



MASSACHUSETTS GAMING COMMISSION  
PUBLIC MEETING #167

October 29, 2015  
10:30 a.m.

**Hynes Convention Center**  
900 Boylston Street, Room 312  
Boston, MA



Massachusetts Gaming Commission

101 Federal Street, 12<sup>th</sup> Floor, Boston, Massachusetts 02110 | TEL 617.979.8400 | FAX 617.725.0258 | [www.massgaming.com](http://www.massgaming.com)



## NOTICE OF MEETING and AGENDA

**October 29, 2015**

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:

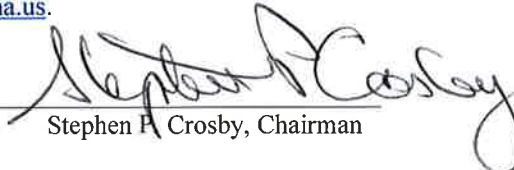
**Thursday, October 29, 2015  
10:30 a.m.  
Hynes Convention Center  
900 Boylston Street, Room 312  
Boston, MA**

### **PUBLIC MEETING - #167**

1. Call to order
2. Approval of Minutes
  - a. October 15, 2015
3. Ombudsman – John Ziemba
  - a. Region C Request For Application 2 – Evaluation Process Update
  - b. Wynn Quarterly Report – Robert DeSalvio & Jackie Krum
  - c. Wynn Site Plan Review
  - d. MGM Design Review Process Discussion
4. Racing – Alex Lightbown, Interim Director of Racing/Chief Veterinarian
  - a. Massachusetts Thoroughbred Breeders Association Request to Race Massachusetts –Bred Races at Finger Lakes – VOTE
  - b. Request from Suffolk Downs to change October 31<sup>st</sup> post time to 11:05 am
  - c. Hearing Dates for 2016 Racing License Applications
5. Fantasy Sports – Chairman Steve Crosby
6. 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 “Gaming Commission Meeting” at [www.massgaming.com](http://www.massgaming.com) and emailed to: [regs@sec.state.ma.us](mailto:regs@sec.state.ma.us), [melissa.andrade@state.ma.us](mailto:melissa.andrade@state.ma.us).

10/27/15  
(Date)

  
Stephen A. Crosby, Chairman

**Date Posted to Website:** October 27, 2015 at 10:30 a.m.



**Massachusetts Gaming Commission**

101 Federal Street, 12<sup>th</sup> Floor, Boston, Massachusetts 02110 | TEL 617.979.8400 | FAX 617.725.0258 | [www.massgaming.com](http://www.massgaming.com)



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## Meeting Minutes

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**Date/Time:** October 15, 2015 – 10:30 a.m.

**Place:** Massachusetts Gaming Commission  
101 Federal Street, 12<sup>th</sup> Floor  
Boston, Massachusetts

**Present:** Commissioner James F. McHugh  
Commissioner Bruce Stebbins  
Commissioner Enrique Zuniga

**Absent:** Chairman Stephen P. Crosby  
Commissioner Gayle Cameron

**Time entries are linked to  
corresponding section in  
Commission meeting video**

### Call to Order

See transcript page 2

10:30 a.m. Commissioner McHugh called to order the 166<sup>th</sup> Commission Meeting and noted the absence of Chairman Crosby and Commissioner Cameron.

### Approval of Minutes

See transcript pages 2-3

10:31 a.m. *Commissioner McHugh moved for the approval of the September 24, 2015 minutes with reservation of power to correct mechanical and typographical errors. Motion seconded by Commissioner Stebbins. Motion passed unanimously.*

*Commissioner McHugh moved for the approval of the October 1, 2015, minutes with reservation of power to correct mechanical and typographical errors. Motion seconded by Commissioner Stebbins. Motion passed unanimously.*

### Administration

See transcript pages 4-20

10:32 a.m. Chief Project Manager Joan Matsumoto provided an update on the After Action Review - an assessment of activities to identify best practices, issues and concerns, corrective actions, and lessons learned from the Plainridge Park Casino opening. She reported she hopes to deliver a final report by the end of the calendar year.

- [10:47 a.m.](#) Interim Executive Director Karen Wells presented on a request for approval of a key gaming executive license for Stephanie Shockley and provided a summary of Ms. Shockley's educational and professional background.
- [10:49 a.m.](#) *Commissioner Stebbins moved that the Commission approve the key gaming license for Stephanie Shockley as Director of Surveillance. Motion seconded by Commissioner Zuniga. Motion passed unanimously.*

### **Research and Responsible Gaming**

See transcript pages 21-72

- [10:51 a.m.](#) Director Mark Vander Linden provided an update on the Play Management system – a budget setting tool, which included roll out timeline and evaluation to determine effectiveness.
- [10:58 a.m.](#) Trina Cramer, Product Manager for Scientific Games, presented on Play Management screen views which included: Play Management icon, enrollment notification, terms and conditions, rewards PIN, choices to set budget, food credit, account history, un-enroll features, notification messages, and change budget options. She also noted availability of Play Management and GameSense information on kiosk screens.
- [11:47 a.m.](#) The Commission took a short recess.
- [11:52 a.m.](#) The meeting resumed.

### **Ombudsman**

See transcript pages 72-89

- [11:52 a.m.](#) Ombudsman John Ziemba provided an update on the Region C evaluation process which included receipt of letters pertaining to designation as a surrounding community, a request from Mass Gaming & Entertainment ("MGE") for a two week delay on their 90 minute presentation, and an updated draft schedule.
- [12:00 p.m.](#) Commissioners Zuniga and McHugh stated that the request from MGE for a two week delay on their presentation was reasonable.
- [12:03 p.m.](#) Chief of Staff Janice Reilly and Licensing Director Paul Connelly provided an update on the Region C application review process. They reported that the administrative completeness review has been finished, a deficiency letter was sent to Attorney Donnelly, and the application, except for sections that are still in review or marked confidential, will be posted on the website.
- [12:08 p.m.](#) Jill Griffin, Director of Workforce, Supplier and Diversity Development, reported on receipt of ILEV (Impacted Live Entertainment Venue) petitions received from the Brockton 21<sup>st</sup> Century Corporation on behalf of Campanelli Stadium and the Shaw's Center; and the Massachusetts Performing Arts Coalition on behalf of South Shore Playhouse (d/b/a South Shore Music Circus and Cape Cod Melody Tent), Lynn Auditorium, and the Zeiterion Theatre in New Bedford.



## **Racing Division**

See transcript pages 89-94

- [12:11 p.m.](#) Dr. Alexandra Lightbown, Interim Director of Racing, provided an update on the 2016 racing license applications received from Plainridge, Suffolk, Brockton and Middleboro. She noted that public hearings will be scheduled and the applications will be posted on the MGC website.
- [12:13 p.m.](#) Dr. Alexandra Lightbown presented on recommendation to approve request from Suffolk Downs for premium free period on harness simulcasting – from May 17 through August 8, 2015.
- [12:15 p.m.](#) *Commissioner Zuniga moved that the Commission approve the request of Suffolk Downs to have May 17 through August 8, 2015 designated as their premium free period for harness racing simulcast signal. Motion seconded by Commissioner Stebbins. Motion passed unanimously.*

## **Legal Division**

See transcript pages 94-111

- [12:16 p.m.](#) General Counsel Catherine Blue presented on the schedule for the issuance of the Section 61 Findings for MGM. General Counsel Blue noted that the draft Section 61 Findings have been provided to MGM and to our consultants for review.
- [12:21 p.m.](#) Attorney Jed Nosal, representing MGM Springfield, reported on notice of project change.
- [12:24 p.m.](#) Deputy General Counsel Todd Grossman provided an update on draft 205 CMR 129 - a transfer regulation. Deputy General Counsel Grossman noted that the language will be reorganized to address a number of transfers that may occur and an updated draft will be presented to the Commission for review.
- [12:29 p.m.](#) General Counsel Blue presented on the Wynn site design review process. General Counsel Blue noted that consultants will provide the Commissioners with a report on their review of the proposed design and the current design provided by Wynn.

## **Other Business Not Reasonably Anticipated**

See transcript pages 111-112

- [12:34 p.m.](#) *Having no further business, a motion to adjourn was made by Commissioner Zuniga. Motion seconded by Commissioner Stebbins. Motion passed unanimously.*

## **List of Documents and Other Items Used**

1. Massachusetts Gaming Commission, Notice of Meeting and Agenda dated October 15, 2015
2. Massachusetts Gaming Commission, Draft Meeting Minutes dated September 24, 2015
3. Massachusetts Gaming Commission, Draft Meeting Minutes dated October 1, 2015,
4. Massachusetts Gaming Commission, After Action Report: Plainridge Park Casino Opening

5. Massachusetts Gaming Commission, Memorandum dated October 15, 2015 regarding Status Update on Play Management with attachment
6. Massachusetts Gaming Commission, Region C Estimated Category 1(Resort-Casino) Timeline, Last updated September 28, 2015
7. Massachusetts Gaming Commission, Region C Estimated Category 1(Resort-Casino) Timeline, Last updated October 13, 2015
8. Letter from John Donnelly to Ombudsman John Ziemba, dated October 7, 2015 regarding Mass Gaming & Entertainment's request for extension
9. Letters from Towns Regarding Designation as a Surrounding Community: Abington, Avon, East Bridgewater, Easton, Holbrook, Stoughton, West Bridgewater, Whitman, and Pembroke
10. Letter from the Brockton 21<sup>st</sup> Century Corporation to the Massachusetts Gaming Commission, dated October 13, 2015 regarding Impacted Live Entertainment Venue
11. Letter from the Massachusetts Performing Arts Coalition to the Massachusetts Gaming Commission, dated October 8, 2015 regarding Impacted Live Entertainment Venue
12. Massachusetts Gaming Commission, Memorandum dated October 13, 2015 regarding Suffolk Downs Request for Premium Free Period for Harness Simulcasting
13. Letter from James Alcott to Dr. Alexandra Lightbown, dated September 18, 2015 regarding request for approval of premium rate waiver of harness simulcast signals

/s/ Catherine Blue

Catherine Blue, Assistant Secretary

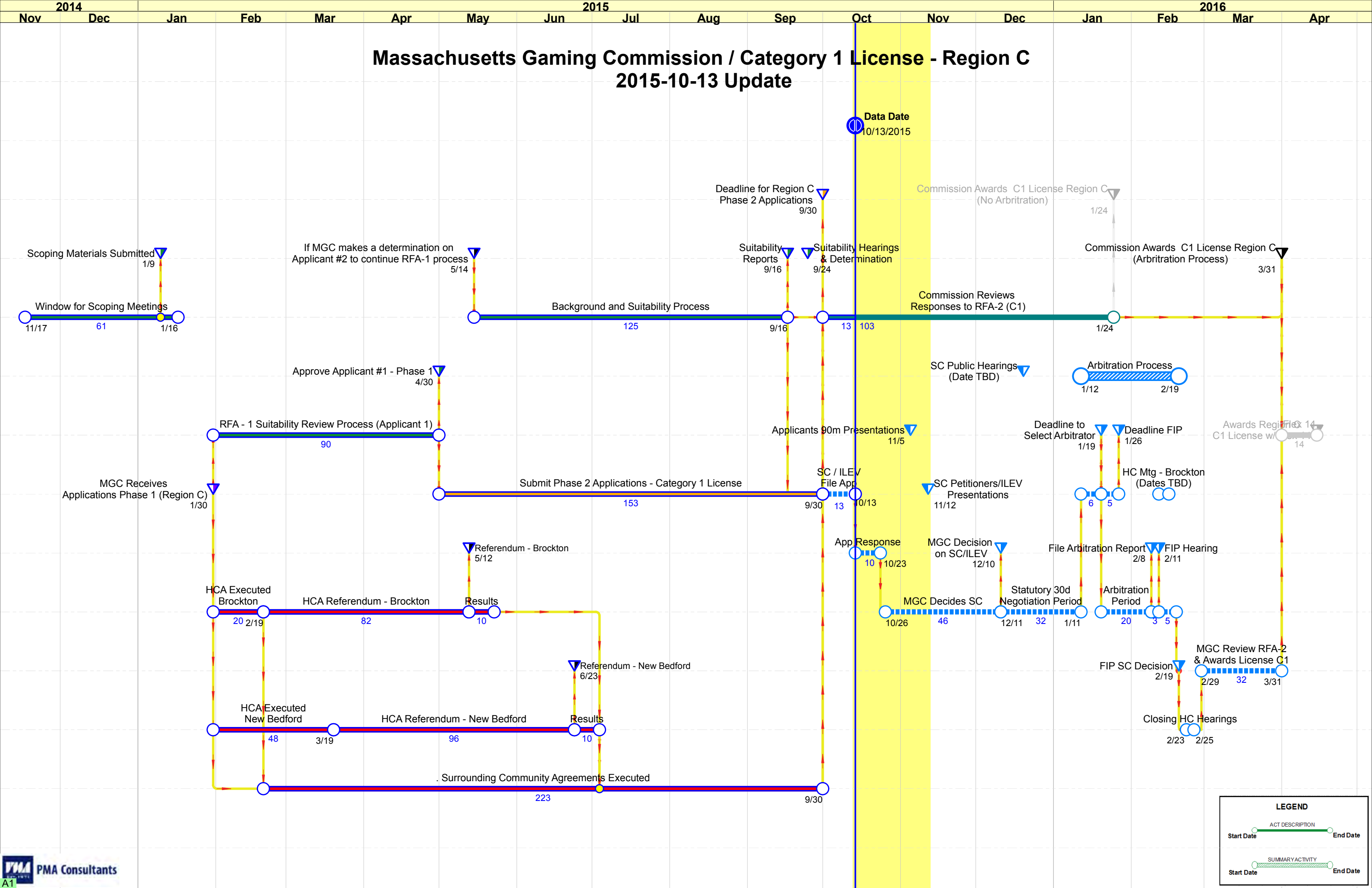
# REGION C

SOUTHEASTERN MASSACHUSETTS

## Estimated CATEGORY 1 (Resort-Casino) Timeline

LAST UPDATED: 10/13/2015

ESTIMATED DATE(S)	ACTION
January 30, 2015	Category 1 RFA-1 (preliminary) application deadline
May 4	Deadline for additional materials for substantially complete RFA-1 application
September 30	Category 1 RFA-2 (site-specific) application deadline
October 13	Deadline for Surrounding Community/Impacted Live Entertainment (“ILEV”) Petitions to be submitted to MGC
	Deadline for Letters of Assent by Surrounding Communities Designated in an Application to be filed with MGC
October 23rd	Applicant may provide a response to Surrounding Community/ILEV Petitions to MGC
November 5th	Applicant 90 minute presentations on Category 1 Application
November 12th	Presentations by Surrounding Community Petitioners/ILEV Petitioners and Applicant on petitions for designation
December 10th	Decisions by Commission on Surrounding Community/ILEV Petitions
	Written designation of Surrounding Communities/ILEV that have assented to designations made in Category 1 Application
December 11th	Beginning of 30-day statutory negotiation period
TBD	Public input hearings in Surrounding Communities regarding resort-casino proposal
January 11th	End of 30-day statutory negotiation period between Applicant and Surrounding Communities/ILEVs
January 12th	Beginning of Binding Surrounding Community/ILEV Arbitration Process
<b>Before selecting an arbitrator, the parties must file with the Commission a notice of intent to commence arbitration.</b>	
January 19th	Deadline for Selection of Arbitrator. If the parties cannot mutually select a single arbitrator, each party shall select one neutral, independent arbitrator who shall then mutually choose a third neutral, independent arbitrator. In the event that a third neutral, independent arbitrator is not selected, the Commission or its designee shall select the third neutral, independent arbitrator.
	Deadline for Best and Final Offer. Each party submits its best and final offer for a Surrounding Community Agreement/ILEV Agreement to the arbitrator and to the other party.
January 19, 2015 – February 8, 2016	Arbitrations. The arbitrator(s) conduct(s) any necessary proceedings.
January 26th	Deadline for petitions that a term or terms of a best and final offer are fundamentally inconsistent with a provision or the purposes of G.L. c. 23K (“Fundamental Inconsistency Petitions”)
February 8th	Deadline for Arbitration report to be filed with Commission. The arbitrator(s) file(s) with the Commission, and issue(s) to the parties, a report specifying the terms of the Surrounding Community Agreement between the applicant and the community.
February 11th	Anticipated Date for Commission hearing on Fundamental Inconsistency Petitions
TBD	Host Community Hearing in Brockton
February 19th	5 days after anticipated date of Commission determination on Fundamental Inconsistency Petitions. Either the parties sign a Surrounding Community Agreement and file it with the Commission, or the arbitrator’s report, as modified by the Commission after a Fundamental Inconsistency petition, shall be deemed to be the Surrounding Community Agreement between the parties.
February 25th	Conclude Host Community Hearing in Brockton
March 31st	<b>DECISION ON CATEGORY 1 REGION C LICENSE</b>





Charles N. Le Ray  
617.542.4880  
cleray@daintorpy.com

October 19, 2015

**By First Class Mail**

Massachusetts Gaming Commission  
101 Federal Street, 12<sup>th</sup> Floor  
Boston, MA 02110  
Attn: John Ziemba, Ombudsman

**Re: Request by Town of Pembroke for Designation as Surrounding Community**

Dear Ombudsman Ziemba:

I am writing on behalf of Mass Gaming & Entertainment, LLC ("MGE"), in response to the request by Pembroke Town Administrator Edwin J. Thorne, in a letter dated October 8, 2015, on behalf of the Pembroke Board of Selectmen, that Pembroke be designated as a Surrounding Community under 205 CMR 125.01(2)(b)4.

Pembroke's stated reason for seeking Surrounding Community status is the claim that Brockton will need to withdraw additional water from Silver Lake to serve MGE's project. The Massachusetts Legislature authorized Brockton's withdrawal of drinking water from Silver Lake over a century ago. Today that withdrawal is subject to and has the benefit of a Department of Environmental Protection permit, as are Brockton's withdrawals of water from other sources. As is the case for any business purchasing water from the City, MGE will have no control over Brockton's sources of water or from which source(s) water is withdrawn to serve MGE's project.

As detailed in the enclosed letter from Brockton Mayor Bill Carpenter and the enclosed Water Supply Summary Memorandum by Bohler Engineering, the City's existing water withdrawal capacity is more than sufficient to support the project's needs. Brockton has approximately 4.7 Million gallons per day in unused withdrawal capacity, available from several sources. Bohler estimates that the project's daily needs will be approximately 115,000 gallons per day or approximately 0.7% of the City's current regulated water withdrawal capacity of 15.4 Million gallons per day.

For the foregoing reasons, I respectfully request that the Massachusetts Gaming Commission deny Pembroke's request to be designated a Surrounding Community to MGE's Brockton project.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Charles N. Le Ray', written over a horizontal line.

Charles N. Le Ray

Enclosure

cc: Edwin J. Thorne, Pembroke Town Administrator





**BOHLER**  
ENGINEERING

75 Federal Street, Suite 620  
Boston, MA 02110  
617-849-8040  
857-259-4958 (fax)  
[smartorano@bohlereng.com](mailto:smartorano@bohlereng.com)

## **WATER SUPPLY SUMMARY MEMORANDUM**

DATE: October 16, 2015

TO: Mass Gaming & Entertainment, LLC

FROM: Matthew D. Smith, P.E., Bohler Engineering  
Stephen Martorano, P.E., Bohler Engineering

SUBJECT: Proposed Category 1 Gaming Establishment  
Water Supply Summary  
Belmont Street, West Street & Forest Avenue  
Brockton, MA

We are responding to questions relative to the proposed water usage and supply with respect to the proposed Resort Casino in Brockton, MA. The city has several contractual agreements to withdraw up to 15.4 MGD of water and currently utilizes approximately 10.7 MGD as further described below. The proposed gaming facility is estimated to use approximately 0.1 MGD, or approximately 0.7% of the City's current regulated allocation. Therefore, since the City has additional available withdrawal of 4.7 MGD, the City has ample capacity to service the proposed Resort Casino.

Mass Gaming & Entertainment, LLC, like any other business in the City, is merely a purchaser of water and has no control over where the City of Brockton sources water withdrawals. The City's water withdrawal is regulated by the Massachusetts Department of Environmental Protection and is outside of Mass Gaming & Entertainment, LLC control as a private property and business owner.

### **Existing City of Brockton Water Supply**

The City of Brockton Department of Public Works Division of Water and Sewer supplies the City of Brockton with its drinking water. Brockton currently has multiple registered and permitted withdrawal sources available from which potable water is drawn from to serve the city (see attached DEP Public Water System Annual Statistical Report for information on withdrawal limits and usage data for each of the available sources). The primary source of water is Silver Lake, located in Pembroke, Kingston, and Plympton and within the Jones River Watershed, from which the city is permitted to withdraw 11.11 MGD. The secondary source is the Brockton Reservoir (Avon Reservoir) which the City is permitted to withdraw 0.83 MGD. Although the combined yield of Silver Lake and the Brockton Reservoir is 11.94 MFD, a DEP Consent Order limits the withdrawal to a total of 11.30 MGD. The third available source is the Aquaria Desalinization Plant, located in Dighton on the lower Taunton River, which Brockton is contracted to purchase up to 4.07 MGD. The Aquaria Desalinization Plant contract was secured pursuant to satisfying the above referenced Consent Order in order to ensure that the City could support growth in its water demand while remaining under the restrictions imposed by

DEP on withdrawals from the City's other sources. The City also has an emergency well on Hubbard Avenue with an available withdrawal of 0.04 MGD. Collectively Brockton can provide up to 15.4 MGD. On average, Brockton is withdrawing 10.7 MGD, the majority of which comes from Silver Lake. Accordingly, the Brockton water supply system has an additional available allocation from the combinations of these sources of 4.7 MGD.

### **Proposed Project Water Use**

Mass Gaming & Entertainment, LLC is proposing to construct an approximately 258,000 square foot (SF) building plus associated hotel and appurtenances as authorized by a Category 1 license under Chapter 23K of the General Laws. The Resort Casino is currently planned to include a gaming facility, a hotel, restaurants, sundry retail, multifunctional meeting, event and entertainment space, and back of house spaces. In total, the proposed facility will consist of approximately 512,000 SF of floor area. Other components of the Resort Casino will include valet parking, surface parking areas and a parking structure, and all required systems in accordance with the law and the Resort Casino's LEED Gold, sustainable, and energy efficiency objectives.

Based on water use records from similar resort casino projects owned and operated by affiliates of Mass Gaming & Entertainment, LLC, the Resort Casino is conservatively estimated to use approximately 115,000 GPD (0.1 MGD) of potable water, roughly 0.7% of the allowable withdrawals from the available City sources, which in turn maintains an additional 4.6 MGD capacity over current withdrawal rates (including the proposed 0.1 MGD Resort Casino's projected water usage). As outlined under the "Existing City of Brockton Water Supply" section, there is ample capacity between the available sources to accommodate the additional flows anticipated from the Resort Casino.

### **Conclusion**

The City has sufficient water supply withdrawal capacity to support the Resort Casino's demand. Any City of Brockton withdrawals are regulated by the Massachusetts Department of Environmental Protection and are outside of Mass Gaming & Entertainment, LLC control as a private property and business owner.



*Brockton, Massachusetts*  
*"City of Champions"*  
*Bill Carpenter – Mayor*

October 16, 2015

Mr. Stephen Crosby, Chair  
Massachusetts Gaming Commission  
101 Federal Street, 12<sup>th</sup> floor  
Boston, MA 02110

Dear Mr. Crosby:

I have been informed by Mass Gaming & Entertainment, LLC, (MG & E) that the Town of Pembroke has petitioned the Commission to be considered a "surrounding community" for the proposed casino in Brockton on the basis of "increased demand on community and regional water and sewer systems", because "the town is home to Silver Lake, the major source of water to the city". I write to you to register my opposition to this request and to ask that you deny that designation to Pembroke.

The city obtains its water from a variety of sources, not just Silver Lake. In addition to Silver Lake, the city currently obtains water from its treatment plant on the Brockton Reservoir, located both in Brockton and Avon, and from a water purchase agreement with a private operator of a desalination plant in Dighton; this company's name is Aquaria. The city's withdrawals from these sources is regulated by the state DEP and also by a Consent Order with the state. I know that MG & E has filed a letter prepared by its engineering firm, Bohler Engineering, which describes in detail the city's water sources, and the allowed draw from each. I won't reiterate all of that information in this letter. However, suffice it to say that the proposed impact of the MG & E project on the city's water demand will be minimal: approximately 0.1 million gallons per day (MGD), or less than 1 % of the city's current withdrawals from all sources.

The city currently has withdrawal allocations from its various sources which exceed the city's current need by almost 4.7 MGD. The city's water supply clearly has the ability to support the additional demand from the casino project. In fact the city's current withdrawal from Silver Lake alone is well under the 11.1 million authorized by the consent decree. That source alone could legally satisfy the demand of the casino. The combination of the Silver Lake plus Brockton Reservoir increases the available supply to 11.3 MGD. The average withdrawal from these two sources alone of 10.7 MGD leaves plenty of capacity to serve the casino. Even so, that capacity ignores the additional supply furnished by the city's water purchase agreement.

Pursuant to the consent decree, the city secured the additional source provided by the water purchase agreement with the company that operates the desalination plant in Dighton. This source is intended to allow the support of growth in the city's water supply in order to support commercial and residential

growth in the city. It would be extremely unfair to ignore the ability of this additional supply of about 4 MGD to support the city's needs.

There is no lack of water supply to Brockton to satisfy the needs of the proposed. The city's use of its water sources is already heavily regulated by state agencies. Accordingly, I request that the Commission deny the request of the Town of Pembroke.

Very truly yours,

  
Bill Carpenter  
Mayor



Charles N. Le Ray  
617.542.4880  
cleray@daintorpy.com

October 23, 2015

**By E-Mail and First Class Mail**

Massachusetts Gaming Commission  
101 Federal Street, 12<sup>th</sup> Floor  
Boston, MA 02110  
Attn: John Ziemba, Ombudsman

**Re: Request by Brockton 21<sup>st</sup> Century Corporation for ILEV designations**

Dear Ombudsman Ziemba:

I am writing on behalf of Mass Gaming & Entertainment, LLC ("MGE"), in response to the request by Michael Gallerani, Executive Director of Brockton 21<sup>st</sup> Century Corporation, in a letter dated October 13, 2015, that Campanelli Stadium and the Shaw's Center be designated as an Impacted Live Entertainment Venue ("ILEV") under 205 CMR 126.01(2).

MGE thanks Brockton 21<sup>st</sup> Century and its Executive Director Gallerani for their continued strong support of MGE's Category 1 gaming establishment project, and for recognizing in their letter that:

Brockton 21<sup>st</sup> Century Corporation remains steadfast in its support of the Mass Gaming and Entertainment, LLC casino project as presented. The project's value to Brockton as a business, an employer, and taxpayer, as well as serving as the basis or foundation of a new economic sector (tourism) is understood, valued and anticipated as only a positive.

MGE shares Brockton 21<sup>st</sup> Century's belief that the proposed resort casino will create significant, positive benefits for the City and Brockton 21<sup>st</sup> Century. To their benefit, Campanelli Stadium and the Shaw's Center will be exposed to the millions of visitors that MGE's project will bring to the City each year.

MGE looks forward to collaborating with the City and Brockton 21<sup>st</sup> Century to build mutually-beneficial relationships and to make MGE's project a catalyst for the creation of a Belmont Street corridor entertainment district. To that end, if selected to receive the Region C Category 1 license, MGE has offered to contribute up to one hundred thousand dollars (\$100,000) toward the City's cost of hiring a third-party consultant for a master planning study for such an entertainment district. Campanelli Stadium and the Shaw's Center will be critical components of that district.

MGE's project will draw significant additional tourism to Brockton, tourism from which Brockton 21<sup>st</sup> Century will benefit. Further, the creation of an entertainment district with new restaurants, retail stores, and other tourist-attracting uses will bring even more visitors to the area, providing greater visibility for and interest in Campanelli Stadium and the Shaw's Center. Far from suffering





John Ziemba, Ombudsman

October 23, 2015

Page 2

adverse impacts, Brockton 21<sup>st</sup> Century will benefit from MGE's project and the creation of the entertainment district that MGE's project will make possible.

MGE and Brockton 21<sup>st</sup> Century have begun discussions about ways to work collaboratively for their common benefit. These discussions are ongoing. MGE expects that a mutually-beneficial agreement will be memorialized in the near future.

Nonetheless, in light of today's deadline for responding to Brockton 21st Century's request for ILEV designation, and to protect its own interests, MGE feels obliged to oppose that request. MGE looks forward to a long-term, mutually-beneficial relationship with Campanelli Stadium and the Shaw's Center, but does not believe that its project will have adverse impacts on those venues. Because Campanelli Stadium and the Shaw's Center are located near MGE's proposed resort casino, those venues will benefit from exposure to the millions of annual visitors that MGE's project will bring to the City. Further, the resort casino's hotel will complement the events hosted by Brockton 21st Century's venues.

The events typically held at those venues are different from the typical events MGE anticipates hosting. MGE's project includes (i) a multi-use space that could host meetings, conventions, weddings, seminars, and live performances with seating for less than 1,000 people and (ii) other, smaller live entertainment venues in the project's lounges, restaurants, bars, and other areas. In contrast to MGE's proposal, Campanelli Stadium seats approximately 4,500 people for ball games, and up to 6,000 people for concerts, *i.e.*, 4½–6 times the capacity of MGE's proposed multi-use space. The Shaw's Center hosts weddings, bar/bat mitzvahs, family gatherings, meetings, and other gatherings typically requiring a much smaller space than MGE's proposed multi-use space. When the Shaw's Center does host live entertainment, the events are typically private, not ticketed events open to the general public.

For the foregoing reasons, while MGE looks forward to a collaborative and mutually-beneficial relationship with Brockton 21<sup>st</sup> Century Corporation, I respectfully request that the Massachusetts Gaming Commission deny Brockton 21<sup>st</sup> Century's request that Campanelli Stadium and the Shaw's Center be designated as an ILEV.

Sincerely,

Charles N. Le Ray

cc: Michael Gallerani, Brockton 21<sup>st</sup> Century Corporation  
Jill Lacey Griffin, Massachusetts Gaming Commission



Charles N. Le Ray  
617.542.4880  
cleray@daintorpy.com

October 23, 2015

**By E-Mail and First Class Mail**

Massachusetts Gaming Commission  
101 Federal Street, 12<sup>th</sup> Floor  
Boston, MA 02110  
Attn: John Ziemba, Ombudsman

**Re: Request by MPAC for ILEV designations**

Dear Ombudsman Ziemba:

I am writing on behalf of Mass Gaming & Entertainment, LLC ("MGE"), in response to the request by Troy Siebels, President of the Massachusetts Performing Arts Coalition ("MPAC"), in a letter dated October 8, 2015 (received by MGE on October 13, 2015), that four venues operated by three MPAC members be designated as Impacted Live Entertainment Venues ("ILEVs") under 205 CMR 126.01(2).

MGE respects these MPAC venue operators and their concerns. MGE's discussions with MPAC have been productive and are ongoing. MGE looks forward to concluding a mutually-beneficial agreement with MPAC, and anticipates entering into such a formal agreement in the near future. Nonetheless, in light of today's deadline for responding to MPAC's request, and to protect its own interests, MGE feels obliged to oppose MPAC's request for ILEV designations.

The Gaming Commission's regulations provide that in determining whether a venue will be designated as an ILEV, the factors to be considered include, but are not limited to, the venue's distance from the gaming establishment, venue capacity, the type of performances offered by that venue, and whether the applicant intends to include a geographic exclusivity in contracts with entertainers or to otherwise limit the performance of entertainers within Massachusetts. MGE's proposed project includes (i) a multi-use space that could host meetings, conventions, weddings, seminars, and live performances with seating for less than 1,000 people and (ii) other, smaller live entertainment venues in the project's lounges, restaurants, bars, and other areas. Furthermore, MGE already has indicated to MPAC that MGE does not intend to require geographic exclusivity with respect to the MPAC venues in the contracts of entertainers at the proposed gaming establishment.

The MPAC venues in question are:

- *South Shore Playhouse Associates, Inc. d/b/a South Shore Music Circus, Cohasset*: Described in MPAC's letter as approximately 19 miles from MGE's proposed gaming establishment, this venue is over 21 miles away by road, a distance that would take three quarters of an hour to drive absent rush hour traffic. According to South Shore Playhouse Associate's website, this venue has approximately 2,300 seats.



John Ziemba, Ombudsman

October 23, 2015

Page 2

- *South Shore Playhouse Associates, Inc. d/b/a Cape Cod Melody Tent, Hyannis*: Described in MPAC's letter as approximately 47 miles from MGE's proposed gaming establishment, this venue is approximately 61 miles away by road, a distance that would take over an hour to drive in moderate traffic. According to South Shore Playhouse Associate's website, this venue is approximately the same size as the South Shore Music Circus, *i.e.*, has approximately 2,300 seats.
- *Lynn Auditorium, Lynn*: Described in MPAC's letter as approximately 26 miles from MGE's proposed gaming establishment, this venue is northeast of Boston and over 35 miles away by road, a distance that would typically take over an hour to drive via the "direct" route through Boston. According to the operator's website, this venue has approximately 2,100 seats.
- *Zeiterion Theatre, New Bedford*: Described in MPAC's letter as approximately 31 miles from MGE's proposed gaming establishment, this venue is over 37 miles away by road, a distance that would typically take at least forty minutes to drive. The on-line seating chart for this venue shows approximately 1,228 seats.

Given the distances involved, capacities of the MPAC venues, and MGE's intention to not require geographic exclusivity with respect to the MPAC venues, we dispute the eligibility of the venues in question for ILEV status under Chapter 23K and the applicable regulations.

For the foregoing reasons, I respectfully request that the Massachusetts Gaming Commission deny MPAC's request that the four venues operated by three of the Coalition's members be granted ILEV status.

Sincerely,

Charles N. Le Ray

cc: Troy Siebels, President, MPAC  
Jill Lacey Griffin, Massachusetts Gaming Commission



Wynn Everett

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# **QUARTERLY REPORT AS OF SEPTEMBER 30, 2015**



Wynn Everett

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# PERMITTING

# Permitting

## MEPA

Secretary's Certificate on **August 28, 2015**

Section 61 findings in progress

## Chapter 91

Application submitted on **August 24, 2015**

Legal publication notice on **September 9, 2015**

Public meeting held on **September 24, 2015**

Public comment concluded on **October 9, 2015**

5 comment letters received

# Permitting

## Site Plan Review Application

Submitted to City of Everett on **May 11, 2015**

Hearing held on **June 22, 2015**

Hearing held on **July 13, 2015**

Hearing held on **August 24, 2015**

Application approved on **September 16, 2015**

## Notice of Intent

Submitted to City of Everett Conservation Commission on **August 11, 2015**

Hearing held on **August 20, 2015**

Notice of Intent approved on **September 17, 2015**

Order of Conditions issued on **September 24, 2015**

Wynn Everett

---

# **SITE REMEDIATION**

# Site Remediation

## **Nearly 2,000 Soil and Water Samples**

Sampling and borings onsite and in the Mystic River, and significant laboratory analysis

## **Release Abatement Measures (“RAM”) Plan for Landside Remediation**

Filed on August 19, 2015 with DEP

## **Development of Plans and Specifications**

Bid documents finalized

## **Petition for Public Involvement Plan**

Designated on April 28, 2015 and filed on August 12, 2015

Public Meeting held on June 2, 2015

Comment Periods ended on July 13, 2015 (PIP) and July 22, 2015 (RAM Plan)

## **Contractor Selected**

Public meetings held in the Cities of Everett and Charlestown on October 13 and 14, 2015

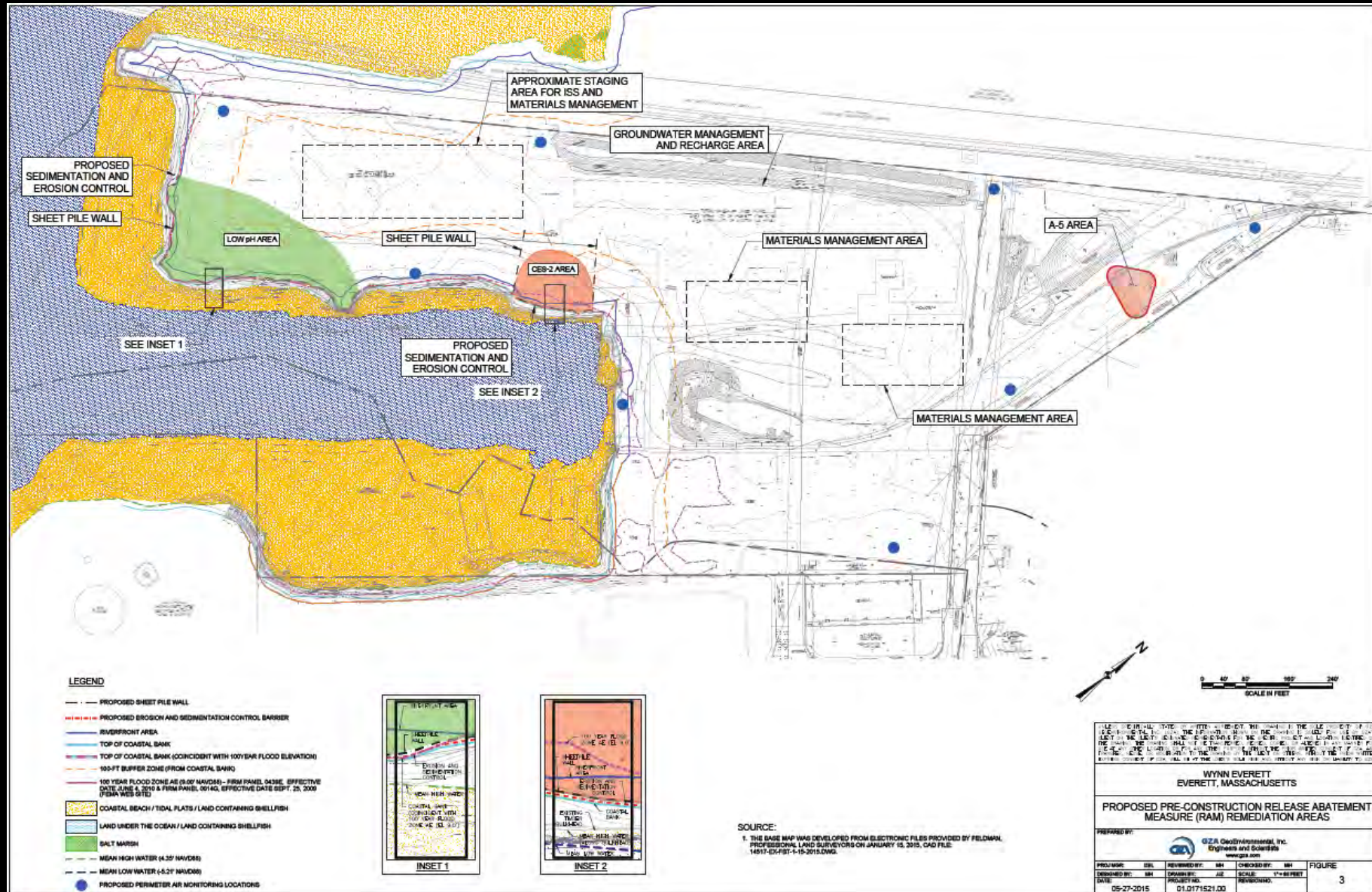


# Site Remediation





# Site Remediation



# Site Remediation

## Perimeter Air Monitoring



## Soil Transportation



Wynn Everett

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# DESIGN

# Design

## Foundation and Garage

Plans for foundation and parking structure ready for permit review this fall

## Hotel Tower

Wynn's design team has completed the design development for the hotel tower and expects to complete full permit review documents by end of November 2015

## Podium

Schematic design is complete and Wynn's design team expects to complete full permit review documents by February 2016

**Site and Maritime** Progressing through design development

Wynn Everett

---

# OFF-SITE INFRASTRUCTURE



# Off-Site Infrastructure

## Design Team Selected

AECOM is advancing the design on all off-site infrastructure other than Sullivan Square

## Sullivan Square/Rutherford Avenue

Howard/Stein-Hudson Associates, Inc. is advancing the conceptual designs to 25%

Meeting scheduled with the City of Boston on October 29, 2015

Wynn Everett

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# **SITE PREPARATION**



# Site Preparation

**Contractor Engaged** - Cashman Dredging and Marine Contractors, LLC



Wynn Everett

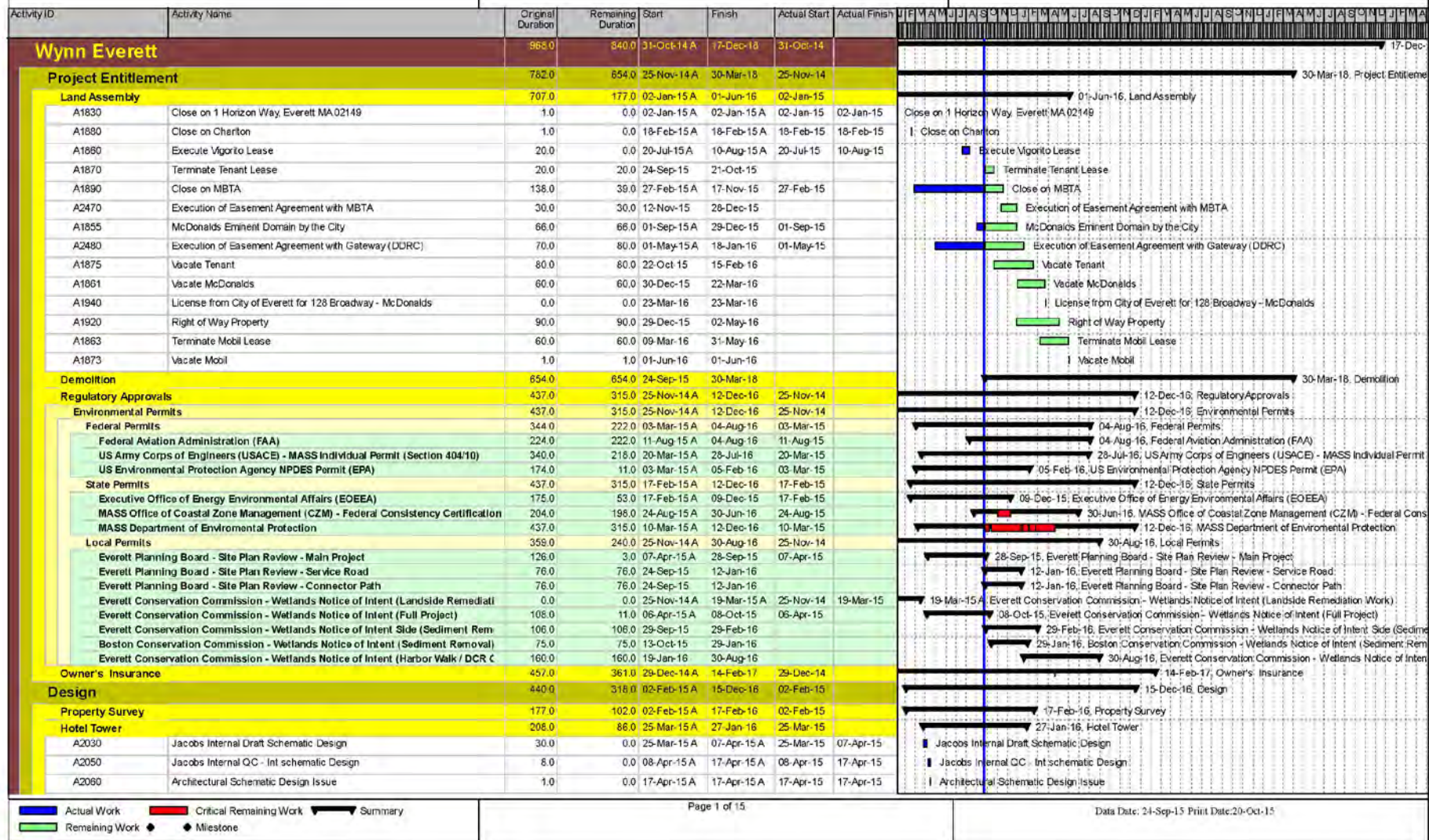
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# PROJECT SCHEDULE

6 Month Look Ahead

## Wynn Everett Master Schedule

Prepared by Wynn Design &amp; Development



Page 1 of 15

Data Date: 24-Sep-15 Print Date: 20-Oct-15



## Prepared by Wynn Design &amp; Development

19



## 6 Month Look Ahead

## Wynn Everett Master Schedule

Prepared by Wynn Design &amp; Development

Activity ID	Activity Name	Original Duration	Remaining Duration	Start	Finish	Actual Start	Actual Finish	Summary
A4170	100% Construction Documents Including Permit Review Comments	1.0	1.0	23-Jun-16	23-Jun-16			I 100% Construction Documents Including Permit Review Comments
<b>Executive Spa</b>		<b>344.0</b>	<b>222.0</b>	<b>25-Mar-15 A</b>	<b>03-Aug-16</b>	<b>25-Mar-15</b>		<b>03-Aug-16, Executive Spa</b>
A4320	WDD Core & Shell Schematic Design	48.0	0.0	25-Mar-15 A	05-Jun-15 A	25-Mar-15	05-Jun-15	■ WDD Core & Shell Schematic Design
A4350	WDD Building Interior Schematic Design	20.0	0.0	18-May-15 A	20-Jun-15 A	18-May-15	20-Jun-15	■ WDD Building Interior Schematic Design
A4340	Draft Jacobs Schematic Design	30.0	0.0	22-Jun-15 A	14-Jul-15 A	22-Jun-15	14-Jul-15	■ Draft Jacobs Schematic Design
A4380	Jacobs Internal QC	8.0	0.0	15-Jul-15 A	24-Jul-15 A	15-Jul-15	24-Jul-15	■ Jacobs Internal QC
A4370	Architectural Schematic Design Issue	1.0	0.0	24-Jul-15 A	24-Jul-15 A	24-Jul-15	24-Jul-15	I Architectural Schematic Design Issue
A4373	Space Plan Approved	5.0	5.0	24-Sep-15	30-Sep-15			I Space Plan Approved
A4376	Update Core & Shell Schematic Design	5.0	5.0	01-Oct-15	07-Oct-15			I Update Core & Shell Schematic Design
A4379	Issue - Jacobs Schematic Design	15.0	15.0	08-Oct-15	28-Oct-15			I Issue - Jacobs Schematic Design
A4390	All Discipline Coordination Work Shop	1.0	1.0	17-Dec-15	17-Dec-15			I All Discipline Coordination Work Shop
A4380	Interiors 30% Issue MEP Device Location	40.0	40.0	22-Oct-15	18-Dec-15			I Interiors 30% Issue MEP Device Location
A4490	Draft Architectural MEP Design & Development 60%	60.0	60.0	01-Oct-15	28-Dec-15			I Draft Architectural MEP Design & Development 60%
A4630	Jacobs Internal QC	8.0	8.0	23-Dec-15	04-Jan-16			I Jacobs Internal QC
A4400	Architectural MEP Design & Development 60%	4.0	4.0	01-Jan-16	06-Jan-16			I Architectural MEP Design & Development 60%
A4410	All Discipline Coordination Work Shop	1.0	1.0	11-Feb-16	11-Feb-16			I All Discipline Coordination Work Shop
A4420	Interiors 60% Issue Pricing Set	20.0	20.0	29-Feb-16	25-Mar-16			I Interiors 60% Issue Pricing Set
A4950	Draft Architectural Issue Pricing Set	60.0	60.0	11-Jan-16	01-Apr-16			I Draft Architectural Issue Pricing Set
A4770	Jacobs Internal QC	8.0	8.0	04-Apr-16	13-Apr-16			I Jacobs Internal QC
A4430	Architectural Issue Pricing Set	1.0	1.0	29-Apr-16	29-Apr-16			I Architectural Issue Pricing Set
A4440	All Discipline Coordination Work Shop	1.0	1.0	12-May-16	12-May-16			I All Discipline Coordination Work Shop
A4990	Draft 90% Issue / Full Permit Issue	16.0	16.0	02-May-15	23-May-16			I Draft 90% Issue / Full Permit Issue
A5000	Jacobs Internal QC	8.0	8.0	24-May-16	02-Jun-16			I Jacobs Internal QC
A4450	90% Issue / Full Permit Issue	8.0	8.0	13-Jun-16	22-Jun-16			I 90% Issue / Full Permit Issue
A4970	Draft 100% Construction Documents Including Permit Review Comments	20.0	20.0	23-Jun-16	20-Jul-16			I Draft 100% Construction Documents Including Permit Review Comments
A5010	Jacobs Internal QC	8.0	8.0	21-Jul-16	01-Aug-16			I Jacobs Internal QC
A4460	100% Construction Documents Including Permit Review Comments	3.0	3.0	01-Aug-16	03-Aug-16			I 100% Construction Documents Including Permit Review Comments
<b>Theater</b>		<b>341.0</b>	<b>219.0</b>	<b>25-Mar-15 A</b>	<b>29-Jul-16</b>	<b>25-Mar-15</b>		<b>29-Jul-16, Theater</b>
A8860	WDD Core & Shell Schematic Design	48.0	0.0	25-Mar-15 A	05-Jun-15 A	25-Mar-15	05-Jun-15	■ WDD Core & Shell Schematic Design
A8870	WDD Building Interior Schematic Design	20.0	0.0	18-May-15 A	20-Jun-15 A	18-May-15	20-Jun-15	■ WDD Building Interior Schematic Design
A8880	Draft Jacobs Schematic Design	30.0	0.0	22-Jun-15 A	14-Jul-15 A	22-Jun-15	14-Jul-15	■ Draft Jacobs Schematic Design
A8890	Jacobs Internal QC - Theater	8.0	0.0	15-Jul-15 A	24-Jul-15 A	15-Jul-15	24-Jul-15	■ Jacobs Internal QC - Theater
A8900	Architectural Schematic Design Issue	1.0	0.0	24-Jul-15 A	24-Jul-15 A	24-Jul-15	24-Jul-15	I Architectural Schematic Design Issue
A8910	Space Plan Approved	5.0	5.0	24-Sep-15	30-Sep-15			I Space Plan Approved
A8920	Update Core & Shell Schematic Design	5.0	5.0	01-Oct-15	07-Oct-15			I Update Core & Shell Schematic Design
A8930	Issue - Jacobs Schematic Design	15.0	15.0	08-Oct-15	28-Oct-15			I Issue - Jacobs Schematic Design
A8940	All Discipline Coordination Work Shop	1.0	1.0	17-Dec-15	17-Dec-15			I All Discipline Coordination Work Shop
A8950	Interiors 30% Issue MEP Device Location	40.0	40.0	22-Oct-15	18-Dec-15			I Interiors 30% Issue MEP Device Location
A8960	Draft Architectural MEP Design & Development 60%	60.0	60.0	01-Oct-15	28-Dec-15			I Draft Architectural MEP Design & Development 60%
A8970	Jacobs Internal QC - Theater	8.0	8.0	23-Dec-15	04-Jan-16			I Jacobs Internal QC - Theater

■ Actual Work   
 ■ Critical Remaining Work   
 ■ Remaining Work   
 ◆ Milestone   
 ▼ Summary

Page 3 of 15

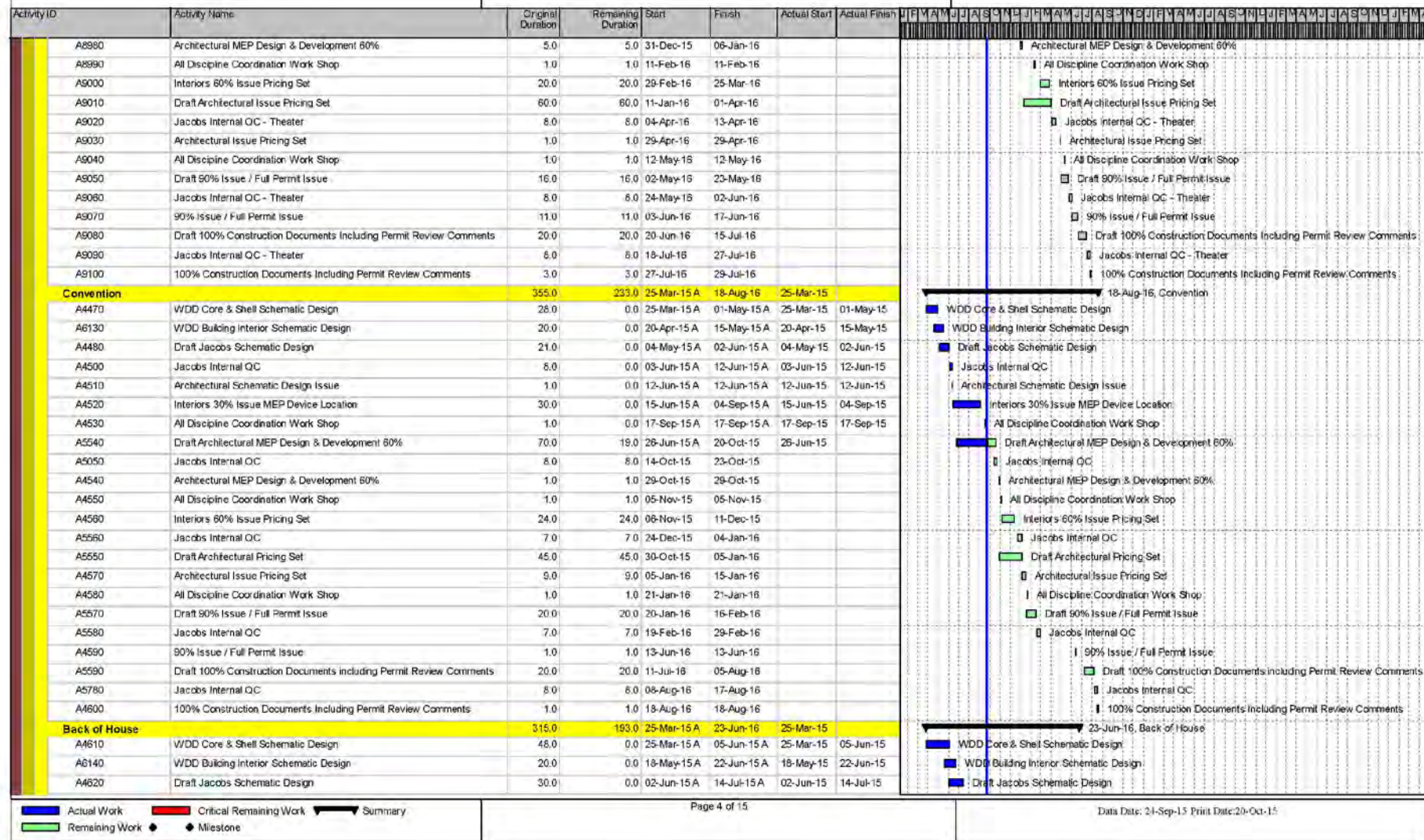
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## 6 Month Look Ahead

## Wynn Everett Master Schedule

Prepared by Wynn Design &amp; Development





## Prepared by Wynn Design &amp; Development

22



## Prepared by Wynn Design &amp; Development

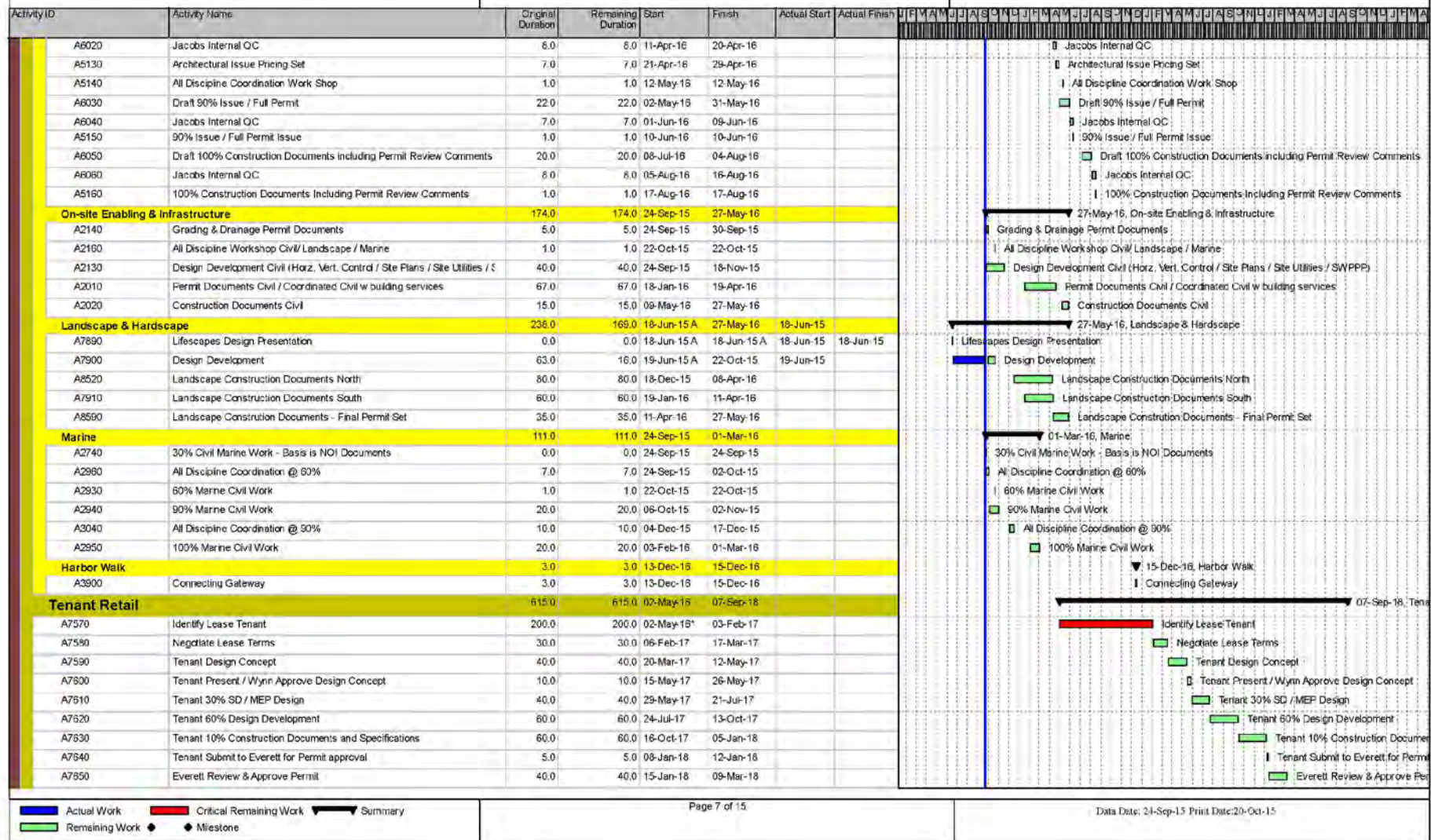
23



## 6 Month Look Ahead

## Wynn Everett Master Schedule

Prepared by Wynn Design &amp; Development

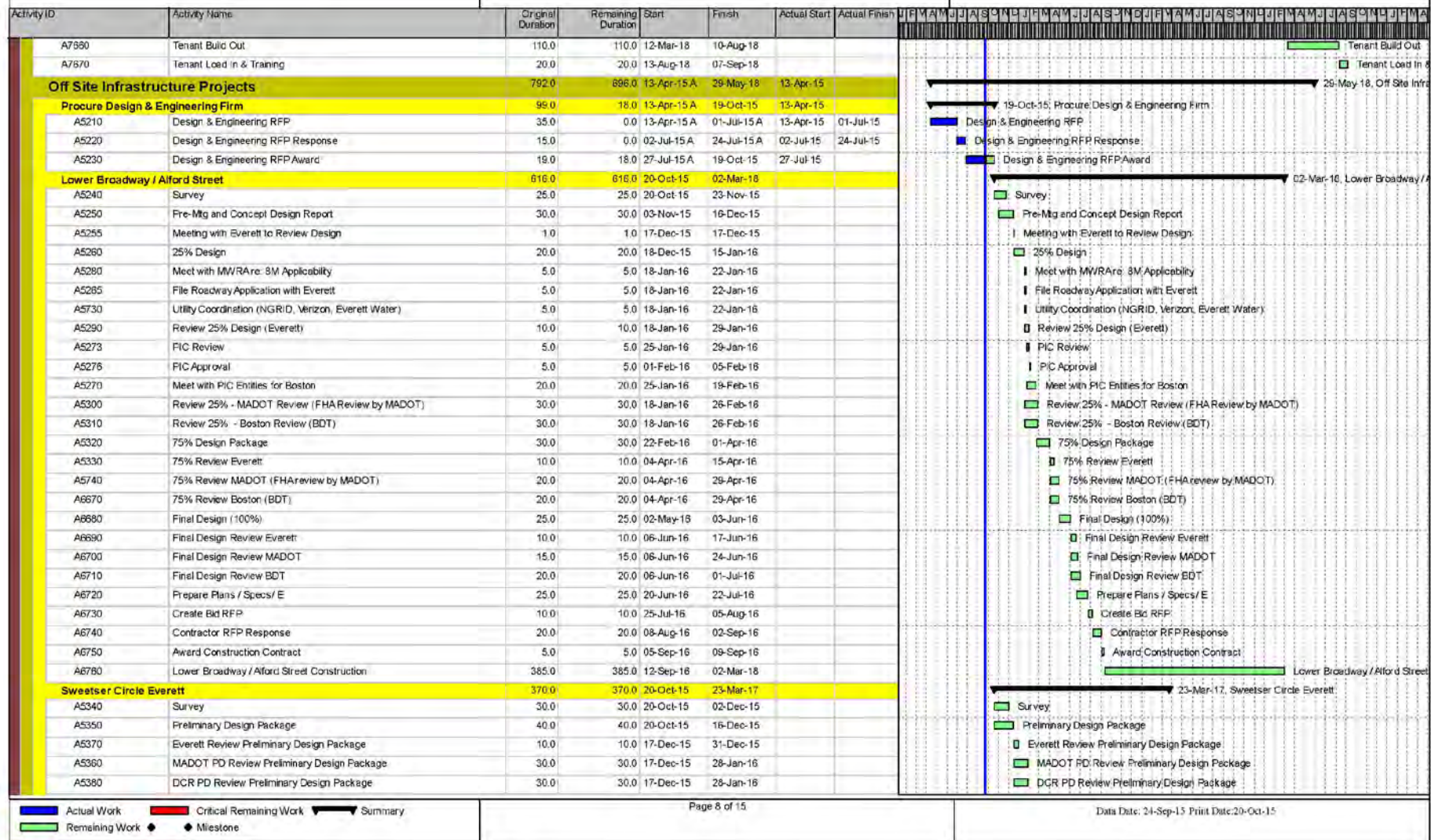




## 6 Month Look Ahead

## Wynn Everett Master Schedule

Prepared by Wynn Design &amp; Development

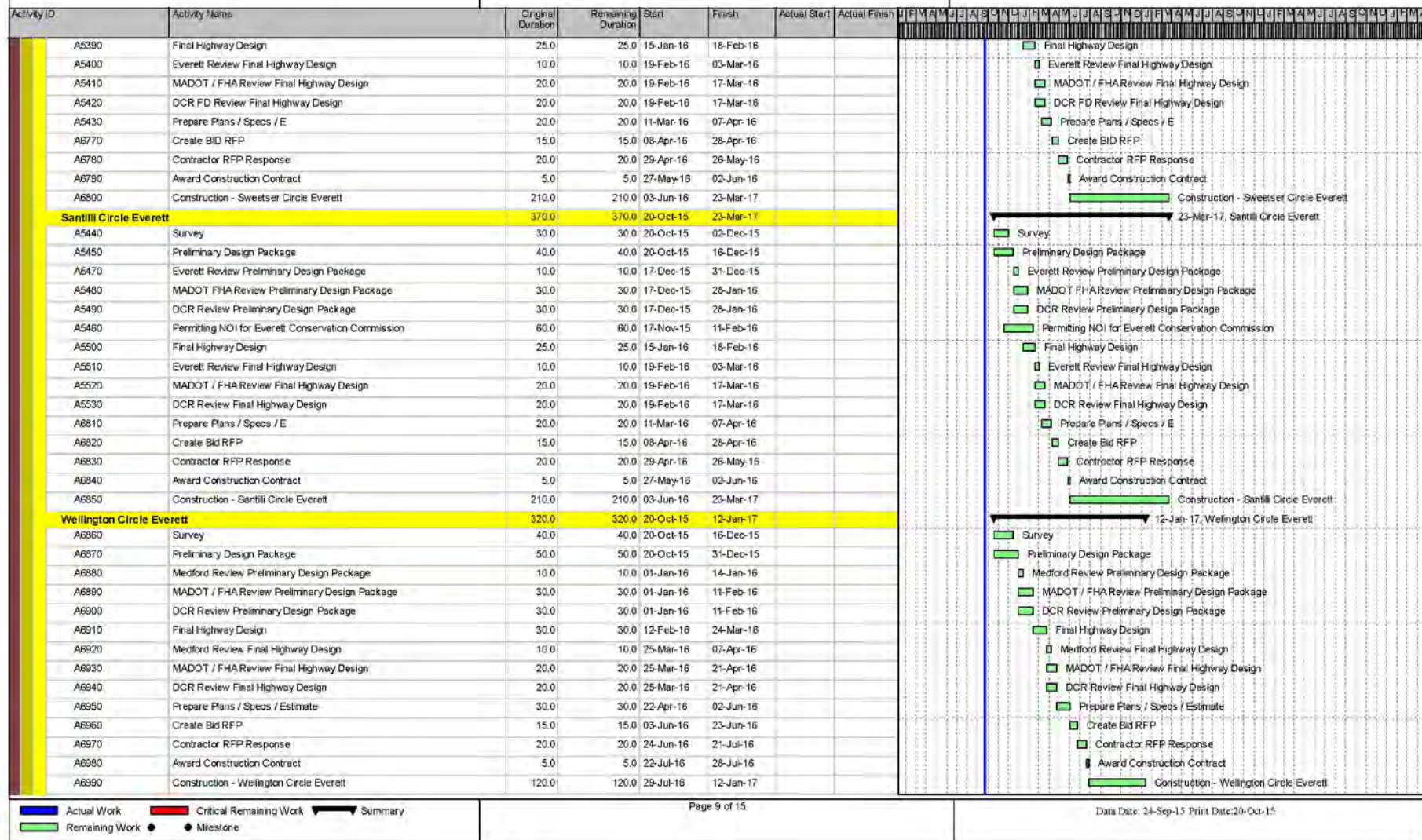




## 6 Month Look Ahead

## Wynn Everett Master Schedule

Prepared by Wynn Design &amp; Development





## Prepared by Wynn Design &amp; Development

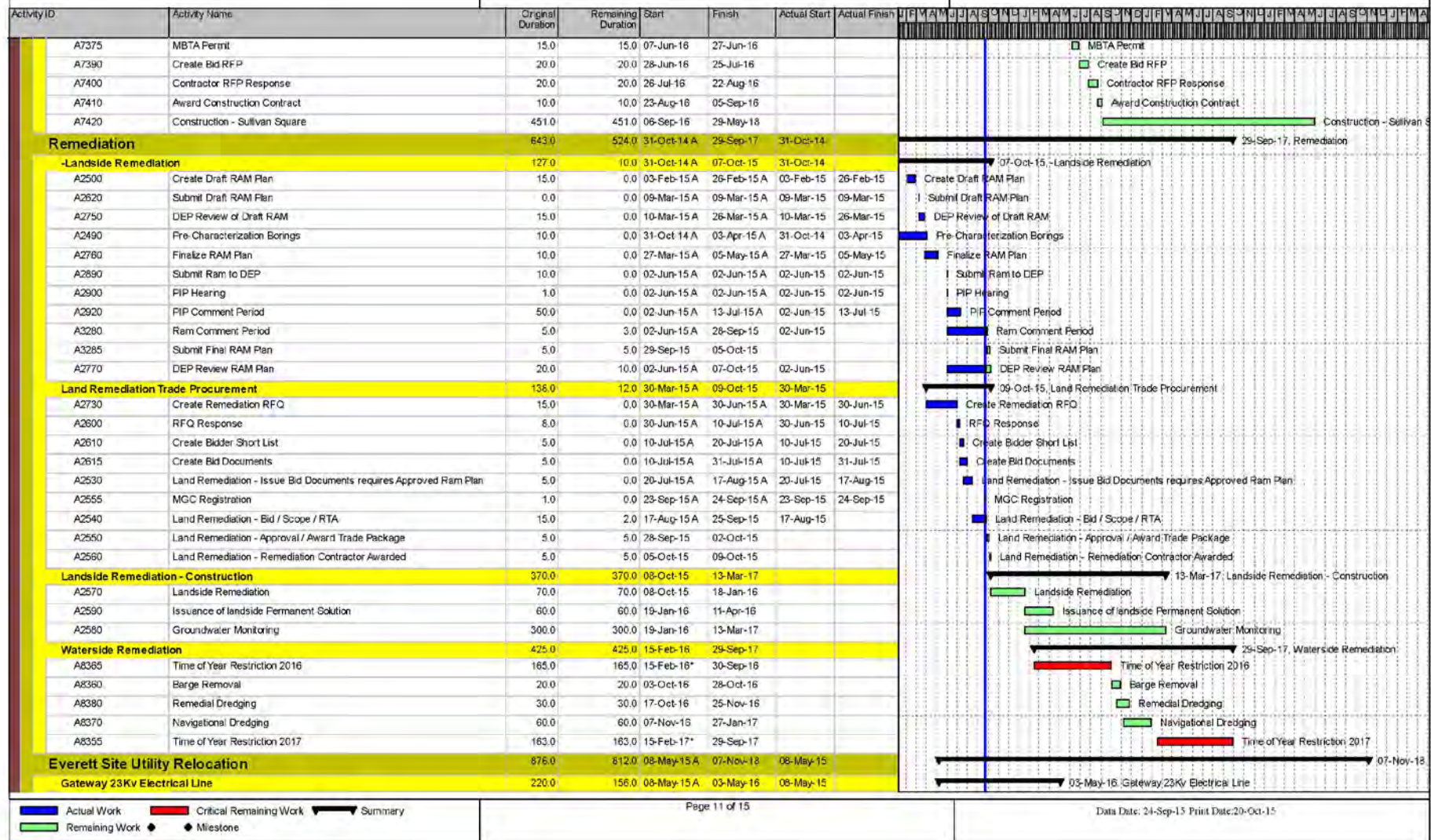
27



## 6 Month Look Ahead

## Wynn Everett Master Schedule

Prepared by Wynn Design &amp; Development





## 6 Month Look Ahead

## Wynn Everett Master Schedule

Prepared by Wynn Design &amp; Development

Activity ID	Activity Name	Original Duration	Remaining Duration	Start	Finish	Actual Start	Actual Finish	
A2290	National Grid Agreement / Payment of Fees	43.0	40.0	08-May-15 A	18-Nov-15	08-May-15		
A2310	National Grid Schematic Design	20.0	20.0	19-Nov-15	18-Dec-15			
A2260	National Grid Complete Engineered Documents	36.0	36.0	21-Dec-15	09-Feb-16			
A3010	Gateway Approval of Design	10.0	10.0	10-Feb-16	23-Feb-16			
A3560	Issue Duct Bank RFP	10.0	10.0	10-Feb-16	23-Feb-16			
A2270	National Grid execute MBTA Utility Easement	56.0	56.0	21-Dec-15	08-Mar-16			
A2280	National Grid Trade Procurement	20.0	20.0	10-Feb-16	08-Mar-16			
A5180	Duct Bank RFP Response	10.0	10.0	24-Feb-16	08-Mar-16			
A2275	Wynn Constructs Duct Bank	5.0	5.0	09-Mar-16	15-Mar-16			
A3565	Duct Bank Award	5.0	5.0	09-Mar-16	15-Mar-16			
A2300	National Grid Complete Relocation of 23KV Gateway Line	40.0	40.0	09-Mar-16	03-May-16			
<b>115Kv High Tension Tower Relocation</b>		<b>676.0</b>	<b>612.0</b>	<b>19-May-15 A</b>	<b>07-Nov-18</b>	<b>19-May-15</b>		
A2390	National Grid Agreement / Payment of Fees	43.0	40.0	19-May-15 A	18-Nov-15	19-May-15		
A2410	National Grid Schematic Design	32.0	32.0	19-Nov-15	08-Jan-16			
A3020	National Grid execute Gateway Utility Easement	20.0	20.0	07-Jan-16	03-Feb-16			
A2350	National Grid Complete Engineered Documents	600.0	600.0	04-Feb-16	23-May-18			
A2370	National Grid Trade Procurement	20.0	20.0	24-May-18	20-Jun-18			
A2340	National Grid Complete Relocation of High Tension Tower	100.0	100.0	21-Jun-18	07-Nov-18			
<b>Verizon / Gateway Phone Line Relocation</b>		<b>260.0</b>	<b>198.0</b>	<b>12-Jun-15 A</b>	<b>28-Jun-16</b>	<b>12-Jun-15</b>		
A2420	Verizon Agreement / Payment of Fees	45.0	0.0	12-Jun-15 A	12-Jun-15 A	12-Jun-15	12-Jun-15	
A2450	Verizon Schematic Design	40.0	40.0	24-Sep-15	18-Nov-15			
A2480	Verizon Complete Engineered Drawings	40.0	40.0	21-Dec-15	15-Feb-16			
A3030	Gateway Approval of Design	10.0	10.0	16-Feb-16	29-Feb-16			
A2430	Verizon Trade Procurement	20.0	20.0	16-Feb-16	14-Mar-16			
A2440	Verizon Complete Relocation	40.0	40.0	04-May-16	28-Jun-16			
<b>National Grid Gas Line Extension</b>		<b>253.0</b>	<b>253.0</b>	<b>24-Sep-15</b>	<b>15-Sep-16</b>			
A2330	National Grid Agreement / Payment of Fees	43.0	43.0	24-Sep-15	23-Nov-15			
A2400	National Grid Schematic Gas Line Design	40.0	40.0	24-Nov-15	21-Jan-16			
A2360	National Grid Site Investigation	50.0	50.0	22-Jan-16	31-Mar-16			
A2380	National Grid Complete Gas Line Design Documents	40.0	40.0	01-Apr-16	26-May-16			
A2910	National Grid Trade Procurement	20.0	20.0	27-May-16	23-Jun-16			
A2970	National Grid Complete Gas Line Relocation	60.0	60.0	24-Jun-16	15-Sep-16			
<b>Gateway Water Relocation</b>		<b>150.0</b>	<b>150.0</b>	<b>19-Nov-15</b>	<b>20-Jun-16</b>			
A6460	Schematic Design	10.0	10.0	19-Nov-15	04-Dec-15			
A6470	DCR - Gateway approval of Schematic Design	5.0	5.0	07-Dec-15	11-Dec-15			
A6480	National Grid approval of Schematic Design	5.0	5.0	07-Dec-15	11-Dec-15			
A6490	Design Development 90%	5.0	5.0	14-Dec-15	18-Dec-15			
A6520	Submit for Gateway Approval	10.0	10.0	21-Dec-15	04-Jan-16			
A6530	Submit for MBTA Approval	10.0	10.0	21-Dec-15	04-Jan-16			
A6500	Create Water Model	20.0	20.0	14-Dec-15	11-Jan-16			

■ Actual Work 
 ■ Critical Remaining Work 
 ■ Summary 
 ■ Remaining Work 
 ◆ Milestone

Page 12 of 15

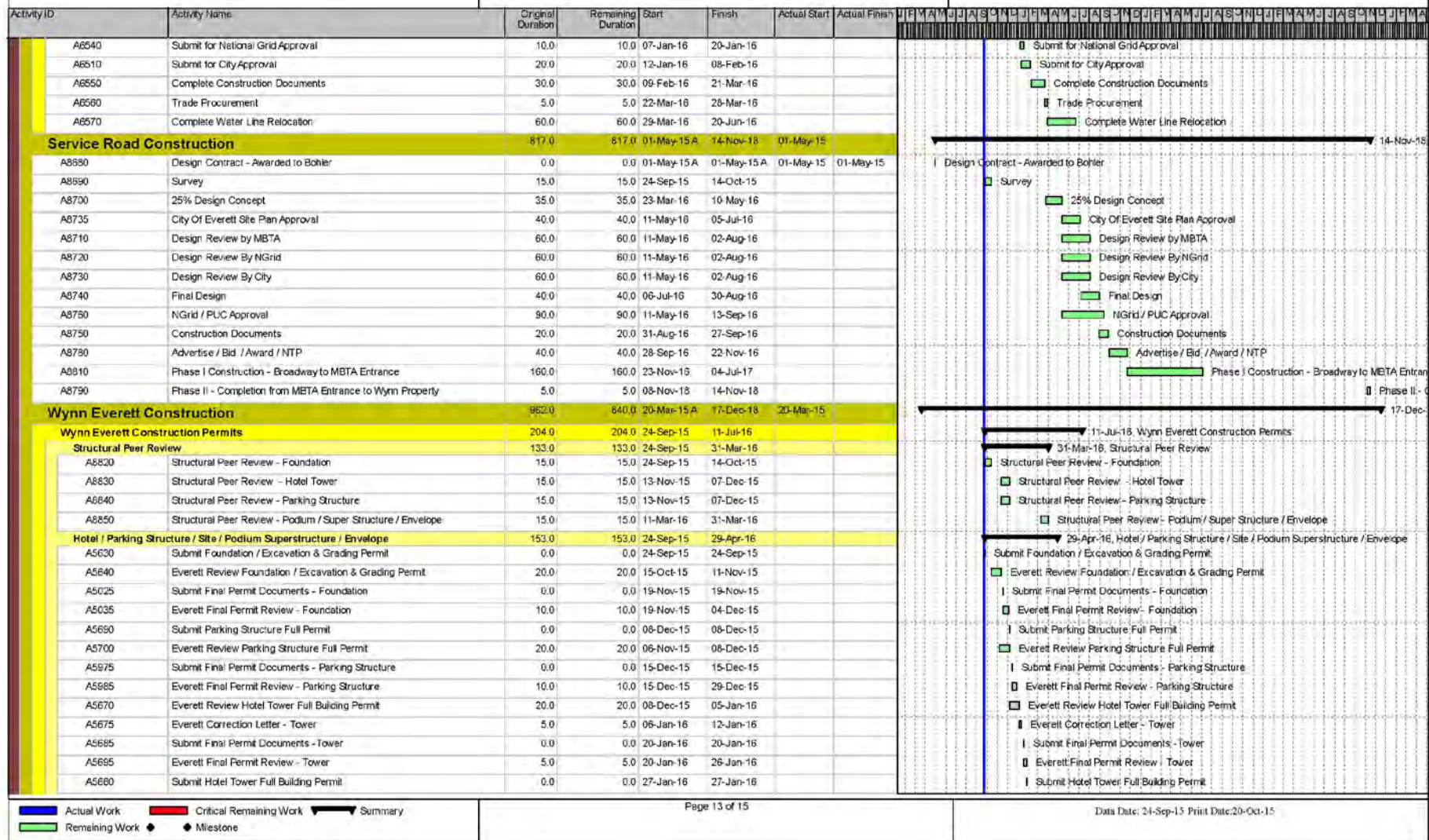
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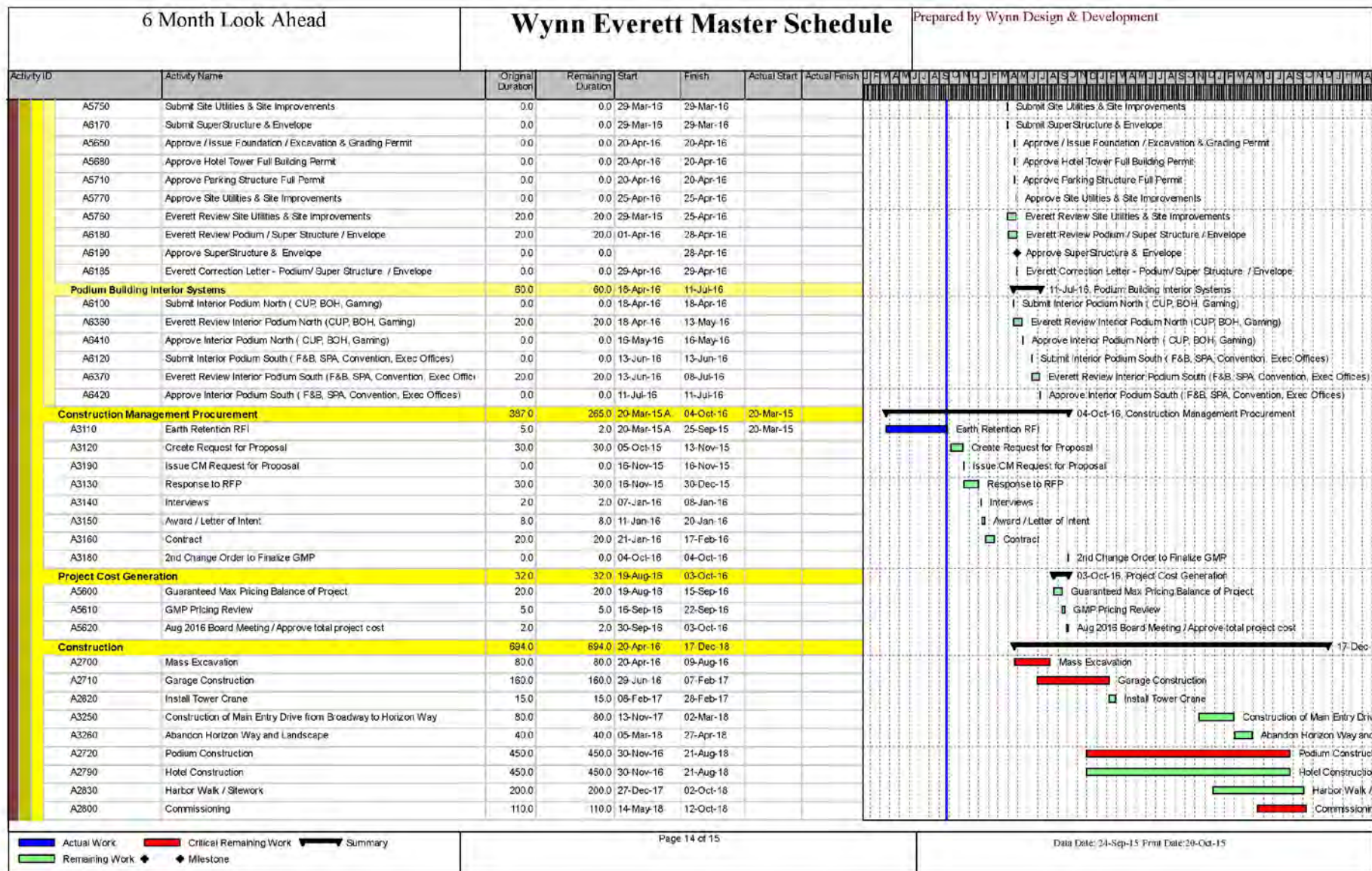
## 6 Month Look Ahead

## Wynn Everett Master Schedule

Prepared by Wynn Design &amp; Development









6 Month Look Ahead

# Wynn Everett Master Schedule

Prepared by Wynn Design & Development

Activity ID	Activity Name	Original Duration	Remaining Duration	Start	Finish	Actual Start	Actual Finish																								
A2810	Substantial Completion	0.0	0.0	15-Oct-18	15-Oct-18																										
A3265	Broadway / Entry Drive Landscaping	90.0	90.0	14-Aug-18	17-Dec-18																										
A3300	Final Completion	0.0	0.0		17-Dec-18																										
A3290	Owner Load-In and Training	46.0	46.0	15-Oct-18	17-Dec-18																										

Substantial C  
 Broadwa  
 Final Co  
 Owner L

Actual Work  
 Remaining Work  
 Critical Remaining Work  
 Milestone  
 Summary

Wynn Everett

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# PROJECT RESOURCES / DIVERSITY

# Contracts Awarded to Minority, Women and Veteran Business Enterprises for Design Phase

## MBE

8 contracts:

**\$2,605,749**

% of total contracts: **6.8%**

% in contract pipeline: **9.4%**

Goal: **7.9%**

## WBE

3 contracts:

**\$619,500**

% of total contracts: **2.1%**

% in contract pipeline: **7.6%**

Goal: **10.0%**

## VBE

2 contracts:

**\$3,165,000**

% of total contracts: **6.3%**

% in contract pipeline: **6.6%**

Goal: **1.0%**

---

## SUMMARY

13 total M/W/VBE contracts:

**\$7,605,749**

% of total contracts: **15.2%**

% in contract pipeline: **23.6%**

Goal: **18.9%**

# Contracts Awarded to Minority, Women and Veteran Business Enterprises for Construction Phase

## MBE

1 contract:

**\$10,525**

% of total contracts: **5.5%**

Goal: **5.0%**

## WBE

2 contracts:

**\$42,808**

% of total contracts: **22.3%**

Goal: **5.4%**

## VBE

1 contract:

**\$1,050**

% of total contracts: **0.5%**

Goal: **1.0%**

# Minority, Women and Veteran Workforce Participation for Construction Phase

## Minority

4 workers:

**60 hours**

% of total work hours: **11.1%**

Goal: **15.3%**

## Women

1 worker:

**16 hours**

% of total work hours: **2.9%**

Goal: **6.9%**

## Veteran

0 workers:

**0 hours**

% of total work hours: **0.0%**

Goal: **3.0%**

Wynn Everett

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# COMMUNITY EVENTS AND OUTREACH

# Events/Outreach

## **Wynn Career Showcase – Everett**

July 11, 2015, Everett

## **Wynn Career Showcase - Charlestown**

July 11, 2015, Charlestown

## **MBDA/GNEMSDC CEO Roundtable Event**

July 30, 2015, Boston

## **Meeting with Building Trades, Community Groups and MGC**

August 4, 2015, Boston

## **Lynn Chamber of Commerce (Presentation and Vendor Fair)**

August 5, 2015, Lynn

## **Wynn Day of Service at Charlestown Kennedy Center Daycare**

August 27, 2015, Charlestown

# Events/Outreach

## **Meeting with Local Career Centers, Building Trades, Policy Group of Tradeswomen's Issues (PGTI)**

September 9, 2015, Everett

## **NorthShore Veterans Parade**

September 13, 2015, Saugus

## **Everett Village Fest**

September 19, 2015, Everett

## **GNEMSDC Annual Supplier Conference and Vendor Expo**

September 24, 2015, Foxwoods, CT

## **Life After High School Career Fair**

September 29, 2015, Everett



Wynn Everett

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# DESIGN REVIEW















Wynn Everett

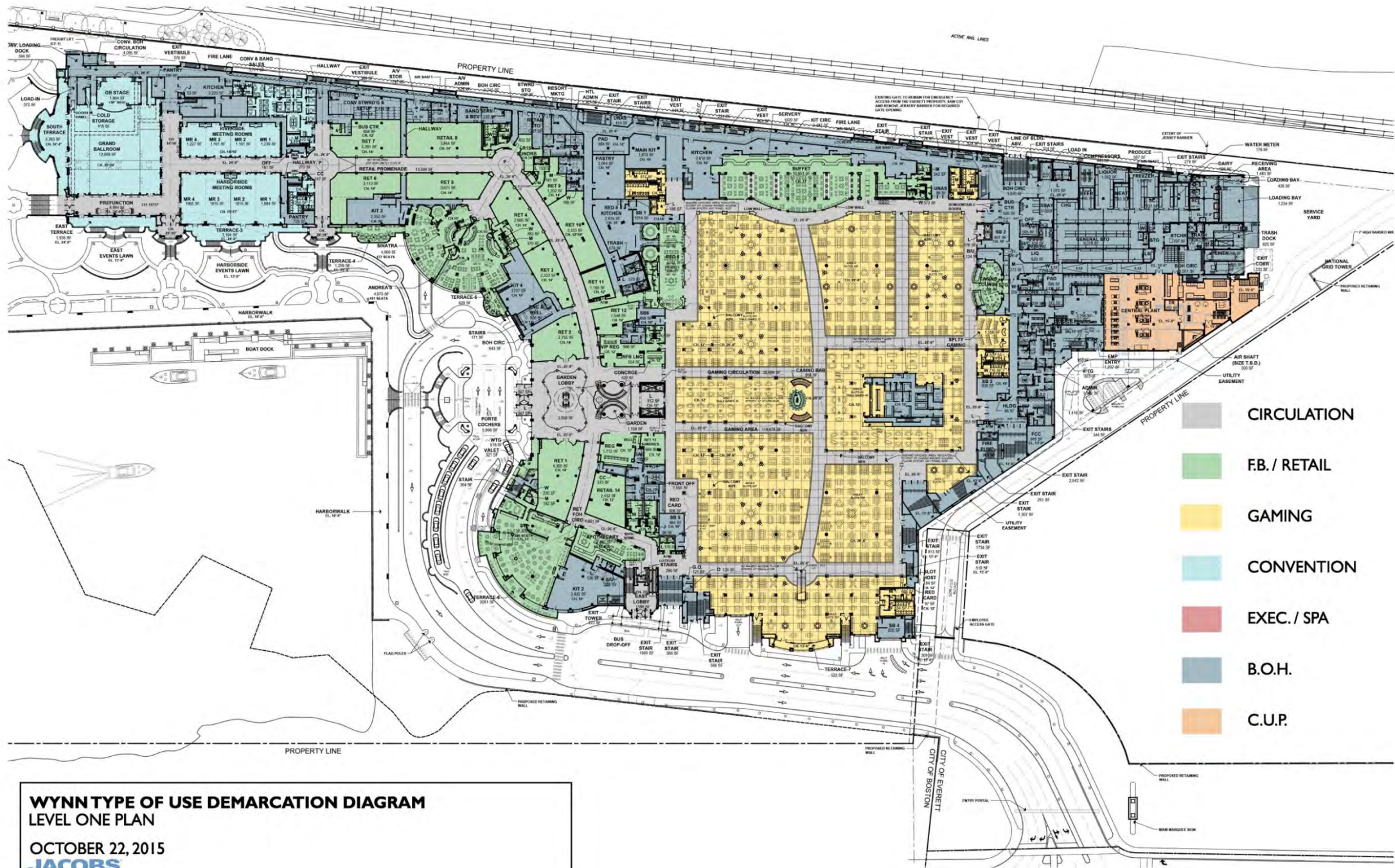
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# SITE PLAN

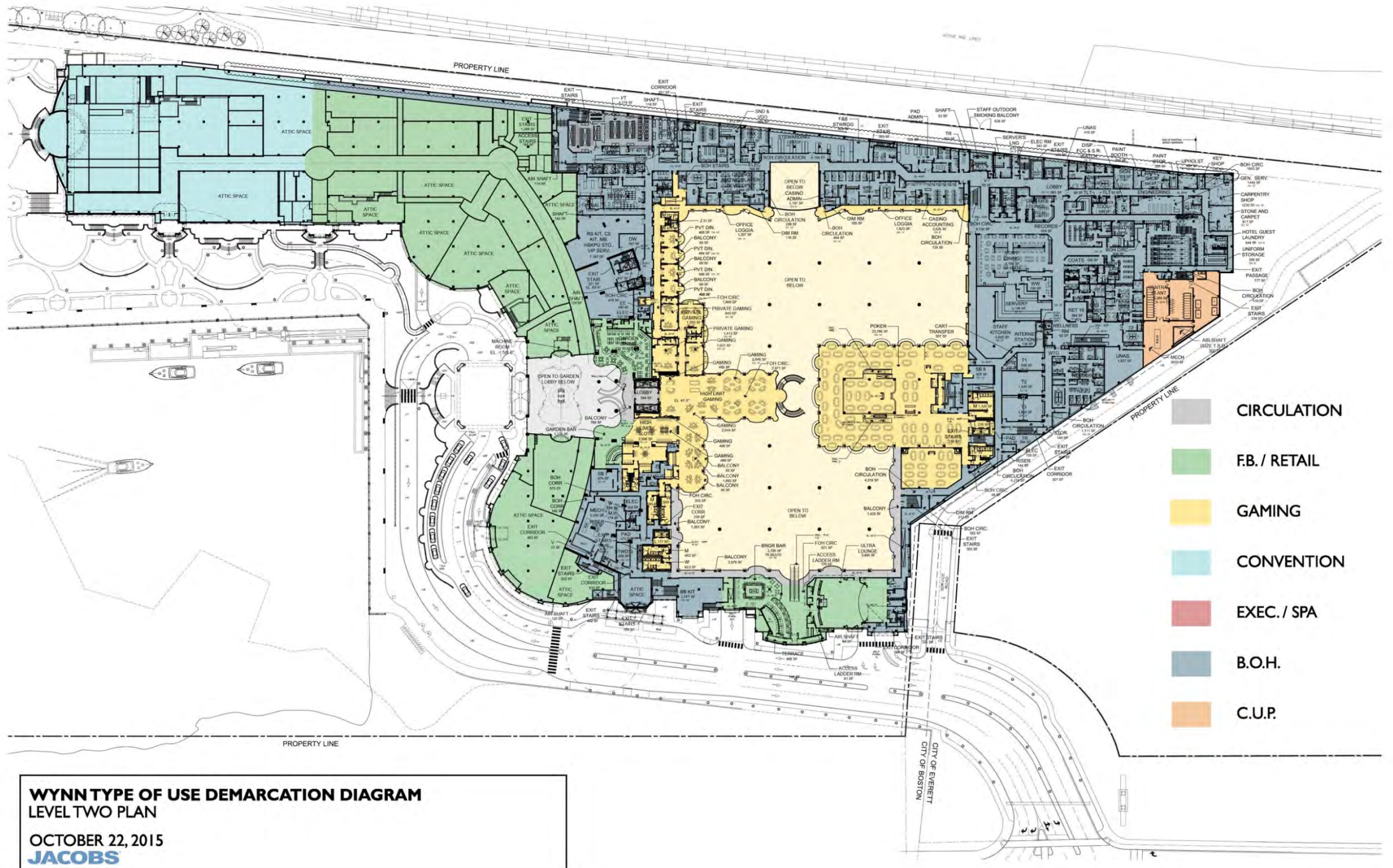




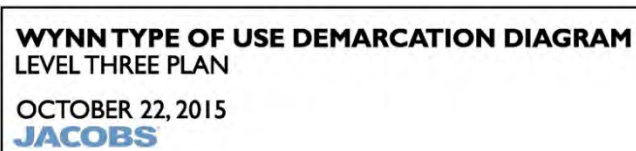








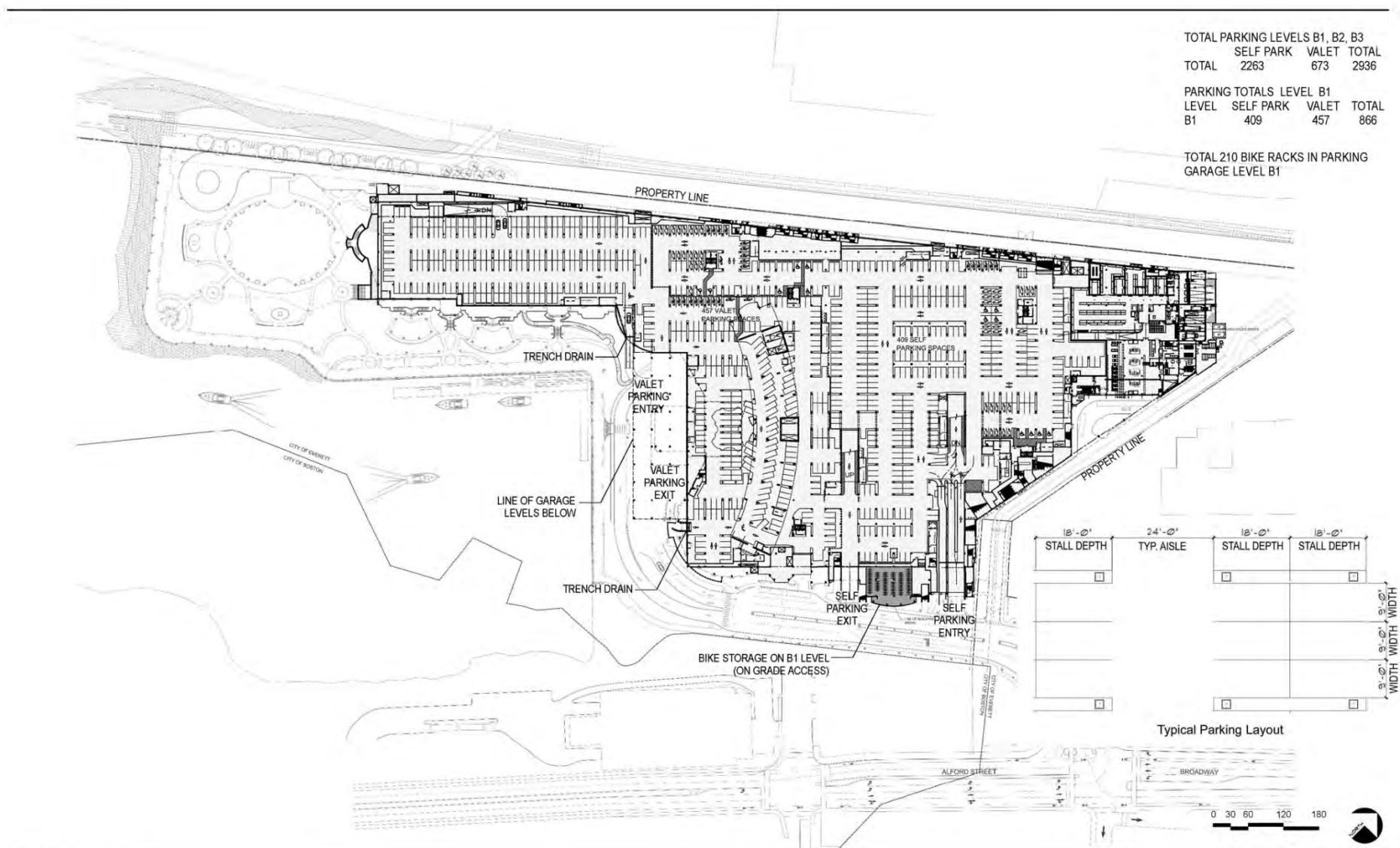






- END SUITE
- PARLOR SUITE
- B.O.H & ELEVATOR LOBBY
- RESORT ROOM - KING
- RESORT ROOM - DOUBLE

TYPICAL TOWER FLOOR

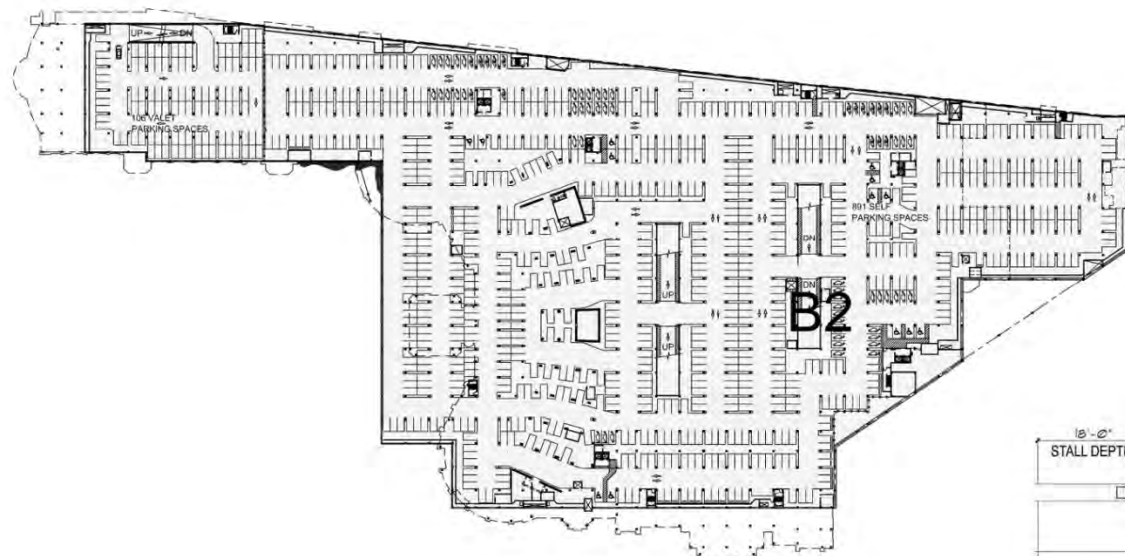


TOTAL PARKING LEVELS B1, B2, B3			
	SELF PARK	VALET	TOTAL
TOTAL	2263	673	2936

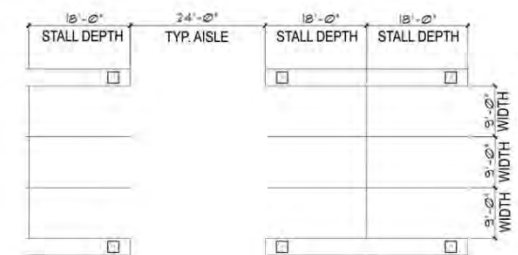
PARKING TOTALS LEVEL B1			
LEVEL	SELF PARK	VALET	TOTAL
B1	409	457	866

TOTAL 210 BIKE RACKS IN PARKING GARAGE LEVEL B1





PARKING TOTALS LEVEL B2			
LEVEL	SELF PARK	VALET	TOTAL
B2	891	106	997

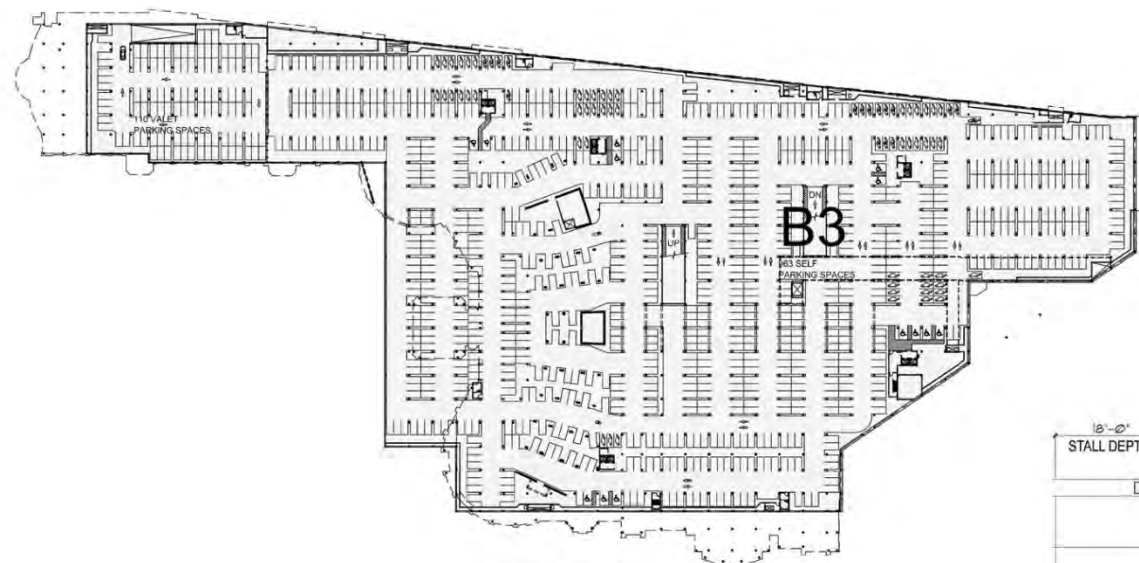


Typical Parking Layout



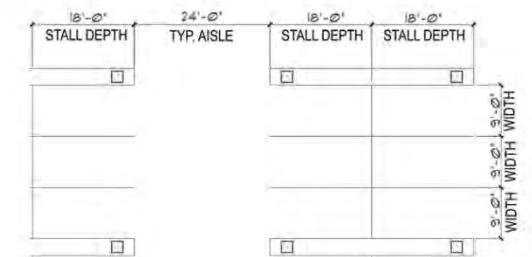
Wynn Resort in Everett  
Everett, Massachusetts

Parking Level B2 Floor Plan  
Revised September 11, 2015



PARKING TOTALS LEVEL B3

LEVEL	SELF PARK	VALET	TOTAL
B3	963	110	1073



Typical Parking Layout



Wynn Everett

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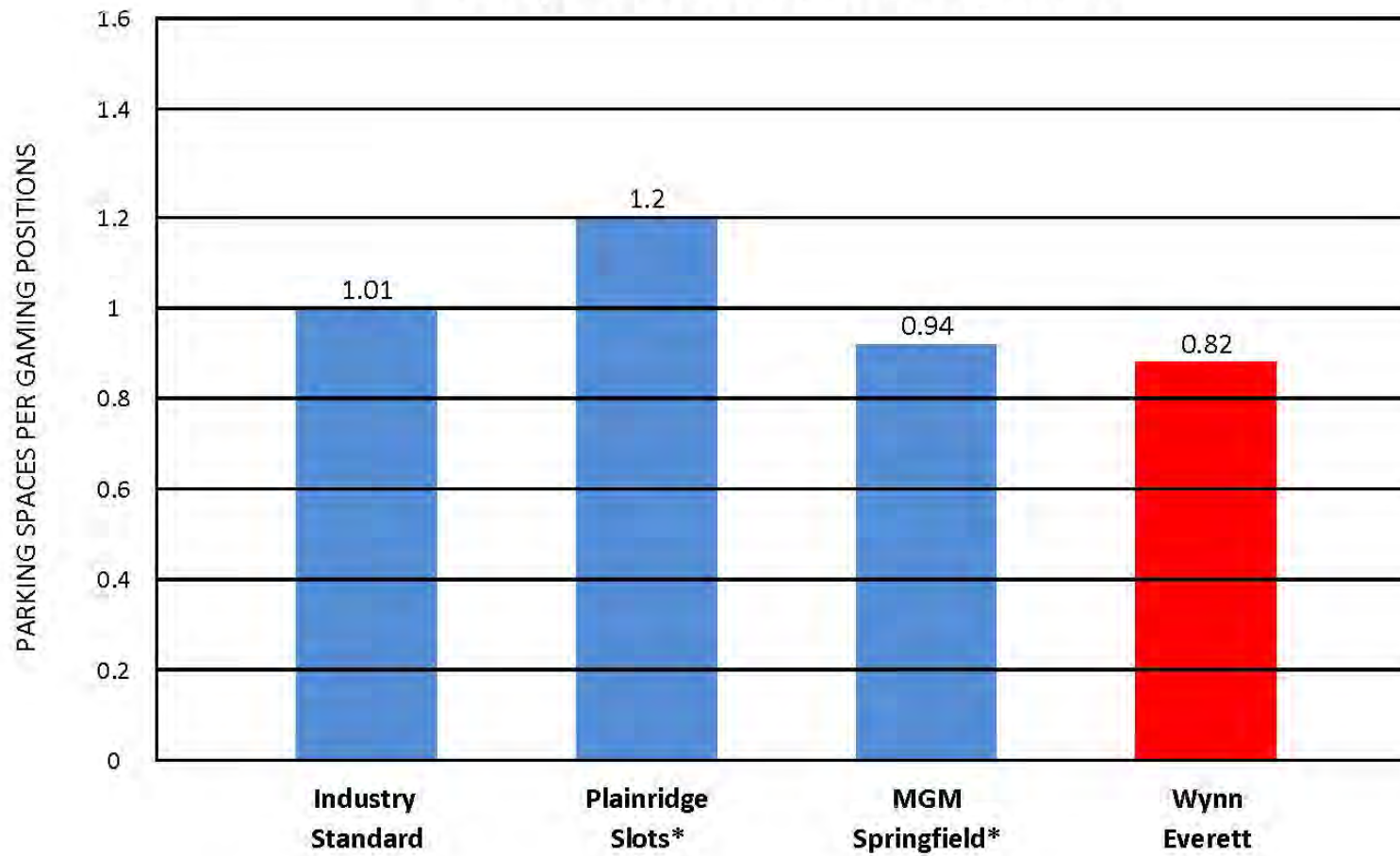
# PROGRAM UPDATE

Feature (square feet unless otherwise noted)	License Award Program	SSFEIR Program	Change	Change	% Change
Hotel Rooms	504	629	125		25%
Hotel Tower	543,677	621,774		78,097	14%
Gaming	192,543	190,461		-2,082	-1%
Total Gaming Positions	4,160	4,580	420		10%
Retail (includes hotel and gaming areas)	77,250	52,632		-24,618	-32%
Food/Beverage	64,593	54,680		-9,913	-15%
Convention/Meeting	32,942	37,068		4,126	13%
Spa/Gym	13,130	15,405		2,275	17%
Back-of-House (includes MEP)	385,710	411,058		25,348	7%
Front-of-House Support (includes restrooms, lobbies, etc.)	73,879	58,548		-15,331	-21%
Lobby Lounge	1,594	841		-753	-47%
Indoor Pool Deck	0	10,485		10,485	N/A
Indoor Garden	5,051	4,525		-526	-10%
Nightclub/Entertainment	25,341	0		-25,341	N/A
Total On-Site GFA w/o Garage	1,415,710	1,457,477		41,767	3%



Feature (square feet unless otherwise noted)	License Award Program	SSFEIR Program	Change	Change	% Change
Total Parking Spaces	4,518	3,736	-782		-17%
Parking Spaces on-site	3,718	2,936	-782		-21%
Parking Spaces off-site	800	800	0		0%
Parking Garage	1,624,970	1,476,461		-148,509	-9%

### Comparison of Casino Parking Ratios



\* Data provided by by MGC

Wynn Everett

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# QUESTIONS







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**From:** Lynne Levesque [<mailto:lynnelevesgue@gmail.com>]

**Sent:** Tuesday, October 27, 2015 3:53 PM

**To:** Crosby, Steve (MGC); McHugh, James (MGC); Stebbins, Bruce (MGC); Zuniga, Enrique (MGC); Cameron, Gayle (MGC); Ziemba, John S (MGC)

**Cc:** Bob Desalvio; 'Krum, Jacqui'; John Tocco

**Subject:** Questions for the Wynn Site Presentation

Greetings, Commissioners!

We are all looking forward to Wynn Resorts' presentation on Thursday. Since my understanding is that questions regarding the presentation can only be made by one of you and not by any of those attending the meeting, I am sending my questions to you ahead of the meeting. I would very much appreciate your addressing my concerns at the meeting, if at all possible.

To date, we have only seen the project in isolation against a landscape of green hills, distant lights, and the river. I would hope that the presentation on Thursday will:

1. Show the project *in situ*, with views of it, including existing surrounding structures, from Assembly Square, Sullivan Square, Bunker Hill, historic Doherty Park, as well as views of the Boston skyline from the project itself.
2. Demonstrate the lighting during the day and at night from those sites.

Only then will we have a real understanding of how the project will fit into existing surroundings during the day and at night.

Thank you in advance.

Sincerely, Lynne

Lynne Levesque, Charlestown Resident



JAMES J. MURREN  
CHAIRMAN OF THE BOARD  
CHIEF EXECUTIVE OFFICER

October 26, 2015

Mayor Domenic Sarno  
City of Springfield  
36 Court Street  
Springfield, MA 01103-1687

Dear Mayor Sarno,

I have received your invite to meet with you and your team regarding our recent MGM Springfield design changes. While I appreciate your hands on approach and your sense of urgency, which we at MGM share, that is a very quick turnaround. I have several very important commitments that day. Regardless, because of my enormous respect for you and your office, and my personal affection for you, I will be there with you that afternoon. I hope that my presence will help prove to you and your colleagues how important the MGM Springfield project is to our company. I will be joined by Bill Hornbuckle and Mike Mathis. As you can see, our company takes your request very seriously.

I regret and apologize to you, personally, that our desire to aggressively advance permitting and construction of the project has recently frustrated our ability to work more collaboratively with your team. As we continue to move forward with our necessary approvals, we commit to doing a better job, including providing comprehensive responses to the questions your team raised in the City's Oct. 22 letter. Providing that level of detail requires time-consuming, comprehensive analysis of our proposed design given the size and scope of our project, and the intense public and media scrutiny.

Our MGM Springfield team has been working diligently to prepare this complete and thorough analysis of all aspects of the project design, including employment and revenue projections. We know we owe that to you, the City Council, the residents of Springfield and the Massachusetts Gaming Commission. I cannot stress enough to you and to our supporters throughout Western Massachusetts that we look forward to addressing the City's request for further information supporting the unprecedented economic benefits and employment opportunities the MGM Springfield project will provide to the City and the region.

While we anticipate a fruitful discussion on Thursday, I want to be very forthcoming and say that we know we will not have all the answers you want at this point. For your planning purposes, we reasonably anticipate being in a position to fully brief you on the questions raised in your letter with a formal presentation to the City during the week of November 16, in advance of a planned presentation of the same information to the Massachusetts Gaming Commission on November 19.

MGM Resorts International remains fully committed to an integrated downtown Springfield resort. We look forward to the moment when together with you we are enormously proud of the largest private development Western Massachusetts has ever seen.

Again, Mr. Mayor, I regret this imperfect communication moment in our already long and fruitful relationship, and our team looks forward to a private discussion with you and your team Thursday as we prepare for a full airing with complete details in mid-November, when I am confident we will emerge - as we have always - united in the resurgence of your great city.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jim", with a stylized loop and a dot above the "i".

Cc: Bill Hornbuckle  
Mike Mathis





10/27/2015

From: SALVATORE CIRCOSTA

Phone: (413) 505-9822

To: Mr. Steve Crosby, Chairman  
Ms. Gayle Cameron, Commissioner  
Mr. James McHugh, Commissioner  
Mr. Bruce Stebbins, Commissioner  
Mr. Enrique Zuniga, Commissioner  
Massachusetts Gaming Commission  
101 Federal Street, 12th Floor  
Boston, MA 02110

Fax: (617) 725-0258

**Comments:**

RE: Springfield MGM Casino Project

Please reply via email: [salvatore.circosta@gmail.com](mailto:salvatore.circosta@gmail.com)



Urgent



For Review



Please Comment



Please Reply



Please Recycle

Mr. Salvatore Circosta  
24 Burlington Street  
Springfield, MA 01108  
(413) 505-9822  
Salvatore.Circosta@gmail.com

October 27, 2015

**Transmitted via fax @ (617) 725-0258**

Mr. Steve Crosby, Chairman  
Ms. Gayle Cameron, Commissioner  
Mr. James McHugh, Commissioner  
Mr. Bruce Stebbins, Commissioner  
Mr. Enrique Zuniga, Commissioner  
Massachusetts Gaming Commission  
101 Federal Street, 12<sup>th</sup> Floor  
Boston, MA 02110

RE: Springfield MGM Casino Project

Dear Chairman Crosby and Members of the Massachusetts Gaming Commission:

I am writing to you today regarding ongoing concerns over the Springfield MGM Casino Project and to urgently request that the Massachusetts Gaming Commission host an emergency public hearing in our City. I am asking that this hearing be held as soon as possible, so that Springfield residents and taxpayers can be provided with accurate and truthful information about the current and future plans for the project. As you are undoubtedly aware, recent changes to the initial plans proposed by the casino have created tremendous controversy within the City of Springfield. Many city residents and taxpayers feel the project changes announced by MGM are not what they voted for, and some union workers who anticipated employment are feeling "duped" by the casino downsizing.

Aside from the controversy, ongoing delays related to the project created a catastrophic parking nightmare for many downtown businesses and workers. I have been contacted by many of these downtown business owners and workers who have shared their frustrations with me over these delays. They have also cited reservations about publicly airing their concerns out of fear of retribution from City Hall. Nonetheless, several downtown business owners have publicly spoken out about the impacts this project is having on their businesses. Specifically, Springfield's NBC News affiliate has reported that the owner of McCaffrey's Public House on Main Street, an Irish themed pub on the edge of the Italian South End, has stated that their business has declined by about 30% since the casino construction began.<sup>1</sup> The Casino was also purportedly a factor in the August 2014 closing of JT's Sports Pub which was located about a block away.<sup>2</sup> Additionally, the owner of an

<sup>1</sup> <http://www.p.com/2015/10/26/spfld-owners-claim-mgm-barriers-are-hurting-businesses/>

<sup>2</sup> [http://www.masslive.com/news/index.ssf/2014/08/jts\\_sports\\_bar\\_in\\_springfield.html](http://www.masslive.com/news/index.ssf/2014/08/jts_sports_bar_in_springfield.html)

Mr. Salvatore Circosta  
24 Burlington Street  
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(413) 505-9822

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Massachusetts Gaming Commission  
October 27, 2015  
Page two (2)

Italian deli located at the edge of the South End has publicly blamed the MGM construction for a drop of business that forced him to close.<sup>3</sup>

In addition to the impacts this delay has caused downtown businesses and workers, the delay has also resulted in a negative financial impact on the City of Springfield. At the direction of the City's Department of Public Works, the Springfield Parking Authority removed 41 meter heads from the casino footprint. Consequently, it is estimated that the City of Springfield will lose approximately \$4,000 per month in meter revenue from this area. This has also caused a reduction in the number of parking spaces available.

Although questions over the lack of progress at the casino site have persisted in recent months, news in late September that MGM Springfield had dropped plans to build a 25-story hotel tower from the casino design plan signaled distress. Although Mayor Domenic Sarno praised the design change, members of the Springfield City Council raised concerns about not being kept fully informed, and at least one City Councilor chastised the Mayor's Office during a public city council meeting for withholding information from the Council.

The sudden and unforeseen announcement from MGM that the plans had changed caused MGM to provide assurances to City Officials that they were committed to the project. However, we learned this month that in addition to the elimination of the hotel tower, MGM was seeking to reduce the overall project size by approximately fourteen (14) percent. This latest deviation from the plan came as a disappointing surprise to city residents and tax payers and was allegedly news to Mayor Sarno and his team.

Despite vehement objection from several members of the Springfield City Council that Mayor Sarno and his economic development staff were not keeping the City Council fully informed and updates on developments, and despite at least one member of the Springfield City Council requesting that the Council have a "seat at the table" for discussions with MGM officials, news outlets reported yesterday that a meeting will take place on Thursday, October 28, 2015, between Mayor Sarno and MGM Officials, at a time and location to be determined. It has been announced that it will **not be a public meeting**.

Additionally, since announcing the elimination of the hotel tower and the downsizing of the casino, MGM has abandoned its commitment to active engagement with the community. Neither MGM nor Mayor Sarno has held any public meetings to solicit community input and hear concerns about the changes.

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<sup>3</sup> <http://wwlp.com/2015/09/17/business-owner-blames-mgm-for-drop-in-business/>



**Mr. Salvatore Circosta**  
**24 Burlington Street**  
**Springfield, MA 01108**  
**(413) 505-9822**  
**Salvatore.Circosta@gmail.com**

Massachusetts Gaming Commission  
October 27, 2015  
Page three (3)

A large number of Springfield residents, including myself, are questioning the accuracy of the information that is communicated to us from Mayor Domenic Sarno's Office. This concern is precipitated by a perceived conflict of interest that Mayor Sarno has created. More specifically, published news reports have confirmed that the MGM Casino project has been a boon to the Mayor's reelection campaign according to records filed with the Massachusetts Office of Campaign and Political Finance 'OCPF'. The OCPF records indicate that a Massachusetts registered lobbyist, who identifies as a "paid community consultant" for MGM, and his wife, have made the maximum contributions allowed under law to the Sarno Campaign. Additionally, an attorney who serves as local counsel for the MGM Casino issued a letter to potential Sarno donors encouraging their support which is reported to be a potential violation of regulations promulgated by the OCPF. Also, there had been no record of an expenditure for the use of the reception hall at the Springfield Sheraton contained in Sarno's campaign finance reports. Moreover, the reported presence of MGM Vice President and General Counsel of MGM Springfield at the political fundraiser gives rise to great concern. (*See attached official news article.*)

As part of the *Concise Summary of Host Community Agreement* published in accordance with M.G.L. Ch. 23K §15(13), MGM will construct a mixed-use commercial and residential casino resort real estate development of approximately 850,000 square feet (excluding structured parking). Components include the following approximate minimum elements and sizes, comprised of the following:

- 125,000 sq. ft. casino with 3,000 slot and video gaming machines, 75 table games, a poker room, high-limit area, security, customer service facilities, on-site compulsive gambling counseling area and on-site child care facility for children of employees;
- 250 room four star hotel tower; 7,000 sq. ft. spa; rooftop outdoor swimming pool; and an 8,000 square foot rooftop garden overlooking a public outdoor plaza that will host seasonally changing events and featuring an ice skating rink, large dynamic video displays, and areas for events and concerts, exhibitions, art shows and similar functions;
- 7,000 sq. ft. of retail space adjoining the casino floor and facing and opening onto Main and State Streets and 20,300 sq. ft. of pedestrian-scale retail space facing and opening onto Main and Union streets as well as a cinema multiplex and bowling alley;
- 48,000 sq. ft. of, and not less than, 7 distinctly branded restaurants, lounges or cafes adjoining and with access from the casino floor and Main, State and Howard Streets;
- Modern, finished meeting and convention space and related pre-function, and back-of-house/food preparation areas totaling 45,000 sq. ft., planned to complement existing facilities at MassMutual Center;
- Residential space including 54 market-rate apartment units;

**Mr. Salvatore Circosta  
24 Burlington Street  
Springfield, MA 01108  
(413) 505-9822**

**Salvatore.Circosta@gmail.com**

Massachusetts Gaming Commission

October 27, 2015

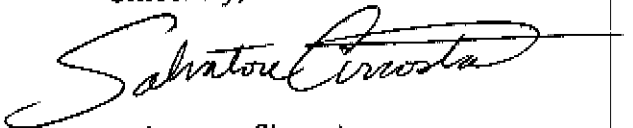
Page four (4)

- 125,000 sq. ft. of on and off-site executive office space and back of house space; 85,000 sq. ft. of rehabbed Class A office space located at 101 State Street; and incorporation of the following existing buildings into new construction: 1200 Main Street, 73 State Street, and the former South End Community Center/Amory; and
- Parking, including valet parking drop off, bus drop off, bus parking, parking for 3,600 personal vehicles, dock and physical plant space in a structure adjacent to Columbus Avenue.

In light of the fact that there appears to be a material deviation from the Host Community Agreement as summarized for the municipal election held in the City of Springfield on Tuesday, July 16, 2013, pursuant M.G.L. Ch. 23K §15(13), and given the lack of information communicated from City Officials to city residents and tax payers, a perceived conflict of interest created by Mayor Domenic Sarno and Mayor Sarno's holding of non-public meetings, it is of paramount importance that you host a public meeting in the City of Springfield, as soon as possible, to ensure that MGM Springfield adheres to their contractual obligation so that this economic catalyst which will create 2,000 construction jobs and at least 3,000 permanent jobs continues to move forward in an open and transparent manner.

The residents of the City of Springfield deserve access to accurate details and public information regarding MGM's changes to the casino plan and public deliberation on those changes, not more backroom dealings. I eagerly await your prompt response regarding the time and location of the requested public meeting.

Sincerely,



Salvatore Circosta

## MGM Springfield casino already a boon for Mayor Sarno's reelection campaign, state records show

Stephanie Barry | [sbarry@repub.com](mailto:sbarry@repub.com) By Stephanie Barry | [sbarry@repub.com](mailto:sbarry@repub.com)

on April 09, 2015 at 6:30 AM, updated April 09, 2015 at 10:47 AM

SPRINGFIELD — With **ground ceremonially broken** in the city's South End, a **final green light by the Historical Commission** and just one municipal vote left to clear a final hurdle for **MGM Springfield**, the casino project has already been a boon for Mayor **Domenic Sarno's** political coffers.

A Feb. 23 fundraiser hosted by MGM's local lawyer Frank Fitzgerald at a venue owned by MGM Springfield investor **Paul Picknelly** raked in about \$15,000 for Sarno, who recently confirmed he will seek reelection.

Six competitors so far have signaled a challenge to the third-term mayor, an **unwavering champion** of the \$800 million downtown casino scheduled to be completed in 2017.

Sarno chose MGM as the project of choice over Penn National in 2013; city voters **overwhelmingly approved the host agreement** through a ballot question later that year. A statewide vote to repeal the casino law failed last year, then the Massachusetts Gaming Commission granted MGM Springfield a license. Meanwhile, casino proposals in **West Springfield** and **Palmer** failed. Those results paved the way for the state's first resort casino here in Springfield.

Records from the state Office of Campaign and Political Finance show the donor list was rife with out-of-town and out-of-state vendors and contractors presumably interested in the explosion of development and construction activity in Springfield's future.

While the list of contributors included the usual sampling of local lawyers, bankers and real estate developers, among the maximum contributors were a construction lawyer from Rhode Island; two executives from Suffolk Construction, with offices in Boston and New York; an administrator from "Sunny's Place," an entertainment complex for kids in Somers, Connecticut; and the owner of Manafort & Sons, a large construction company in Plainville, Connecticut.

Also making the maximum contribution between him and his wife was lobbyist Dennis Murphy, not a lobbyist for MGM but a "paid community consultant." The original donor list included two separate contributions of \$200 and \$300 from Murphy himself. By law, lobbyists are only permitted to

contribute \$200 to any political candidate. However, MGM Springfield spokeswoman Carole Brennan said the initial accounting was a clerical error. Campaign finance records were later amended to reflect that the \$300 check was actually from Murphy's wife.

"MGM requires that all employees, consultants, vendors, contractors and suppliers follow all applicable laws and regulations concerning political contributions," Brennan said in an email.

Fitzgerald, a longtime fund-raiser who was an attorney for both the failed Mohegan Sun project in Palmer and now for MGM Springfield, was notably absent from the list of donors. However, a Feb. 12 letter on his company letterhead (a potential violation of state finance law) encouraged potential donors to lend their support.

"Domenic has proven himself to be an effective and capable leader and he deserves our continued support. He is always responsive to the needs of the community in general, and, in particular, understands that economic development and good business relationships are vital," the invitation read.

Attached was a "save the date" invite with suggested donations from \$100 to \$500 per person.

In response to questions about the event, Fitzgerald said that has has supported Sarno since Sarno was a city councilor and will continue to boost him,

"This support has never been related to nor contingent upon his position on any particular project or issue. Continuing with that tradition, I was a host for an event for Mayor Sarno on February 23, 2015, at the Sheraton in Springfield," Fitzgerald wrote in an email.

He added that he has been a supporter of various charities, causes and political candidates for 40 years and spent precisely \$167.88 on mailing, envelope's postage and his personal assistant's time, which has since been reimbursed by Sarno's campaign.

"It is my understanding that reimbursement of those expenses by the candidate, the candidate's political committee or, from an individual supporter is in compliance with the campaign finance laws," Fitzgerald wrote.

While state campaign finance law also requires that political donations be reported to the state within a week, the contributions from Feb. 23 fundraiser were not logged in until almost a month later.

Sarno campaign manager Paul "Skip" Lessard said they recorded the donations in a timely fashion but did not specifically address whether they ran afoul of campaign finance laws.



"We have always deposited checks and filed with OCPF as soon as possible after receiving proceeds from any event. In addition, we pay all invoices as soon as we receive them as we did for this event," Lessard said.

Also, in terms of accounting, no expenditure in connection with the reception hall at the Springfield Sheraton appears in Sarno's campaign finance reports. However, Sheraton manager Paul Marcelina said the invoice for the event was submitted and was paid in full by Sarno's campaign. Sheraton officials declined to say when the bill was paid, but Lessard said the campaign paid \$1,583.17 to the hotel.

Brennan said the only MGM staffer who attended was Seth Stratton, recently hired as vice president and general counsel of MGM Springfield. Stratton was formerly a lawyer in Fitzgerald's office. Though present, Stratton did not contribute to Sarno's campaign.

Included among the most generous donors were four employees of Northern Tree Services, who each contributed \$500. Marcelina, also the general manager of the Hilton Garden Inn (a Picknelly property), also gave the maximum contribution as did Helder Nunes, a construction company owner in Ludlow; and Joshua Vassallo, operations manager of Monarch Enterprises, also owned by Picknelly.

The fundraiser brought Sarno's war chest to just under \$100,000.

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October 15, 2015

PRINCIPALS

Theodore A Barten, PE

Margaret B Briggs

Michael E Guski, CCM

Dale T Raczyński, PE

Cindy Schlessinger

Lester B Smith, Jr

Robert D O'Neal, CCM, INCE

Andrew D Magee

Michael D Howard, PWS

Douglas J Kelleher

AJ Jablonowski, PE

Stephen H Slocumb, PE

David E Hewett, LEED Ap

Samuel G Mygatt, LLB  
1943-2010

ASSOCIATES

Maureen A Cavanaugh

Taya S Dixon

3 Clock Tower Place, Suite 250  
Maynard, MA 01754  
[www.epsilonassociates.com](http://www.epsilonassociates.com)

978 897 7100  
FAX 978 897 0099

Secretary Matthew A. Beaton  
Executive Office of Energy & Environmental Affairs  
Attn: Holly Johnson, MEPA Office  
100 Cambridge Street, Suite 900  
Boston, MA 02114

**Subject: Notice of Project Change  
MGM Springfield, EEA #15033**

Dear Secretary Beaton:

On behalf of Blue Tarp reDevelopment LLC, enclosed please find a Notice of Project Change (NPC) for the MGM Springfield project in Springfield, Massachusetts.

Please notice the NPC in the *Environmental Monitor* to be published on October 19, 2015. The public comment period will extend through November 9, 2015, and the Certificate will issue on November 18, 2015.

By copy of this letter, I am advising recipients of the NPC that written comments may be filed during the comment period, sent to the address above.

Copies of the NPC, including paper copies, may be obtained from Epsilon Associates at (978) 897-7100, or via e-mail at [csnowdon@epsilonassociates.com](mailto:csnowdon@epsilonassociates.com).

Thank you for your attention to this matter.

Sincerely,  
EPSILON ASSOCIATES, INC.

A handwritten signature in dark ink, appearing to read "Taya Moked".

Taya Moked  
Project Planner

Enclosure

cc: Circulation List

Notice of Project Change  
*Submitted Pursuant to the Massachusetts Environmental Policy Act*

---

EEA# 15033

# MGM Springfield



Submitted to:  
**Executive Office of Energy  
and Environmental Affairs**  
MEPA Office  
100 Cambridge Street, Suite 900  
Boston, MA 02114

Prepared by:  
**Epsilon Associates, Inc.**  
3 Clock Tower Place, Suite 250  
Maynard, MA 01754

Submitted by:  
**Blue Tarp reDevelopment, LLC ("MGM Springfield")**  
1414 Main Street, Suite 1140  
Springfield, MA 01144

In association with:  
**Davenport Companies**  
**TEC, Inc.**  
**Allen & Major Associates, Inc.**  
**Brown Rudnick, LLP**

October 15, 2015

Notice of Project Change  
*Submitted Pursuant to the Massachusetts Environmental Policy Act*

---

EEA# 15033

# MGM Springfield

Submitted to:  
**Executive Office of Energy  
and Environmental Affairs**  
MEPA Office  
100 Cambridge Street, Suite 900  
Boston, MA 02114

Prepared by:  
**Epsilon Associates, Inc.**  
3 Clock Tower Place, Suite 250  
Maynard, MA 01754

Submitted by:  
**Blue Tarp reDevelopment, LLC ("MGM Springfield")**  
1414 Main Street, Suite 1140  
Springfield, MA 0114

In association with:  
**Davenport Companies**  
**TEC, Inc.**  
**Sanborn, Head & Associates, Inc.**  
**Allen & Major Associates, Inc.**  
**Brown Rudnick, LLP**

October 15, 2015



## Table of Contents

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## Table of Contents

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Cover Letter

Notice of Project Change Form

Notice of Project Change Narrative

Attachment 1 Secretary's Certificate on the 2014 Final Environmental Impact Report

Attachment 2 FEIR Proposed Site Plan

Attachment 3 Current Proposed Site Plan

Attachment 4 USGS Locus Map

Attachment 5 Circulation List

Attachment 6 MGM Gaming Establishment Boundaries

Attachment 7 Updated Trip Generation and Parking Demand Generation Calculations

## Notice of Project Change Form

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**Commonwealth of Massachusetts**  
**Executive Office of Energy and Environmental Affairs ■ MEPA Office**

*For Office Use Only*  
**Executive Office of Environmental Affairs**

MEPA Analyst:

Phone: 617-626-

## Notice of Project Change

The information requested on this form must be completed to begin MEPA Review of a NPC in accordance with the provisions of the Massachusetts Environmental Policy Act and its implementing regulations (see 301 CMR 11.10(1)).

EEA #15033		
Project Name: MGM Springfield		
Street Address: Main Street		
Municipality: Springfield	Watershed: Connecticut River	
Universal Transverse Mercator Coordinates: <b>UTM Zone 18, 699569E, 4663629N</b>	Latitude: 42° 5' 57.7854" Longitude: -72° 35' 11.6376"	
Estimated commencement date: Fall 2015	Estimated completion date: September 2018	
Project Type: Multi-use	Status of project design: 30 %complete	
Proponent: Blue Tarp reDevelopment, LLC ("MGM Springfield")		
Street Address: 1414 Main Street, Suite 1140		
Municipality: Springfield	State: MA	Zip Code: 01144
Name of Contact Person: Corinne Snowden		
Firm/Agency: Epsilon Associates, Inc.	Street Address: 3 Clock Tower Place, Suite 250	
Municipality: Maynard	State: MA	Zip Code: 01754
Phone: (978) 897-7100	Fax: (978) 897-0099	E-mail: csnowdon@epsilonassociates.com

With this Notice of Project Change, are you requesting:

a Single EIR? (see 301 CMR 11.06(8))	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
a Special Review Procedure? (see 301CMR 11.09)	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
a Waiver of mandatory EIR? (see 301 CMR 11.11)	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
a Phase I Waiver? (see 301 CMR 11.11)	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Which MEPA review threshold(s) does the project meet or exceed (see 301 CMR 11.03)?

301 CMR 11.03(5)(b)4.a – New discharge or expansion of discharge to a sewer system of 100,000 or more gpd;

301 CMR 11.03(6)(a)6 – Generation of 3,000 or more New adt;

301 CMR 11.03(6)(a)7 – Construction of 1,000 or more New parking spaces at a single location;

301 CMR 11.03(6)(b)13 – New adt of 2,000 or more on roadways providing access to a single location;

301 CMR 11.03(6)(b)14 – Generation of 1,000 or more New adt on roadways providing access to a single location and construction of 150 or more New parking spaces at a single location;

301 CMR 11.03(6)(b)15 – Construction of 300 or more New parking spaces at a single location;

301 CMR 11.03(6)(b)2.b - Cut five or more living public shade trees of 14 or more inches in diameter at breast height;



301 CMR 11.03(10)(b)1 – Demolition of all or any exterior part of any Historic Structure listed in or located in any Historic District listed in the State Register of Historic Places or the Inventory of Historic and Archaeological Assets of the Commonwealth.

**Which State Agency Permits will the project require?**

Massachusetts Gaming Commission – Gaming License

Massachusetts Department of Transportation – Highway Access Permit

Department of Environmental Protection – Sewer Connection Permit

Department of Environmental Protection – Construction Dewatering Permit

Department of Public Safety – Storage Permit

**Identify any financial assistance or land transfer from an Agency of the Commonwealth, including the Agency name and the amount of funding or land area in acres: none**

## **PROJECT INFORMATION**

In 25 words or less, what is the project change? The project change involves . . .  
The hotel has been relocated and redesigned, the housing units have been moved off-site, and the parking garage has been reduced by one level.

See full project change description beginning on page 3.

Date of publication of availability of the ENF in the Environmental Monitor: (Date: March 20, 2013)

Was an EIR required? ☒ Yes ☐ No; if yes,  
was a Draft EIR filed? ☒ Yes (Date: December 16, 2013) ☐ No  
was a Final EIR filed? ☒ Yes (Date: November 6, 2014) ☐ No  
was a Single EIR filed? ☐ Yes (Date: ) ☒ No

Have other NPCs been filed? ☐ Yes (Date(s): ) ☒ No

If this is a NPC solely for lapse of time (see 301 CMR 11.10(2)) proceed directly to  
**ATTACHMENTS & SIGNATURES**.

### **PERMITS / FINANCIAL ASSISTANCE / LAND TRANSFER**

List or describe all new or modified state permits, financial assistance, or land transfers not previously reviewed: **dd w/ list of State Agency Actions (e.g., Agency Project, Financial Assistance, Land Transfer, List of Permits)**

Are you requesting a finding that this project change is insignificant? A change in a Project is ordinarily insignificant if it results solely in an increase in square footage, linear footage, height, depth or other relevant measures of the physical dimensions of the Project of less than 10% over estimates previously reviewed, provided the increase does not meet or exceed any review thresholds. A change in a Project is also ordinarily insignificant if it results solely in an increase in impacts of less than 25% of the level specified in any review threshold, provided that cumulative impacts of the Project do not meet or exceed any review thresholds that were not previously met or exceeded. (see 301 CMR 11.10(6)) ☐ Yes ☒ No; if yes, provide an explanation of this request in the Project Change Description below.

### **FOR PROJECTS SUBJECT TO AN EIR**

If the project requires the submission of an EIR, are you requesting that a Scope in a previously issued Certificate be rescinded?

☐ Yes ☒ No; if yes, provide an explanation of this request\_\_\_\_\_.

If the project requires the submission of an EIR, are you requesting a change to a Scope in a previously issued Certificate?

☐ Yes ☒ No; if yes, provide an explanation of this request\_\_\_\_\_.

## **SUMMARY OF PROJECT CHANGE PARAMETERS AND IMPACTS**

<b>Summary of Project Size &amp; Environmental Impacts</b>	<b>Previously reviewed</b>	<b>Net Change</b>	<b>Currently Proposed</b>
<b>LAND</b>			
Total site acreage	15.6	-1.6	14
Acres of land altered	15.6	-1.6	14
Acres of impervious area	13.7	0	13.7
Square feet of bordering vegetated wetlands alteration	N/A	N/A	N/A
Square feet of other wetland alteration	N/A	N/A	N/A
Acres of non-water dependent use of tidelands or waterways	N/A	N/A	N/A
<b>STRUCTURES</b>			
Gross square footage	881,691	-122,534	759,157
Number of housing units	54	*	54
Maximum height (in feet)	274	-172	102
<b>TRANSPORTATION</b>			
Vehicle trips per day	22,268	-1,135	21,133
Parking spaces	3,762	-387	3,375
<b>WATER/WASTEWATER</b>			
Gallons/day (GPD) of water use	244,130	-18,888	225,242
GPD water withdrawal	N/A	N/A	N/A
GPD wastewater generation/ treatment	221,937	-14,319	207,618
Length of water/sewer mains (in miles)	0	0	0

\* The dimension change for residential will result in a net change to the Project's existing location but not a net change to the overall Project size for the purposes of MEPA or the Proponent's commitments under its Host Community Agreement due to these units being developed offsite within one half mile of the project. The residential units were analyzed as part of the MEPA review and referenced in all filings and certificates. The residential units were not, however, included within the boundaries of the licensed gaming establishment by the Massachusetts Gaming Commission under MGM Springfield's conditional license approval. See Attachment 6. Residential programming is not required as a condition of licensure under the provisions of the Gaming Act, c. 23K of the General Laws. The proposed offsite residential programming will not be licensed by the Massachusetts Gaming Commission. Therefore, construction of the residential units in these areas, while still subject to MEPA review as part of the Project will not require any further State action by the Commission.

Does the project change involve any new or modified:

1. conversion of public parkland or other Article 97 public natural resources to any purpose not in accordance with Article 97? ☐Yes ☒No

2. release of any conservation restriction, preservation restriction, agricultural preservation restriction, or watershed preservation restriction? ☐Yes ☒No

3. impacts on Rare Species? ☐Yes ☒No

4. demolition of all or part of any structure, site or district listed in the State Register of

Historic Place or the inventory of Historic and Archaeological Assets of the Commonwealth?

☒ **Yes**   ☐ **No**

5. impact upon an Area of Critical Environmental Concern?   ☐ **Yes**   ☒ **No**

If you answered 'Yes' to any of these 5 questions, explain below:

**PROJECT CHANGE DESCRIPTION** (attach additional pages as necessary). The project change description should include:

- (a) a brief description of the project as most recently reviewed
- (b) a description of material changes to the project as previously reviewed,
- (c) if applicable, the significance of the proposed changes, with specific reference to the factors listed 301 CMR 11.10(6), and
- (d) measures that the project is taking to avoid damage to the environment or to minimize and mitigate unavoidable environmental impacts. If the change will involve modification of any previously issued Section 61 Finding, include a draft of the modified Section 61 Finding (or it will be required in a Supplemental EIR).



## ATTACHMENTS & SIGNATURES

### Attachments:

1. Secretary's most recent Certificate on this project
2. Plan showing most recent previously-reviewed proposed build condition
3. Plan showing currently proposed build condition
4. Original U.S.G.S. map or good quality color copy (8-1/2 x 11 inches or larger) indicating the project location and boundaries
5. List of all agencies and persons to whom the proponent circulated the NPC, in accordance with 301 CMR 11.10(7)
6. MGM Gaming Establishment Boundaries
7. Updated Trip Generation and Parking Demand Generation Calculations

### Signatures:

<u>10/15/15</u>	<u>Michael C. Mathis</u>	<u>10/15/15</u>	<u>Talya Moked</u>
Date	Signature of Responsible Officer or Proponent	Date	Signature of person preparing NPC (if different from above)

<u>Michael C. Mathis</u>	<u>Talya Moked</u>
Name (print or type)	Name (print or type)
<u>Blue Tarp re-Development, LLC</u>	<u>Epsilon Associates</u>
Firm/Agency	Firm/Agency
<u>1414 Main Street, Suite 1140</u>	<u>3 Clock Tower Place, Suite 250</u>
Street	Street
<u>Springfield, MA 01144</u>	<u>Maynard, MA 01754</u>
Municipality/State/Zip	Municipality/State/Zip
<u>(413) 273-5000</u>	<u>(978) 897-7100</u>
Phone	Phone

## Notice of Project Change Narrative

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# MEPA NOTICE OF PROJECT CHANGE FOR MGM SPRINGFIELD

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## Introduction

Blue Tarp reDevelopment, LLC dba MGM Springfield (the Proponent) is filing this Notice of Project Change pursuant to the Massachusetts Environmental Policy Act (MEPA) Regulations at 310 CMR 11.10(1) to inform the Secretary of the Executive Office of Energy and Environmental Affairs (EEA) of minor programmatic and design changes being proposed to the MGM Springfield Project (EEA # 15033). The changes being proposed are minor changes to the programmed uses and their location within the Project's buildings. The Massachusetts Gaming Commission has also approved a revised opening date of September 2018 for the Project. The changes do not create any new environmental impacts and the Proponent is committed to complete the mitigation measures previously proposed in the Draft and Final EIR's. For these reasons, the Proponent believes the changes do not warrant any further MEPA review<sup>1</sup>.

## MEPA History

In accordance with the Massachusetts Environmental Policy Act (MEPA), the Proponent filed an Environmental Notification Form (ENF) for the Project with the Secretary of Energy and Environmental Affairs (the Secretary) on March 15, 2013. The comment period was voluntarily extended four weeks beyond the required twenty days to allow a fuller opportunity for public and agency review and comment. On May 24, 2013, the Secretary issued a Certificate on the ENF, outlining the Scope for the Project's Environmental Impact Report (EIR). The Draft Environmental Impact Report (DEIR) was filed on December 16, 2013, and on February 7, 2014 the Secretary issued a Certificate on the DEIR. The Final Environmental Impact Report (FEIR) was filed on November 6, 2014 and the Secretary issued a Certificate on the FEIR on December 31, 2014 finding that the FEIR adequately and properly complied with MEPA, thus concluding the MEPA process at that time (See Attachment 1).

## Project Description as Previously Proposed

The MGM Springfield Project consists of a multi-use development anchored by an MGM casino that will serve as a significant economic catalyst for the City of Springfield and the surrounding area. The Project will consist of two separate "blocks" of development, referred to as the "Casino Block" and the "Retail Block." The approximately 739,012 sf Casino Block included a hotel, 3,821 casino gaming positions, retail and restaurant uses, convention space, office space, and 54 residential apartments.

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<sup>1</sup> The proposed design changes must be approved by the Massachusetts Gaming Commission pursuant to its regulations including 205 CMR 120 and 205 CMR 135 and by the City of Springfield under the Host Community Agreement between the City of Springfield and the Proponent.

The Retail Block consisted of an approximately 142,679 sf multi-use facility that will include multiple retail tenants, restaurants, an event plaza, office space, a radio station, a multi-screen cinema, and bowling alley. The retail spaces will open to the street in an effort to invigorate the surrounding streetscape and create a vibrant urban environment for the City and its residents. Not including parking, the Project's gross total area was approximately 881,691 sf. The Project also included approximately 3,762 parking spaces on site located in an eight-story parking garage and an additional 54 parking spaces locating within a surface lot in the Retail Block.

The FEIR Site Plan is included as Attachment 2.

For purposes of construction period impacts, the FEIR included a construction schedule identifying major elements of the project with an anticipated final construction stage concluding in September of 2017. The FEIR also identified the need for coordination with MassDOT's Project to replace the I-91 Viaduct through downtown Springfield (MassDOT Project #607731). The FIER cited the Viaduct Project commencing in the Spring of 2015 and reaching substantial completion in August of 2017.

## Description of Project Changes

The changes proposed are minor and will not result in any increase in environmental impacts and will not require any additional state actions or changes to any required state permits. They consist of the following elements:

- ◆ **Relocation of the residential units:** Potential off-site locations within Downtown Springfield are being explored for the relocation of approximately 54 residential units that were previously located on the corner of Main Street and Howard Street. The residential units, while a commitment under the Springfield Host Community Agreement, were specifically excluded from the boundaries of the licensed gaming establishment by the Massachusetts Gaming Commission under MGM Springfield's conditional license approval. A copy of Exhibit B of MGM Springfield's Decision Awarding a License to Operate a Category 1 Gaming Establishment in Region B is presented in Attachment 6. The Proponent is in discussions with local property owners to select existing building(s) that will be renovated into residential space. Once the Proponent determines the residential location(s), local and state historic commissions will be consulted as necessary if historic resources will be impacted. The off-site residential units will be located within the area highlighted in Figure 1.
- ◆ **Relocation and redesign of the hotel:** The FEIR included a 25-story glass skinned hotel adjacent to the western corner of the casino along State Street. The redesigned, six-story hotel will have the same number of rooms, but has been relocated to Main Street where the residential units were previously located. Locating the hotel entrance on Main Street will provide increased opportunities for



patrons of MGM Springfield to visit local businesses along Main Street. The hotel will be designed to respect the architectural and historic context of Downtown Springfield.


- ◆ **Reduction in gaming positions and back-of-house:** Although the square footage of the gaming space remains fairly consistent with the site plan contained within the FEIR, the number of gaming positions has been reduced by approximately 164 positions and the back-of-house space has been reduced by approximately 68,000 sf within the casino block to accommodate the redesign and relocation of the hotel.
- ◆ **Reduction in Armory Retail Block development:** The size of several uses within the Armory Retail Block will be reduced as compared to the site plan contained within the FEIR, including an approximately 26,800 sf reduction in retail space, an approximately 8,200 sf reduction in the size of the bowling alley, and an approximately 10,400 sf reduction in the size of the cinema. These reductions will be partially offset by an increase in food and beverage space and the addition of an approximately 1,300 sf arcade within the Armory Retail Block.
- ◆ **Reduction in parking garage size:** The parking garage has been reduced by one level to a seven-story parking garage. This results in a reduction of approximately 387 parking spaces.
- ◆ **Revised Opening Date:** On August 6, 2015, the Massachusetts Gaming Commission reviewed and approved a revised opening date for the Project of September 2018 based in part on the continuing necessity to coordinate the Project with the MassDOT Viaduct Project. The Viaduct Project contract was subsequently awarded to JW White and the original timeline for the MassDOT Project has been extended as follows: (i) the contractual deadline for full beneficial use for the Viaduct Project is August 6, 2018; (ii) the contractor's proposed completion date to take full advantage of all available incentives is December 14, 2017; and (iii) the contract may be completed as late as 2019 under an un-accelerated schedule. Based on the new MassDOT project schedule, the potential impact on the short and long-term success of the MGM Springfield project as well as the need for certainty around an opening date, the Proponent proposed a new opening date of September 2018 that was approved by the Massachusetts Gaming Commission.

The remainder of the Project program remains similar to the FEIR Project. Table 1 below presents a comparison. An updated site plan is presented in Attachment 3.



**LEGEND**

 MGM Springfield Location

 Zone of Potential Residential Commitment\*

\*Bounded area matches ULI Study Area Boundary in ULI Boston 2007 Technical Advisory Panel Report (Page 6)

**MGM Springfield**    **Springfield, Massachusetts**

**Table 1 Project Program Comparison**

Project Element	FEIR Dimension	Updated Dimension	Change
<i>Casino Block</i>			
Hotel	177,351	151,861	-25,490 sf
Gaming	126,701	126,262	-439 sf
Retail	7,682	15,204	+ 7,522 sf
Food and Beverage	48,131	34,184	-13,947 sf
Convention	45,859	43,705	-2,154 sf
Residential	64,800 / 54 units	65,000 <sup>2</sup>	+ 200
Operations	268,488	200,605	-67,883 sf
<b>Casino Block Total</b>	<b>739,012</b>	<b>636,821</b>	<b>-102,191 sf</b>
<i>Retail Block</i>			
Retail	42,854	16,046	-26,808 sf
Bowling	17,810	9,618	-8,192 sf
Food and	20,115	24,962	+ 4,847 sf
Cinema	47,900	37,465	-10,435 sf
Office	12,000	12,000	0 sf
Operations	2,000	18,495	+ 16,495 sf
Church Relocation	0	2,489 <sup>3</sup>	+ 2,489 sf
Arcade	0	1,261	+ 1,261 sf
<b>Retail Block Total</b>	<b>142,679</b>	<b>122,336</b>	<b>-20,343 sf</b>
<b>Total Gross Area</b>	<b>881,691</b>	<b>759,157</b>	<b>-122,534 sf</b>
Parking	3,762 garage spaces	3,375 garage spaces	-387 spaces

<sup>2</sup> The dimension change for residential will result in a net change to the Project's existing location but not a net change to the overall Project size for the purposes of MEPA or the Proponent's commitments under its Host Community Agreement due to these units being developed offsite within one half mile of the project. The residential units were analyzed as part of the MEPA review and referenced in all filings and certificates. The residential units were not, however, included within the boundaries of the licensed gaming establishment by the Massachusetts Gaming Commission under MGM Springfield's conditional license approval. See Attachment 6. Residential programing is not required as a condition of licensure under the provisions of the Gaming Act, c. 23K of the General Laws. The proposed offsite residential programing will not be licensed by the Massachusetts Gaming Commission. Therefore, construction of the residential units in these areas, while still subject to MEPA review as part of the Project will not require any further State action by the Commission.

<sup>3</sup> The relocated church is assumed to be occupied by restaurant space.

## Measures to Minimize Environmental Impacts

The proposed changes will not alter environmental impacts. The FEIR included a thorough discussion of the Project's proposed mitigation measures and Draft Section 61 Findings, which the Proponent remains wholly committed to. The Proponent is implementing a comprehensive program of measures to mitigate traffic impacts, greenhouse gas, stormwater, and water and sewer demand. Each of these is addressed briefly below.

### *Transportation*

The proposed changes will not result in changes in transportation impacts, as described below.

### **Trip Generation**

The minor reduction in certain program elements understandably results in a lower trip generation potential for the Project. The number of gaming positions and retail areas, which generate the greatest number of new trips, has been reduced in the casino and Armory Square blocks as shown in Table 2.

**Table 2      Trip Generation Comparison**

Time Period	FEIR New Primary Trip Estimate	NPC New Primary Trip Estimate	Net Change in Primary Trips
Friday Daily	19,673	18,570	-1,103 (-5.6%)
Friday Evening Peak Hour			
Enter	730	687	-43 (-5.9%)
Exit	<u>560</u>	<u>517</u>	<u>-43 (-7.7%)</u>
Total	1,290	1,204	-86 (-5.0%)
Saturday Daily	21,925	20,824	-1,101 (-5.0%)
Saturday Midday Peak Hour			
Enter	740	689	-51 (-6.9%)
Exit	<u>572</u>	<u>526</u>	<u>-46 (-8.0%)</u>
Total	1,312	1,215	-97 (-7.4%)

As shown above, the daily and peak period trip generation has been reduced by approximately five to eight percent based on the new development program. The trip rates used within this NPC remain consistent with those previously endorsed by MassDOT during their review of the DEIR and FEIR. The detailed trip generation calculations are included in Attachment 7.

The residential development program of the Project is moving to an off-site location(s) near MGM Springfield. The 54 apartment units will likely be developed in more than one renovated building within approximately one-half mile of the Project site. The Proponent has an agreement to purchase 195 State Street for reuse for up to 35 units. This is a building that was formerly used as school district offices. Knowing that the total peak hour



trip generation for the residential development is approximately 20 peak hour trips, there will be no measureable traffic impacts associated with this change since it is a change to a less intensive use. To provide the most conservative (worst case) estimate of the trips to be generated by the Project, trips generated by the proposed apartment units were included in the trip generation estimate summarized in Table 2. Following the Proponent's review of the zoning regulations for the prospective site(s), an appropriate parking supply will be supplied on each site or through formal arrangements for shared parking in adjacent surface lots. There is also sufficient parking supply on the MGM Springfield site to provide alternative arrangements for parking.

### **Site Plan Modifications**

The following describes the adjustments to the proposed MGM Springfield site plan and access/egress configuration as compared to the site plan that was submitted to the MEPA office as part of the FEIR review process. Accommodations for truck, bus, passenger van, valet, and self-parking vehicles have each been described separately. The minor traffic distribution changes associated with these modifications on the traffic volumes along Bliss Street, Howard Street, and Union Street are described in the Trip Distribution section of this document.

#### *Truck and Bus Access / Egress*

As part of the previously proposed site plan, access for delivery trucks was proposed via a new full-access/egress driveway on Union Street approximately 430 feet northeast of East Columbus Avenue. A 140-foot long left-turn lane was proposed on Union Street at this driveway to accommodate trucks waiting to turn into the driveway. Loading/unloading of trucks was proposed to occur in the basement level of the MGM Springfield parking garage.

As part of the original site plan, buses were proposed to enter the MGM Springfield parking garage via the truck driveway on Union Street and load/unload in the designated bus parking area on the ground floor of the parking garage. Buses would then circulate through the parking garage and exit back onto Union Street via the truck driveway.

As currently proposed, trucks would continue to enter and exit the MGM Springfield parking garage via a full-access/egress, truck driveway on Union Street, which would be shifted approximately 65 feet closer to East Columbus Avenue as compared to the prior site plan. Buses would no longer share this driveway with trucks and would be shifted to a new drop-off area on MGM Way as described below. The left-turn lane on Union Street at the truck driveway will be 100 feet long, which will be adequate to safely accommodate two trucks waiting to enter the driveway. Based on the expected truck operations described, it is highly unlikely that more than two such vehicles would be entering the site at the same time. The left turn lane has been designed to maintain an efficient traffic operation for Union Street eastbound by providing queuing area for trucks even though it does not necessarily warrant this improvement.

The modifications to the site plan described above will slightly decrease traffic entering and exiting the truck driveway on Union Street due to the shift of the bus access / egress to MGM Way. However, given the number of projected trucks and buses visiting the site per day, this modification results in a negligible change in traffic volumes. This is described further in the Trip Distribution section of this memo.

In an effort to improve the customer experience for those using mass transit via charter bus, MGM Springfield has relocated the bus depot from the periphery of the site near Howard Street to a new location directly in front of the casino doors along MGM Way. Three new saw-toothed bus bays are provided in the pedestrian-friendly area on the east side of MGM Way. This site plan change is expected to increase the attractiveness of multi-modal transportation. The increase in bus trips along Bliss Street and MGM Way is expected to have a negligible impact given the Project's overall drop in trip generation and the limited number of bus trips generated by the Project. MGM is currently investigating opportunities for off-site staging for buses that discharge passengers at the MGM Springfield bus drop-off area and wait at an off-site location for a coordinated pick-up time.

#### *Passenger Van Parking and Limousine Staging*

The previously reviewed site plan accommodated passenger van parking on the ground floor of the parking garage between two rows of bus parking. Access and egress for passenger vans was previously proposed via the shared truck/bus driveway on Union Street.

In order to accommodate truck loading/unloading on the ground floor of the parking garage, the passenger van parking has been relocated to an area between Bliss Street and Howard Street on either side of the central plant. Access to the limousine staging and van parking area to the north of the central plant is provided via the main parking garage entrance on Bliss Street and egress is provided via a connection to Howard Street. Access to and egress from the van parking area south of the central plant is provided via a connection to Howard Street. These modifications remove large vans from Union Street and will have substantially similar traffic volumes when compared to the DEIR/FEIR site plan given the limited number of passenger van trips occurring during the peak hours.

#### *Valet Parking*

With the previously reviewed site plan, the casino valet parking was proposed to be accessed via a full-access/egress driveway on Bliss Street slightly offset from MGM Way. The casino valet pick-up and drop-off area was proposed on the ground floor of the parking garage immediately adjacent the casino entrance. The hotel valet parking was proposed to be accessed via an entrance only driveway on MGM Way opposite Bliss Street and an exit only driveway onto MGM Way between Bliss and State Streets. Vehicles parked with valet service would have been accommodated in the basement level of the parking garage.

With the elimination of the basement level, the valet parking area has been shifted to the first floor of the parking garage. The valet pick-up and drop-off will occur in the same area as previously proposed for the casino valet, including the valet function associated with the redesigned hotel.

The ramp to the valet parking has been eliminated and access/egress for the valet parking area has been shifted slightly east along Bliss Street to align with MGM Way and provide a more standard four-way intersection.

The minor modifications to the site plan described above will not impact traffic entering and exiting any of the proposed site driveways on Bliss Street, Union Street, or Howard Street as the valet parking access and egress will remain essentially unchanged

### *Self Parking Garage*

The site plan included within the FEIR showed casino self-parking on the second and higher levels of the MGM Springfield parking garage. Access into the garage was proposed via a single entrance on Bliss Street approximately 250 feet east of East Columbus Avenue. The entrance ramp was proposed to accommodate two entering lanes in order to allow traffic to flow freely into the garage from either direction on Bliss Street. Egress from the self-parking garage was proposed via a single two-lane ramp from the upper levels of the garage down to the lower level. The right-most lane was proposed to loop through the ground level to provide connections to Howard Street and Union Street for traffic destined toward I-91 South and West Columbus Avenue. The left-most lane was proposed to exit onto Bliss Street at the main self-park driveway for alternate access to I-91 North and I-291.

To accommodate the changes to the ground floor of the garage and eliminate the basement level, the main driveway for the self-parking garage will remain on Bliss Street but has been shifted approximately 50 feet closer to East Columbus Avenue to fit between the proposed columns rows. The garage entrance will still accommodate two entrance lanes to allow traffic to flow efficiently into the garage without impacting traffic on East Columbus Avenue. This driveway will continue to serve as the only entrance into the self-parking area of the garage.

Egress from the self-parking garage will still be accommodated via connections to Union Street, Howard Street, and Bliss Street; however the location of the proposed connections will shift slightly within the parking garage. As part of the previous plan, all traffic exiting the self-parking area would utilize a single ramp down to the ground level and make a decision on which exit driveway to utilize at the bottom of the ramp. With the proposed site plan, a secondary ramp has been proposed from the second level of the garage out to Union Street. To accommodate this revision, wayfinding signage will be posted within the upper levels of the garage to direct patrons destined for I-91 South and West Columbus Avenue toward this exit ramp to Union Street. Traffic exiting the self-parking area to Bliss Street or Howard Street would still continue down the main exit ramp out of the garage and

make a decision at the bottom of the ramp as to which exit to choose. The left-most lane on the down-ramp would provide a connection to Howard Street, while the right-most lane would continue to the main self-park driveway on Bliss Street. This provides a better opportunity to distribute traffic within the garage rather than draw all exiting patrons closer to the Bliss Street access point.

As the currently proposed site plan will continue to provide a similar access and egress configuration for self-parking vehicles within the MGM Springfield parking garage as compared to the previously reviewed plan, the modifications described above are anticipated to result in only minor changes to traffic volumes on Bliss Street, Howard Street, and Union Street.

The following modifications to the site plan will adjust the distribution of traffic exiting each of the site driveways:

- ◆ Bus and passenger van exiting traffic has been shifted from Union Street to Bliss Street and Howard Street. Fewer than 5 exiting bus and passenger van trips are anticipated to occur during the Friday evening and Saturday midday peak hours. Therefore, this site plan modification is expected to have a negligible impact on traffic volumes exiting the site.
- ◆ With the previously reviewed site plan, traffic exiting the self-parking garage toward Howard Street would travel down the main garage exit ramp and make all free-flowing right-turns exiting the garage to Howard Street. With the currently proposed plan, these vehicles will continue to use the main garage exit ramp, but will need to yield at the bottom of the ramp to traffic entering the garage in order to make a left-turn through the garage toward Howard Street. The potential delay and conflict that may result from this modification is likely to result in some redistribution of traffic that was formerly anticipated to exit via Howard Street to use the Union Street and Bliss Street driveways. However, the five to eight percent reduction in the overall trip generation negates the potential increases along Bliss Street associated with this change.
- ◆ The exit ramp to Union Street will be accessible from the second floor of the MGM Springfield parking garage and will require a route through the second floor of the garage to access the ramp. As a result, the majority of exiting traffic is likely to utilize the main ramp toward Bliss Street. Wayfinding signage will be posted within the garage to direct patrons destined for I-91 South to utilize the Union Street exit ramp. Therefore, patrons that were anticipated to utilize the Howard Street egress toward I-91 South with the previously reviewed plan will be redistributed to the Union Street ramp with the currently proposed site plan. The 6 to 10 percent reduction in the overall site-generated trips created by the proposed site plan modifications will negate any trips redistributed from the Howard Street egress to the Union Street ramp to access I-91 South, resulting in negligible changes in traffic



volumes exiting the MGM Springfield garage toward Union Street. This minor change in traffic volumes is not expected to measurably impact traffic operations at intersections along Union Street.

- ◆ Approximately one-third of the remaining trips that were formerly anticipated to utilize the Howard Street egress with the previously reviewed site plan will continue using this egress with the currently proposed site plan. The remaining two thirds will exit the garage via the main driveway onto Bliss Street toward East Columbus Avenue. This will result in a decrease in vehicle trips on East Columbus Avenue between Howard and Bliss Streets of 107 to 111 vehicle trips, and an increase in traffic exiting Bliss Street onto East Columbus Avenue of 78 vehicle trips during the Friday evening and Saturday midday peak hours as compared to the previous plan. As the increase on Bliss Street will be all right-turns and the volume of East Columbus Avenue will decrease by a greater volume, the changes in traffic volumes are not expected to result in significant changes to the operations of the East Columbus Avenue / Bliss Street intersection because the overall traffic volumes remain consistent.

Based on the insignificant changes in the configuration of the proposed site driveways, coupled with the decrease in trip generation, there is no need to update the quantitative capacity analysis of the intersections in the vicinity of the Project.

### **Off-Site Transportation Mitigation & Road Safety Audits**

Although the trip generation characteristics of the site are lower than originally projected in the DEIR and FEIR, the Proponent is not reducing its commitment for off-site transportation mitigation. Therefore, the infrastructure improvements and operational requirements outlined within the FEIR Certificate remain intact. The MGM design team, MassDOT, City staff, and other independent consultants and stakeholders will be conducting Road Safety Audits in eight different areas in late October and early November. As requested by MassDOT, several elements of the easily implemented recommendations may be added to the mitigation requirements that will ultimately be included into MassDOT's Section 61 Finding. Other elements associated with the MGM's commitment to enhance MassDOT's Intelligent Transportation System (ITS) infrastructure along the Route 5 corridor are being defined as part of this Finding. This includes supplemental highway message board, cameras, and/or communications that will assist MassDOT in notifying the motoring public of future traffic conditions.

### **Parking Demand**

Section 3.9.3 of the FEIR contained a detailed analysis of the parking demand anticipated to be generated by the MGM Springfield Project for each hour of the day and each day of the week to assess whether the proposed parking supply would be adequate to accommodate the peak parking demand. The parking demand characteristics for the casino patrons,

casino employees, hotel, apartments, daycare center, and Armory Square were each calculated separately for each hour and superimposed upon one another to identify the total peak parking demand for the entire site. A similar analysis was conducted for the updated building program, which indicates that the peak parking demand generated by the MGM Springfield Project with the revised site plan would be 2,928 spaces on a Friday and 3,107 spaces on a Saturday. Table 3 below provides a comparison of the parking demand generated by the prior site plan included in the FEIR and the current site plan included in this NPC. The detailed parking demand generation calculations are included in Attachment 6. As shown in Table 3, the site plan revisions will result in a net decrease in parking demand generated by the MGM Springfield Project of 173 spaces during the Friday peak and 162 spaces during the Saturday peak hours.

**Table 3          Parking Demand Generation Comparison**

Time Period	MGM Springfield Parking Demand (in spaces)		
	FEIR Parking Demand	NPC Parking Demand	Net Change in Parking Demand
Friday Peak Hour	3,101	2,943	-158 (-5.1%)
Saturday Peak Hour	3,269	3,127	-142 (-4.3%)

In addition to a net reduction in parking demand, the revised site plan also proposes a net reduction in parking supply within the parking garage of approximately 387 parking spaces by removing one of the floors. This reduction in parking supply is consistent with the reduction in parking demand anticipated for the Project, as demonstrated in Table 3. A total of 3,437 parking spaces will be provided on site. Therefore, the proposed parking supply will be adequate to accommodate the peak parking demand, while allowing a minimum of an additional 310 parking spaces to remain available for use by existing land uses in the surrounding area that may be displaced by the Project.

As described in Section 3.9.1 of the FEIR, the former land uses located on the MGM site and within the surrounding area just prior to commencement of demolition activities generated a peak parking demand of 700 parking spaces within parking lots that will be eliminated as part of the MGM Springfield Project. These businesses experience their peak parking demand on Monday through Friday between 8:00 AM and 5:00 PM, during which time the casino experiences limited activity. As a result, parking spaces will be available within the MGM Springfield parking garage during the day for use by the surrounding businesses.

During the day when surrounding businesses experience their peak parking demand of 700 spaces, the MGM Springfield facility is expected to generate a maximum parking demand of approximately 2,336 parking spaces. Superimposing the peak parking demand of the Project and the existing businesses results in a total peak parking demand of 3,036 parking spaces. This represents approximately 88.3 percent occupancy of the proposed parking

supply on the site. Based on information contained within the Institute of Transportation Engineers (ITE) publication *Parking Generation, 4<sup>th</sup> Edition*, drivers typically perceive a parking lot to be full when approximately 90 percent of the park spaces are full. Therefore, the parking garage has been sized appropriately to ensure that the parking supply can accommodate the peak parking demand without causing excess recirculation of vehicles to find open parking spaces.

### ***Greenhouse Gas***

The Proponent remains committed to achieving the same level of GHG reductions described in the FEIR. MGM Springfield continues to evaluate energy projects, including geothermal and solar applications. As the design progresses, the final determination of PV extent will depend on construction and interconnection costs, but the design strategy of achieving at least 10% of MGM Springfield's annual electricity needs via a combination of on-site solar and RECs is not anticipated to change.

All candidate PV areas will be constructed as "solar-ready." Specifically, roof areas not significantly shaded, and not designated for other uses (mechanical equipment, green roof, etc.) will be constructed such that they can support the loads and include space for conduit runs and electrical gear such as inverters and meters.

### ***Water Supply and Wastewater***

As discussed in the FEIR, water conservation methods to reduce the Project's effects on the Springfield Water and Sewer Commission's water distribution system may include:

- ◆ Rainwater reuse for landscape irrigation;
- ◆ Weather-based irrigation controllers;
- ◆ Installation of drip irrigation systems;
- ◆ Drought tolerant plants;
- ◆ Low-flow urinals;
- ◆ Low-flow water closets (1.1 gallons per flush (gpf) for liquids and 1.6 gpf for solids);
- ◆ Metering faucets (fitted with 0.5 gallon per minute (gpm) aerators with 15 seconds run time); and
- ◆ Education and training programs.

The water conservation measures identified above will minimize the Project's wastewater generation. Low Impact Development techniques will be implemented to minimize the volume of stormwater runoff, which will in turn reduce impacts on the wastewater collection and treatment systems.

As a result of the updated program, water use is anticipated to decrease by approximately 18,888 gallons per day (gpd) to approximately 225,242 gpd. Wastewater generation will decrease by approximately 14,319 gpd for a total generation of 207,618 gpd. See Table 4 below for detail calculations.

**Table 4 Proposed Water Use and Wastewater Generation**

Use	Square Footage	Program	Unit	Gallons Per Day (GPD)*	Total (GPD) Wastewater Demand	Total (GPD) Water Demand
Retail	31,250		per 1000 sq. ft.	50	1,563	1,719
Warehouse Area						
Dock	9,059	7 Persons	per person	15	105	115
Back of House	156,920	970 Persons	per person	15	14,550	16,005
Warehouse	9,201	10 Persons	per person	15	150	165
Central Plant	14,788	4 Persons	per person	15	60	66
Cinema	37,465	750 Seats	per seat	5	3,750	4,125
Daycare	6,000	95 Persons	per person	10	950	1,045
Bowling	9,501	10 Lanes	per lane	100	1,000	1,100
Restaurant	56,216	2,165 Seats	per seat	35	75,775	80,215
Convention/ Function Hall	29,128	1,450 Seats	per seat	15	21,750	23,925
Casino	126,262	3,657 Seats	per seat	15	54,855	60,341
Hotel						
Hotel	148,322	251 Rooms	per room	110	27,610	30,371
Spa / Fitness	5,955	55 Persons	per person	100	5,500	6,050
				<b>TOTAL:</b>	<b>207,618</b>	<b>225,242</b>



### ***Stormwater***

As discussed in the FEIR, the Project will reduce the amount of impervious area on the site. Appropriate Best Management Practices and Low Impact Development concepts will be used to mitigate the stormwater impacts from the proposed development.

### ***Historic Resources***

The Proponent will utilize full preservation, partial preservation, and relocation of historic properties within the Project site to eliminate, minimize, or mitigate adverse impacts. The Proponent has had ongoing consultation with the Massachusetts Historical Commission (MHC) regarding project impacts to historic properties. The MHC, in its review of the DEIR and supporting materials, determined that the Project includes demolition of part or all of State Register Properties, which constitutes adverse effects through destruction or alteration of all or part of the buildings. The MHC consulted with the Massachusetts Gaming Commission (MGC) and Proponent regarding the potential adverse effects of the Project to the State Register Properties, examined alternatives, and concluded that there are no prudent and feasible measures or alternatives which would eliminate the need for the demolition or partial demolition of State Register Properties. It was agreed that the parties would enter into a Memorandum of Agreement (MOA) outlining measures to eliminate, minimize, and/or mitigate the adverse Project impacts. The MHC has determined to accept the adverse effects of the Project on the State Register Properties in accordance with the satisfactory implementation of the terms and stipulations of the MOA. The Springfield Historical Commission (SHC), City of Springfield, and Springfield Preservation Trust (Concurring Parties) were invited to participate in the consultation and to concur with the MOA.

The draft MOA has been revised in response to comments from the MHC and SHC. The most recent version of the MOA, accompanied by additional information describing changes to the Project program, was submitted to the MHC on September 24, 2015. The Proponent anticipates ongoing consultation with the MHC, MGC, and Concurring Parties to finalize the MOA.

**Attachment 1**

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Secretary's Certificate on the 2014 Final Environmental Impact Report



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

Deval L. Patrick  
GOVERNOR

Maeve Vallely Bartlett  
SECRETARY

Tel: (617) 626-1000  
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December 31, 2014

CERTIFICATE OF THE SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS  
ON THE  
FINAL ENVIRONMENTAL IMPACT REPORT

PROJECT NAME : MGM Springfield  
PROJECT MUNICIPALITY : Springfield  
PROJECT WATERSHED : Connecticut River  
EEA NUMBER : 15033  
PROJECT PROPONENT : Blue Tarp Redevelopment LLC  
DATE NOTICED IN MONITOR : November 24, 2014

As Secretary of Energy and Environmental Affairs, I hereby determine that the Final Environmental Impact Report (FEIR) 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).

Project Description

As described in the FEIR, the project consists of a 881,691 gross square foot (sf) mixed-use redevelopment consisting of a casino, a retail and entertainment center, a hotel, apartments, and a daycare center. It is proposed on a 14.5-acre site in downtown Springfield. On November 6, 2014 the Proponent was awarded a Category 1 gaming license pursuant to 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 (the Gaming Act), which authorizes the Massachusetts Gaming Commission (MGC) for Region B of the Commonwealth.<sup>1</sup> As required by the Gaming Act, a Host Community Agreement between the

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<sup>1</sup> 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). This project is located in Region B.

City of Springfield and the Proponent was signed on May 14, 2013 and approved by the residents of Springfield on July 15, 2013.

The FEIR stated that the redevelopment is designed to take advantage of the existing transportation infrastructure and to integrate the uses into the existing urban fabric by providing access at the street level and design of streetscape elements including shade trees, street furniture, planters, enhanced lighting, street banners, gathering spaces and landscaping. It consists of two primary areas – the Casino Block (739,012 sf) and the Retail Block (142,679 sf).<sup>2</sup>

The Casino Block includes the following: 126,701 sf of casino gaming facilities with 3,821 gaming positions; a 250-room hotel (177,351 sf); 45,859 sf of convention space; 7,682 sf of retail space; 48,131 sf of restaurant space; 268,488 sf of casino-related back of house/operational space and 54 apartments (1-3 bedroom units; 64,800 sf).

The Retail Block includes a retail and entertainment center ('Armory Square'), an eight-story parking structure to provide 3,762 parking spaces, and a surface parking lot with 54 spaces. It will include a 17,810-sf bowling alley, 42,854 sf of retail space, 20,115 sf of restaurant space, a 47,900-sf multi-screen cinema, an event plaza, 12,000 sf of office space and 2,000 sf of back of house/operational space.

The project is estimated to generate 19,010 visitors per day on a weekday (Monday - Thursday) and 26,640 visitors per day on a weekend day (Friday – Sunday). The redevelopment includes a combination of new construction, redevelopment of existing buildings, retention of existing infrastructure and facilities, and demolition. The project includes construction of access drives, extensive landscaping, construction of a new stormwater management system and other associated infrastructure. Vehicular access to and circulation within the site is proposed via State Street, Union Street and East Columbus Avenue.

### Project Site

The 15.6-acre site is located in downtown Springfield and is comprised of several city blocks. It includes nine acres of surface parking, 4.2 acres of buildings and 1.8 acres of paved surfaces and sidewalks. It is bounded by Main Street to the northeast, Union Street to the southeast, East Columbus Avenue and Interstate 91 (I-91) to the southwest and State Street to the northwest. The site includes portions of Bliss Street and Howard Street. The Connecticut River and associated parkland is located to the west of the site and I-91. The site contains vacant lots and several buildings that include office, retail and residential uses. Many of the buildings were damaged by the tornado that struck Springfield in 2011. A number of buildings within the site are listed on the State and National Registers of Historic Places, the State Register of Historic Places and/or in the Inventory of Historic and Archeological Assets of the Commonwealth. The

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<sup>2</sup> As noted in the FEIR, this Casino Block square footage is a correction from the DEIR that incorrectly stated the square footage at 501,708 sf. The DEIR figure omitted a majority of back of house space and did not impact the transportation analysis.



site is located within ½ mile of Union Station and the Springfield Bus Terminal and is served by several bus routes.

### Environmental Impacts

Potential environmental impacts are associated with land alteration, traffic, water supply and wastewater generation, waste site clean-up, and generation of Greenhouse Gas (GHG) emissions. Impervious surfaces, compared to existing conditions, will be reduced by 1.8 acres. The project will generate a total of 24,851 average daily vehicle trips (adt) on a Friday and 27,590 adt on a Saturday. When adjusted for mode share, vehicle trips are estimated at 19,673 adt on a weekday and 21,925 adt on a Saturday. Water demand is estimated at 244,130 gallons per day (GPD) and wastewater generation is estimated at 221,937 GPD. A total of 3,816 parking spaces (structured and surface) are provided.

Measures to avoid, minimize and mitigate environmental impacts include redevelopment of an existing site in close proximity to transit, roadway and signal improvements (including off-site improvements), implementation of a Transportation Demand Management (TDM) program to limit single-occupancy-vehicle (SOV) trips, improved bicycle and pedestrian access, and the construction of a new stormwater management system. The project includes measures to reduce the GHG emissions. The project is designed to be certifiable by the U.S. Green Building Council's (GBC) Leadership in Energy and Environmental Design (LEED) at the Gold level. It will include a Combined Heat and Power (CHP) unit to increase efficiency, a rainwater reuse system and financial support to support transit use.

### Permitting and Jurisdiction

This project is subject to MEPA review and requires the preparation of a mandatory EIR pursuant to 301 CMR 11.03(6)(a)(6) and (6)(a)(7) because it requires a State Agency Action and it will generate 3,000 or more unadjusted new adt on roadways providing access to a single location and it includes construction of 1,000 or more new parking spaces at a single location (301 CMR 11.03(6)(a)(7)).

In addition, the project exceeds the following ENF thresholds:<sup>3</sup>

- Construction, widening, or maintenance of a roadway or its right-of-way that will cut five or more living public shade trees of 14 or more inches in diameter at breast height (301 CMR 11.03(6)(b)(2)(b));

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<sup>3</sup> The Certificate on the ENF indicated that the project included conversion of land held for natural resources purposes in accordance with Article 97 of the Amendments to the Constitution of the Commonwealth to any purpose not in accordance with Article 97 (301 CMR 11.03 (1)(b)(3)). As currently proposed, the project no longer proposes conversion of land held for natural resources purposes and, therefore, does not exceed this threshold.

- Destruction of all or any part of any Historic Structure site listed in or located in any Historic District listed in the State Register of Historic Places or the Inventory of Historic and Archaeological Assets of the Commonwealth (301 CMR 11.03(10)(b)(1));
- New discharge or expansion in discharge to a sewer system of 100,000 or more GPD (301 CMR 11.03(5)(b)(4(a)); and,
- Approval in accordance with M.G.L. c. 121B of a new urban renewal plan or a major modification of an existing urban renewal plan (301 CMR 11.03 (1)(b)(7).

The project requires a Gaming License from the MGC. The project requires an Underground Injection Control (UIC) (BRP WS-06) Permit and a Construction Site Dewatering Permit from the Massachusetts Department of Environmental Protection (MassDEP). It may also require Air Quality Permits from MassDEP for certain project components or equipment, such as the proposed CHP unit. It requires a Vehicular Access Permit from the Massachusetts Department of Transportation (MassDOT). In addition, it requires approval from the Department of Housing & Community Development (DHCD) for an urban renewal plan or urban redevelopment project pursuant to M.G.L. c. 121A or 121B. The project is subject to review by the Massachusetts Historical Commission (MHC). The project is subject to the EEA Greenhouse Gas (GHG) Emissions Policy and Protocol (the GHG Policy).

The project requires a National Pollutant Discharge Elimination System (NPDES) Construction General Permit from the United States Environmental Protection Agency (EPA) and a Determination of No Hazard to Air Navigation from the Federal Aviation Administration (FAA).

The project may require approval from the Federal Highway Administration (FHWA) for modifications to the highway system (I-91) and/or for work on the National Highway System (NHS). If it does require FHWA approvals, the project may be subject to review pursuant to the National Environmental Policy Act (NEPA), Section 4(f), and Section 106 of the National Historic Preservation Act (NHPA).

Also, the project requires multiple permits and approvals from the City of Springfield, including a Road and Curb Cut Permit, Public Way Discontinuance, and an Application for Re-Zoning. The Proponent has entered into a Host Community Agreement (HCA) with the City of Springfield, which was approved by Springfield voters. The Proponent will enter into a Surrounding Community Agreement with one or more surrounding municipalities.

Because the Proponent is not requesting State Financial Assistance, 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 by the MEPA regulations.

Changes Since the Filing of the Draft EIR

The FEIR identified the following modifications to the project since the filing of the DEIR:

- The gas station and convenience store, previously located on Lot 14, have been removed from the project. The other elements of the project program remain the same;
- Pedestrian connections and site circulation have been refined to provide clear connections between on-site features, surrounding businesses, and the adjacent sidewalk network;
- A vehicle turning circle has been added at the Main Street end of Howard Street;
- Elimination of a previously proposed 12-foot turning lane along East Columbus Avenue between Howard and Bliss Street; and
- Architectural design modifications are proposed in response to consultation with the Springfield Historic Commission (SHC). The façade of 73 State Street will be preserved as originally proposed; elements of the building lobby will be preserved and used elsewhere in the project. The street-side portion of the 95 State Street façade will be preserved and reused, while the remaining portions of the office tower will be removed.

*Surrounding Community Agreements*

The Proponent also entered into Surrounding Community Agreements (SCAs) consistent with the MGC regulations (205 CMR 125.00). The communities that were deemed “Surrounding Communities” per the MGC’s regulations were: Agawam, Chicopee, East Longmeadow, Holyoke, Longmeadow, Ludlow, West Springfield, and Wilbraham. The communities of Longmeadow and West Springfield participated in an arbitration process to determine the most appropriate settlement agreement; this process was completed in April 2014 and the Proponent has finalized all required SCAs. Per the SCAs, physical mitigation improvements previously proposed by the Proponent in the Towns of Longmeadow and West Springfield will no longer be undertaken by MGM Springfield.

The SCA processes identified the following payments:

<b>Community</b>	<b>Upfront Payment</b>	<b>Annual Payment</b>	<b>Terms</b>
West Springfield	\$665,000, plus legal and consulting expenses of \$129,000	\$425,000 (average plus annual consumer price index adjustment)	Duration of operations
Longmeadow	\$850,000, plus legal and consulting expenses of \$143,000	\$275,000 (plus 2.5% escalator)	15 years (with mutual right to reopen for negotiation upon license renewal)
Agawam	\$125,000	\$150,000	15 years with waiver of right to reopen
Chicopee	\$125,000	\$150,000	15 years with waiver of right to reopen
East Longmeadow	\$50,000	\$100,000	15 years with waiver of right to reopen
Wilbraham	\$50,000	\$100,000	15 years with waiver of right to reopen
Ludlow	\$50,000	\$100,000	15 years with waiver of right to reopen
Holyoke	\$50,000	\$85,000	15 years with waiver of right to reopen

### Review of the FEIR

#### Project Description and Permitting

The FEIR included a description of the project and supporting narrative and graphics in response to the scope issued in the Certificate on the DEIR. The FEIR identified local, State and federal permitting requirements. The FEIR provided responses to comments received on the DEIR and identified measures proposed to avoid, minimize, and mitigate Damage to the Environment.

The FEIR provided additional information on the block between Hubbard Avenue, Willow Street, Union Street, and Main Street. This parcel is a possible site for the relocation of the French Congregational Church and the proposed 3,000-sf daycare facility. The Proponent indicated that these project elements are accessory to the casino, with the proposed church location at the corner of Union and Willow Street and the daycare located at the corner of Hubbard Avenue and Willow Street. According to the FEIR, the location for the church was reviewed by the SHC and the SHC did not raise any objections to this location. The Main Street side of the block is preliminarily proposed as a 6,000-8,000-sf retail building with a rear parking lot; however, programming is contingent upon the church relocation and zoning requirements associated with the daycare facility.

### Traffic and Transportation

The FEIR included an updated transportation study prepared in conformance with the MassDOT/EEA *Transportation Impact Assessment Guidelines*. The MassDOT comment letter noted that the FEIR adequately addressed its comments raised in the DEIR and included satisfactory mitigation measures for impacts to State roadways. Comments submitted by the City of Springfield identify concerns related to pedestrian signal phasing, bicycle accommodations, operations along Main Street and Union Street. As indicated below, additional analysis or design will be necessary in conjunction with State, local and potentially federal permitting requirements for impacts to roadways within the study area. Implementation of the final traffic mitigation program may require amendments to existing agreements, such as the HCA with the City of Springfield, to accurately reflect the final project design. The Proponent should continue to work with MassDOT, the City of Springfield, the PVPC, PVTA, abutting landowners and communities with a SCA through project design, permitting and construction commencement to avoid, minimize and mitigate project-related traffic and transportation impacts. The Proponent should use the comment letters provided on the FEIR to guide these coordination efforts.

This FEIR included a supplemental analysis that included an assessment of the following intersections:

- West Street (US Route 20)/Riverside Road/Basset Boat Company Driveway [City of Springfield];
- Burnett Road/New Lombard Road [City of Chicopee]; and
- Converse Street/Laurel Street [Town of Longmeadow].

The FEIR described existing conditions at each of these intersections, including roadway geometrics and signal equipment, traffic volumes, intersection operations, and intersection safety. Future traffic volumes for the 2024 No-Build and 2024 Build Condition were estimated with consideration for projected background growth volumes and in a manner consistent with the methodology use in the DEIR. The FEIR presented the results of levels of service (LOS) and queue length analyses (average and 95<sup>th</sup> percentile) for the supplemental intersections. This intersection analysis used *Highway Capacity Manual (HCM) 2000* software, while LOS in rotaries were determined using a procedure described in Sidra Intersection v.5.1 software. The supplemental traffic analysis concluded the following:

- West Street (US Route 20)/Riverside Road/Basset Boat Company Driveway [City of Springfield] – all movements in this intersection are anticipated to operate at LOS C or better in the 2024 No-Build and 2024 Build Condition. No project-related mitigation is proposed.
- Burnett Road/New Lombard Road [City of Chicopee] - all movements in this intersection are anticipated to operate at LOS C or better in the 2024 No-Build and 2024 Build Condition. No project-related mitigation is proposed.



- Converse Street/Laurel Street [Town of Longmeadow] – The Laurel Street southbound approach is expected to continue to operate at degraded LOS (LOS F) in the 2024 No-Build and 2024 Build Conditions. The project is not anticipated to add additional traffic volumes to the Laurel Street southbound approach and is anticipated to contribute less than one percent of all intersection traffic in the 2024 Build Condition. Therefore, no project-related mitigation is proposed at this location.

The FEIR included a queue storage evaluation of the average and 95<sup>th</sup> percentile queues for all study area intersections under the 2024 No-Build, 2024 Build, and 2024 Build with Mitigation Conditions. This evaluation included a comparison of all queues with the available queue storage distances. These data were used to determine if additional mitigation measures are required in the 2024 Build Condition. The Proponent will be required to work with MassDOT during and post permitting to optimize traffic operations and manage access along some project corridors. Potential modifications proposed by MassDOT to further improve traffic operations include:

- Providing right-turn lanes into the site to facilitate turning and through traffic on Union Street (these are projected to operate at LOS B);
- Implementing potential signal timing improvements and coordination at the Riverside Street/West Street and Plainfield Street/Avocado Street intersections, subject to further evaluation;
- Providing two through lanes and a right-turn lane for the Union Street westbound approach at the Union Street segment under the I-91 overpass; and
- Ensuring that the proposed queue detector on the I-91 southbound ramp off-ramp would pre-empt the Hall of Fame Avenue southbound movement and the Union Street eastbound movement simultaneously to prevent traffic from backing up on the I-91 southbound ramp.

The FEIR included detailed conceptual plans for all proposed improvements, including bicycle and pedestrian improvements, verifying the feasibility of constructing such improvements. These plans clearly showed the proposed lane widths and offsets, layout lines and jurisdictions, land uses (including access drives), existing and proposed traffic signals, and wetland resource areas adjacent to areas where improvements are proposed, as applicable. The FEIR included detailed and updated pedestrian and bicycle plans that clearly identified paths and location of infrastructure (including bicycle parking) and connections. All off-site roadway improvements will be constructed consistent with Complete Streets principles to the maximum extent reasonable and practicable. The FEIR discussed the project's consistency with these principles and summarized proposed "complete streets" improvements.

Construction period traffic impacts and traffic and parking management mitigation measures are addressed later in this Certificate.

*Sensitivity Analyses*

The FEIR included a sensitivity analysis for study area intersections in the Town of Longmeadow to evaluate potential traffic-related impacts of the project utilizing alternative trip generation and distribution assertions developed by the peer review letter generated by Greenman-Pedersen, Inc. (GPI) on behalf of the PVPC. This sensitivity analysis was conducted for the study area intersections presented in the DEIR and the additional intersections included in the FEIR:

- Longmeadow Street (US Route 5)/Forest Glen Road/Western Drive;
- Longmeadow Street (US Route 5)/Converse Street/Englewood Drive; and
- Converse Street/Laurel Street.

The sensitivity analysis evaluated the impact of the following assertions:

1. Trip generation rates for casino gaming and casino employees should be increased by 20 percent; and
2. Overall trip generation distribution along Longmeadow Street should be increased from 3.0 percent to 3.5 percent of total site-generated traffic.

The FEIR confirmed the use of the Friday PM peak hour as the “critical” analysis period for the US Route 5 corridor through the completion of automatic traffic recorder (ATR) counts along Longmeadow Street south of Forest Glen Road and manual Turning Movement Counts (TMCs). To conduct the sensitivity analysis, the GPI-recommended site-generated traffic volumes for the project were superimposed utilizing the GPI-projected trip distribution upon the No-Build traffic networks to reflect the 2024 Build Condition. The FEIR included the results of the sensitivity capacity and queue analysis for the study area intersections in tabular format, supported by a descriptive narrative explaining the results in additional detail. The FEIR concluded that the introduction of additional site-generated traffic along Longmeadow Street and Converse Street, using GPI assertions, would have a negligible impact on the results of the traffic analysis provided in the DEIR.

The FEIR also included a sensitivity analysis for study area intersections in the Town of West Springfield to evaluate potential traffic-related impacts of the project utilizing the GPI assertions associated with alternative trip generation and distribution. This sensitivity analysis was conducted for the following study area intersections presented in the DEIR:

- Memorial Avenue (Route 147)/Union Street/Union Street Extension;
- Memorial Avenue (Route 147)/Bresnahan Street/Century Plaza Driveway;
- Memorial Rotary;
- Park Street (US Route 20)/Elm Street;
- Park Street (US Route 20)/Main Street;
- Park Avenue (US Route 20)/Elm Street/Union Street;
- Park Avenue (US Route 20)/Main Street; and

- North End Rotary.

The sensitivity analysis evaluated the impact of the following assertions:

1. Trip generation rates for casino gaming and casino employees should be increased by 20 percent;
2. Overall trip distribution across the Memorial Bridge should be increased from 3.0 percent to 6.0 percent of the overall site-generated traffic; and
3. Overall trip distribution across the North End Bridge should be decreased from 5.0 percent to 3.0 percent of total site-generated traffic.

To conduct the sensitivity analysis, the GPI-recommended site-generated traffic volumes for the project were superimposed utilizing the GPI-projected trip distribution upon the No-Build traffic networks to reflect the 2024 Build Condition. The FEIR included the results of the sensitivity capacity and queue analysis for the study area intersections in tabular format, supported by a descriptive narrative explaining the results in additional detail. The FEIR concluded a reduction of site-generated traffic, as compared to the DEIR, across the North End Bridge, using GPI assumptions, would improve traffic operations at this location. Furthermore, the FEIR concluded that the introduction of additional site-generated traffic across Memorial Avenue, using GPI assertions, would have a negligible impact on the results of the traffic analysis provided in the DEIR. The FEIR acknowledged the poor LOS (LOS F) associated with the Memorial Rotary in the 2024 No-Build and 2024 Build Condition (using both DEIR and GPI methodologies). According to the FEIR, MassDOT plans to construct improvements at the Memorial Rotary in Summer 2015, prior to opening of the MGM Springfield project. Improvements to the North End Rotary are currently under construction by MassDOT on an accelerated construction schedule in order to ensure work is completed prior to the commencement of the I-91 Viaduct Deck Replacement project (scheduled to commence in Spring 2015). These rotary improvements are anticipated to improve safety and are not expected to have a measurable impact on traffic operations.

The FEIR also evaluated the potential impact on project-related traffic if proposed MassDOT infrastructure projects are not constructed prior to the opening of MGM Springfield. In particular, the FEIR focused on MassDOT Project #606599, which consists of improvements at the Burnett Road/I-90 Interchange 6/I-291 signalized intersection. The proposed improvements, including signal upgrades, construction of a third left-turn lane existing I-90 onto Burnett Road/I-291, and additional channelized right-turn lane from I-291 northbound onto I-90, and an additional through lane on Burnett Road southbound is anticipated to commence in the spring of 2017. Plans to convert I-90 to open road all-electronic tolling (AET) will alter queuing trends on the I-90 westbound approach to the intersection of Burnett Road/I-90 Interchange 6/I-291 in Chicopee. AET is expected to be active by July 2016; however, toll booth structures may remain until the spring of 2017. Both of these MassDOT infrastructure projects are expected to be constructed prior to the opening of MGM Springfield. These improvements were incorporated into the 2024 No-Build and Build analyses in the DEIR's traffic study.

The FEIR concluded that based on existing intersection geometry at Burnett Road/I-90 Interchange 6/I-291, the left-turn exiting the I-90 ramps is expected to operate at degraded LOS in the 2024 No-Build and 2024 Build Conditions during the Friday evening peak period. Pending the construction of MassDOT Project #606599 improvements, signal timing optimization should be implemented to mitigate project-related impacts and result in all movements at the intersection operating at levels consistent with the 2024 No-Build Condition.

#### *Additional Operational and Intersection Analyses*

As directed by MassDOT, the FEIR included an evaluation of potential mitigation measures at the Plainfield Street (Route 20) and I-91 northbound ramps intersection. The traffic analysis indicated that this intersection will operate at LOS F during the 2024 No-Build and Build conditions, with significant queuing on the I-91 northbound Exit 9 off-ramp. MassDOT comments noted that the crash rate at this location is higher than the district and state averages. Project-related traffic is expected to increase traffic volumes on the I-91 northbound off-ramp by 3.5 percent. In the FEIR the Proponent proposed to provide interim lane configuration mitigation to the intersection prior to any long-term corridor improvements along Plainfield Street that MassDOT and the City of Springfield may consider in the future. A sensitivity and queue analysis was conducted to demonstrate that proposed mitigation measures will reduce delay and queues on the I-91 northbound off-ramp. These interim improvements are detailed in the mitigation section of the Certificate.

The FEIR included an evaluation comparing traffic operations associated with a five-lane versus a four-lane cross-section of Union Street under the I-91 overpass. The Proponent met with MassDOT and the City of Springfield and presented the results of this analysis prior to submission of the FEIR. The FEIR included graphics depicting proposed and existing roadway widths, lane assignments and width, bike accommodations and adjacent shared-use areas for each cross-section. MassDOT conducted a capacity and queue analysis for each cross-section in the 2024 and 2034 Build with Mitigation scenarios. The results of this analysis indicated that the traffic generated by the project would be accommodated efficiently with either a four-lane or five-lane cross-section on Union Street under the I-91 overpass (i.e., overall intersection LOS C or better). The five-lane cross-section limits bicycle accommodations to a narrow shoulder; however, MassDOT recommended the implementation of the five-lane cross-section as it provides additional storage to accommodate the double left-turn from Hall of Fame Avenue to Union Street. I strongly encourage the Proponent and MassDOT to weigh the potential benefits of the four-lane cross-section with a full bicycle lane in the final selection of alternatives, as this amenity is consistent with project mode-share shift goals. Furthermore, I note the comment letter from Pride Stores LLC indicating that previous attempts to mitigate traffic in this location were not advanced due to potential conflicts with an existing Traffic Control Agreement (TCA) between MassDOT and the City of Springfield. It is unclear from the FEIR how the proposed cross-section modifications will continue to meet the TCA or if a new agreement is required. This additional permitting and review step should be considered when determining the cross-section submitted for approval by MassDOT and the City of Springfield.

The FEIR did not include a simulation model of the I-91/Route 5 interchange. The FEIR noted that the Proponent met with the City of Springfield and MassDOT to discuss project impacts on the I-91 viaduct and the status of future roadway improvement projects along I-91 in Springfield and Longmeadow. An I-91 Long-Term Improvements Study is currently being prepared on behalf of MassDOT. MassDOT indicated at this meeting that a simulation model of the I-91 corridor should be prepared by the PVPC as part of an ongoing corridor study on I-91 between Exits 1 and 5. I note the comment from PVPC indicating that a traffic simulation model is not currently proposed as part of its Unified Planning Work Program for this section of I-91. The PVPC indicates its preference for this simulation modeling work to be integrated into the MassDOT study, or undertaken by the Proponent. It is unclear from the FEIR and comment letters if such modeling is necessary to inform the proposed mitigation program for the project. The Proponent, MassDOT and the PVPC should discuss this issue in advance of the preparation of 25 percent transportation design plans to determine the study's need and the entity responsible for its completion.

#### *Intersection Safety Analysis*

At the request of MassDOT, the Proponent reviewed the crash history for all study area intersections to assess where crash rates exceed State and district-wide averages, where intersections are eligible for the Highway Safety Improvement Program (HSIP), and where intersections appear on the MassDOT Top 200 Crash Locations listing. According to the FEIR, MassDOT guidelines require a Road Safety Audit (RSA) to be conducted where HSIP-eligible or statewide Top 200 crash clusters are present within the study area of a transportation improvement project, prior to commencing or finalizing a 25 percent design and Functional Design Report (FDR). MassDOT's comments on the DEIR also indicated that RSAs should be prepared for other high crash rate locations in the study area that will receive significant volumes of project-related traffic. Those intersections that will be subject to an RSA as part of the 25 percent design process for improvements are listed in the mitigation portion of this Certificate. MassDOT indicated that as of the submission of the FEIR, crash data has been updated to reflect 2012 data. The Proponent should review all identified high crash locations in Springfield and surrounding communities and update the list of intersections in order for MassDOT to revise the locations where RSA's will be required. During permitting, MassDOT will make recommendations on mitigation measures to be implemented by the Proponent upon completion of the RSAs and revise the draft Section 61 Finding accordingly.

The FEIR indicated that the project no longer includes widening East Columbus Avenue between Bliss Street and Howard Street to accommodate an additional lane for motorists decelerating onto Bliss Street as they enter the site. The conceptual improvement plans included in the FEIR have been modified to provide a sweeping, channelized right-turn lane from East Columbus Avenue onto Bliss Street in place of the standard deceleration lane that was positioned parallel to East Columbus Avenue. The channelized right-turn lane will allow vehicles to depart East Columbus Avenue onto Bliss Street at a transitional rate of speed, reducing delay to following vehicles, and eliminating the need for a full deceleration lane. The capacity and queue analysis included in the FEIR demonstrates that the proposed channelized



right-turn lane will provide similar operations when compared to the previously proposed standard deceleration lane and can accommodate site-generated traffic.

#### *Roadway Jurisdiction and Functional Classification*

The FEIR indicated that off-site improvements are proposed on roadways owned and maintained by both MassDOT and the City of Springfield. The FEIR included graphics depicting the jurisdiction and functional classification of study area roadways. According to the FEIR, traffic control modifications to highway ramps typically require review and approval by the FHWA through a Project Framework Document. The project includes the following improvements to interstate highway ramps:

- Installation of queue detection on the I-91 Exit 6 southbound off-ramp; and
- Reconstruction of the end of the existing vehicle barrier between the off-ramp and West Columbus Avenue to improve sight lines.

The FEIR states that these improvements are not anticipated to require submission of a Project Framework Document because they do not include a change in lane use of traffic control on the interstate off-ramp. Several of the roadways within the study area are also part of the National Highway System (NHS). The project includes improvements to several NHS-designated roadways to enhance pedestrian and bicycle access and incorporate safety measures. These improvements may require design exception requests (DER) related to lane and shoulder widths, but are expected to be classified as 3R (Resurfacing, Restoration, and Rehabilitation) projects that have no significant geometric changes or widening. The FEIR described potential design exceptions based upon the conceptual mitigation plans at the following intersections:

- Main Street – lane width and shoulder width;
- State Street (east of Main Street) – shoulder width;
- State Street (west of Main Street) – lane width and shoulder width;
- West Columbus Avenue (between Memorial Bridge/Boland Way and Union Street) – shoulder width;
- Memorial Bridge – lane width and shoulder width;
- Plainfield Street – shoulder width; and
- Plainfield Street Bridge – shoulder width, pedestrian accommodations, bicycle accommodations.

In addition to ramp modifications, FHWA and NEPA review will be required for improvement projects proposed on roadways that are part of the NHS where a design exception is required, whether it lies within City or State jurisdictional limits. The FEIR included a commitment by the Proponent to work with MassDOT during the 25 percent design stage to review proposed mitigation concepts and determine the extent of subsequent federal environmental permitting requirements. The project team will prepare DERs and Categorical Exclusion forms associated with NEPA permitting for review and approval by MassDOT and the City of Springfield.

*Abutter Site Circulation*

The FEIR summarized potential traffic circulation impacts associated with the construction and operation of the MGM Springfield project on three abutters: the Colvest Property, Red Rose Pizzeria, and the Bacon & Wilson Property. Specifically, the discontinuation of Howard Street and Bliss Street will alter existing access patterns to these sites. The FEIR described existing access/egress driveways for each site, proposed changes to access/egress (e.g., changes to allowed turning movements, etc.), and comparative travel distance changes due to modified access and egress points.

I received several comments from abutting property owners immediately adjacent to the project site. As a result of the discontinuation of Howard Street and Bliss Street, as well as the construction of new access and egress points for the project, existing operations (e.g., entry and exit points, delivery or trash pick up access, etc.) at these adjacent sites will be altered. I strongly encourage the Proponent to establish a dialogue with each abutter to clarify potential project-related impacts, proposed mitigation measures, and seek to remedy additional impacts to the extent the Proponent is legally obligated to do so. The Proponent should continue to evaluate design or operational measures to ameliorate project-related impacts to abutting properties, including but not limited to, design treatments to reduce the visual impact of the garage, confirmation of the constructability of the garage from entirely within the Proponent's property, mitigation measures to reduce noise, vibration or emissions associated with the proposed central plant, maintenance of safe pedestrian access, and enhanced communication protocols during the construction period. I note the specific concerns expressed by Colvest/East Columbus, LLC regarding potential conflicts with traffic exiting this property's driveway to the through lane onto Union Street due to the addition of the westbound right-turn only lane and the potential for cut-through traffic exiting the project garage onto Howard Street. The Proponent should specifically review these concerns with respective abutters and the City of Springfield prior to finalizing the project's mitigation plan to determine if there are additional opportunities to mitigate potential impacts.

*Bicycle and Pedestrian Infrastructure*

The FEIR included graphics and a supporting narrative that described existing bicycle and pedestrian infrastructure within the study area, noting width, condition, signage, ADA-compliance, push buttons, bicycle detection capabilities, etc. The Proponent will implement a series of bicycle and pedestrian infrastructure improvements to enhance existing and future operations and to improve the safety of study area roadways and intersections for pedestrians and bicyclists. The Proponent will install way-finding signage at key entry points within Downtown Springfield and along primary MGM Springfield access/egress corridors to facilitate pedestrian and bicycle use. The project will also enhance bicycle and pedestrian access to the Connecticut River Walk and Bikeway by providing improved railroad crossing signage and striping along the at-grade bikeway access point along West Columbus Avenue (opposite State Street) and adding way-finding signage and improved lighting under the I-91 viaduct at State Street and Union Street. Proposed improvements must be reviewed and approved by the City of Springfield. For

those improvements located on NHS-roadways additional review and approval by MassDOT will be required.

Proposed pedestrian improvements include:

- Installation of updated MUTCD-compliant pedestrian signal equipment (i.e., push buttons and signage, countdown signal housings, audible warning devices (where necessary));
- Modification or retrofitting of accessible wheelchair ramps to achieve compliance with ADA standards (i.e., installing tactile warning devices, providing sufficient ramp openings, and providing adequate ramp slope);
- Reconstruction of sidewalks (widening where possible) and providing additional amenities such as benches, pedestrian-level lighting, landscaping, and other streetscape improvements;
- Upgrades to mid-block crossing locations along the site frontage (i.e., new crosswalks, pedestrian flashing signals, refuge islands, etc.); and
- Modification of the existing pedestrian crossing across East Columbus Avenue north of the intersection with State Street to eliminate pedestrian/vehicle conflicts.

The Proponent should review the comments provided by the City of Springfield regarding proposed pedestrian signal equipment, pedestrian crossing phasing, and sight lines, and modify design plans as necessary to ensure proposed mitigation measures adequately enhance the pedestrian environment in the study area. I strongly encourage the Proponent to implement MassDOT's request to provide highway lighting at each crosswalk at the North End Rotary for consistency with the proposed mitigation at the Memorial Bridge Rotary as a pedestrian safety measure.

Proposed bicycle improvements include:

- Installation of bicycle pavement marking and signage (i.e., bicycle lanes, "sharrows" and "share the road" bicycle signage, bicycle boxes, etc.);
- Provision of secure, covered bicycle racks with storage for up to 28 bicycles within the Armory Square block and near major project entryways (State Street and Union Street);
- Provision of approximately 24 secure, weather-protected, long-term bicycle parking (for employees and residents) spaces at designated locations in the MGM Springfield parking garage;
- Installation of way-finding signage at key entry points within Downtown Springfield and along primary MGM Springfield access/egress corridors; and
- Implementation of a bicycle share program with a total of 16 bicycles for use by MGM employees, patrons and residents. This system will include a U-lock to allow users to secure the bicycle at a destination location without an electronic locking system.

The Proponent should review the comments provided by the City of Springfield regarding bicycle accommodations along the Main Street and Union Street corridors and modify plans as necessary subsequent to consultation with the City to maximize safe bicycle accessibility in the study area. It is unclear in the FEIR how the proposed number of bicycle parking spaces was determined. Given the bicycle mode share goals for the project (notably 4 percent of casino employee trips by bicycle), it appears that additional bicycle parking may be warranted. The Proponent should reevaluate the volume of proposed secure bicycle parking spaces in the final design.

The FEIR provided additional details and graphics depicting proposed pedestrian connections and circulation routes through the MGM Springfield site itself. The FEIR described interior pedestrian connections to the casino/hotel block and Armory Square from the MGM Springfield parking garage, access to the casino/hotel block from adjoining streets and Armory Square, and Armory Square to the casino/hotel block, parking garage, and the Union Street and Main Street sidewalk network and Pioneer Valley Transit Authority (PVTa) bus system. The project includes two main casino entries on Main Street, a hotel entry off State Street, and an entry from Armory Plaza. Office, retail, and restaurant facilities facing the surrounding streets will have entry points from both the casino and the street to allow access without entering the casino. A wide pedestrian walkway is proposed to fully encircle the casino floor to allow for internal connections between the casino, garage, retail, restaurants, Armory Square and adjacent streets without requiring access through the casino. Way-finding signage will be provided throughout the project site and within the parking garage, casino/hotel block and Armory Square to direct patrons to major on-site features (e.g., casino entrances, Armory Square, DaVinci Park, parking garage, bicycle parking, bus drop-off/pick-up, etc.), the surrounding street system (including PVTa bus stops and MGM trolley stops), and area attractions (e.g., Basketball Hall of Fame, Connecticut River Park and Bikeway, Union Station, etc.).

The FEIR also discussed exterior pedestrian connections from the MGM Springfield parking garage (which will offer free parking to surrounding area businesses) to the adjacent street system. The FEIR described walking routes to the State Street/Springfield District Courthouse area, Main Street and Red Rose Pizzeria, and Union Street. Each route presented included travel through the casino block to maximize length of time traveling through covered or weather-protected areas. Alternate routes are also provided along the sidewalk network along Main Street, State Street, Bliss Street, and Union Street.

### *Public Transportation*

The project site is easily accessed by existing PVTa bus routes. The FEIR summarized the proposed service changes, to be undertaken by the PVTa as a result of its Comprehensive Service Analysis completed in June 2014, on bus routes most directly serving the project site and Downtown Springfield. Generally, these changes are either anticipated to have minimal impact on service to the project site, or increase trip frequency. For the two routes proposed for discontinuance (Routes 8 and 13), existing or future crosstown bus service is expected to service similar areas, but may require passenger transfers. As noted in the FEIR, the Proponent has no

expectation that the PVRTA would initially provide service outside current operations for patrons or employees.

The project includes consolidating bus stops along Main Street between State Street and Union Street to provide a single bus stop on each side of Main Street. A bus stop will be provided on the southerly side of Main Street just west of Howard Street and on the northerly side of Main Street just east of Peabody Lane. The FEIR included conceptual plans depicting proposed bus stop locations and their relationship to overall improvements on Main Street, including bicycle and pedestrian amenities, on-street parking, and traffic signal improvements. I encourage the Proponent to expand the proposed bus stops from 80 to 150 feet in length to allow for future articulated bus access or to allow more than one bus to stop at a time along these busier routes without impeding traffic flow. Final design, location and approval of bus stop locations will be completed in coordination with the City of Springfield, the PVRTA, and other approving entities as necessary. The Proponent has committed to the following:

- Fund the design and construction of bus stops on Main Street;
- Perform maintenance of the amenities installed at these stops, including regular cleaning and snow removal;
- Install a shelter for weather protection and seating at the bus stops;
- Install signage identifying routes and schedules of PVRTA bus service;
- Install additional seating, trash barrels and other street furniture as agreed upon in the final design process; and
- Install signage within MGM Springfield to direct transit users to the proposed bus stops.

I encourage the Proponent to provide an enclosed waiting area within the project site to provide a centralized location for transportation information and access to public and private transportation services.

The Proponent will also initiate and fund the implementation of a Trolley Service/Downtown Circulator. The FEIR described the preliminary details of this service, to be funded by the Proponent and provided by PVRTA under contract. The Proponent and the PVRTA should continue to work cooperatively to finalize the terms of an agreement for this mitigation measure. Service will be offered free of charge to employees, patrons, and visitors of MGM and Downtown Springfield. The FEIR included a graphic of a conceptual preferred route and outlined the following proposed routing and hours of operation:

- MGM will provide funds to PVRTA to operate two existing PVRTA public trolley-style buses to provide public transportation;
- Trolleys will operate on up to 20 minute headways at peak times;
- MGM shall reimburse PVRTA for costs associated with operating the trolleys on a negotiated basis, with costs generally determined based on PVRTA hourly operating expenses based on agreed upon operating hours;
- The trolleys will be owned and operated by PVRTA;



- MGM will pay for the cost of retrofitting/accessorizing the trolleys as may be required or desirable for use;
- The trolley will run for approximately six hours per day;
- Trolleys may be made available by request for service outside of regular schedule and off route at a predetermined negotiated rate;
- MGM will continue to negotiate with other Downtown destinations to participate in the initiation of service;
- Hours or days of operation may change even in the initial period by mutual agreement;
- PVRTA will work with MGM to allow advertising on the trolleys for MGM Springfield and other area destinations; and
- The exact route and stops will be agreed upon and will be located within the Downtown corridor in the City of Springfield connecting Springfield Union Station, the City's Museums, MGM Springfield and the Basketball Hall of Fame.

The FEIR noted that as currently planned, the Trolley Service/Downtown Circulator agreement will take effect upon the start-up of the trolley operations and would remain in effect for one year. After the first year, the service would be reevaluated, taking into consideration ridership and service, with the terms of the agreement subject to review and potential renewal on a recurring basis.

The FEIR included a comprehensive assessment of potential project-induced demand on future PVRTA paratransit and senior dial-a-ride services. These services are provided to older adults (60+) and persons with disabilities. The assessment included a description of existing services (ridership, cost, operational hours, etc.), outlined an estimated demand methodology, and a review of demand based on other paratransit systems serving casinos (MGM Grand Detroit, Rivers Casino Pittsburgh, and Harrah's Joliet). The FEIR included a demand estimate for both ADA paratransit customers and senior services customers. A low and high demand range for ADA paratransit and senior services for the project was estimated using data associated with the River Casino Pittsburgh (ridership) and the MGM Grand Detroit (senior services trip distribution). The projected low end of the range estimated 279 new PVRTA ADA paratransit trips and 4,209 new PVRTA senior services trips annually. The high end of the range estimated 615 new PVRTA ADA paratransit trips and 5,043 new PVRTA senior services trips annually. According to the FEIR, PVRTA's current fixed operation cost scenario with comingled ADA paratransit trips and senior service trips, new ADA paratransit trips can only be served if an equal number of senior trips are denied.

To avoid the displacement of senior trips, and to continue to allow the PVRTA to meet its regulatory obligation to provide ADA paratransit service, MGM will reimburse the PVRTA for the cost of providing ADA paratransit trips to the project. Based on the analysis presented in the FEIR, this is estimated to cost between \$7,965 and \$17,558 per year. The FEIR also acknowledges the potential budgetary implications of increased demand for senior dial-a-ride services; a service that the PVRTA is not obligated to provide. The FEIR identified potential alternatives that could be explored by the Proponent and the PVRTA to develop service alternatives to address potential increases in demand. These include:

- Implement a limit on senior trips to MGM Springfield. This could be done in conjunction with a cashless fare policy for dial-a-ride services, with “tickets” for the MGM site made available in limited supply, and on-site monitoring;
- Divert senior casino trips away from dial-a-ride services and contract with PVRTA’s current service provider or other carrier to operate group field trips from various Councils on Aging (COAs) to the casino on specific days;
- Contract with an operator other than PVRTA’s current paratransit and dial-a-ride service provider at a lower per-trip rate for senior casino trips; and
- Work with a private inter-city bus carrier to offer casino/transportation packages with seniors.

The Proponent has committed to continue to work with the PVRTA to finalize an agreement codifying the proposed transportation improvement mitigation measures proposed in the FEIR, providing additional detail based upon advancement of project design.

### *Parking*

The FEIR included an analysis of existing and proposed public parking supply and demand for the project and the Downtown Springfield area. Currently, within the project site there are a total of 905 parking spaces: 186-for fee structured parking spaces in the 16 Bliss Street Garage, 673 for-free surface lot parking spaces, and 46 on-street parking spaces (Bliss Street and Howard Street). These spaces will be displaced due to project construction. Additionally, approximately 64 on-street parking spaces along Main Street and State Street along the site frontage may be temporarily closed during the construction period.

The FEIR also evaluated parking availability in the I-91 North and South Garages, located north of the project site, which also serve as a public parking resource for courthouse-related parking and patron/employee parking for other land uses in the South End neighborhood. According to the FEIR, at full capacity the I-91 North Garage can accommodate 1,098 vehicles and the I-91 South Garage can accommodate 670 vehicles. As discussed later in this Certificate, MassDOT’s I-91 viaduct replacement project, which will overlap with the MGM Springfield construction period, will include the temporary closure of 450 parking spaces (200 of which are already closed) on the upper decks of these garages throughout the duration of the I-91 viaduct project.

Existing parking demand counts were performed from 11:00 AM to 5:00 PM on a Friday to capture peak parking demand for the courthouse and surrounding businesses (utilization of these lots by these users would be low on Saturdays and Sundays when casino operations would be heavier). Peak parking demand for on-site parking facilities occurs between 11:00 AM and 11:30 AM at 72 percent total occupancy (700 occupied spaces). Peak parking demand for the I-91 South Garage was observed during the same peak period at 430 spaces. As noted above, 200 of the 670 spaces in the I-91 South Garage have already been closed, reducing supply to 470 spaces. The I-91 South Garage available parking supply meets the 11:00 AM to 11:30 AM peak

demand period and with 40 additional spaces may be available for overflow or displaced parking from the MGM Springfield site.

Construction period parking management is detailed in the Construction Period section of this Certificate.

The FEIR discussed future parking demand and parking management services associated with project operations. The results of the analysis presented in the DEIR identified a peak parking demand generated by the MGM Springfield site at 3,101 spaces on a Friday and 3,269 spaces on a Saturday. A total of 3,816 spaces will be provided on-site. The proposed parking supply is anticipated to be adequate to accommodate the peak parking demand with an additional 547 parking spaces available for existing land uses in the surrounding area. While the parking demand study indicated that existing surrounding uses generate a peak parking demand of 700 spaces, the timing of this peak demand does not coincide with periods of heavy demand at the MGM Springfield project. During periods of peak parking demand for surrounding uses, parking demand associated with the project is estimated at 2,707 spaces, resulting in an estimated available parking supply of 1,109 spaces, well in excess of the 700 space peak demand by surrounding land uses.

The Proponent will offer free parking within the MGM Springfield garage to surrounding area businesses to offset the parking that will be displaced by the project. To offset potential revenue losses to the Springfield Parking Authority (SPA) as a result of this benefit, the Proponent will monitor the impacts of the SPA's revenue following the opening of the project and provide funding to the SPA to offset related loss of revenue. Several comments noted the potential conflict between offering free parking to casino/hotel/retail block guests and meeting the project's mode share goals for non-car travel to and from the site, particularly the 16 percent transit mode share for casino/hotel employees. Free parking will likely discourage alternative modes of transit unless these alternative modes can be incentivized. I strongly encourage the Proponent to consider how the proposed parking fee structure may impact project-related traffic trips and mode-share and options for limiting free on-site parking. The Proponent should note that the results of future monitoring might indicate that a critical path to reducing SOV trips is to charge market-rate parking for guests.

The Proponent will also use Intelligent Transportation Systems (ITS) to direct patrons to other SPA lots in the event the MGM Springfield parking lot becomes full. In the event that monitoring efforts indicate that peak parking demand is exceeding or nearing the capacity of the garage, the Proponent will coordinate with the SPA to provide employee parking within one or more of the SPA parking lots that can provide an excess of 935 parking spaces, and if necessary, provide a shuttle service to transport employees to the site as a means to ensure sufficient on-site parking for patrons and surrounding land uses.

The project includes valet parking at designated drop-off areas for both the hotel and the casino. A total of 371 parking spaces within the MGM Springfield parking garage, on the basement and ground floor levels, will be designated for valet parking only. A charter bus drop-off area with parking for up to 22 buses will be provided on the ground floor of the MGM

Springfield parking garage. The Proponent is continuing to work with owners of other public and private parking lots in the area to accommodate any overflow charter bus parking that may occur during events or peak periods. A total of 90 preferential parking spaces, located on the second level of the garage near employee entrances to the casino and Armory Square, will be designated for use by employees and residents participating in carpool or rideshare programs or who use hybrid vehicles. Finally, the Proponent has designated a total of 190 preferred spaces or electric vehicles (EV) spaces, along with approximately 50 charging stations, to be provided along the outside of levels 2, 3 and 4, of the MGM Springfield parking garage near entryways, elevators, and staircases. EV charging stations will also be provided in the valet parking area on the basement level. Signage will be provided directing drivers to EV parking and charging stations.

### *Transportation Demand Management*

The FEIR summarized the components of the TDM program to reduce SOV trips and promote multi-modal transit options by employees and patrons. These measures are listed in the mitigation section of this Certificate.

The Proponent established the following mode share targets, by land use, assuming implementation of the TDM program.

Mode	Casino/Hotel Patrons	Casino/Hotel Employees	Residential	Armory Retail	Armory Office
SOV <sup>a</sup>	85.5%	67.0%	95.0%	95.0%	79.5%
Carpool/Rideshare <sup>a</sup>	N/A <sup>a</sup>	13.0%	0.0%	N/A <sup>a</sup>	15.5%
Public Transit	2.0%	16.0%	4.0%	4.0%	4.0%
Pedestrian/Bicycle	0.5%	4.0%	1.0%	1.0%	1.0%
Taxi	2.0%	-	-	-	-
Charter Bus	10.0%	-	-	-	-

<sup>a</sup> For Casino/Hotel Patron and Armory Retail trips, all vehicle trips were assumed to be double-occupant vehicle trips.

A Transportation Coordinator will be responsible for developing additional TDM measures should the monitoring program identify any unanticipated or unmitigated project-specific impacts. Should the monitoring program identify such impacts, additional improvements will be identified and implemented to mitigate the project-specific impacts.

### *Monitoring*

The project general contractor will prepare a Transportation Monitoring Program (TMP) for review and approval by the City and MassDOT. The TMP is intended to monitor traffic operations, parking occupancy, public transportation utilization, and pedestrian/bicycle use throughout the construction period and for a period of five years following completion of the project. The TMP's intent is to monitor project impacts to ensure consistency with the

projections of the DEIR and FEIR, evaluate the effectiveness of the TDM program in meeting mode share targets, and assess the need for additional mitigation measures. As part of the TMP, the Proponent will provide traffic count information to the MassDOT District 2 office, the City of Springfield, the Pioneer Valley Planning Commission (PVPC) and MassRIDES to assist in signal timing adjustments, as necessary, and tracking trips. As recommended by MassDEP, I encourage the Proponent to consider a review of TMP efficacy after the five year mark, and, if found effective, continue annual monitoring as appropriate. The components of the proposed TMP are included in the Mitigation section of this Certificate.

#### *SCAs Look-Back Provision*

The FEIR also noted that in addition to the monitoring program described above, the Proponent's executed SCA's include a "look-back" provision to assess the impacts of the project on surrounding infrastructure and identify appropriate additional mitigation and/or funding to offset the impacts. The SCA's require the following as part of the Look-Back scope:

- Set study scope to focus on specific potential impacts with offset for specific positive impacts;
- Perform and complete a baseline study between two and five months after licensure. This independent baseline study will assess the existing conditions related to economic development, traffic, crime, housing, and other potentially impacted characteristics, both positive and negative, directly attributable to the project;
- Commence a 1<sup>st</sup> Year Look-Back study fifteen months from Grand Opening;
- Commence a 5<sup>th</sup> Year Look-Back study five years and three months from Grand Opening;
- The Proponent will select the Third Party to conduct the study with the consent of a majority of the communities with SCAs;
- Look-Back impacts in excess of \$500,000 must be identified in the 1<sup>st</sup> Year Look-Back study;
- Disputes with respect to Look-Back liability addressed through JAMS, Inc. arbitration; and
- Priority for satisfaction of Look-Back liability: (i) community-specific portion from annual payments; (ii) state mitigation funds; (iii) other mitigation funding; (iv) MGM.

The baseline, 1<sup>st</sup>-year and 5<sup>th</sup>-year traffic studies are expected to consider the following:

- Review of project-wide trip generation data based on driveway counts in comparison to the Proponent's trip generation estimates prepared during the DEIR/FEIR review process;
- Key municipally-owned and maintained intersections identified collaboratively between the Proponent, PVPC, and the municipality;
- TMC counts at each location during at least two seasonal period during the following peak periods:
  - Weekday morning peak hours (7-9 AM);



- Weekday evening peak hours (5-8 PM); and
  - Saturday midday peak hours (11 AM – 2 PM).
- ATR data at limited locations to assess a week-long period for use in adjusting day-of-week trends;
- Review of seasonal adjustment characteristics;
- Review of other development projects that are introduced following the baseline study;
- Application of an annual growth rate based on regional growth characteristics prepared by PVPC;
- Review of deviations from the projected versus actual traffic conditions, and any associated local factors; and
- Review of potential supplemental funding, or projects, to address a pro rata share of traffic impacts above the original trip projections at each location.

The final scope of the look-back approach, including the roadways for evaluation, will be developed in coordination with each respective community, PVPC, the Proponent, and each entity's consultants.

#### Greenhouse Gas Emissions

In accordance with the Gaming Act, the project will be required to meet or exceed the Stretch Energy Code (Stretch Code), have the project certified at the Gold Level or higher under the GBC's LEED program, procure or generate on-site at least ten percent of its annual electricity consumption from renewable sources, and develop an ongoing plan to monitor all major sources of energy consumption and undertake regular efforts to maintain and improve energy efficiency in building systems. The Proponent has a unique opportunity to set a high standard for energy efficiency gaming and casino resort design. I strongly encourage the Proponent to continue to explore feasible energy efficiency measures for incorporation into the final design to meet and exceed MGC requirements and support the Commonwealth's GHG reduction goals.

The FEIR did not include an updated GHG stationary source analysis using the IECC 2012 and ASHRAE 90.1-2010 as the project Base Case as suggested by the Certificate on the DEIR. In compliance with the GHG Policy, the Proponent used the IECC 2009 and ASHRAE 90.1-2007 codes for the Base Case, as these were the codes in place at the time the Environmental Notification Form (ENF) was filed. The Proponents justified this Base Case code selection as providing consistency with the GHG Policy, the analysis presented in the DEIR, LEED certification requirements, and the current Stretch Code.<sup>4</sup> Numerous projects within the

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<sup>4</sup> A revised Stretch Code (SCII) is anticipated for release in mid-2015 to correspond with the adoption of IECC 2012 (ASHRAE 90.1-2010) as the Building Code. SCII is anticipated to require energy use in new large buildings to be 12 to 15 percent below the baseline of IECC 2012 (ASHRAE 90.1-2010). However, as the SCII has yet to be released, the previous version remains in effect, requiring a 20 percent reduction in energy use compared to the IECC 2009 (ASHRAE 90.1-2007) code.

Commonwealth have demonstrated the ability to meet the projected requirements of the proposed new Stretch Code. I encourage the Proponent to review the selection of final building systems and other energy efficiency measures with consideration for these more stringent energy efficiency parameters.

The FEIR included an expanded analysis of combined heat and power (CHP) systems to include a system with a larger capacity than those studied in the DEIR. Specifically, the FEIR analyzed a four 100-kW engine with 100-ton absorption chiller (Option 6). The Proponent has committed to include a CHP system that is technically and economically feasible in the final project design. I encourage the Proponent to install as substantial a CHP system as feasible given this commitment to CHP. The current design includes a 200 kW CHP system. The FEIR indicated that the final system sizing would be determined in the final design phase, optimized based on the final calculation of available thermal and electrical loads and subsequent to a review of interconnection logistics with the utility and availability of utility incentives for the proposed system.

Energy modeling performed in the DEIR estimated the electrical load attributable to gaming machines at 510 kilowatts (8 watts per square foot). The FEIR indicated that the Proponent expects a 10-30 percent improvement in energy use could be achieved based upon use of gaming machines with LED lighting, LED/OLED screens, and higher efficiency power supplies. Energy use will be a criterion in the selection and purchase of gaming machines.

The solar photovoltaic (PV) study performed in the DEIR concluded the top of the parking garage and the podium associated with the hotel are the best locations for PV installation. The FEIR estimated the average annual energy production from the podium PV system at 246.54 MWh per year and the parking structure PV system at 807.91 MWh per year. Total CO<sub>2</sub> offsets from these systems are estimated at 379.1 tons per year (tpy). The Proponent will construct each roof as "solar ready" where PV installation is technically feasible (i.e., not shadowed, not used for mechanical space, etc.) and include space for conduit runs and electrical gear such as inverters and meters. The proposed PV system will generate approximately 1,054 MWh per year on-site, an estimated 5.5 percent of the overall project's projected annual electricity use of 19,502 MWh. Consistent with MGC requirements, the Proponent will purchase renewable energy credits (RECs) such that at least ten percent of the facility's annual electricity consumption is from on-site or off-site renewable energy sources. Based upon estimated electrical generation from the on-site PV systems, the Proponent expects to purchase 896 RECs per year (one REC equals one MWh generated by a renewable energy source).

A ground source heat pump is proposed for the daycare center as part of the strategy to create a Net Zero structure. This system will result in a minimal CO<sub>2</sub> savings of 0.5 tpy. These limited reductions are due to the additional electricity to pump this renewable source of thermal energy. Space constraints limit the application of ground source heat pumps for other project-related uses, but a review of this technology will be conducted during final design, and implemented if technologically and economically feasible.

The Proponent will include language in all tenant guidelines and leases mandating that tenant fit-out include installation of equipment with standards consistent with the requirements established for the initial construction, or compliance with future energy codes if they exceed the initial requirements.

Total stationary source emissions reductions were tabulated in the FEIR. The project Base Case is estimated to generate 10,845 tpy of CO<sub>2</sub> emissions. Implementation of energy-saving and sustainability mitigation measures is estimated to reduce project-related stationary source CO<sub>2</sub> emissions by 2,356 tpy (or 21 percent) to 8,489 tpy. These estimates do not include the potential CO<sub>2</sub> reductions associated with proposed on-site and off-site renewable energy commitment (i.e., on-site PV, CHP and REC purchases). If these sources, as presented in the FEIR, are included in the final project, additional GHG reductions will be achieved. These additional reductions, assuming the renewable energy commitment is met through GHG-free sources, and using source energy, is approximately 30 percent (or 4,676 tpy from the Base Case).

The FEIR included an updated mobile source GHG emissions analysis to reflect the impacts associated with additional intersections and presented an additional case (Case 1 – 2024 Build without TDM measures). Mobile emissions data were obtained from the mesoscale analysis using MOBILE 6.2 and SYNCHRO modeling software. The following cases were analyzed:

- Case 1 – represents the difference between the 2024 No Build case and the baseline 2024 Build case (i.e., traffic associated with the addition of the project to the area without any Proponent-proposed mitigation, including TDM and/or roadway improvements);
- Case 2 – represents the difference between the 2024 No Build case and the 2024 Build case with TDM; and
- Case 3 – represents the difference between the 2024 No Build case and the 2024 Build with Mitigation case (i.e., implementation of TDM measures, traffic signal timing and phasing improvements, and off-site roadway improvements).

The results on this analysis estimate project-related mobile source CO<sub>2</sub> emissions at 9,795 tpy (Case 1). The 2024 Build with Mitigation case (Case 3) reduces project-related mobile source emissions to 9,078 tpy, a reduction of 717 tpy, or seven percent.

The Proponent has not finalized plans for fleet vehicle usage on-site. The Proponent intends to use compressed natural gas (CNG) fleet vehicles in lieu of traditional diesel-powered vehicles. According to the FEIR, the use of CNG provides local air quality benefits over diesel use, along with some GHG benefits. I encourage the Proponent to consider the use of electric vehicles for smaller fleet vehicles (e.g., security, landscaping).

The Proponent will comply with the MassDEP's commercial food waste disposal ban regulations implemented on October 1, 2014. The Project will develop a facility-wide food waste source-separated organics (SSO) recycling program that addresses all food service operations in the casino, hotel and food and beverage outlets. The project will implement BMPs

consistent with MassDEP guidelines and provide dedicated storage for food waste and include some refrigerated storage (as appropriate). The Proponent will seek a long-term contract for off-site anaerobic digestion of food waste.

Total estimated project-related CO<sub>2</sub> emissions from combined stationary and mobile source emissions are 17,567 tpy, a 3,073 tpy (or 15 percent) reduction from the Base Case.

### *Climate Resiliency*

Climate change-induced increases in storm intensity, duration, and frequency should be considered by the Proponent when designing the facility and back-up generator systems. The project includes generators with local fuel storage sized to accommodate the demand from emergency lighting, building life safety systems, partial building heating, security systems, some refrigerated food storage, and some receptacles for cell phone charging. Conversations with the Proponent indicate that the casino is located proximate to an existing City of Springfield shelter location at the Convention Center. The Proponent should continue to work with the City of Springfield and the MassMutual Center to coordinate shelter plans, determine additional shelter capacity requirements based on casino and hotel guests, and identify resources available at either facility to meet City needs during potential short-duration or longer-duration emergencies due to storms. Final design of the backup power system should include an evaluation of options to use natural gas instead of, or in addition to, a diesel-powered system to mitigate for potential shortages of diesel fuel during an extended emergency period.

### Water Supply and Wastewater

The FEIR included a table summarizing estimated water use and wastewater generation, by building use, based on MassDEP Title 5 regulations (310 CMR 15.00). The FEIR included a proposed conditions plan for water and wastewater infrastructure, noting that additional design detail will be required by the Springfield Water and Sewer Commission (SWSC) prior to finalizing the design for permit approval. The Proponent has continued to meet with the SWSC between the filing of the DEIR and the FEIR, with additional data collection completed and submitted for review. These efforts include research on the existing water and sewer infrastructure (i.e., age, type of material, and leak history) and completion of Closed Circuit Television (CCT) inspections. These data have informed the proposed commitments by the Proponent to mitigate project-related impacts through the replacement of SWSC water and sewer mains.

The FEIR included an assessment of peak rates of water demand and wastewater generation. Peak water demand was estimated at 366,196 gpd, using a peaking factor of 1.5 per the US Fire Administration's Water Supply Systems and Evaluation Methods. According to the FEIR, based on discussions with the SWSC, there is sufficient water supply to meet project-related peak demands. Peak wastewater demand was estimated at 1,242,846 gpd, using a peaking factor of 5.6 as provided by NEIWPCC's TR-16. Similar to peak water demand, the FEIR noted that the SWSC indicated that ample sewer capacity is available within the sewer system and that no on-site storage of wastewater is proposed.

The SWSC has recommended that the proposed sewer discharges be directed into the Main Street system to minimize flows to the CSO regulator 15A. According to SWSC's CSO Long Term Control Plan (LTCP), construction of the Union to Clinton Relief Conduit is proposed between 2025-2029 to reduce CSO volumes. To ensure compliance with the LTCP and to minimize flows to CSO regulator 15A, drainage from the site will be connected to the existing system within Union Street and East Columbus Boulevard, while the sewer will connect into Main Street. To further limit discharges to the CSO, the Proponent will implement mitigation measures consistent with the Massachusetts Water Conservation Standards (MWCS), including water conservation and reuse measures and low impact development (LID) and stormwater Best Management Practices (BMPs) to reduce project-related flows to the system.

Revisions to the MassDEP wastewater regulations (314 CMR 7.00 and 314 CMR 12.00) in April 2014 eliminated the requirement for a MassDEP Sewer Connection Permit. Wastewater discharges associated with the project will be subject to review and approval by the local sewer authority. The Proponent will be required to comply with the SWSC plan for controlling infiltration and inflow (I/I) to reduce stormwater runoff into combined sewers. The Proponent should continue to coordinate with the SWSC to ensure these local permitting requirements and performance standards are met prior to finalization of infrastructure design.

It is anticipated that all of the retained stormwater will meet the project's irrigation demand during the months of May through September. Municipal make-up water may be required if historic monthly rainfall volumes are not realized.

The FEIR did not specifically address water conservation measures for the industrial commercial uses, such as the laundry and food services. As the project design is completed, I strongly encourage the Proponent to investigate technologies to minimize water use and wastewater generation associated with food preparation and dishwashing and on-site laundry services, and hotel shower fixtures to further reduce project-related water and wastewater impacts.

### Historic Resources

The FEIR included an analysis of existing conditions (including structural integrity) and feasibility for reuse, within the project programming and design goals, for each historic building. The FEIR identified a total of 12 historic properties on-site, four of which are listed in the State and National Registers of Historic Places (WCA Boarding House, French Congregational Church, State Armory, and United Electric Company Building); three listed in the State Register of Historic Places (Young Women's Christian Association (YWCA), Massachusetts Mutual Life Insurance Building, and Edison Theater Block); two properties listed in the *Inventory of Historic and Archaeological Assets of the Commonwealth* (Howard Street Primary School and Union House/Chandler Hotel); and three properties identified as being of historic interest (35 Howard Street apartment building, 79 State Street office building, and 95 State Street office building).



Each of these buildings was analyzed to determine if retention and adaptive reuse, partial demolition, or relocation would be feasible alternatives to complete demolition. This analysis considered: the overall condition of the building to be preserved as a standalone building within the project; ability to reuse the building, or parts of it, in its current condition as part of the project; ability to reuse the building if upgraded or modified for inclusion in the project; ability to reuse the façade as part of the project exterior (and demolish the remaining portion of the building); and, ability to relocate the building outside the project site and maintain existing uses or support new uses.

The FEIR indicates that all portions of buildings retained as part of the development will need to meet the MGC requirements to be LEED certified at Gold level or higher, as well as meet current building and energy code provisions, as appropriate for their designated new uses.

Subsequent to completion of the analysis, the Proponent proposed the following treatment for the historic structures on-site:

- Massachusetts Mutual Life Insurance Building – this building will be retained and renovated to LEED Gold standards and continue to be used for office purposes. The building's façade and entry points will remain, building systems will be upgraded, the façade will be inspected, repaired and cleaned and windows and the roof will be replaced, as needed.
- State Armory – this building comprised of three sections, a head house, middle section, and drill shed, will be partially preserved. The drill shed was damaged in the 2011 tornado and demolished. The project proposes to preserve the head house and remove the middle section to accommodate public amenities, becoming the main public feature in the project's pedestrian plaza, amenities/recreation zone, and adjacent public park. The project will restore and repoint the exterior masonry, replace windows to match the original configuration, install a new roof, new utilities and an elevator in the head house.
- United Electric Company Building – this building is located at the site of the proposed hotel tower. The project proposes to retain the limestone building façade for use as the hotel frontage on State Street. The existing canopy, entry stairs, entry doors, and vestibule will be retained and incorporated into the hotel design as an entry point. The project team is continuing to study the building interior, with current plans to retain and reuse some architectural elements within the first floor lobby. The stained glass dome with decorative railing and marble elements of the lobby may be removed, stored and reused within the hotel or the project.
- Union House – Chandler Hotel – the building is in poor condition and it was concluded that the interior couldn't be reused for any development purpose. The analysis also concluded that the poor structural condition prohibits it from being relocated. The preservation and incorporation of the building's elevation and façade into the project is ongoing.
- 95 State Street office building – the building consists of a three-story podium facing State Street with an 11-story office tower to the rear. The podium is located in the

proposed hotel footprint and the tower portion of the building is located in the proposed casino and food court footprint. The project proposes to retain the three-story podium and first structural bay of the building and potentially the lobby. The project will upgrade building systems, inspect, repair and clean the façade, replace the windows and roof (as needed), replace the sidewalk slab, and repair the supporting steel beams beneath the sidewalk. The analysis of the feasibility of retaining the 11-story office tower (all or a portion thereof) is ongoing.

- French Congregational Church – this building was restored subsequent to damage from the 2011 tornado and is located in the center of the casino development. The project proposes to relocate the building two blocks southeast to Union Street. Relocation may require the building to be divided into sections for transport and the masonry tower may need to be replicated as it may not be suitable for relocation due to its slender shape. The building will be renovated to LEED Platinum standards and reused as a daycare center.
- YWCA – this building is located in the center of the development parcel, in fair condition, and the façade exhibits damage from the 2011 tornado. The building is taller than the proposed project buildings and extends beyond the proposed building façade into the planned Howard Street plaza. The analysis proposes the removal of the building, with its character emulated in the new façade elements of the casino.
- 79 State Street office building – this building is located in the footprint of the hotel tower and casino. The façade has been modified over time and is in fair to poor condition. The FEIR indicates that use of this building would not be consistent with project programming and retention of the façade is not feasible. The project proposes to carry the façade treatments of the United Electric Building across the hotel façade at this location to unify the streetscape.
- Edisonia Theater Block – This two-story former movie theater has been altered from its original form. The façade is damaged, shows signs of structural damage, and is not structurally able to support development proposed for upper floors. Its location affects the development's primary entry, residential building, restaurants, casino, and back of house service areas in the basement. The building will be demolished and replaced with a new building and façade of similar proportion, with residential properties above.
- WCA Boarding House – this building is in fair condition and located in the middle of the project parcel. Because the analysis concluded that it is a poor candidate for relocation, the building is proposed for demolition.
- Howards Street Primary School – this building was substantially damaged in the 2011 tornado and subsequently closed and condemned. The building is proposed for demolition. Selective salvage of interior wood components is being considered, but is contingent upon the structural integrity of the building to allow safe access;
- 35 Howard Street apartment building – this building was substantially damaged in the 2011 tornado, condemned, and subsequently demolished in 2013.

The Proponent forwarded a copy of the analysis - *MGM Springfield, Historical Commission Progress Update of Recommendations* (June 2014) - to MHC and SHC in advance

of filing the FEIR per the direction of the Certificate on the DEIR. The MHC provided a letter dated October 30, 2014 indicating that the proposed project has the potential to affect historic resources and initiated the consultation process pursuant to 950 CMR 71.07(3). Properties that will be adversely affected per the MHC regulations include: the United Electric Company Building, the Edisonia Theatre Block, the WCA Boarding House, the French Congregational Church, the YWCA Building, the State Armory, the Union House-Chandler Hotel, and the Howard Street Primary School. The Proponent should continue to work through MHC's consultation process and consult with MHC, the MGC, SHC, the Springfield Preservation Trust, and interested members of the public to explore alternatives to eliminate, minimize, or mitigate potential adverse effects of the proposed demolitions and alterations of all or part of the aforementioned buildings. The Proponent anticipates entering into a Memorandum of Agreement (MOA) with the MHC and MGC that outlines measures to avoid, minimize, or mitigate adverse project impacts.

If consultations with MHC result in changes to the project design, the Proponent should consult with the MEPA Office to determine whether additional MEPA review would be warranted.

#### Construction Period Impacts

The FEIR included an updated construction schedule identifying construction periods associated with major elements of the project, preliminary task durations and concurrent on-site and off-site construction components for which the Proponent has responsibility. As noted previously, the project construction period will overlap with MassDOT's project to replace the I-91 viaduct through downtown Springfield (MassDOT Project #607731). This project consists of replacing the deck on both the northbound and southbound barrels between Exit 6 and the I-291 interchange ramps. The I-91 viaduct project will require lane shifts and closures along the I-91 mainline and closure of Exit 6 (Union Street) and Exit 7 (State Street), resulting in numerous detours during the construction period. According to the FEIR, the I-91 viaduct project design has been completed and is currently in the bid phase, with an expected contract award date in February 2015. The I-91 viaduct project is anticipated to commence construction in Spring 2015 and reach substantial completion in August 2017. The MGM Springfield project is anticipated to begin in Winter 2015 and continue through Fall 2017. The FEIR acknowledges the requirement for careful coordination of the two projects to minimize construction period traffic-related impacts within the study area. The FEIR included graphics depicting the anticipated roadway and exit closures, and corresponding detour routes, proposed in conjunction with the I-90 viaduct project. The Proponent and its contractor will coordinate with MassDOT and their contractor throughout the entire construction process to minimize impacts to surrounding transportation infrastructure. MassDOT and the Proponent plan to incorporate language into respective contracts requiring bi-weekly construction coordination meetings to evaluate traffic detours, parking demands, major trucking needs, and other related items.

The FEIR included a discussion of the proposed MGM Springfield construction period, consisting of four basic stages:

- Stage 1 (January 2015 to May 2015; 5 months) – demolition of existing buildings on-site and removal of materials from the site. Existing parking will be displaced to other locations. Parking for MGM Springfield construction employees will be provided on-site.
- Stage 2 (May 2015 to February 2016; 9 months) – excavation and preparation of site for construction. Parking for MGM Springfield construction employees will be provided at off-site parking locations.
- Stage 3 (March 2016 to December 2016; 9 months) – construction of the parking garage and building superstructure. During the first half of this stage, until the parking garage is open (May 2016), construction employees will be accommodated in off-site satellite parking lots.
- Stage 4 (January 2017 to September 2017; 9 months) – building finishing and fit-out. Parking for MGM construction workers and surrounding land uses will be provided in the garage.

The FEIR included conceptual temporary traffic control plans (TTCPs) for various phases of on-site construction. The FEIR include illustrative TTCPs for Union Street, State Street, and Main Street, and included graphics depicting potential traffic pattern modifications and pedestrian/bicycle accommodations during various construction stages. Pedestrian access, with ADA/AAB accessible ramps, will be maintained, but limited to one side of the street opposite the work zone. Short-term road closures at off-peak times may be required for final paving, pavement marking application and major utility construction including trunk-line improvements and service connections. Detours will be mapped out on the TTCPs showing routes and signage and will be prepared during the design process. These plans will be refined as the project design advances and require review and approval from the Springfield Department of Public Works (DPW) and MassDOT. The plans will comply with MUTCD Standards and depict the work zone, advance warning signs, barrel and barrier placement, temporary pavement markings, and vehicular and pedestrian detours.

During the construction of the I-91 Viaduct Deck Replacement and MGM Springfield projects, the Proponent proposes using traffic-monitoring cameras located along I-90, I-91, and I-291 in the area surrounding the MGM Springfield site to monitor traffic conditions along these major highways and use the ITS message boards to direct drivers toward appropriate travel routes to avoid delays and alert drivers of traffic incidents and construction detours. The Proponent is committed to installing additional cameras and message boards along Route 5 in West Springfield and Agawam to efficiently direct traffic over the North End, Memorial, and South End Bridges. Furthermore, there are no variable message signs (VMS) located along Route 5 to assist in directing traffic. These devices will be installed during Stage 1 to facilitate monitoring and management of traffic throughout the remainder of the MGM Springfield and I-91 Viaduct Deck Replacement construction.

Project-related truck trips will vary throughout the construction period. The FEIR indicated that it would likely average 60 trips over the course of the day. The I-91 viaduct project will limit potential haul routes for MGM Springfield-bound construction vehicles. The

Proponent has begun preliminary discussions with the City of Springfield and MassDOT to identify these truck routes. The FEIR included graphics depicting proposed truck routes to and from the east of the site, to and from the north and west of the site, and to and from the south of the site. Construction contracts will restrict truck traffic to the approved routes unless a specific exception is approved by the City of Springfield.

The FEIR noted that weekend, extended hours and second and third shift activities will be performed in a manner that will minimize impacts as necessary to meet permitting restrictions. Some activities, such as delivery of large construction equipment, will be performed during off-hours and scheduled to avoid and/or minimize impacts to vehicular and pedestrian traffic and noise generation. Activities such as excavation, pile driving and steel erection will only be conducted during permitted hours. The contractor will prepare and disseminate a schedule of upcoming work every two weeks and monthly schedule updates describing progress and projected activity for the next month. This information will be posted to the project website for real-time access by project stakeholders.

The Proponent will implement noise and vibration impact mitigation measures during the construction period. These measures are detailed in the Mitigation section of this Certificate. The Proponent will comply with City of Springfield and MassDEP guidelines regarding environmental mitigation during the construction period. The FEIR indicates that the Proponent will evaluate the Commonwealth's Clean Air Construction Initiative (CACI) as a construction period mitigation measure to reduce air quality impacts from certain categories of construction vehicles. Because the project site is within a densely populated area, I strongly encourage the Proponent to require the use of emission control devices, or similar equipment in consistent with the CACI, by any selected contractor for the project to minimize construction-period emissions.

#### *Construction Period Parking*

Portions of the upper decks of the I-91 North and South Garages operated by the SPA will be closed during construction of the I-91 viaduct project. Agreements between the SPA and MassDOT allow the closure of a maximum of 450 spaces on the upper floors, reducing overall garage parking supply from 1,768 spaces to 1,318 during the I-91 viaduct construction period. Parking utilization counts indicated a current peak parking demand at these facilities of 1,379 spaces on a typical weekend. Therefore, the I-91 viaduct project has the potential to displace up to 61 vehicles to other parking lots in the surrounding area.

The FEIR estimated a total of 350-400 full-time employees will be required for construction of the I-91 viaduct project, with a maximum number of 200 workers per shift. MassDOT has arranged for construction employee parking within the Trolley Car Lot. This lot can accommodate parking for up to 700 vehicles, a sufficient amount to accommodate all 400 construction employees while allowing for overlap in shift changes. MGM Springfield's parking garage is anticipated to be open during Stage 4 of its construction, which will overlap with the last nine months of the I-91 viaduct project. During this time, MassDOT construction employees can be accommodated within the MGM Garage.



The approximately 700 vehicles that use on-street and off-street parking spaces on the MGM Springfield site will be displaced to other parking facilities in the Downtown area during Stages 1-3 of the MGM Springfield project. According to the FEIR, approximately 121 of these vehicles will be accommodated in a parking lot (Zorzi Lot) located on the northeast corner of Main Street and Union Street for District Courthouse parking.<sup>5</sup>

The SPA conducted an inventory of SPA parking lots and identified an additional 935 available parking spaces in various SPA-operated parking facilities in Downtown Springfield to accommodate the remaining estimated 579 displaced vehicles and the 61 displaced parking spaces at the I-91 North Lot and I-91 South Lot garages during the I-91 viaduct project.<sup>6</sup> Private parking facilities are also available as a parking option. The Proponent will operate a free shuttle service that will circulate between the SPA lots and the area surrounding the site to provide access to businesses. This shuttle service will not stop at the I-91 South Garage, Zorzi Lot or Civic Center Lot, as these are all in close proximity to businesses and the District Courthouse.

The number of construction workers will vary based upon the project phase and level of activity. Construction worker traffic trips are anticipated to occur outside of peak traffic periods with jobsite personnel allowed to park in designated areas in the construction site at no cost. No construction or personal vehicle parking will be allowed on adjacent city streets. This will be enforced through the terms to be incorporated into a parking plan subject to the City of Springfield's review and approval. Parking requirements and encouragement of public transportation use by construction workers will be incorporated into each subcontract.

During peak construction activity for MGM Springfield, up to 500 construction employees will be on-site during the largest shift. Some of these employees will be accommodated in off-site satellite parking locations. An excess capacity of 106 parking spaces in SPA-owned lots will be available for use by MGM Springfield construction workers in Stages 2 and 3 of construction. Additional MGM Springfield construction worker parking will be provided in privately-owned lots within the Downtown Springfield. The Proponent is consulting with these facilities, including ProPark, to determine the feasibility and fees associated with providing construction period employee parking. The FEIR also identified the Basketball Hall of Fame as a site that could accommodate overflow parking from the MGM Springfield Site or MGM Springfield construction employee parking. The Proponent indicated that it will continue to coordinate with the SPA, City of Springfield, the Basketball Hall of Fame, and other private parking lot owners to identify suitable locations for off-site construction employee parking. The Proponent will operate an employee parking shuttle to transport construction workers between off-site satellite parking lots and the MGM Springfield site during Stages 2 and 3 of MGM Springfield construction. This shuttle will be operated at appropriate times and headways to

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<sup>5</sup> The Zorzi lot is bounded by Main Street, Union Street, Hubbard Avenue and Willard Street and is the future location of the former French Congregational Church.

<sup>6</sup> Apremont Lot (15 spaces); Civic Center Lot (263 spaces); Columbus Lot (125 spaces); Dwight Lot (59 spaces); I-91 North Lot (149 spaces); I-91 South Lot (40 spaces); Morgan Lot (36 spaces); Taylor Lot (148 spaces); Winter Worthington Lot (100 spaces).

accommodate employee shift changes. Depending upon parking location(s) identified for satellite employee parking, the employee parking shuttle may be combined with the parking shuttle for displaced surrounding land users.

### Mitigation and Section 61 Findings

The FEIR included draft Section 61 Findings for use by State Agencies. These draft Section 61 Findings should be revised in response to this Certificate and provided to State Agencies to assist in the permitting process and issuance of final Section 61 Findings. The FEIR identified each mitigation measure, the responsible party, and the timing of implementation. The following mitigation measures have been proposed in accordance with the project:

#### *Traffic and Transportation*

The FEIR included a summary outlining proposed traffic and transportation mitigation measures. Final mitigation measures will be determined in accordance with MassDOT, the City of Springfield and other stakeholders (as necessary) based upon potential revisions in response to comments received in the FEIR and preparation of permitting documents. Mitigation measures listed below are drawn from Table A and other sections of the proposed Section 61 Findings and the FEIR.

#### Signal Timing Optimization (Prior to MGM Springfield Opening \$20,000)

- Dwight Street/I-291 WB Ramps,
- East Columbus Avenue/West Columbus Avenue/Main Street/Longhill Street,
- Mill Street/Locust Street/Belmont Avenue/Fort Pleasant Avenue,
- Belmont Avenue/Sumner Avenue/Dickinson Street/Lenox Street

#### Union Street Corridor Improvements (West Columbus Avenue to Main Street) – (Prior to MGM Springfield Opening, \$950,000)

- Widen sidewalks along site frontage,
- Complete pavement mill and overlay on Union Street between Main Street and West Columbus Avenue,
- Construct trolley stop adjacent to Armory Square,
- Widen and restripe roadway along site frontage,
- Upgrade accessible wheelchair ramps,
- Install vehicular / pedestrian / bicycle wayfinding signs,
- Install mid-block crosswalk, pedestrian flasher assembly, and raised median island east of MGM Bus Driveway,
- Install bicycle “sharrows” and share-the-road signage,
- Reconstruct Union Street under I-91 Overpass to 5-Lane cross-section,
- Modify vehicular and pedestrian signal phasing scheme at Union Street / East and West Columbus intersections,

- Upgrade vehicular and pedestrian traffic signal equipment and infrastructure at corridor intersections where necessary, and
- Optimize traffic signal timings, clearance intervals, signal coordination, and offset timings at corridor intersections.

State Street Corridor Improvements (West Columbus Avenue to St. James Avenue)

(Prior to MGM Springfield Opening, \$1,110,000)

- Widen sidewalks along site frontage,
- Construct trolley stop adjacent to MGM Springfield,
- Restripe State Street along site frontage,
- Stripe intersection tracking markings across intersection of State Street/Main Street,
- Complete pavement mill and overlay State Street between Dwight Street and East Columbus Avenue,
- Upgrade accessible wheelchair ramps at:
  - State Street/Main Street
  - State Street/East Columbus Avenue
  - State Street/West Columbus Avenue
- Install vehicular/pedestrian/bicycle wayfinding signs,
- Install mid-block crosswalk, pedestrian flasher assembly, and raised median island west of MGM Drive,
- Install bicycle “sharrows” and share-the-road signage, Install bike boxes, shift stop lines, and recalculated clearance intervals at intersections along State Street,
- Modify pedestrian crossing across East Columbus Avenue north of State Street intersection,
- Construct pedestrian refuge island along St. James Avenue approach to State Street,
- Upgrade pedestrian traffic signal equipment only at:
  - State Street/Chestnut Street/Maple Street
  - State Street/Dwight Street/Maple Street
  - State Street/Main Street
- Upgrade vehicular and pedestrian traffic signal equipment and infrastructure at:
  - State Street/East Columbus Avenue
  - State Street/West Columbus Avenue
- Modify traffic signal phasing at intersection of State Street/Main Street, and
- Optimize traffic signal timings, clearance intervals, signal coordination, and offset timings at corridor intersections.

Main Street Corridor Improvements (Mill Street to Frank B. Murray Street) (Prior to MGM Springfield Opening, \$440,000)

- Widen sidewalks along site frontage,
- Relocate PVRTA bus stops along Main Street,

- Complete a pavement mill and overlay Main Street between State Street and Union Street,
- Restripe Main Street between State Street and Union Street,
- Stripe intersection tracking markings across intersection of Main Street/Boland Way/Harrison Avenue,
- Upgrade accessible wheelchair ramps at:
  - Main Street/Union Street
  - Main Street/State Street
- Install vehicular/pedestrian/ bicycle wayfinding signs,
- Install mid-block crosswalk north of Howard Street,
- Install bicycle “sharrows” and share-the-road signage between Mill Street and Union Street,
- Install bike lane northbound and bicycle “sharrows” southbound with share-the-road signage along Main Street between Union Street and Lyman Street,
- Install bike boxes, shift stop lines, and recalculated clearance intervals at intersections with Boland Way and State Street,
- Install new parking regulation signs along Main Street between State Street and Union Street,
- Upgrade pedestrian traffic signal equipment only at:
  - Main Street/Falcons Way/Court Street
  - Main Street/Boland Way/Harrison Avenue
  - Main Street/Worthington Street
- Optimize traffic signal timings, clearance intervals, signal coordination, and offset timings at corridor intersections.

Lyman Street Corridor (Main Street to Dwight Street) (Prior to MGM Springfield Opening \$30,000)

- Restripe Lyman Street between Main Street and Dwight Street
- Install bicycle lanes and wayfinding signage

East and West Columbus Avenues at Boland Way Improvements (Prior to MGM Springfield Opening, \$490,000)

- Install vehicular/pedestrian/bicycle wayfinding signs,
- Restripe Boland Way eastbound between East Columbus Avenue and West Columbus Avenue to include 5-foot bike lane,
- Stripe intersection tracking markings across intersection of West Columbus Avenue / Boland Way / Memorial Bridge,
- Install “sharrows” along Boland Way between East Columbus Avenue and Main Street and along Boland Way westbound between East Columbus Avenue and West Columbus Avenue,
- Upgrade accessible wheelchair ramps at:
  - East Columbus Avenue/Boland Way

- West Columbus Avenue/Boland Way/Memorial Bridge
- Upgrade vehicular and pedestrian traffic signal equipment at:
  - East Columbus Avenue/Boland Way
  - West Columbus Avenue/Boland Way/Memorial Bridge
- Optimize traffic signal timings, clearance intervals, signal coordination, and offset timings at corridor intersections.

East and West Columbus Avenue Corridors Improvements (Boland Way to Union Street) (Prior to MGM Springfield Opening, \$250,000)

- Install vehicular/pedestrian/bicycle wayfinding signs,
- Restripe West Columbus Avenue southbound approach and Memorial Bridge receiving lanes,
- Complete pavement mill and overlay East Columbus Avenue between Union Street and State Street, and
- Restripe West Columbus Avenue between Boland Way and Union Street.

Memorial Bridge (Prior to MGM Springfield Opening, \$570,000)

- Restripe Memorial Bridge cross-section and install bike lanes,
- Remove scored concrete median,
- Reconstruct gaps along former scored concrete median with bituminous asphalt pavement, and
- Complete pavement mill and overlay Memorial Bridge.

Plainfield Street (Prior to MGM Springfield Opening, \$280,000)

- Restriping the Plainfield Street westbound approach from the existing two through lanes to provide a single through lane and a channelized right-turn lane onto the I-91 NB On-Ramp,
- Restriping Plainfield Street westbound to provide one through travel lane between the I-91 NB On-Ramp and I-91 NB Off-Ramp,
- Restriping the terminus of the I-91 NB Off-Ramp to enter Plainfield Street, west of the intersection, into its own travel lane. This would create a de facto free, unopposed movement exiting the I-91 NB Off-Ramp,
- Construct new sidewalk along Plainfield Street north of US Route 20,
- Remove existing offset sidewalk between the newly constructed sidewalk connections,
- Install new crosswalk with flashing warning assembly and ADA-compliant accessible ramps immediately east of I-91 Ramps,
- Install "No Pedestrian Crossing" signage at locations along the northerly side of Plainfield Street at the I-91 Ramps and Birnie Avenue, and
- Construct accessible wheelchair ramps, install new pedestrian countdown indications and push buttons at Plainfield Street (US Route 20)/West Street (US Route 20)/Plainfield Street/ Avocado Street intersection.



**Intelligent Transportation System Enhancements (Prior to MGM Springfield Opening, \$500,000)**

To improve operations and safety along I-91 and I-291, the Proponent has committed to work with MassDOT to deploy variable message signs along I-91 and I-291 to notify motorists of traffic conditions in the Downtown area. These would be used to inform the public of the following:

- Detour routes to follow when a traffic incident, construction, or traffic congestion warrants diversion of vehicles to an alternative route,
  - Alternative routes to use during special events to avoid traffic congestion or locate appropriate and convenient parking, and
  - Location of available parking in the Downtown area and routes for access.
- 
- The Proponent will work with the PVTA to draft a document that captures all public transportation agreements and commitments on the project, including final details on various components of the proposed transportation mitigation program:
    - Commitment to fund ADA paratransit trips that serve the MGM Springfield site;
    - Provision of trolley/circulator service, at no fare, to be operated by PVTA. The final agreement will clarify the trolley route, stops, and hours of operation;
    - Improvements to bus stops on Main Street, including passenger amenities;
    - Ongoing commitment to maintain bus stops, including snow removal;
    - Working with PVTA and other stakeholders on ways to manage/provide/serve seniors using the current Dial-a-Ride or other alternate means for travel to MGM Springfield;
    - Targeting a transit mode share for employees;
    - Promotion of PVTA passes to MGM employees;
    - Provision of transit information for all users, including prominent placement of information about PVTA service;
    - Implementing onsite PVTA pass and fare sales;
    - Granting preferential shifts to employees who take public transportation, so they can utilize existing service;
    - Committing to regularly review service levels and demand for MGM Springfield with PVTA, and adjust service as necessary;
    - Providing a robust Transportation Demand Management (TDM) program for employees to discourage single occupancy vehicle (SOV) travel and encouraging alternate transportation, including PVTA service; and
    - Completing annual monitoring of transportation usage, with a goal of reaching target mode shares.
  - Upon site occupancy, the Proponent will work with the PVTA to assess actual changes to transit demand and identify corresponding mitigation, as warranted.
  - Fund and implement a TDM program consisting of the following elements:

- Transit Measures

- Coordinate with PVRTA to periodically review bus service directly serving the site and overall service;
- Open trolley service for no fare on scheduled service days between the Project site, Union Station, and local attractions; such as: Basketball Hall of Fame and Quadrangle Museum Zone;
- Promote the use of public transportation and coordinate with PVRTA to provide information on the availability of service to employees and patrons;
- Provide transit schedules and information about program services;
- Provide improved bus stops with passenger amenities (weather protection, seating, real time information, customer information) near the site;
- Provide ongoing maintenance of bus stop facilities and amenities installed as part of the Project;
- Provide preferential shift selection to employees using transit services, and align shifts to the extent possible with PVRTA transit service;
- Provide on-site transit pass sales and offer pre-tax pass sales for employees that enroll in the program;
- As part of employment application process, ask prospective employees about likely use of public transportation; and
- Provide a forum for employees to give customer feedback on transit service for Transportation Coordinator to share with PVRTA to target improvements in service. Feedback form can be incorporated in company commute website.

- Pedestrian and Bicycle Measures

- Update and retrofit pedestrian signal equipment at study area intersections surrounding the site and along Main Street between Union Station and the site;
- Provide striping improvements for bicycle lanes or sharrows along with corresponding bike signs;
- Provide pedestrian and bicycle wayfinding signage throughout Downtown Springfield on roadways providing direct access to the site. This includes coordinating with retailers, employers, and property managers to distribute bicycle and pedestrian route maps to casino, hotel, and retail patrons, employees, and residents;
- Provide ADA improvements at wheelchair ramps near the site;
- Provide enhanced connectivity to the Connecticut River Walk and Bikeway;
- Provide secure, weather protected, long-term bicycle parking (for employees and residents) at designated locations within the site;
- Provide bicycle racks for short-term users at several locations on-site;
- Provide bicycles and equipment for employees;
- Implement bicycle share program;
- Provide showers for employees who commute by walking or biking;
- Include a repair station near the bike cages and/or advertised visits by a local mechanic;

- Provide on-site bicycle education classes such as basic maintenance and repairs, rules of the road and winter cycling;
- Canvas employees to identify potential "bicycle captains" and inexperienced cyclists that would be willing to participate in a Bike Buddy Program;
- Reconstruct sidewalks along streets surrounding the site that are affected by construction activities to improve access;
- Construct mid-block crossing with pedestrian warning device on State Street to service the pedestrian traffic between the Project parking structure and the adjacent courthouse;
- Construct mid-block crossing with raised median island on Union Street to service pedestrian traffic to land uses along southerly side of Union Street; and
- "CommuteFit" and "Workout to Work" incentive programs allow participants to log miles each month walked or bicycled to work. The Proponent will work with NuRide to implement these as part of work wellness program with incentivized participation.
- Parking Measures
  - Provide a reduced valet rate for vehicles with three or more patrons;
  - Provide preferential parking for rideshare, carpool, and hybrid vehicles. Employers, property managers, or the Transportation Coordinator would distribute parking passes or tags provided by MassRIDES to employees and residents participating in recognized rideshare or carpool programs at no cost to the employees or residents. These passes would allow employees and residents to park in reserved spaces dedicated for rideshare and carpool participants that will be strategically located in convenient locations within the parking structure;
  - Provide charging stations for electric vehicles, which will be located near the doorways on each floor of the parking structure;
  - Implement an intelligent parking system to direct drivers to open parking spaces or nearby facilities controlled by the Springfield Parking Authority;
  - Employee parking "buy out" program, which will provide a financial incentive for employees to use alternative modes of transportation; and
  - Promote TDM programs alongside sale and delivery of parking information for employees and visitors. This could include a website and traditional print media such as fliers in garages, posters in parking garage and stairwells.
- Other Measures
  - Appoint a Transportation Coordinator on-site to oversee, implement, monitor, and evaluate TDM measures, employed or funded by the Proponent. Responsibilities include:
    - Posting and distributing announcements;
    - Holding promotional events to encourage ridesharing, using public transit, bicycling, and walking;
    - Monitoring the program and assisting in the evaluation;
    - Providing transit schedules and information about program services;

- Coordinating on-site sales of transit passes;
- Managing transit subsidy or discount programs for employees;
- Coordinating rideshare and carpool programs and coordinating preferential parking for participants;
- Coordinating with PVTa and MassRIDES to implement TDM programs and improve transit mode share; and
- Collecting and reviewing transportation data and employee surveys and coordinating with transportation consultant for review of post-occupancy conditions and 'look back' intersection studies.
- Partner with MassRIDES to implement and monitor TDM measures;
- Offer preferential shifts to employees using transit to align with PVTa service;
- Register employees with NuRIDE to encourage ride-sharing and "green" trips;
- Provide Car Sharing (Zip Car or equivalent) for resident and employee use with convenient spaces located within the parking structure;
- Encourage vanpool and carpooling participation through marketing, events and vanpool formation meetings;
- Offer pre-tax payment option for employee vanpool fares;
- Offer employees a guaranteed ride home program through participation with NuRide;
- Provide and update a monthly Commuter Bulletin;
- Provide real-time traffic/weather information;
- Team up with local partners and provide lunchtime tours to help employees discover local amenities and attractions;
- Promote safe commuting by all modes through a multi-modal safety awareness campaign. Increase awareness of multi-modal user needs with printed, online or interactive information as developed;
- Implement electronic sign-up for TDM programs to support creation of a database of participants to track program effectiveness and costs;
- Facilitate events through coordination with MassRIDES and PVTa; and
- Establish a monitoring system to evaluate TDM goals.
- The TDM program will be modified, as necessary, contingent upon the outcome of the proposed transportation monitoring program, to ensure mode share estimates presented in the FEIR are met.
- Conduct RSAs as part of the 25 percent design process for intersection improvements at the following locations:<sup>7</sup>
  - Dwight Street/Interstate 291 southbound ramps;
  - Mill Street/Locust Street/Belmont Avenue/Fort Pleasant Avenue;

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<sup>7</sup> As noted previously, MassDOT has recently issued updated crash data for 2012. The Proponent will review study area intersections to enable MassDOT to determine if additional intersections will require RSAs prior to completion of 25 percent design plans.

- State Street between Main Street and Chestnut Street;
  - State Street between Walnut Street and St. James Street;
  - Union Street between West Columbus Avenue and Main Street;
  - Main Street/West Columbus Avenue/East Columbus Avenue/Longhill Street; and
  - Plainfield Street (US Route 20) between I-91 northbound Exit 9 ramps and the North End Bridge.
- Construct off-site roadway improvements consistent with “Complete Streets” principles to the extent reasonable and practicable. These improvements include:
  - Reconstruct existing curb cut ramps to bring them into compliance with ADA and AAB regulations;
  - Reconstruct pedestrian traffic signals to bring them into compliance with the most recent version of the Manual on Uniform Transportation Control Devices (MUTCD);
  - Bicycle and pedestrian accommodations where feasible such as, “bike boxes” at all signalized intersections to reduce bicycle/vehicle conflicts, new PVRTA bus stops and reconfiguration of on-street parking to provide additional safety measurements for pedestrians and bicyclists.
- Complete a Traffic Monitoring Plan (TMP) with an evaluation of the following:
  - Traffic operations at key study area intersection and roadways surrounding the project.
    - Collect the following traffic impact-related data:
      - Manual Turning Movement Counts (TMCs) during the Friday evening (4:00 to 7:00 PM) and Saturday midday (11:00 AM to 2:00 PM) peak periods at the following intersections:
        - All MGM Springfield and Armory Square driveways;
        - State Street at Main Street;
        - State Street at East Columbus Avenue;
        - State Street at West Columbus Avenue;
        - Union Street at Main Street;
        - Union Street at East Columbus Avenue;
        - Union Street at West Columbus Avenue;
        - Interstate 291 southbound Exit 2B Off-Ramp at Dwight Street;
        - I-91 Exit 7 On-and Off-Ramp Intersections with East and West Columbus Avenues;
        - East Columbus Avenue/Boland Way;
        - West Columbus Avenue/Boland Way/Memorial Bridge;
        - Main Street/Harrison Street;
        - Sumner Avenue/Belmont Street/Dickinson Street; and
        - State Street/Federal Street/Walnut Street.
      - Automatic Traffic Recorder (ATC) data for a continuous week-long period at the following locations:
        - State Street east of East Columbus Avenue;
        - Union Street east of East Columbus Avenue;
        - Main Street north of Howard Street;



- East Columbus Avenue north of Howard Street;
  - West Columbus Avenue between State Street and Union Street;
  - Interstate 91 southbound Exit 6 Off-ramp;
  - Interstate 91 northbound Exit 6 Off-ramp;
  - Interstate 291 southbound Exit 2B Off-ramp;
  - North End Bridge;
  - South End Bridge; and
  - Memorial Bridge
- Compare the site-generated vehicle trips collected in the TMCs at the site driveways with the site-generated vehicle trips estimate included in the DEIR;
- Compare the TMCs with those projected in the DEIR to determine whether the total vehicles entering each intersection exceeds the volumes projected and whether trip distribution patterns generally concur with those project in the DEIR;
- Perform a capacity and queuing analysis to evaluate the traffic operations at the study area intersections and compare to the projections in the DEIR;
- Assess whether additional improvements are necessary at any of the study area intersections and identify measures to improve operations and reduce traffic volumes.
  - The need for mitigation will be conditioned upon exceeding total projected traffic generation through an intersection by more than ten percent or of exceeding the projected overall intersection delay by more than 20 percent.
  - The need for additional TDM measures will be conditioned upon exceeding the total projected traffic generation volume by more than five percent.
- Adequacy of the constructed parking supply;
  - Collect parking utilization counts during the Friday and Saturday peak parking demand periods between 12:00 and 9:00 PM and a weekday morning (non-Friday) between 7:00 AM and 12 PM to assess adequacy of parking supply.
    - Separate parking counts will be conducted in the self-parking garage, hotel and casino valet parking areas and tour bus parking, and Armory Square parking areas.
    - Separate counts will be conducted of utilization of preferential carpool, alternative-fueled vehicle, and EV charging station spaces.
  - Assess whether the constructed parking supply is adequate based upon the observed parking demand.
  - Assess the need for additional TDM measures to improve use of preferential parking or EV charging stations, including increasing the number of these types of spaces to provide additional capacity.
- Effectiveness of TDM measures.
  - Prepare a report on the progress and effectiveness of each TDM measure including narrative and quantitative data;

- Collect boarding and alighting counts at the PVRTA bus stops located along Main Street, Dwight Street, and Chestnut Street in the immediate vicinity of the site;
  - Collect boarding and alighting counts at the proposed trolley stops;
  - Conduct an annual commuter survey for employees to determine mode split (transit, pedestrian, bicycle) and evaluate opportunities to expand or adjust TDM measures.
- Complete “look-back” studies in accordance with the SCA’s. The final scope of the look-back approach, including the roadways for evaluation, will be developed in coordination with each respective community, PVPC, the Proponent, and each entity’s consultants.
- Work with MassDOT during and post permitting to optimize traffic operations and manage access along some project corridors (notably Main Street and Union Street).

#### *Air Quality*

- Implement a TDM program to mitigate the projected emissions increase between the 2024 No Build and 2024 Build conditions (7 percent increase in volatile organic compounds (VOCs) and a 5 percent increase in nitrogen oxides (NO<sub>x</sub>)).
- Install on-site stationary sources of potential air pollutants, including the proposed CHP system in accordance with MassDEP’s Environmental Results Program (ERP) or air quality permitting regulations, as applicable.

#### *Greenhouse Gas Emissions*

- In accordance with the Gaming Act, the project will be required to meet or exceed the following sustainable design and/or energy efficiency requirements:
  - Compliance with the Stretch Code;
  - Certifiable at the Gold Level or higher under the GBC’s LEED program;
  - Procure through the purchase of RECs or generate on-site at least ten percent of its annual electricity consumption from renewable sources; and
  - Develop an ongoing plan to monitor all major sources of energy consumption and undertake regular efforts to maintain and improve energy efficiency in building systems.
- Project buildings will incorporate the following elements, or measures achieving similar energy use reductions, into the final Project design:
  - High efficiency water cooled chillers
  - Water side economizers
  - Air side economizers
  - Variable air volume systems
  - Variable speed pumping
  - Variable speed cooling tower fans
  - Demand controlled kitchen exhaust (with tenant participation)
  - Increased air filtration

- High performance building envelope
- Green roof
- High-albedo roofs
- Premium electric motors
- Energy recovery ventilation
- Demand controlled ventilation (in garage, and where the occupant density exceeds 40 persons per thousand square feet)
- Room occupancy sensors for lighting (and HVAC in hotel rooms)
- Daylighting (where possible)
- Reduced lighting power density (below ASHRAE guidelines) (except residential and guest room spaces)
- High performance lighting
- Low-flow fixtures
- Energy star appliances
- Energy management system
- Inspections and air sealing
- Enhanced refrigerant management
- Regional building materials
- Low-VOC adhesives, sealants, paints, carpets, and wood (where feasible)
- Incorporation of an approximately 200 kW CHP system, and review of options to increase the CHP size during final design;
- Incorporation of onsite solar PV systems, with sizes and locations to be determined during final design. Preliminary analysis identified an estimated average annual energy production from the podium PV system at 246.54 MWh per year and the parking structure PV system at 807.91 MWh per year. Total CO<sub>2</sub> offsets from these potential systems are estimated at 379.1 tons per year (tpy);
- Roof areas not significantly shaded and not designated for other uses will be constructed “solar-ready” such that they can support the live loads and include space for conduit runs and electrical gear such as inverters and meters;
- Use refrigerants with lower global warming potentials for freezer and refrigerator spaces.
- Conduct annual energy use surveys using information collected by the energy management system.
- Include energy efficiency standards as criterion in the selection and purchase of electronic gaming machines.
- Review in the final project design costs and benefits of the following project elements and consider inclusion:
  - Chillers with improved full-load efficiency;
  - Oversized cooling towers that can supply condenser water to the chiller condensers at a temperature  $\leq 75$  degrees F for 95 percent of the operating hours per year;
  - Advanced elevators (machine room-less, permanent magnet gearless with efficient drives) and advanced escalators;

- Improvements to the building envelope and lighting power densities;
- Electronically commutated motors for terminal units; and
- Solar hot water to support specific end uses.
- Implement traffic-related strategies to reduce emissions from vehicles as outlined in the traffic mitigation section, including providing electric vehicle charging stations and designated parking spaces for alternatively fueled vehicles within the parking garage consistent with patron demand.
- Provide a self-certification document to the MEPA Office that is signed by an appropriate professional (e.g., engineer, architect, transportation planner, general contractor) and indicates that all of the required mitigation measures, or their equivalent, have been completed for each phase. The certification will be supported by plans that clearly illustrate what type of GHG mitigation measures have been incorporated into the Project. For those measures that are operational in nature, the Proponent will provide an updated plan identifying the measures, the schedule for implementation, and a description of how progress towards achieving the measures will be obtained.
- Implement roadway and intersection improvements to improve traffic operations, reduce idling times for study area vehicle trips, and promote mode shifts away from SOVs;
- Fund and implement the TDM program outlined above.

#### *Historic Resources*

- Develop a Memorandum of Agreement among the MHC, MGC and the Proponent to specify measures to minimize and mitigate impacts. These measures may include, but are not limited to:
  - Photographic documentation of the buildings prior to demolition;
  - Salvage and reuse of architectural elements within the Project; and
  - Interpretive signage and displays providing information about the history of the Project area.

#### *Water and Wastewater*

- Replacement of the twin 12-inch water mains in Main Street with one 16-inch water main;
- Replacement of a 10-inch sewer main within Union Street with a 12-inch sewer main;
- Replacement of a 24-inch water main in Union Street;
- Replacement of a 12-inch vitrified clay sewer main and upgrade hot water mains in Howard and Bliss Streets where the roadway ROW will remain;

- Work with the SWSC and the City of Springfield to identify and mitigate potential impacts on abutting properties. This may include the installation of backflow preventers on service laterals to prevent a surcharge condition during heavy rainfall events;
- Execution of a Memorandum of Understanding (MOU) with the SWSC to memorialize water and sewer infrastructure commitments including maintenance, inspections, monitoring, reporting, and continued communication;
- Implementation of the following water conservation and reuse measures (overseen by a designated Water Conservation Manager):
  - Rainwater reuse for irrigation;
  - Consider rainwater reuse for HVAC cooling tower.
  - Weather-based irrigation controllers;
  - Installation of drip irrigation systems;
  - Drought-tolerant plants/groundcover;
  - Installation of low-flow urinals;
  - Installation of dual-flush water closets (1.1/1.6 gallons per flush (gpf));
  - Installation of metering faucets with 0.5 gallons per minute (gpm) aerators with 15 seconds run time) and;
  - Education and training programs.

### *Stormwater*

- The project will be designed and constructed consistent with MassDEP Stormwater Management Standards. The stormwater management system will reduce peak rates of runoff at each design point and provide treatment to improve water quality of discharge, compared to existing conditions.
- Implementation of stormwater BMPs and LID techniques, including, but not limited to: deep sump catch basins, infiltration systems, hydro-dynamic (proprietary) separators, rainwater capture, 2.2 acres of green roofs, and adherence to a specific maintenance schedule;
- Elimination of 1.3 acres of impervious areas on-site;
- Registration of the stormwater system's infiltration system in accordance with the MassDEP Underground Injection Control (UIC) program.
- The Proponent will draft and execute a Memorandum of Understanding (MOU) with the SWSC to memorialize their stormwater management agreements and commitments including maintenance, inspections, monitoring, reporting and continued communication.



*Hazardous Materials*

- Prior to building demolition or renovation, hazardous building materials will be abated or removed in accordance with applicable regulations.
- Consistent with the requirements of the Activity and Use Limitation (AUL) (RTN 1-12379), located at 38-50 Howard Street, this portion of the project site has been designed to accommodate the development of the main floor and basement offices of the casino building.
- Construction activities within identified Massachusetts Contingency Plan (MCP) disposal sites will include an environmental monitoring plan to monitor potential impacts to neighboring properties. The environmental monitoring plan will set dust action levels and VOC ambient air monitoring requirements for the Project. Air monitoring with dust meters and a photoionization detector will be a key component of the environmental monitoring plan included within the Release Abatement Measure (RAM).
- A Licensed Site Professional (LSP) will be engaged to manage the MCP-submittal process and manage potential construction-period waste, soil and groundwater remediation in accordance with the MCP.

*Construction Period*

- Coordinate with MassDOT and its construction contractor on a regular basis throughout the entire construction process to minimize impacts on the surrounding transportation infrastructure due to the simultaneous construction of the project and the I-91 Viaduct Deck Replacement project. The Proponent and MassDOT will incorporate language into each respective construction contract to define a need for bi-weekly construction coordination meetings to evaluate traffic detours, parking demands, major trucking needs, and other related items;
- Develop and implement a construction period traffic management plan, subject to review and approval by the City and State. Prepare and implement Temporary Traffic Control Plans (TTCP) for construction of improvements near the MGM Project site including signage, traffic cones, drums, and other traffic control measures to facilitate vehicle traffic near the work zone. These plans will be refined as the project advances to the 25% design stage and will require review and approval by the City of Springfield DPW and MassDOT District 2 staff.
- Establish truck traffic routes, with consideration for road closures or detours as part of the I-91 viaduct project, in collaboration with MassDOT, the City of Springfield, and PVPC.
- Implement a construction period parking plan for the City of Springfield's review and approval, which shall include the general contractor's plans and protocols for enforcing the prohibition on construction personnel parking personal vehicles on streets in the adjacent neighborhood. Terms and conditions to maximize protection of the neighborhoods related to workforce parking will be written into each subcontract and

reviewed with each worker during a mandatory orientation. Terms and conditions encouraging public transportation use will be included in each subcontract.

- Coordinate with the Springfield Parking Authority, City of Springfield, and owners of private parking facilities throughout downtown Springfield to identify locations to accommodate construction employee parking, as well as parking for uses displaced from the site during construction.
- Publish an updated schedule of upcoming work every two weeks and disseminate to affected parties in local neighborhoods. In addition, the general contractor will publish monthly schedule updates describing progress as well as projected activity for the next month. This information will be available on a Project website which will allow neighbors real-time access to the most up-to-date construction information;
- Comply with the City of Springfield Noise Ordinance;
- Conduct activities such as excavation, pile-driving, and steel erection only during permitted hours;
- Use appropriate mufflers on all equipment and provide ongoing maintenance of intake and exhaust mufflers;
- Replace specific construction operations and techniques with less noisy ones, where feasible;
- Select the quietest of alternative items of equipment, where feasible;
- Locate noisy equipment at locations that protect sensitive receptors (by shielding or distance);
- Conduct precondition surveys and vibration monitoring to document initial site conditions followed by vibration monitoring throughout the construction period;
- Establish vibration limits and performance criteria in the Construction Management Plan and require mitigation measures by contractor if adverse impacts occur during construction.
- Conduct below-grade work under the supervision of a geotechnical engineer to observe and document construction procedures, monitor vibration, and anticipate or facilitate mitigation measures, as necessary.
- Comply with MassDEP's anti-idling regulations;
- Establish a goal of 100 percent diversion of construction waste.

Conclusion

Based on a review of the FEIR, comment letters and consultation with State Agencies, I find that the FEIR adequately and properly complies with MEPA and its implementing regulations. Outstanding issues can be addressed during State and local permitting. The Proponent and State Agencies should forward copies of the final Section 61 Findings to the MEPA Office for publication in accordance with 301 CMR 11.12.

December 31, 2014

Date

  
Maeve Valley Bartlett

## Comments received:

11/23/2014	Gerald Dudarme
11/24/2014	Ryan M. Kmetz
11/24/2014	Jay Minkarah
11/24/2014	Desiree Rock
11/28/2014	Marilyn Beardslee
12/01/2014	M. Aluqdait
12/01/2014	Claudia Orcutt
12/04/2014	Massachusetts Historical Commission
12/04/2014	Preservation Massachusetts
12/04/2014	Springfield Preservation Trust
12/15/2014	Jon Gardner
12/17/2014	Rev. Jonathan C. Tetherly
12/22/2014	Massachusetts Historical Commission (2 <sup>nd</sup> letter) – with attachments from William Devlin (2 letters), David Hosford, Allen Agnitti, Patty Cabey, James Boone, Preservation Massachusetts (2 letters), Springfield Historical Commission (2 letters)
12/22/2014	Law Offices of Eric I. Michelman
12/22/2014	Briarwood Thirteen, LLC
12/22/2014	Mayor Dominic J. Sarno, City of Springfield
12/23/2014	Pioneer Valley Planning Commission
12/23/2014	Colvest/East Columbus, LLC
12/23/2014	Red Rose Pizzeria
12/23/2014	Courthouse Park Associates
12/23/2014	Pride Stores LLC
12/23/2014	Brianne Zulkiewicz
12/24/2014	Town of West Springfield
12/09/2014	Bill Devlin

MVB/HSJ/hsj

## Attachments 2 - 5

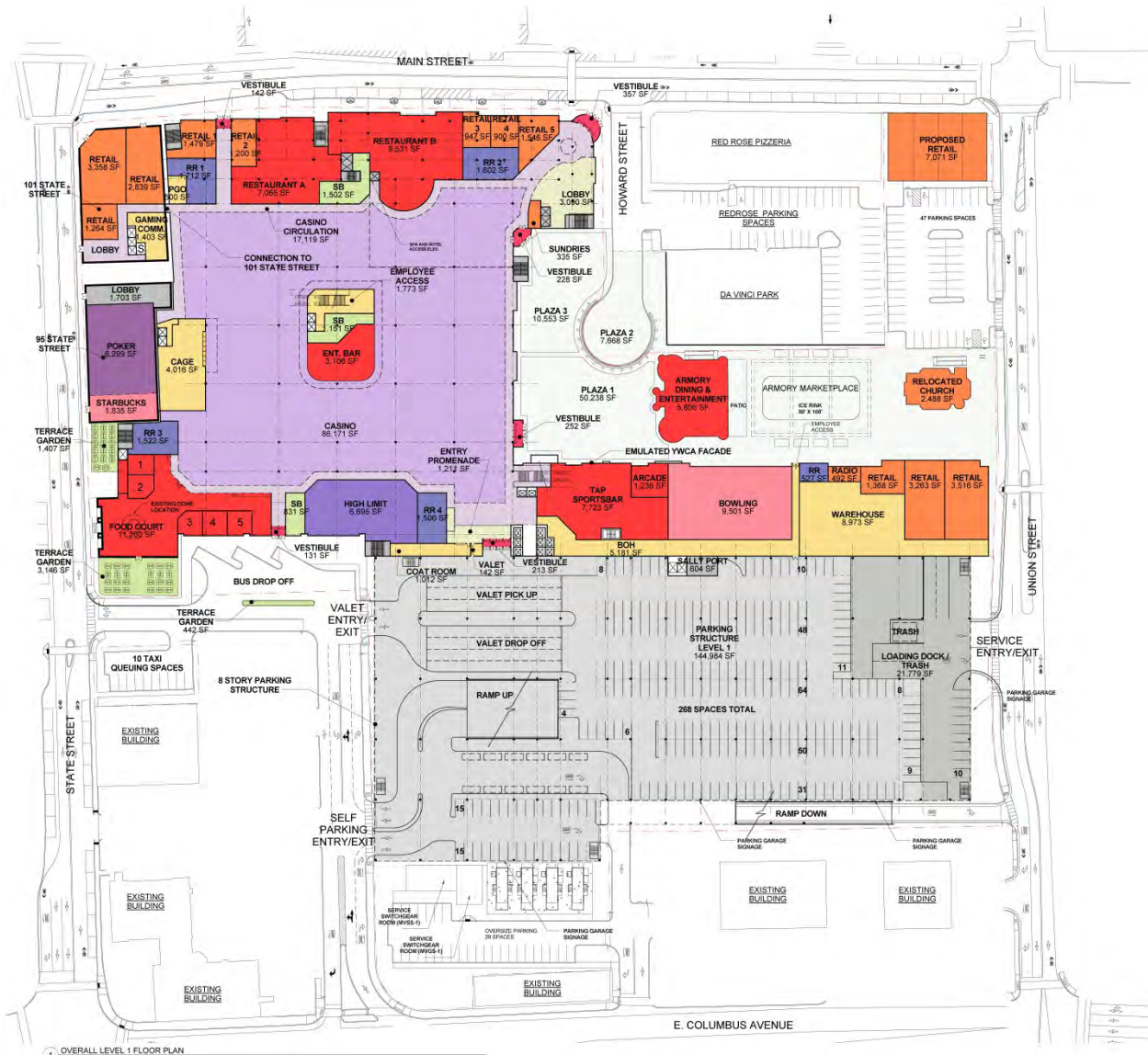
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- 2 FEIR Proposed Site Plan
- 3 Current Proposed Site Plan
- 4 USGS Locus Map
- 5 Circulation List



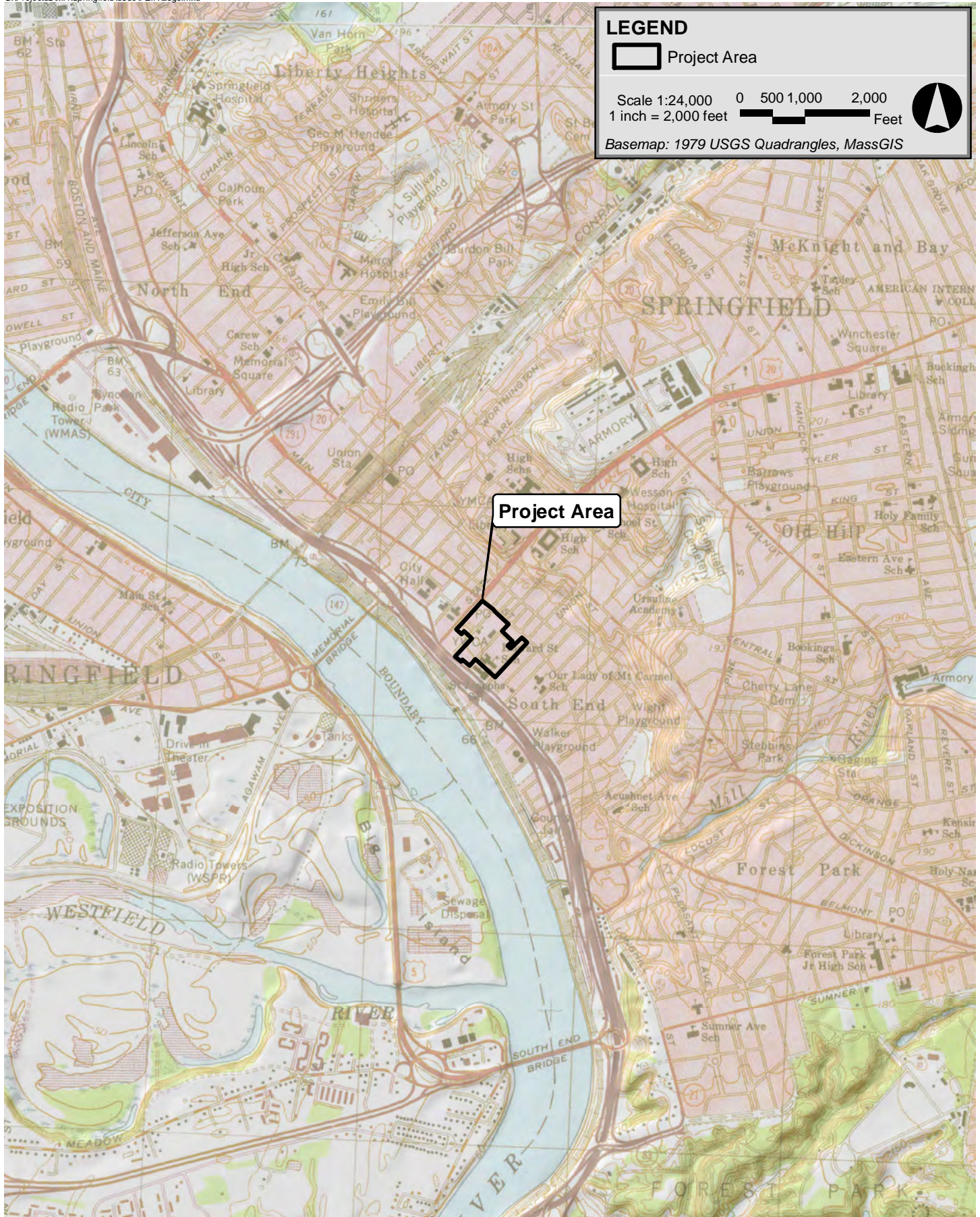
MGM Springfield Springfield, Massachusetts





MGM Springfield Springfield, Massachusetts





MGM Springfield Springfield, Massachusetts



## ATTACHMENT 5      CIRCULATION LIST

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Executive Office of Energy and  
Environmental Affairs  
Attn: MEPA Office  
100 Cambridge Street, 9<sup>th</sup> Floor  
Boston, MA 02114

Massachusetts Department of  
Environmental Protection  
Commissioner's Office  
Attn: MEPA Coordinator  
One Winter Street  
Boston, MA 02108

Massachusetts Department of  
Environmental Protection  
Western Regional Office  
Attn: MEPA Coordinator  
436 Dwight Street  
Springfield, MA 01103

Massachusetts Department of  
Environmental Protection  
Attn: Sewer Connection  
One Winter Street  
Boston, MA 02108

Massachusetts Department of Housing  
and Community Development  
100 Cambridge Street, Suite 300  
Boston, MA 02114

Massachusetts Department of Public  
Safety  
One Ashburton Place, Room 1301  
Boston, MA 02108

Massachusetts Department of  
Transportation  
Attn: Environmental Reviewer  
Public/Private Development Unit  
10 Park Plaza, Suite 4160  
Boston, MA 02116

Massachusetts Department of  
Transportation Highway Department  
District #2  
Attn: MEPA Coordinator  
811 North King Street  
Northampton, MA 01060

Natural Heritage & Endangered Species  
Program  
MA Division of Fisheries & Wildlife  
100 Hartwell St., Suite 230  
West Boylston, MA 01583

Massachusetts Gaming Commission  
84 State Street, 10<sup>th</sup> Floor  
Boston, MA 02109

Massachusetts Historical Commission  
Attn: Environmental Reviewer  
The MA Archives Building  
220 Morrissey Boulevard  
Boston, MA 02125

Massachusetts Department of Energy  
Resources  
100 Cambridge Street, Suite 1020  
Boston, MA 02114

Pioneer Valley Transit Authority  
2808 Main Street  
Springfield, MA 01107

Pioneer Valley Planning Commission  
60 Congress Street, Floor 1  
Springfield, MA 01104

Springfield City Council  
Springfield City Hall  
36 Court Street  
Springfield, MA 01103

Springfield Conservation Commission  
70 Tapley Street  
Springfield, MA 01104

**ATTACHMENT 5****CIRCULATION LIST (CONTINUED)**

---

Springfield Historic Commission  
70 Tapley Street  
Springfield, MA 01104

Springfield Office of Planning and  
Economic Development  
70 Tapley Street  
Springfield, MA 01104

Town of Longmeadow  
Attn: Town Manager  
20 Williams Street  
Longmeadow, MA 01106

Town of West Springfield  
Office of the Mayor  
26 Central Street, suite 23  
West Springfield, MA 01089

City of Chicopee  
Department of Planning and  
Development  
City Hall Annex- 274 Front Street  
Chicopee, MA 01013

Connecticut River Watershed Council  
15 Bank Row  
Greenfield, MA 01301

Mass Audubon  
Advocacy Department  
Six Beacon Street, Suite 1025  
Boston, MA 02108

Preservation Massachusetts  
Old City Hall  
45 School Street  
Boston, MA 02108

Springfield Preservation Trust  
74 Walnut Street  
Springfield, MA 01105

Walk Boston  
Old City Hall- 45 School Street  
Boston, MA 02108

Briarwood Thirteen, LLC  
174 South Boulevard – 2<sup>nd</sup> Floor  
West Springfield, MA 01089

The Colvest Group  
Peter LaPointe  
1259 East Columbus Avenue, Suite 201  
Springfield, MA 01105

Courthouse Park Associates, Inc  
33 State Street  
Springfield, MA 01103

Red Rose Pizzeria  
1060 Main Street  
Springfield, MA 01103

Pride Stores, LLC  
Attn: Robert Bolduc  
246 Cottage Street  
Springfield, MA 01104

Ted Steger  
35 Warwick Street  
Longmeadow, MA 01106

Margaret A. Ashe  
23 Magnolia Terrace  
Springfield, MA 01108

Marilyn Beardslee  
2marilyn@comcast.net

James A. Boone  
97 Florida Street  
Springfield, MA 01109

Ellen Berry  
6 Crescent Hill  
Springfield, MA 01105

**ATTACHMENT 5****CIRCULATION LIST (CONTINUED)**

---

Timothy Cummings  
72 Firglade Avenue  
Springfield, MA 01108

Aluq Dart  
P.O. Box 4533  
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Jay Minkarah  
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Jon Tetherly  
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Chicopee, MA 01020

Brianne Zulkiewicz  
308 Skeelee Street  
Chicopee, MA 01013  
Chicopee Public Library  
449 Front Street  
Chicopee, MA 01013

Hubbard Memorial Library  
24 Center Street  
Ludlow, MA 01056

Wilbraham Library  
25 Crane Park Drive  
Wilbraham, MA 01095

East Longmeadow Library  
60 Center Square  
East Longmeadow, MA 01028  
Storrs Library  
693 Longmeadow Street  
Longmeadow, MA 01106

Agawam Library  
75 Cooper Street  
Agawam, MA 01001

West Springfield Public Library  
200 Park Street  
West Springfield, MA 01089

**Attachment 6**

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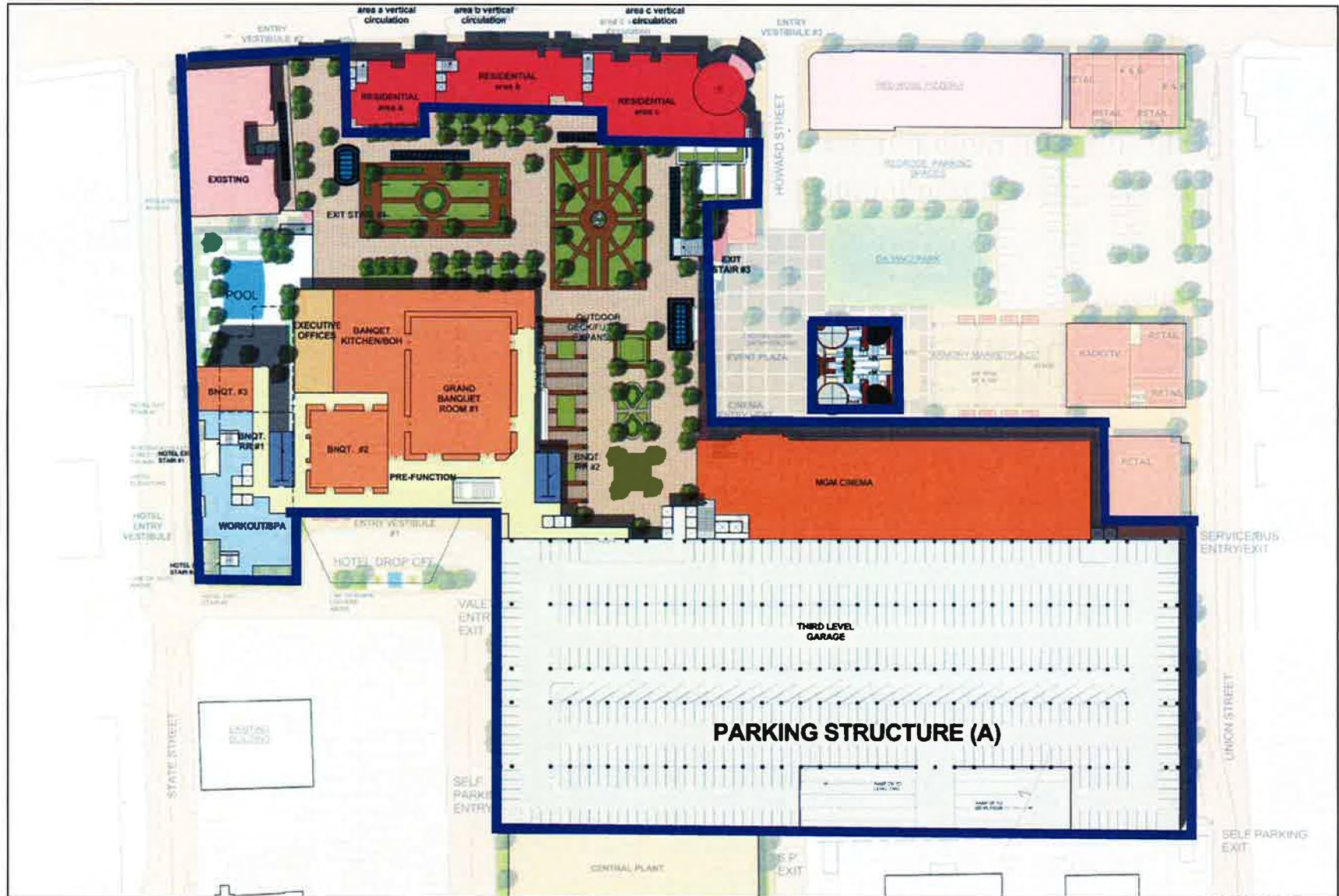
**MGM Gaming Establishment Boundaries**

The site plan illustrates the layout of the proposed casino and hotel complex. The main building is divided into several functional areas: a central gaming area with slots and tables, a bar, and multiple restaurants and buffets. The hotel portion includes a lobby, guest rooms, and a dedicated hotel drop-off area. The parking structure (A) is a large, multi-level facility with designated zones for valet service, bus service, and self-parking. The plan also shows the location of the central plant, existing buildings, and the surrounding streets: State Street, Howard Street, and Union Street. Key features include a service bus entry/exit, a self-parking entry/exit, and a central plant area.

**(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 7

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### Updated Trip Generation and Parking Demand Generation Calculations

## Site Generated Trip Assessment - Full Build

Project: MGM Resorts Development - Springfield, Massachusetts  
 Date: October 7, 2015  
 Analyst: TEC, Inc. / Rebecca L. Brown, P.E., PTOE  
 Source: Institute of Transportation Engineers - Trip Generation - 9th Ed.

### PROPOSED DEVELOPMENT

#### Armory Square Wedding Chapel (LUC 560 - Church)

Units:	0.00 kSF																
	Total Trips		Total New Trips	% Distribution		Total Trips		Multi-Use		Transit		Total New Pass-by Trips	Total New Primary Trips	# Passby Trips		# Primary Trips	
	Avg. Rates	Fitted Curve		IN	OUT	IN	OUT	IN	OUT	IN	OUT			IN	OUT	IN	OUT
	0		0	50%	50%	0	0	0	0	0	0	0	0	0	0	0	0
	0		0	48%	52%	0	0	0	0	0	0	0	0	0	0	0	0
	0		0	50%	50%	0	0	0	0	0	0	0	0	0	0	0	0
	0		0	71%	29%	0	0	0	0	0	0	0	0	0	0	0	0
	0		0														

#### Armory Square Bowling Alley (LUC 437 - Bowling Alley)

Units:	9.62 KSF																
	Total Trips		Total New Trips	% Distribution		Total Trips		Multi-Use		Transit		Total New Pass-by Trips	Total New Primary Trips	# Passby Trips		# Primary Trips	
	Avg. Rates	Fitted Curve		IN	OUT	IN	OUT	IN	OUT	IN	OUT			IN	OUT	IN	OUT
Weekday Daily	321		321	50%	50%	161	160	45	48	6	6	0	216	0	0	110	106
Friday PM PH	16		16	61%	39%	10	6	2	1	0	0	0	13	0	0	8	5
Saturday Daily	172		172	50%	50%	86	86	24	26	3	3	0	116	0	0	59	57
Sat Midday PH	23		23	39%	61%	9	14	3	4	0	1	0	15	0	0	6	9

#### Armory Square Multi-Plex Cinema (LUC 445 - Multiplex Movie Theater)

Units:	750 Seats																
	Total Trips		Total New Trips	% Distribution		Total Trips		Multi-Use		Transit		Total New Pass-by Trips	Total New Primary Trips	# Passby Trips		# Primary Trips	
	Avg. Rates	Fitted Curve		IN	OUT	IN	OUT	IN	OUT	IN	OUT			IN	OUT	IN	OUT
Weekday Daily	964		964	50%	50%	482	482	135	145	17	17	0	650	0	0	330	320
Friday PM PH	75		75	60%	40%	45	30	9	6	2	1	0	57	0	0	34	23
Saturday Daily	867		867	50%	50%	434	433	122	130	16	15	0	584	0	0	296	288
Sat Midday PH	68		68	72%	28%	49	19	15	5	2	1	0	45	0	0	32	13

#### Armory Square Restaurant (LUC 932 - High Turnover Restaurant)

Units:	39.45 KSF																
	Total Trips		Total New Trips	% Distribution		Total Trips		Multi-Use		Transit		Total New Pass-by Trips	Total New Primary Trips	# Passby Trips		# Primary Trips	
	Avg. Rates	Fitted Curve		IN	OUT	IN	OUT	IN	OUT	IN	OUT			IN	OUT	IN	OUT
Weekday Daily	5016		5016	50%	50%	2508	2508	702	753	90	88	0	3383	0	0	1716	1667
Friday PM PH	389		389	60%	40%	233	156	46	31	9	6	0	297	0	0	178	119
Saturday Daily	6248		6248	50%	50%	3124	3124	875	937	112	109	0	4215	0	0	2137	2078
Sat Midday PH	555		555	53%	47%	294	261	90	75	10	9	0	371	0	0	194	177

#### Armory Square Office / Radio Station (LUC 710 - General Office)

Units:	12.00 KSF																
	Total Trips		Total New Trips	% Distribution		Total Trips		Multi-Use		Transit		Total New Pass-by Trips	Total New Primary Trips	# Passby Trips		# Primary Trips	
	Avg. Rates	Fitted Curve		IN	OUT	IN	OUT	IN	OUT	IN	OUT			IN	OUT	IN	OUT
Weekday Daily	132		132	50%	50%	66	66	18	20	2	2	0	90	0	0	46	44
Friday PM PH	18		18	17%	83%	3	15	1	3	0	1	0	13	0	0	2	11
Saturday Daily	30		30	50%	50%	15	15	4	5	1	1	0	19	0	0	10	9
Sat Midday PH	5		5	54%	46%	3	2	1	1	0	0	0	3	0	0	2	1

#### Armory Square Retail (LUC 820 - Shopping Center)

Units:	17.31 KSF																
	Total Trips		Total New Trips	% Distribution		Total Trips		Multi-Use		Transit		Total New Pass-by Trips	Total New Primary Trips	# Passby Trips		# Primary Trips	
	Avg. Rates	Fitted Curve		IN	OUT	IN	OUT	IN	OUT	IN	OUT			IN	OUT	IN	OUT
Weekday Daily	739		739	50%	50%	370	369	104	110	13	13	0	499	0	0	253	246
Friday PM PH	64		64	48%	52%	31	33	6	7	1	1	0	49	0	0	24	25
Saturday Daily	865		865	50%	50%	433	432	121	129	16	15	0	584	0	0	296	288
Sat Midday PH	83		83	52%	48%	43	40	13	12	2	1	0	55	0	0	28	27

TOTAL Armory Square Development																	
Units:																	
Weekday Daily Friday PM PH Saturday Daily Sat Midday PH	Total Trips		Total	% Distribution		Total Trips		Multi-Use		Transit		Total New	Total New	# Passby Trips	# Primary Trips		
	Avg. Rates	Fitted Curve	New Trips	IN	OUT	IN	OUT	IN	OUT	IN	OUT	Pass-by Trips	Primary Trips	IN	OUT	IN	OUT
			7172			3587	3585	1004	1076	128	126	0	4838	0	0	2455	2383
			562			322	240	64	48	12	9	0	429	0	0	246	183
			8182			4092	4090	1146	1227	148	143	0	5518	0	0	2798	2720
		734			398	336	122	97	14	12	0	489	0	0	262	227	

5% Transit Trip Credit (assumed)

0% Passby rate for LUC 820 (MassDOT Standard)

Apartment (ITE LUC 220)																	
Units:	54		Units														
	Total Trips		Total	% Distribution		Total Trips		Multi-Use		Transit		Total New	Total New	# Passby Trips		# Primary Trips	
	Avg. Rates	Fitted Curve	New Trips	IN	OUT	IN	OUT	IN	OUT	IN	OUT	Pass-by Trips	Primary Trips	IN	OUT	IN	OUT
Weekday Daily	359	451	451	50%	50%	226	225	0	0	11	11	0	429	0	0	215	214
Friday PM PH	33	47	47	65%	35%	31	16	0	0	2	1	0	44	0	0	29	15
Saturday Daily	345	168	345	50%	50%	173	172	0	0	9	9	0	327	0	0	164	163
Sat Midday PH	28	41	41	50%	50%	21	20	0	0	1	1	0	39	0	0	20	19

5% Transit Trip Credit (assumed)

Hotel (Emperical Data from MGM Detroit)																		
Units:		251 Rooms																
		Total Trips		Total	% Distribution		Total Trips		Multi-Use		Transit		Total New	Total New	# Passby Trips	# Primary Trips		
		Avg. Rates	Fitted Curve	New Trips	IN	OUT	IN	OUT	IN	OUT	IN	OUT	Pass-by Trips	Primary Trips	IN	OUT	IN	OUT
				715			386	329					0	715	0	0	386	329
				37			24	13					0	37	0	0	24	13
				946			547	399					0	946	0	0	547	399
				45			35	10					0	45	0	0	35	10

Casino Employee (Emperical Data from MGM Detroit)																		
Units:		3,657		Positions														
		Total Trips		Total New Trips	% Distribution		Total Trips		Multi-Use		Transit		Total New Pass-by Trips	Total New Primary Trips	# Passby Trips		# Primary Trips	
		Avg. Rates	Fitted Curve		IN	OUT	IN	OUT	IN	OUT	IN	OUT			IN	OUT	IN	OUT
Weekday Daily				2794			1458	1336					0	2794	0	0	1458	1336
Friday PM PH				124			48	76					0	124	0	0	48	76
Saturday Daily				2685			1340	1345					0	2685	0	0	1340	1345
Sat Midday PH				166			102	64					0	166	0	0	102	64

Casino Patrons (Emperical Data from MGM Detroit)																		
Units:		3,657		Positions														
		Total Trips		Total New Trips	% Distribution		Total Trips		Multi-Use		Transit		Total New Pass-by Trips	Total New Primary Trips	# Passby Trips		# Primary Trips	
		Avg. Rates	Fitted Curve		IN	OUT	IN	OUT	IN	OUT	IN	OUT			IN	OUT	IN	OUT
Weekday Daily				11874			6175	5699	1076	1004			0	9794	0	0	5099	4695
Friday PM PH				682			388	294	48	64			0	570	0	0	340	230
Saturday Daily				13721			7048	6673	1227	1146			0	11348	0	0	5821	5527
Sat Midday PH				695			367	328	97	122			0	476	0	0	270	206

		Total New Trips		Total Trips In	Total Trips Out	Total Multi-Use Trips In	Total Multi-Use Trips Out	Total Transit Trips In	Total Transit Trips Out	Total Pass-by Trips	Total New Primary Trips	Total Passby Trips In	Total Passby Trips Out	Total Primary Trips In	Total Primary Trips Out
Net Increase:															
Weekday Daily		23006		11832	11174	2080	2080	139	137	0	18570	0	0	9613	8957
Friday PM PH		1452		813	639	112	112	14	10	0	1204	0	0	687	517
Saturday Daily		25879		13200	12679	2373	2373	157	152	0	20824	0	0	10670	10154
Sat Midday PH		1681		923	758	219	219	15	13	0	1215	0	0	689	526

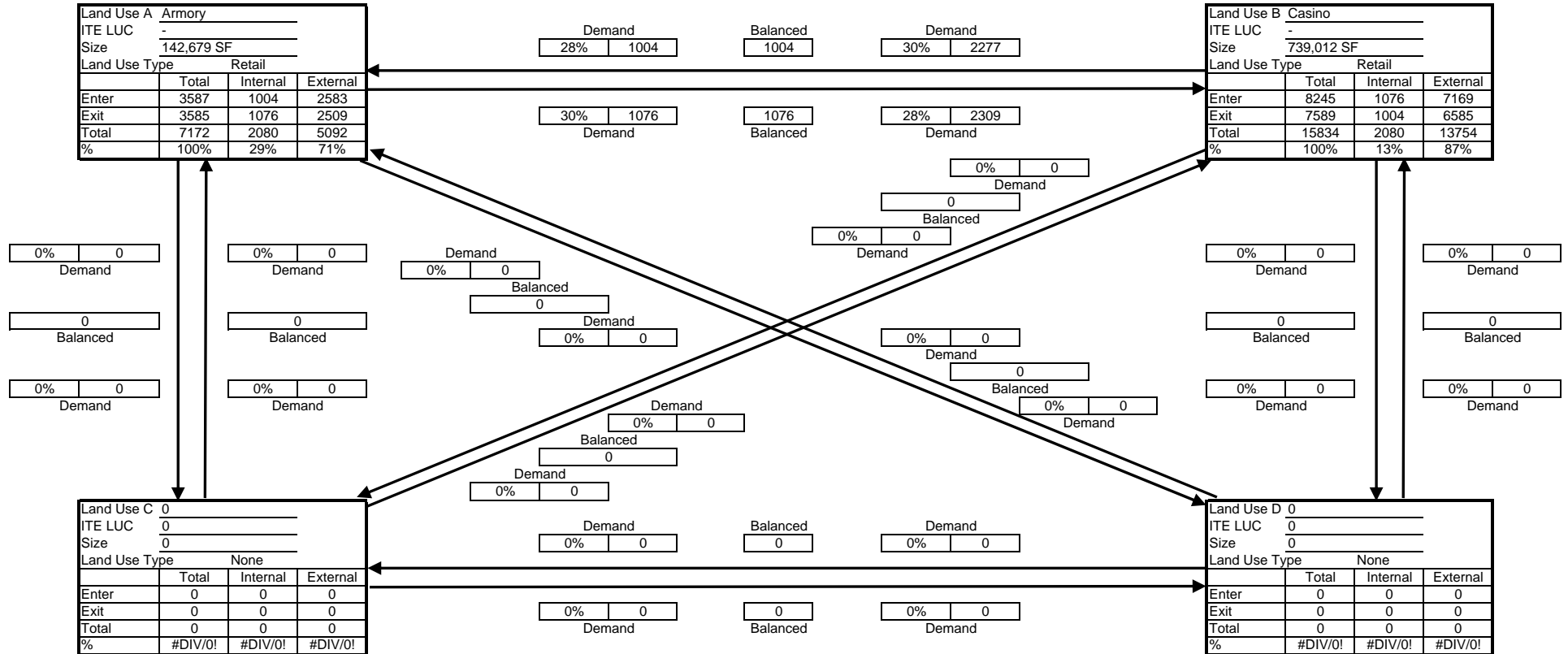
\*Assumes no Shared Trips between Retail and Hotel

\*\*Assumes 5% Transit Trip Credit

## Multi-Use Trip Generation Calculation

Analyst: TEC, Inc. / Rebecca Bro  
Date: 10/7/2015

Project Name: MGM Springfield Resort Developr  
Time Period: Weekday Daily



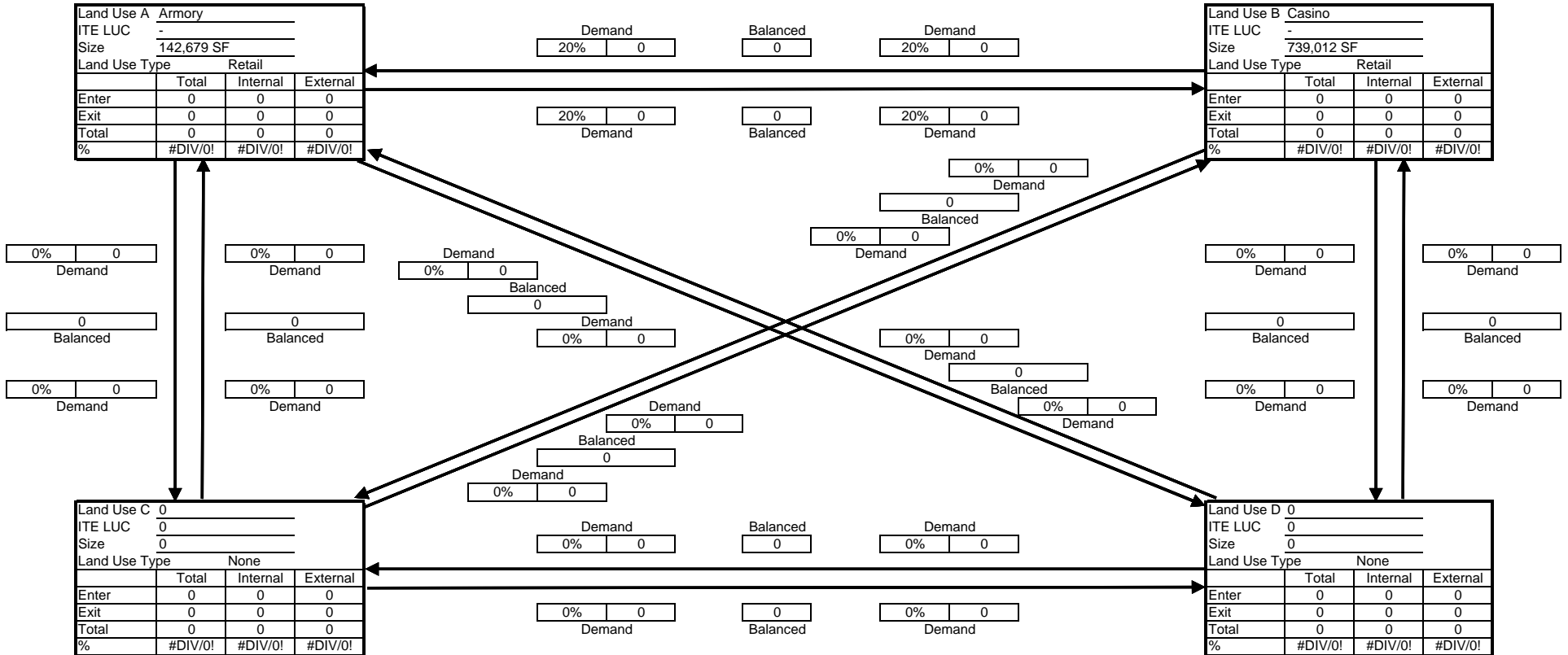
Net External Trips for Multi-Use Development					
Land Use	A	B	C	D	Total
Enter	2583	7169	0	0	9752
Exit	2509	6585	0	0	9094
<b>Total External Trips</b>	<b>5092</b>	<b>13754</b>	<b>0</b>	<b>0</b>	<b>18846</b>
Single-Use Trip Gen. Est.	7172	15834	0	0	23006
<b>Net Internal Trips</b>	<b>2080</b>	<b>2080</b>	<b>0</b>	<b>0</b>	<b>4160</b>

Internal Capture

## Multi-Use Trip Generation Calculation

Analyst: TEC, Inc. / Rebecca Bro  
Date: 10/7/2015

Project Name: MGM Springfield Resort Developr  
Time Period: Weekday AM Peak Hour



Net External Trips for Multi-Use Development					
Land Use	A	B	C	D	Total
Enter	0	0	0	0	0
Exit	0	0	0	0	0
<b>Total External Trips</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
Single-Use Trip Gen. Est.	0	0	0	0	0
<b>Net Internal Trips</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

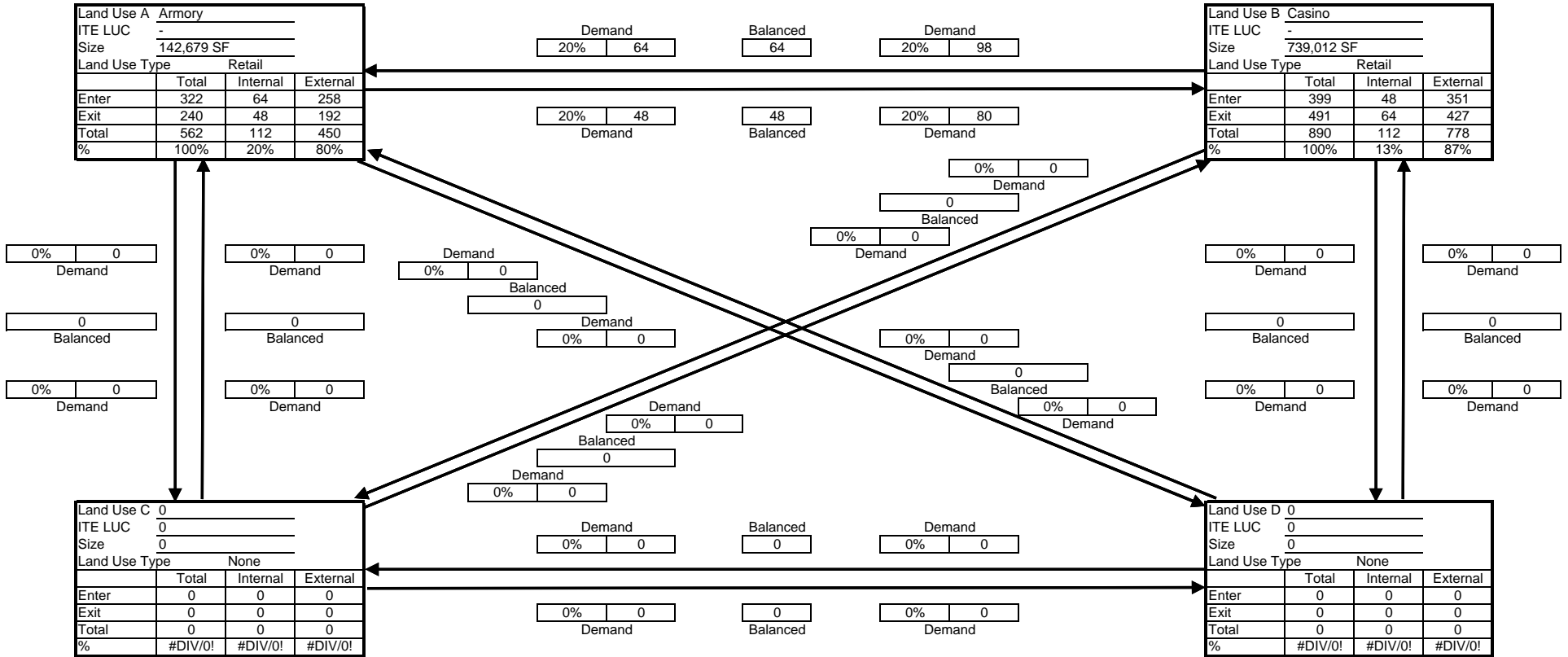
**Internal Capture**  
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## Multi-Use Trip Generation Calculation

Analyst: TEC, Inc. / Rebecca Bro  
Date: 10/7/2015

Project Name: MGM Springfield Resort Developr  
Time Period: Weekday PM Peak Hour



Net External Trips for Multi-Use Development					
Land Use	A	B	C	D	Total
Enter	258	351	0	0	609
Exit	192	427	0	0	619
<b>Total External Trips</b>	<b>450</b>	<b>778</b>	<b>0</b>	<b>0</b>	<b>1228</b>
Single-Use Trip Gen. Est.	562	890	0	0	1452
<b>Net Internal Trips</b>	<b>112</b>	<b>112</b>	<b>0</b>	<b>0</b>	<b>224</b>

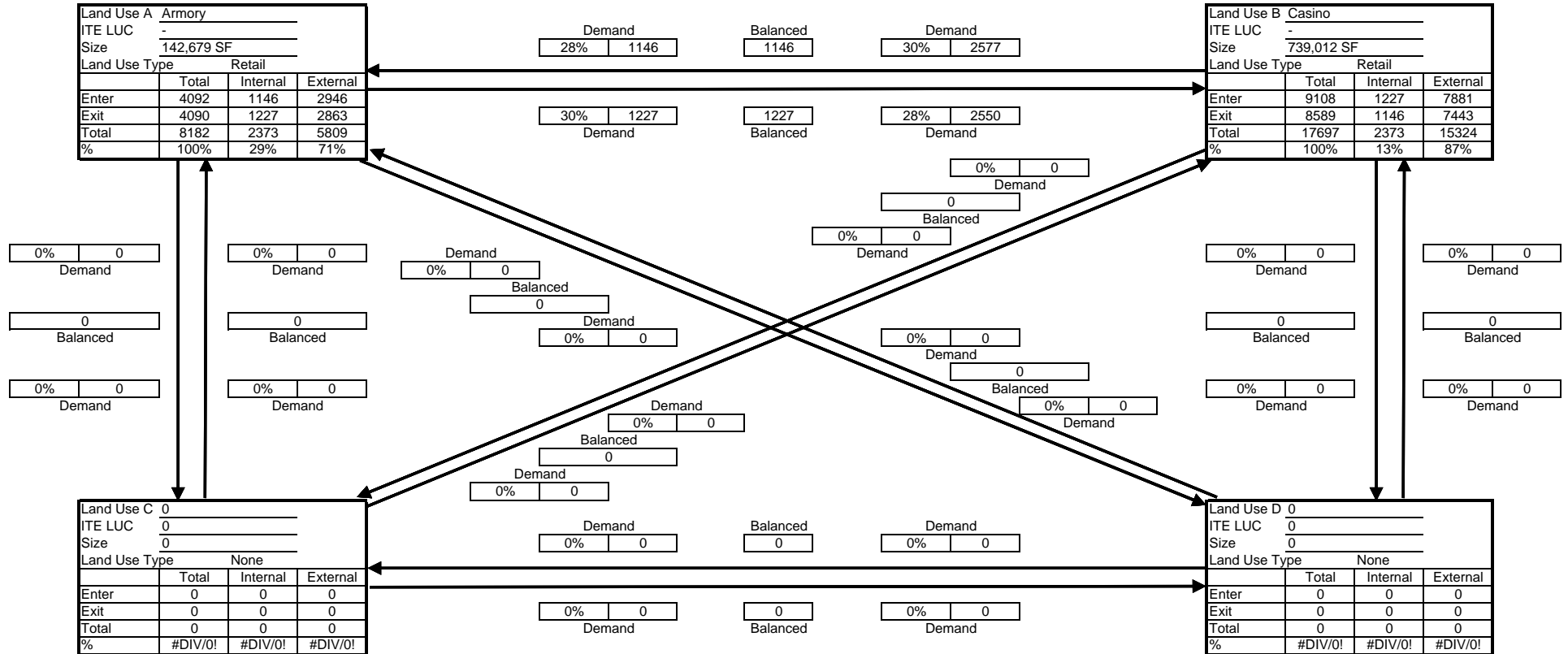
Internal Capture

15%

## Multi-Use Trip Generation Calculation

Analyst: TEC, Inc. / Rebecca Bro  
Date: 10/7/2015

Project Name: MGM Springfield Resort Developr  
Time Period: Saturday Daily



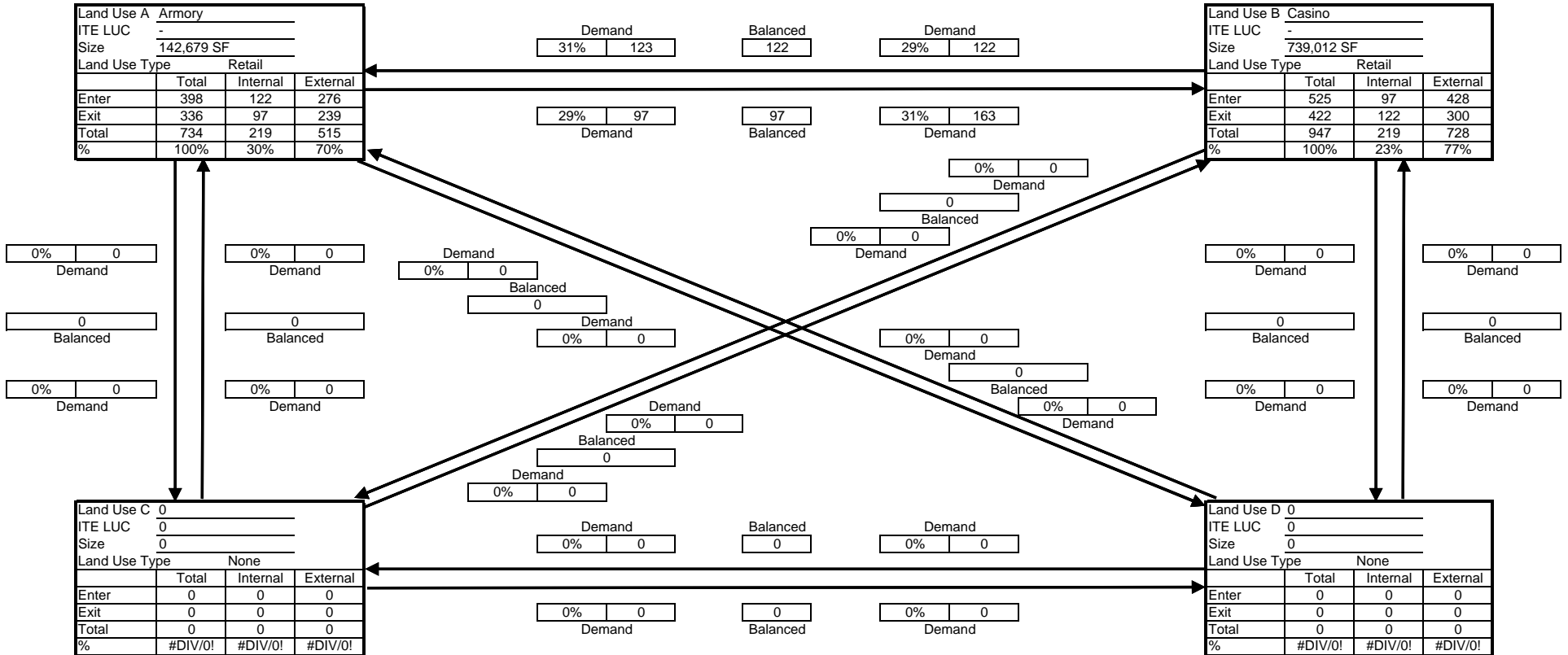
Net External Trips for Multi-Use Development					
Land Use	A	B	C	D	Total
Enter	2946	7881	0	0	10827
Exit	2863	7443	0	0	10306
<b>Total External Trips</b>	<b>5809</b>	<b>15324</b>	<b>0</b>	<b>0</b>	<b>21133</b>
Single-Use Trip Gen. Est.	8182	17697	0	0	25879
<b>Net Internal Trips</b>	<b>2373</b>	<b>2373</b>	<b>0</b>	<b>0</b>	<b>4746</b>

Internal Capture

## Multi-Use Trip Generation Calculation

Analyst: TEC, Inc. / Rebecca Bro  
Date: 10/7/2015

Project Name: MGM Springfield Resort Developr  
Time Period: Saturday Middy



Net External Trips for Multi-Use Development					
Land Use	A	B	C	D	Total
Enter	276	428	0	0	704
Exit	239	300	0	0	539
<b>Total External Trips</b>	<b>515</b>	<b>728</b>	<b>0</b>	<b>0</b>	<b>1243</b>
Single-Use Trip Gen. Est.	734	947	0	0	1681
<b>Net Internal Trips</b>	<b>219</b>	<b>219</b>	<b>0</b>	<b>0</b>	<b>438</b>

Internal Capture

26%

# Parking Demand Assessment - MGM Springfield

Project: MGM Resort / Casino Springfield, MA

Date: 10/6/15

Analyst: TEC, Inc. / Rebecca L. Brown, PE, PTOE

Source: Empirical Data from MGM Grand Detroit

## Parking Demand - Time of Day Distribution

Time	Friday			Saturday		
	Casino Patrons	Casino Employees	Total Casino	Casino Patrons	Casino Employees	Total Casino
12:00 AM	1048	343	1391	1459	444	1903
1:00 AM	849	331	1180	1265	413	1678
2:00 AM	636	307	943	1013	377	1390
3:00 AM	473	287	760	722	341	1063
4:00 AM	340	268	608	513	318	831
5:00 AM	286	273	559	391	298	689
6:00 AM	277	279	556	361	285	646
7:00 AM	346	349	695	411	331	742
8:00 AM	463	405	868	507	376	883
9:00 AM	625	467	1092	622	413	1035
10:00 AM	772	521	1293	735	441	1176
11:00 AM	936	552	1488	890	443	1333
12:00 PM	1073	575	1648	1048	458	1506
1:00 PM	1119	587	1706	1185	482	1667
2:00 PM	1207	624	1831	1319	516	1835
3:00 PM	1236	611	1847	1444	523	1967
4:00 PM	1273	608	1881	1544	532	2076
5:00 PM	1389	575	1964	1654	527	2181
6:00 PM	1488	563	2051	1739	538	2277
7:00 PM	1581	582	2163	1794	563	2357
8:00 PM	1666	581	2247	1792	567	2359
9:00 PM	1673	586	2259	1760	561	2321
10:00 PM	1651	550	2201	1808	545	2353
11:00 PM	1603	498	2101	1787	486	2273

Note:

Casino Patrons parking demand assumes a 3-hour stay per patron. Parking demand is equivalent to arriving trips for 3 hours prior to Time.

Casino Employees parking demand assumes an 8-hour shift. Parking demand is equivalent to arriving trips for 8 hours prior to Time.

# Parking Demand Assessment - MGM Springfield

Project: MGM Resort / Casino Springfield, MA

Date: 10/6/15

Analyst: TEC, Inc. / Rebecca Brown, P.E., PTOE

Source: Institute of Transportation Engineers - Parking Generation - 4th Ed.

## ITE Land Use Code (LUC) 310 - Hotel

Land Use: Hotel

LUC: 310

Size: 251 Rooms

### Average Peak Period Parking Demand

Weekday:	0.89 vehicles per room	X	251 Rooms =	<b>223 vehicles</b>
Saturday:	1.20 vehicles per room	X	251 Rooms =	<b>301 vehicles</b>

### Parking Demand - Time of Day Distribution

Time	Weekday		Saturday	
	Percent of Peak	Demand	Percent of Peak**	Demand
12:00 AM	94%	210	94%	283
1:00 AM	92%	205	92%	277
2:00 AM	89%	198	89%	268
3:00 AM	87%	194	87%	262
4:00 AM	84%	187	84%	253
5:00 AM	82%	183	82%	247
6:00 AM	79%	176	79%	238
7:00 AM	77%	172	77%	232
8:00 AM	100%	223	100%	301
9:00 AM	96%	214	96%	289
10:00 AM	55%	123	55%	166
11:00 AM	52%	116	52%	157
12:00 PM	60%	134	60%	181
1:00 PM	60%	134	60%	181
2:00 PM	55%	123	55%	166
3:00 PM	52%	116	52%	157
4:00 PM	53%	118	53%	160
5:00 PM	58%	129	58%	175
6:00 PM	62%	138	62%	187
7:00 PM	66%	147	66%	199
8:00 PM	68%	152	68%	205
9:00 PM	85%	190	85%	256
10:00 PM	87%	194	87%	262
11:00 PM	97%	216	97%	292

Note:

\*Parking Demand based off average peak period parking demand in suburban areas.

No data provided in ITE Parking Generation; percentages assumed by interpolation.

\*\*No data provided for Saturday in ITE Parking Generation for these time periods; percentages assumed.

# Parking Demand Assessment - MGM Springfield

Project: MGM Resort / Casino Springfield, MA

Date: 10/6/15

Analyst: TEC, Inc. / Douglas S. Halpert, E.I.T

Source: Institute of Transportation Engineers - Parking Generation - 4th Ed.

## ITE Land Use Code (LUC) 221 - Low/Mid-Rise Apartment

Land Use: Low/Mid-Rise Apartments

LUC: 221

Size: 54 Units

### Average Peak Period Parking Demand

Weekday:	1.20 vehicles per unit	X	54 Units =	<b>65 vehicles</b>
Saturday:	1.03 vehicles per unit	X	54 Units =	<b>56 vehicles</b>

### Parking Demand - Time of Day Distribution

Time	Weekday		Saturday	
	Percent of Peak	Demand	Percent of Peak	Demand
12:00 AM	100%	65	95%	53
1:00 AM	100%	65	95%	53
2:00 AM	100%	65	95%	53
3:00 AM	100%	65	95%	53
4:00 AM	100%	65	95%	53
5:00 AM	96%	62	100%	56
6:00 AM	92%	60	98%	55
7:00 AM	74%	48	94%	53
8:00 AM	64%	42	89%	50
9:00 AM	34%	22	59%	33
10:00 AM	32%	21	71%	40
11:00 AM	31%	20	67%	38
12:00 PM	30%	20	66%	37
1:00 PM	31%	20	64%	36
2:00 PM	33%	21	64%	36
3:00 PM	37%	24	69%	39
4:00 PM	44%	29	73%	41
5:00 PM	59%	38	78%	44
6:00 PM	69%	45	80%	45
7:00 PM	66%	43	83%	46
8:00 PM	75%	49	84%	47
9:00 PM	77%	50	87%	49
10:00 PM	92%	60	89%	50
11:00 PM	94%	61	95%	53

Note:

No data provided for LUC 221 in ITE Parking Generation for these time periods; percentages obtained from LUC 224 (Rental Townhouse).



# Parking Demand Assessment - MGM Springfield

Project: MGM Resort / Casino Springfield, MA

Date: September 17, 2013

Analyst: TEC, Inc. / Douglas S. Halpert, E.I.T

Source: Institute of Transportation Engineers - Parking Generation - 4th Ed.

Land Use: Bowling

LUC: 437

Size 10 Lanes

## 85th Percentile Peak Period Parking Demand

Weekday:

$$\frac{\text{Non-Friday Weekday Urban Parking Demand}}{\text{Non-Friday Suburban Parking Demand}} = \frac{\text{Friday Urban Parking Demand}}{\text{Friday Suburban Parking Demand}}$$

$$\frac{3.78}{4.62} = \frac{(Y)}{5.58} \quad Y = 4.57$$

Saturday:

$$\frac{\text{Non-Friday Weekday Urban Parking Demand}}{\text{Non-Friday Suburban Parking Demand}} = \frac{\text{Saturday Urban Parking Demand}}{\text{Saturday Suburban Parking Demand}}$$

$$\frac{3.78}{4.62} = \frac{(Y)}{4.28} \quad Y = 3.5$$

Weekday: 4.57 vehicles per lane X 10 SF = **46 vehicles**

Saturday: 3.50 vehicles per lane X 10 SF = **35 vehicles**

## Parking Demand - Time of Day Distribution

Time	Weekday		Saturday	
	Percent of Peak	Demand	Percent of Peak	Demand
12:00 AM	0%	0	0%	0
1:00 AM	0%	0	0%	0
2:00 AM	0%	0	0%	0
3:00 AM	0%	0	0%	0
4:00 AM	0%	0	0%	0
5:00 AM	0%	0	0%	0
6:00 AM	0%	0	0%	0
7:00 AM	0%	0	0%	0
8:00 AM	0%	0	0%	0
9:00 AM	0%	0	0%	0
10:00 AM	10%	5	10%	4
11:00 AM	10%	5	10%	4
12:00 PM	25%	12	25%	9
1:00 PM	25%	12	25%	9
2:00 PM	30%	14	30%	11
3:00 PM	35%	16	35%	12
4:00 PM	40%	18	40%	14
5:00 PM	51%	23	51%	18
6:00 PM	83%	38	83%	29
7:00 PM	99%	46	99%	35
8:00 PM	100%	46	100%	35
9:00 PM	81%	37	81%	28
10:00 PM	75%	35	75%	26
11:00 PM	50%	23	50%	18

Notes:

No data provided for Saturday in ITE Parking Generation for these time periods; percentages assumed.

No data provided in ITE Parking Generation for these time periods; percentages assumed.

# Parking Demand Assessment - MGM Springfield

Project: MGM Resort / Casino Springfield, MA

Date: September 17, 2013

Analyst: TEC, Inc. / Douglas S. Halpert, E.I.T

Source: Institute of Transportation Engineers - Parking Generation - 4th Ed.

Land Use: Multiplex Movie Theater

LUC: 445 / 444

Size 750 Seats

85th Percentile Peak Period Parking Demand

Weekday: ITE LUC 445 Friday Peak Parking Demand

Weekday: 0.20 vehicles per seat X 750 seats = **150 vehicles**

Saturday: ITE LUC 444 Saturday Peak Parking Demand

Saturday: 0.23 vehicles per seat X 750 seats = **173 vehicles**

## Parking Demand - Time of Day Distribution

Time	Weekday		Saturday	
	Percent of Peak	Demand	Percent of Peak	Demand
12:00 AM	40%	60	40%	69
1:00 AM	20%	30	20%	35
2:00 AM	0%	0	0%	0
3:00 AM	0%	0	0%	0
4:00 AM	0%	0	0%	0
5:00 AM	0%	0	0%	0
6:00 AM	0%	0	0%	0
7:00 AM	0%	0	0%	0
8:00 AM	0%	0	0%	0
9:00 AM	0%	0	0%	0
10:00 AM	19%	29	20%	35
11:00 AM	76%	114	20%	35
12:00 PM	72%	108	20%	35
1:00 PM	100%	150	45%	78
2:00 PM	100%	150	55%	95
3:00 PM	96%	144	55%	95
4:00 PM	99%	149	55%	95
5:00 PM	98%	147	60%	104
6:00 PM	81%	122	60%	104
7:00 PM	90%	135	80%	138
8:00 PM	97%	146	100%	173
9:00 PM	95%	143	100%	173
10:00 PM	61%	92	80%	138
11:00 PM	54%	81	65%	112

Note:

Weekday percentages from ITE Parking Generation for LUC 445 for Friday.

Saturday percentages from ITE Parking Generation, 4th Edition for LUC 444

# Parking Demand Assessment - MGM Springfield

Project: MGM Resort / Casino Springfield, MA

Date: September 17, 2013

Analyst: TEC, Inc. / Douglas S. Halpert, E.I.T

Source: Institute of Transportation Engineers - Parking Generation - 4th Ed.

## ITE Land Use Code (LUC) 701 - Office Building

Land Use: Office Building  
LUC: 701  
Size: 12,000 SF

85th Percentile Peak Period Parking Demand

Weekday: 2.98 vehicles per 1,000 SF X 12,000 SF = **36 vehicles**

Saturday:

ITE LUC 710 Saturday Trip Generation Rate = Saturday Urban Parking Demand  
ITE LUC 710 Weekday Trip Generation Rate = Weekday Urban Parking Demand

$$\frac{2.46}{11.03} = \frac{(Y)}{2.98} \quad Y = 0.66$$

Weekday: 2.98 vehicles per 1,000 SF X 12,000 SF = **36 vehicles**

Saturday: 0.66 vehicles per 1,000 SF X 12,000 SF = **8 vehicles**

## Parking Demand - Time of Day Distribution

Time	Weekday		Saturday	
	Percent of Peak	Demand	Percent of Peak	Demand
12:00 AM	0%	0	0%	0
1:00 AM	0%	0	0%	0
2:00 AM	0%	0	0%	0
3:00 AM	0%	0	0%	0
4:00 AM	0%	0	0%	0
5:00 AM	0%	0	0%	0
6:00 AM	10%	4	10%	1
7:00 AM	19%	7	19%	2
8:00 AM	64%	23	64%	5
9:00 AM	91%	33	91%	7
10:00 AM	99%	36	99%	8
11:00 AM	99%	36	99%	8
12:00 PM	98%	35	98%	8
1:00 PM	96%	35	96%	8
2:00 PM	100%	36	100%	8
3:00 PM	99%	36	99%	8
4:00 PM	90%	32	90%	7
5:00 PM	58%	21	58%	5
6:00 PM	25%	9	25%	2
7:00 PM	10%	4	10%	1
8:00 PM	0%	0	0%	0
9:00 PM	0%	0	0%	0
10:00 PM	0%	0	0%	0
11:00 PM	0%	0	0%	0
Note:				
No data provided in ITE Parking Generation for urban locations; percentages are from suburban locations.				
No data provided in ITE Parking Generation for Saturday; percentages are from Weekday.				

# Parking Demand Assessment - MGM Springfield

Project: MGM Resort / Casino Springfield, MA

Date: September 17, 2013

Analyst: TEC, Inc. / Douglas S. Halpert, E.I.T

Source: Institute of Transportation Engineers - Parking Generation - 4th Ed.

## ITE Land Use Code (LUC) 820 - Shopping Center

Land Use: Shopping Center  
 LUC: 820  
 Size 17,307 SF

### Average Peak Period Parking Demand

Friday (Non-December): 2.94 vehicles per 1,000 SF X 17,307 SF = **51 vehicles**  
 Saturday (Non-December): 2.87 vehicles per 1,000 SF X 17,307 SF = **50 vehicles**

### Parking Demand - Time of Day Distribution

Time	Friday		Saturday	
	Percent of Peak	Demand	Percent of Peak	Demand
12:00 AM	0%	0	0%	0
1:00 AM	0%	0	0%	0
2:00 AM	0%	0	0%	0
3:00 AM	0%	0	0%	0
4:00 AM	0%	0	0%	0
5:00 AM	0%	0	0%	0
6:00 AM	0%	0	0%	0
7:00 AM	5%	3	13%	7
8:00 AM	18%	9	27%	14
9:00 AM	38%	19	60%	30
10:00 AM	63%	32	75%	38
11:00 AM	79%	40	90%	45
12:00 PM	100%	51	100%	50
1:00 PM	92%	47	100%	50
2:00 PM	83%	42	98%	49
3:00 PM	76%	39	91%	46
4:00 PM	70%	36	76%	38
5:00 PM	73%	37	67%	34
6:00 PM	77%	39	72%	36
7:00 PM	92%	47	51%	26
8:00 PM	89%	45	52%	26
9:00 PM	42%	21	44%	22
10:00 PM	29%	15	29%	15
11:00 PM	0%	0	0%	0
Note: Non-December percentages				
No data available in ITE Parking Generation for Friday; percentages are from Non-Friday Weekday				
No data available in ITE Parking Generation for Friday; percentages are from Saturday				

# Parking Demand Assessment - MGM Springfield

Project: MGM Resort / Casino Springfield, MA  
 Date: September 17, 2013  
 Analyst: TEC, Inc. / Douglas S. Halpert, E.I.T  
 Source: Institute of Transportation Engineers - Parking Generation - 4th Ed.

Land Use: High-Turnover Restaurant with Bar or Lounge  
 LUC: 932  
 Size: 39,451 SF

## Average Peak Period Parking Demand\*\*

Weekday:

$\frac{\text{Family Rest. Weekday Urban Parking Demand}}{\text{Family Rest. Weekday Suburban Parking Demand}} = \frac{\text{Rest. w/Bar Weekday Urban Parking Demand}}{\text{Rest. w/Bar Weekday Suburban Parking Demand}}$

$$\frac{5.55}{10.60} = \frac{(Y)}{13.30} \quad Y = 6.96$$

Saturday:

$\frac{\text{Family Rest. Weekday Urban Parking Demand}}{\text{Family Rest. Weekday Suburban Parking Demand}} = \frac{\text{Rest. w/Bar Saturday Urban Parking Demand}}{\text{Rest. w/Bar Saturday Suburban Parking Demand}}$

$$\frac{5.55}{10.60} = \frac{(Y)}{16.30} \quad Y = 8.53$$

Weekday: 6.96 vehicles per 1,000 SF X 39,451 SF = **275 vehicles**  
 Saturday: 8.53 vehicles per 1,000 SF X 39,451 SF = **337 vehicles**

## Parking Demand - Time of Day Distribution

Time	Weekday		Saturday	
	Percent of Peak	Demand	Percent of Peak	Demand
12:00 AM	0%	0	0%	0
1:00 AM	0%	0	0%	0
2:00 AM	0%	0	0%	0
3:00 AM	0%	0	0%	0
4:00 AM	0%	0	0%	0
5:00 AM	0%	0	0%	0
6:00 AM	0%	0	0%	0
7:00 AM	0%	0	0%	0
8:00 AM	0%	0	0%	0
9:00 AM	5%	14	5%	17
10:00 AM	7%	19	7%	24
11:00 AM	16%	44	20%	67
12:00 PM	49%	135	41%	138
1:00 PM	39%	107	53%	179
2:00 PM	27%	74	46%	155
3:00 PM	19%	52	38%	128
4:00 PM	22%	61	63%	212
5:00 PM	60%	165	80%	270
6:00 PM	94%	259	100%	337
7:00 PM	100%	275	93%	313
8:00 PM	81%	223	70%	236
9:00 PM	84%	231	33%	111
10:00 PM	48%	132	40%	135
11:00 PM	44%	121	53%	179

Note:

No data provided for restaurant w/bar or lounge. Data is from family restaurant

\*\*Average rates were utilized as the ratios of suburban to urban rates results in a higher parking demand than using 85th Percentile rates.



Parking Demand Assessment - MGM Springfield

Project: MGM Resort / Casino Sprinfield, MA  
Date: October 10, 2013  
Analyst: TEC, Inc. / Rebecca L. Brown, PE, PTOE  
Source: Institute of Transportation Engineers - Parking Generation - 4th Ed.

Time	Weekday Parking Demand										Saturday Parking Demand									
	Casino	Hotel	Apartments	Bowling	Cinema	Office	Retail	Restaurant	Daycare	Total	Casino	Hotel	Apartments	Bowling	Cinema	Office	Retail	Restaurant	Daycare	Total
12:00 AM	1391	210	65	0	60	0	0	0	12	1738	1903	283	53	0	69	0	0	0	12	2320
1:00 AM	1180	205	65	0	30	0	0	0	12	1492	1678	277	53	0	35	0	0	0	12	2055
2:00 AM	943	198	65	0	0	0	0	0	12	1218	1390	268	53	0	0	0	0	0	12	1723
3:00 AM	760	194	65	0	0	0	0	0	12	1031	1063	262	53	0	0	0	0	0	12	1390
4:00 AM	608	187	65	0	0	0	0	0	12	872	831	253	53	0	0	0	0	0	12	1149
5:00 AM	559	183	62	0	0	0	0	0	12	816	689	247	56	0	0	0	0	0	12	1004
6:00 AM	556	176	60	0	0	4	0	0	12	808	646	238	55	0	0	1	0	0	12	952
7:00 AM	695	172	48	0	0	7	3	0	12	937	742	232	53	0	0	2	7	0	12	1048
8:00 AM	868	223	42	0	0	23	9	0	12	1177	883	301	50	0	0	5	14	0	12	1265
9:00 AM	1092	214	22	0	0	33	19	14	12	1406	1035	289	33	0	0	7	30	17	12	1423
10:00 AM	1293	123	21	5	29	36	32	19	12	1570	1176	166	40	4	35	8	38	24	12	1503
11:00 AM	1488	116	20	5	114	36	40	44	12	1875	1333	157	38	4	35	8	45	67	12	1699
12:00 PM	1648	134	20	12	108	35	51	135	12	2155	1506	181	37	9	35	8	50	138	12	1976
1:00 PM	1706	134	20	12	150	35	47	107	12	2223	1667	181	36	9	78	8	50	179	12	2220
2:00 PM	1831	123	21	14	150	36	42	74	12	2303	1835	166	36	11	95	8	49	155	12	2367
3:00 PM	1847	116	24	16	144	36	39	52	12	2286	1967	157	39	12	95	8	46	128	12	2464
4:00 PM	1881	118	29	18	149	32	36	61	12	2336	2076	160	41	14	95	7	38	212	12	2655
5:00 PM	1964	129	38	23	147	21	37	165	12	2536	2181	175	44	18	104	5	34	270	12	2843
6:00 PM	2051	138	45	38	122	9	39	259	12	2713	2277	187	45	29	104	2	36	337	12	3029
7:00 PM	2163	147	43	46	135	4	47	275	12	2872	2357	199	46	35	138	1	26	313	12	3127
8:00 PM	2247	152	49	46	146	0	45	223	12	2920	2359	205	47	35	173	0	26	236	12	3093
9:00 PM	2259	190	50	37	143	0	21	231	12	2943	2321	256	49	28	173	0	22	111	12	2972
10:00 PM	2201	194	60	35	92	0	15	132	12	2741	2353	262	50	26	138	0	15	135	12	2991
11:00 PM	2101	216	61	23	81	0	0	121	12	2615	2273	292	53	18	112	0	0	179	12	2939

Weekday Parking Demand:

2943

Saturday Parking Demand:

3127

## Parking Demand Assessment - MGM Springfield

Project: MGM Resort / Casino Springfield, MA

Date: October 10, 2013

Analyst: TEC, Inc. / Rebecca L. Brown, PE, PTOE

Source: Institute of Transportation Engineers - Parking Generation - 4th Ed.

Time	Weekday Parking Demand			
	MGM Springfield	Existing Off-Street	Existing On-Street	Total
11:00 AM	1875	599	101	2575
12:00 PM	2155	515	91	2761
1:00 PM	2223	446	80	2749
2:00 PM	2303	456	94	2853
3:00 PM	2286	455	73	2814
4:00 PM	2336	334	78	2748
5:00 PM	2536	215	66	2817
6:00 PM	2713	95	54	2862

Weekday Parking Demand:	2862
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TO: Steve Crosby, Chairman  
Gayle Cameron, Commissioner  
James McHugh, Commissioner  
Bruce Stebbins, Commissioner  
Enrique Zuniga, Commissioner

FROM: Alexandra Lightbown, Director of Racing

CC: Karen Wells, Interim Executive Director  
Catherine Blue, General Counsel

DATE: October 26, 2015

RE: Massachusetts Thoroughbred Breeders Association Request to Race at Finger Lakes Racecourse in New York

---

Dear Commissioners,

George Brown, Chairman of the Massachusetts Thoroughbred Breeders Association, has requested approval of the Massachusetts Gaming Commission to run five restricted Massbred races at Finger Lakes Racecourse in New York. These will be after they have run the nine Massbred stake races at Suffolk Downs. This will allow other owners and breeders to earn some purse money this year to help support their farms. At the August 20<sup>th</sup> Massachusetts Gaming Commission meeting, the Massachusetts Thoroughbred Breeders Association specifically requested to run their races at Finger Lakes if Suffolk Downs did not race this year, and the Commissioners approved that specific request. Now they have available funds and would like to race in New York in addition to their races at Suffolk Downs.

**Recommendation: That the Massachusetts Gaming Commission approve the request of the Massachusetts Thoroughbred Breeders Association to run five restricted Massbred races at Finger Lakes Racecourse in New York in 2015, after the nine stake races at Suffolk Downs are complete.**



Massachusetts Gaming Commission



## MASSACHUSETTS THOROUGHBRED BREEDERS ASSOCIATION

121 Pine Street, Rehoboth, MA 02769

508-252-3690 voice & fax, [www.massbredds.com](http://www.massbredds.com)

Massachusetts Gaming commission

October 20, 2015

Dear Dt. Lightbown,

I am requesting the approval of the Massachusetts Gaming Commission to run 5 (five) restricted Massbred races an Finger Lakes Racecourse in New York. We have the available funds after running the 9 stakes races at Suffolk Downs. We would like to run races now that would allow other owners and breeders to earn some purse money to help keep the farms in Massachusetts operating.

Sincerely,

George F. Brown

Chairman, Massachusetts Thoroughbred Breeders Association



*Division of Racing*

October 21, 2015

Mr. James Alcott  
Director of Pari-Mutuel Operations  
Suffolk Downs  
525 McClellan Highway  
East Boston, MA 02128

Dear Mr. Alcott,

The Massachusetts Gaming Commission approves the Suffolk Downs request to change its post-time from 12:00 pm to 11:05 am for Saturday October 31, 2015.

Respectfully,

Alexandra Lightbown, DVM  
Interim Director of Racing  
Massachusetts Gaming Commission

Cc: Chip Tuttle, Chief Operating Officer, Suffolk Downs



Massachusetts Gaming Commission

101 Federal Street, 12<sup>th</sup> Floor, Boston, Massachusetts 02110 | TEL 617.979.8400 | FAX 617.725.0258 | [www.massgaming.com](http://www.massgaming.com)



*Division of Racing*

**Racing Division's Public Hearing**  
**Brockton Agricultural Society-Running Horse Racing License Application**

**NOTICE OF PUBLIC HEARING AND AGENDA**

November 4, 2015

Pursuant to the Massachusetts Open Meeting Law, G.L. c.30A, §§18-25, notice is hereby given of a public hearing of the Massachusetts Gaming Commission.

The hearing will take place:

Wednesday, November 4, 2015

1:30 p.m.

The Conference Center at Massasoit

770 Crescent Street (Rte. 27)

Brockton, MA 02302

**PUBLIC HEARING**

1. Call to order
2. Public Input

I certify on this date, this Notice was posted as "Racing Division Public Hearing" at [www.massgaming.com](http://www.massgaming.com) and emailed to: [regs@state.ma.us](mailto:regs@state.ma.us) and [Melissa.andrade@state.ma.us](mailto:Melissa.andrade@state.ma.us).

10/27/15  
(Date)

Alexandra Lightbown  
Dr. Alexandra Lightbown  
Interim Director of Racing/  
Chief Veterinarian and Operations Manager

Posted to Website: October 27, 2015



Massachusetts Gaming Commission

101 Federal Street, 12<sup>th</sup> Floor, Boston, Massachusetts 02110 | TEL 617.979.8400 | FAX 617.725.0258 | [www.massgaming.com](http://www.massgaming.com)





*Division of Racing*

**Racing Division's Public Hearing**  
**Middleborough Agricultural Society-Running Horse Racing License Application**

**NOTICE OF PUBLIC HEARING AND AGENDA**

November 4, 2015

Pursuant to the Massachusetts Open Meeting Law, G.L. c.30A, §§18-25, notice is hereby given of a public hearing of the Massachusetts Gaming Commission.

The hearing will take place:

Wednesday, November 4, 2015

1:30 p.m.

The Conference Center at Massasoit

770 Crescent Street (Rte. 27)

Brockton, MA 02302

**PUBLIC HEARING**

1. Call to order
2. Public Input

I certify on this date, this Notice was posted as "Racing Division Public Hearing" at [www.massgaming.com](http://www.massgaming.com) and emailed to: [regs@state.ma.us](mailto:regs@state.ma.us) and [Melissa.andrade@state.ma.us](mailto:Melissa.andrade@state.ma.us).

10/23/15  
(Date)

Dr. Alexandra Lightbown  
Interim Director of Racing/  
Chief Veterinarian and Operations Manager

Posted to Website: October 23, 2015



Massachusetts Gaming Commission

101 Federal Street, 12<sup>th</sup> Floor, Boston, Massachusetts 02110 | TEL 617.979.8400 | FAX 617.725.0258 | [www.massgaming.com](http://www.massgaming.com)



*Division of Racing*

**Racing Division's Public Hearing**  
**Plainridge Park Casino Harness Horse Racing License Application**

**NOTICE OF PUBLIC HEARING AND AGENDA**

November 4, 2015

Pursuant to the Massachusetts Open Meeting Law, G.L. c.30A, §§18-25, notice is hereby given of a public hearing of the Massachusetts Gaming Commission.

The hearing will take place:

Wednesday, November 4, 2015

10:00 a.m.

Plainville Council on Aging

9 School Street

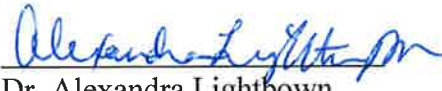
Plainville, MA 02762

**PUBLIC HEARING**

1. Call to order
2. Public Input

I certify on this date, this Notice was posted as "Racing Division Public Hearing" at [www.massgaming.com](http://www.massgaming.com) and emailed to: [regs@state.ma.us](mailto:regs@state.ma.us) and [Melissa.andrade@state.ma.us](mailto:Melissa.andrade@state.ma.us).

10/23/15  
(Date)

  
Dr. Alexandra Lightbown  
Interim Director of Racing/  
Chief Veterinarian and Operations Manager

Posted to Website: October 23, 2015



Massachusetts Gaming Commission

101 Federal Street, 12<sup>th</sup> Floor, Boston, Massachusetts 02110 | TEL 617.979.8400 | FAX 617.725.0258 | [www.massgaming.com](http://www.massgaming.com)



*Division of Racing*

**Racing Division's Public Hearing**  
**Suffolk Downs Running Horse Racing License Application**

**NOTICE OF PUBLIC HEARING AND AGENDA**

November 5, 2015

Pursuant to the Massachusetts Open Meeting Law, G.L. c.30A, §§18-25, notice is hereby given of a public hearing of the Massachusetts Gaming Commission.

The hearing will take place:

Thursday, November 5, 2015

3:00 p.m.

Boston Convention and Exhibition Center

415 Summer Street, Room 107 A/B

Boston, MA

**PUBLIC HEARING**

1. Call to order
2. Public Input

I certify on this date, this Notice was posted as "Racing Division Public Hearing" at [www.massgaming.com](http://www.massgaming.com) and emailed to: [regs@state.ma.us](mailto:regs@state.ma.us) and [Melissa.andrade@state.ma.us](mailto:Melissa.andrade@state.ma.us).

10/23/15  
(Date)

Alexandra Lightbown  
Dr. Alexandra Lightbown  
Interim Director of Racing/  
Chief Veterinarian and Operations Manager

Posted to Website: October 23, 2015



Massachusetts Gaming Commission



TO: Commissioners

FROM: Justin Stempeck, Staff Attorney

CC: Catherine Blue, General Counsel

DATE: October 23, 2015

RE: Daily Fantasy Sports

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This memorandum will address the legal history of gaming in Massachusetts and its potential intersection with daily fantasy sports (“DFS”), with additional reference to potentially relevant federal statutes.

## **I. Legal History of Gaming in Massachusetts**

### **A. Illegal Gaming**

Illegal gaming in Massachusetts is defined as any:

banking or percentage game played with cards, dice, tiles or dominoes, or an electronic, electrical or mechanical device or machine for money, property, checks, credit or any representative of value, but excluding: (i) a lottery game conducted by the state lottery commission, under sections 24, 24A and 27 of chapter 10; (ii) a game conducted under chapter 23K; (iii) pari-mutuel wagering on horse races under chapters 128A and 128C and greyhound races under said chapter 128C; (iv) a game of bingo conducted under chapter 271; and (v) charitable gaming conducted under said chapter 271.

M.G.L. c. 4, § 7.

In addition to this definition, cited in only one case,<sup>1</sup> Massachusetts case law has noted that “the word ‘game’ is very comprehensive and embraces any contrivance or institution which has for its object the furnishing of sport, recreation or amusement. ‘Gaming for money or other property’ is illegal.” Com. v. Theatre Adver. Co., 286 Mass. 405, 411 (1934) (internal citations omitted). Nevertheless, no Massachusetts statute directly criminalizes participation in “illegal gaming” or a “banking or percentage game” in those terms. Instead, Massachusetts addresses illegal gaming through a multitude of different criminal statutes dealing with where, when and how “illegal gaming” is conducted or financed including,

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<sup>1</sup> Sullivan v. Vorenberg, 241 Mass. 319 (1922) (the receiving of a bet on a horse race and making a memo of same on a slip of paper is “registering a bet” and thus, illegal gaming)

but not limited to, statutes on running an illegal gaming establishment,<sup>2</sup> trying to recover gaming losses,<sup>3</sup> loaning money for purposes of gaming,<sup>4</sup> and running a bet-placing operation;<sup>5</sup> amongst others.

## **B. Lotteries**

While there is very little case law addressing the statutory definition of “illegal gaming,” there are a number of cases addressing “lotteries.” The term “lottery” has been interpreted broadly to include any activities consisting of the following three elements: “(1) the payment of a price for (2) the possibility of winning a prize, depending upon (3) hazard or chance.” See Com. v. Stewart-Johnson, 78 Mass. App. Ct. 592, 594 (2011), quoting, Com. v. Lake, 317 Mass. 264, 267 (1944). The running of lotteries outside of a “gaming establishment” is illegal under Massachusetts law and such lotteries are broadly defined to include certain types of illegal gaming:

Whoever sets up or promotes a lottery for money or other property of value, or by way of lottery disposes of any property of value, or under the pretext of a sale, gift or delivery of other property or of any right, privilege or thing whatever disposes of or offers or attempts to dispose of any property, with intent to make the disposal thereof dependent upon or connected with chance by lot, dice, numbers, game, hazard or other gambling device that is not taking place in a gaming establishment licensed pursuant to chapter 23K, whereby such chance or device is made an additional inducement to the disposal or sale of said property, and whoever aids either by printing or writing, or is in any way concerned, in the setting up, managing or drawing of such lottery, or in such disposal or offer or attempt to dispose of property by such chance or device, shall be punished by a fine of not more than three thousand dollars or by imprisonment in the state prison for not more than three years, or in jail or the house of correction for not more than two and one half years.

M.G.L. c. 271, § 7.<sup>6</sup>

In order to set chance-based endeavors apart from other contests that evaluated the skill of participants, the Commonwealth adopted an approach now known as the “dominant factor test.” The Supreme Judicial Court stated that:

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<sup>2</sup> M.G.L. c. 137, § 2.

<sup>3</sup> M.G.L. c. 137, § 1.

<sup>4</sup> M.G.L. c. 137, § 3.

<sup>5</sup> M.G.L. c. 271, § 17.

<sup>6</sup> This statute has been widely used as a catch-all for other types of illegal gambling:

Over time, “lottery” has become used as shorthand for a wide variety of gambling practices deemed to be prohibited by the statute. Such practices extend significantly beyond the narrowest sense of the term (the sale of chances that a number selected by a player will match one chosen in a random drawing). Thus, for example, a pinball game with a cash prize has been viewed as a “lottery” within the meaning of the statute.

Com. v. Stewart-Johnson, 78 Mass. App. Ct. 592, 595, (2011), citing Com. v. Macomber, 333 Mass. 298 (1955).

Where the game contains elements both of chance and of skill, in order to render the laws against lotteries effectual to combat the evils at which they are aimed, it has been found necessary to draw a compromise line between the two elements, with the result that by the weight of authority a game is now considered a lottery if the element of chance predominates and not a lottery if the element of skill predominates.

Com. v. Lake, 317 Mass. 264, 267 (1944); see also Com. v. Plisner, 295 Mass 457, 464 (1936).

Massachusetts cases evaluating the chance versus skill balance have looked at a number of disparate scenarios as set forth below:

In Plisner, the Court found that a machine where a player operated a toy crane to attempt to pick prizes was more chance than skill (and thus a lottery) where the players' only ability to manipulate the crane was to set the area where it would descend and where the player had no ability to influence the manner or strength by which the crane closed its claw on a potential prize. 295 Mass. at 244.

In Com. v. Theatre Advertising Co., Inc., 286 Mass. 405, 410 (1934), the court found that a game called "Beano," consisting of a combination of darts and bingo, involved more chance than skill and thus constituted illegal gaming.

Similarly, in Lake the court examined a machine that players would pay to use to attempt to win prizes. After paying, the player could press a button to cause a mechanical arm to swing out in an attempt to push various prizes into a hole in the center of a rotating circle. The defendant argued that the machine did not constitute a lottery where success was based on the skill of the player. The court reasoned that even if it was possible to become skilled enough in the machine to outweigh the chance involved that "in determining which element predominates, where the game is not one of pure skill or of pure chance, some courts have held, we think rightly, that it is permissible in appropriate instances to look beyond the bare mechanics of the game itself and to consider whether as actually played by the people who actually play it chance or skill is the prevailing factor." Id. at 925. Ultimately, the court explained that the determination of whether the game was more one of skill or chance was left to the jury.

In U.S. v. Marder, 48 F.3d 564 (1st Cir. 1995), the First Circuit examined the chance versus skill argument in the context of video poker machines while applying Massachusetts law. The court found that chance predominated and that the jury could lawfully find that the defendant was operating an illegal lottery despite recognizing that there was some skill involved in a player choosing which cards to discard from any given hand. The court examined many different facts including: the extremely short amount of time that players would take to play a hand, the lack of the role of any normal poker skills in play and the fact that "there were a great many more losers than winners."

To date, no Massachusetts case has addressed whether fantasy sports or daily fantasy sports would constitute a "lottery" as in the examples set forth above. The cited cases all involved analyzing chance versus skill where the individual playing the game had a direct effect on the outcome of the game (i.e., personally operating a crane, choosing cards or throwing darts). These examples stand in contrast to daily fantasy sports where the player's skill is exercised only in choosing the roster, as the player has no ability to control the final outcome of the sporting events. It is not clear whose skill a Massachusetts court would examine in determining the skill versus chance contest in the fantasy sports arena.



### **C. Betting Pools**

Another related area of Massachusetts gaming law that factors into many of the criminal statutes addresses the “pooling” of bets or wagers. Such statutes are of particular relevance in light of the recent opinion by the Nevada attorney general finding that DFS constitute gaming requiring licensure where DFS qualify as both “sports pools” and “percentage games” under Nevada law.

The two primary statutes in Massachusetts addressing betting “pools” are G.L. c. 271, §§ 16A and 17. § 16A states:

Whoever knowingly organizes, supervises, manages or finances at least four persons so that such persons may provide facilities or services or assist in the provision of facilities or services for the conduct of illegal lotteries, or for the illegal registration of bets or the illegal buying or selling of pools upon the result of a trial or contest of skill, speed or endurance of man, beast, bird or machine, or upon the happening of any event, or upon the result of a game, competition, political nomination, appointment or election, or whoever knowingly receives from at least four such persons compensation or payment in any form as a return from such lotteries, such registration or such buying or selling shall be punished . . . . As used in this section the word "persons" shall not include bettors or wagerers or persons who organize, supervise, manage or finance persons for the purpose of gaming conducted under chapter 23K who merely avail themselves of such facilities or services for the purpose of making a bet or wager and do not otherwise provide or assist in the provision of such facilities or services. This section shall not apply to such bettors or wagerers.

Similarly, § 17 states

Whoever keeps a building or room, or any part thereof, or occupies, or is found in, any place, way, public or private, park or parkway, or any open space, public or private, or any portion thereof, with apparatus, books or any device, for registering bets, or buying or selling pools, upon the result of a trial or contest of skill, speed or endurance of man, beast, bird or machine, or upon the result of a game, competition, political nomination, appointment or election, or whoever is present in such place, way, park or parkway, or any such open space, or any portion thereof, engaged in such business or employment; or, being such keeper, occupant, person found or person present, as aforesaid, registers such bets, or buys or sells such pools, or is concerned in buying or selling the same; or, being the owner, lessee or occupant of a building or room, or part thereof, or private grounds, knowingly permits the same to be used or occupied for any such purpose, or therein keeps, exhibits, uses or employs, or knowingly permits to be therein kept, exhibited, used or employed, any device or apparatus for registering such bets, or for buying or selling such pools, or whoever becomes the custodian or depository for hire, reward, commission or compensation in any manner, of any pools, money, property or thing of value, in any manner staked or bet upon such result, shall be punished by a fine of not more than three thousand dollars or by imprisonment in the state prison for not more than three years, or in jail or the house of correction for not more than two and one half years. This section shall not apply to a person who organizes, supervises,

manages or finances another person for the purpose of gaming conducted in accordance with chapter 23K.

Limited case law has addressed “betting pools;” however, Commonwealth v. Sullivan, provides a definition of the term and some explanation of how a betting pool works:

A pool has been defined as 'a combination of stakes the money derived from which was to go to the winner.' . . . This does not mean, however, that all the money derived from the combination of stakes must go to the winner. Commonly the man who runs the pool makes something out of the transaction. It is enough to constitute the criminal offense if there is a combination of stakes a part of which is to go to the winner. . . . [It] is enough if the proceeds of the so-called purchases of the coupon books constituted a fund out of which the so-called prizes--in fact the proceeds of the pool--were paid to the winners in the game of chance.

218 Mass. 281, 283 (1914).

The Court described the activity at issue in Sullivan in the following terms:

There was evidence tending to show that the defendants kept the rooms and there kept and sold, for twenty-five cents each, books entitled, 'American and National League Baseball Schedule and Record Book.' The book was exhibited in evidence and is described in the record as 'containing many advertisements and a schedule of dates when and places where baseball games were to be played by the various clubs belonging to the American and National Leagues together with some other information.' One page contained two coupons to be filled out in duplicate 'by writing in the names of the baseball clubs which the contestant believed would score the greatest number of runs on each day of the following week.' One coupon was to be given to one of the defendants and the other kept by the contestant. The names of six different baseball teams could be used, but the name of one could not be used twice during the same week. Prizes of considerable amounts were offered. . . . Whether the aggregate of the prizes constituted the entire pool does not appear in the evidence and is of no consequence. But it is enough if the proceeds of the so-called purchases of the coupon books constituted a fund out of which the so-called prizes--in fact the proceeds of the pool--were paid to the winners in the game of chance.

Sullivan further defines a “bet” as “the hazard of money or property upon an incident by which one or both parties stand to lose or win by chance.”<sup>7</sup> Id. “For one to have placed a “bet,” he must have taken a risk on the uncertain outcome of a particular event and, depending on the outcome, he must be entitled to receive payment from another.” Com. v. Sousa, 33 Mass. App. Ct. 433, 437 (1992)

Many of the contests offered by DFS operators involve numerous participants paying their entry fees into a common pool, from which the winner receives his/her award (with the operator also

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<sup>7</sup> This definition is extremely similar to the definition of “wager” applied by the Nevada attorney general. In Nevada, a wager is “a sum of money or representative of value that is risked on an occurrence for which the outcome is uncertain.” See Nev. Rev. Stat. Ann. 463.01962. Massachusetts’ definition of bet was cited with approval as recently as 1992.

receiving a percentage of the total pool value). No Massachusetts court has addressed whether fantasy sports or DFS would qualify as betting pools and thus run afoul of either G.L. c. 271, §§ 16A or 17.

## **II. Does the MGC Have Any Obligation or Authority to Regulate DFS?**

The Massachusetts Gaming Act sets forth the scope of the Commission's powers in the realm of gaming oversight. Critically, under the Act, the "paramount policy objective" is "ensuring public confidence in the integrity of the gaming licensing process and in the strict oversight of all gaming establishments." M.G.L. c. 23K, § 1(1) (emphasis added). The term "gaming establishments" is specifically defined as "the premises approved under a gaming license which includes a gaming area and any other nongaming structure related to the gaming area and may include, but shall not be limited to, hotels, restaurants or other amenities." *Id.* at §2.

Numerous other sections of the Gaming Act explain the Commission's involvement with "licensees" and "gaming establishments," but there is no suggestion within the Act that the Commission is responsible for oversight of questionably illegal gaming occurring outside the four walls of a licensed "gaming establishment." The only potential argument for greater oversight authority can be found in the list of enumerated powers of the commission at § 4(36) of the Act which states that the powers include the ability to: "monitor any federal activity regarding internet gaming and coordinate with the office of the treasurer and receiver general on implementing any measures necessary to protect the commonwealth's lottery and gaming interests." There are no regulations associated with this section that further explain how such powers would be exercised nor is "internet gaming" a defined term in the statute itself.

G.L. c. 23K defines "Game" as: "a banking or percentage game played with cards, dice, tiles, dominoes or an electronic, electrical or mechanical device or machine played for money, property, checks, credit or any other representative of value which has been approved by the commission." Critically this definition is nearly identical to the definition of illegal gaming cited in the preceding section. Neither statute nor any regulations further define a "banking or percentage game;" however, a banking game is traditionally one in which players play against the house (blackjack, roulette, craps) versus a percentage game where players directly compete against each other and the house takes a rake (poker).

These definitions of "game" and "illegal gaming" are similar to Nevada's definition of "gambling games." Nevada's attorney general recently concluded that DFS constitute "sports pools" and "gambling games" under Nevada law and thus require a license to run. In analyzing the comparison between DFS and "gambling games" the attorney general noted that DFS was not likely to qualify as a banking game as players do not play against the house but that DFS did qualify as a percentage game where players played against each other and the operator took a percentage of the overall betting pool.

Recently, Massachusetts' attorney general stated that DFS is not expressly made illegal under Massachusetts and Federal gaming law but that she planned to meet with DFS representatives to discuss implementing consumer protection mechanisms. Although M.G.L. c. 4, § 7 identifies percentage games as "illegal gaming," there is no statute that actually criminalizes percentage games absent violation of one of the associated criminal statutes mentioned above. In contrast, Nevada's Revised Statute 463.160 makes it unlawful for any person to "deal, operate, carry on, conduct, maintain or expose for play in Nevada any gambling game without first obtaining a gaming license." (emphasis

added). There is no corollary to this statute in Massachusetts and our Gaming Act does not criminalize offering a percentage game.

As the Gaming Act is currently drafted, the MGC has no ability to regulate DFS without formal legislative action broadening its oversight powers. Even if DFS were determined to qualify as a percentage game, the Act does not provide the MGC with generalized authority over gaming outside of a “gaming establishment.”

### **III. The Role of UIGEA**

While both Fanduel and DraftKings rely on UIGEA to support their conclusions that DFS are legal, this conclusion is not entirely clear, particularly where DFS did not exist at the time that UIGEA was passed in 2006.<sup>8</sup> Dozens of articles have broadly stated that UIGEA is a federal law that made DFS legal. Such a conclusion is an over-simplification of the statute, which has a far narrower scope.

UIGEA prohibits “gambling businesses from knowingly accepting payments in connection with the participation of another person in a bet or wager that involves the use of the Internet and that is unlawful under any federal or state law.” The focus of the statute was the exploding online poker industry and its passage effectively eliminated online poker in the U.S. It is essentially an enforcement act dealing specifically with payment processing. UIGEA on its own does not legalize DFS or fantasy sports of any kind.

In the “Congressional Findings and Purpose” section of the statute, the “Rule of Construction” notes that: “No provision of this subchapter shall be construed as altering, limiting, or extending any Federal or State law or Tribal-State compact prohibiting, permitting, or regulating gambling within the United States.” (emphasis added). Thus, UIGEA defers to any other federal or state law that prohibits or regulates gambling, including DFS. Ostensibly, a company could be in compliance with UIGEA but still violate state law and mere compliance with UIGEA would not protect the company.

The oft-cited UIGEA provision relied upon by DFS operators is merely an exception to the statute’s definition of “bet” or “wager.” There is no express language legalizing fantasy sports, nor any indication that the drafters contemplated the way DFS operate today.

Further, under the text of UIGEA, fantasy sports are only entitled to a carve out when “all winning outcomes reflect the relative knowledge and skill of the participants and are determined predominantly by accumulated statistical results of the performance of individuals (athletes in the case of sports events) in multiple real-world sporting or other events.” Based on this definition, it is unclear how certain DFS providers can offer contests, such as golf and NASCAR, with results based on solely one tournament/race.

### **IV. Other States’ Approaches to DFS Regulation**

#### **A. Kansas**

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<sup>8</sup> The first DFS website appeared in 2007.

In 2015, the Kansas legislature excluded fantasy sports leagues from the definition of a "bet" if the league meets certain conditions set forth in the definition of Fantasy Sports League found in K.S.A. 21-6403(d):<sup>9</sup>

"Fantasy sports league" means any fantasy or simulation sports game or contest in which no fantasy or simulation sports team is based on the current membership of an actual team that is a member of an amateur or professional sports organization and that meets the following conditions:

(1) All prizes and awards offered to winning participants are established and made known to the participants in advance of the game or contest and their value is not determined by the number of participants or the amount of any fees paid by those participants;

(2) all winning outcomes reflect the relative knowledge and skill of the participants and are determined predominantly by accumulated statistical results of the performance of individual athletes in multiple real-world sporting events; and

(3) no winning outcome is based:

(A) on the score, point spread or any performance or performances of any single real-world team or any combination of such teams; or

(B) solely on any single performance of an individual athlete in any single real-world sporting event.

This change in the law contradicted the previous position taken by the Kansas Racing and Gaming Commission that fantasy sports were an illegal lottery where they had a prize, consideration and chance. On its website FAQ section in 2014, the Commission stated that fantasy leagues were predominantly games of chance<sup>10</sup> and cited to a similar opinion by the Florida attorney general's office. The Commission's website still links to an article where they take the position that gambling on fantasy sports is illegal although the language expressing the opinion that such leagues were games of chance has been removed from the FAQ section. Additionally, it appears clear from the 2015 legislation that this position by the Commission has now been officially superseded.

## **B. Florida**

Although lacking any statutory or regulatory authority on the subject of DFS, in 1991 the Florida attorney general was asked for an opinion concerning the legality of a fantasy football league wherein a group of football fans each paid an entry fee of \$100.00 to draft and manage a team for the football

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<sup>9</sup> This definition mirrors that of the UIGEA fantasy sports carve out.

<sup>10</sup> The commission specifically cited to such factors left to chance as (1) how a drafted athlete performs in a future event; (2) whether a drafted player is injured; (3) whether the player's actual team in a given week executes a game plan that fits the player's talents; whether the coach calls plays that favor the player; and (4) how opponents of the actual player (who may be drafted by another manager) actually play.

season. At the end of the season the winner with the highest aggregate statistics would win the total amount of entry fees paid.

In evaluating the scenario, the attorney general discussed the fact that state gaming laws typically governed contests of skill and that the drafting of a fantasy football team could involve some skill; however, under Florida law: "Whoever stakes, bets or wagers any money or other thing of value upon the result of any trial or contest of skill, speed or power or endurance of man or beast . . . or whoever knowingly becomes the custodian or depositary of any money or other thing of value so staked, bet, or wagered upon any such result . . . shall be guilty of a misdemeanor." Fla. Stat. 849.14. Citing this statute, the attorney general noted that the statute prohibited the fantasy football league where the \$100.00 entry fee constituted a "bet, stake or wager" on a contest of skill.

### **C. Washington State**

A senator in Washington State introduced a bill in early 2015 that would have defined fantasy sports specifically as skill-based and not gambling. Washington is one of five states where DFS are not offered due to the manner in which state law defines gambling<sup>11</sup>. At the State Senate Labor and Commerce Hearing to discuss the bill, the presenting senator clearly stated that her bill was for season-long fantasy sports which were "games of skill" and not DFS which were undoubtedly "gambling." A representative from the Fantasy Sports Trade Association also spoke in favor of the bill but attempted to characterize DFS as games of skill. The commission was unpersuaded by his presentation and repeatedly observed that such daily competitions suggested the actions were gambling. This bill has not yet been acted upon and has been reintroduced in several separate legislative sessions.

### **D. Nevada**

On October 16, 2015, Nevada's Office of the Attorney General provided a 17-page memorandum to Nevada's Gaming Control Board concerning the "Legality of Daily Fantasy Sports Under Nevada Law." This memorandum came a day after the Board released a "Notice to Licensees" declaring that DFS constitute gambling under Nevada law and thus any provider of DFS must have a gaming license in order to offer DFS within the state. The Board explained that "DFS meets the definition of a game or gambling game pursuant to Chapter 463 of the Nevada Revised Statutes" and that "because DFS involves wagering on the collective performance of individuals participating in sporting events, under current law, regulation and approvals, in order to lawfully expose DFS for play within the State of Nevada, a person must possess a license to operate a sports pool issued by the Nevada Gaming Commission." These conclusions were further supported and explained in the attorney general's detailed memorandum.

Nevada defines a "game" or "gambling game" as:

any game played with cards, dice, equipment or any mechanical, electromechanical or electronic device or machine for money, property, checks, credit or any representative of value, including, without limiting the generality of the foregoing, faro, monte,

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<sup>11</sup> Washington defines "gambling" in relevant part as "staking or risking something of value upon the outcome of a contest of chance or a future contingent event not under the person's control or influence, upon an agreement or understanding that the person or someone else will receive something of value in the event of a certain outcome." RCW 9.46.0237.



roulette, keno, bingo, fan-tan, twenty-one, blackjack, seven-and-a-half, big injun, klondike, craps, poker, chuck-a-luck, Chinese chuck-a-luck (dai shu), wheel of fortune, chemin de fer, baccarat, pai gow, beat the banker, panguingui, slot machine, any banking or percentage game or any other game or device approved by the Commission, but does not include games played with cards in private homes or residences in which no person makes money for operating the game, except as a player, or games operated by charitable or educational organizations which are approved by the Board pursuant to the provisions of NRS 463.409.

Nev. Rev. Stat. Ann. § 463.0152.

In applying this definition to DFS, the attorney general determined that DFS are a “game played with cards, dice, equipment or any mechanical electromechanical or electronic device or machine” and that they are played for “money, property, checks, credit or any representative of value.” The attorney general concluded that DFS are not a “banking game” (where participants play against the house as in craps, roulette or blackjack), but that DFS qualify as “percentage games” because the players wager against each other and the house takes a percentage of each wager.

Additionally, the attorney general examined the statutory definitions applicable to sports pools to conclude that DFS operators must possess a license (issued by the board) to operate.

Nevada defines a sports pool as “the business of accepting wagers on sporting events or other events by any system or method of wagering.” See Nev. Rev. Stat. Ann. § 463.0193. A “wager” is defined as “a sum of money or representative of value that is risked on an occurrence for which the outcome is uncertain.” See Nev. Rev. Stat. Ann. § 463.01962. Analyzing these definitions in the context of DFS, the attorney general concluded that “wagers” are present in DFS and that DFS operators are in “the business of accepting wagers on sporting events,” thus they require a license to operate within the state.

#### **E. Michigan**

The Michigan Gaming Control Board’s executive director recently opined that under current Michigan law, daily fantasy sports are illegal. The board has yet to publish anything official establishing this position nor has the Michigan attorney general commented on the statement. Ironically, approximately a week before the Board took this position a state senator introduced a bill to legalize fantasy sports as a game of skill. The proposed bill seeks to carve out fantasy sports, as defined by UIGEA, from the state penal code as it applies to gambling

#### **F. California**

Early in 2015, state lawmakers in California introduced a bill to regulate DFS. That bill has been extensively amended and is still pending in committee. Under the bill, DFS operators in the state would be required to obtain a license prior to offering any games to residents of California. The bill additionally contains numerous consumer protection safeguards.

#### **G. Massachusetts**

There is no current or pending legislation concerning the legality of DFS in Massachusetts.

State senator Michael Rush introduced a bill which would authorize the Lottery commission to create online games of skill which would allow customers to play fantasy sports or poker accessible only via a prepaid card that would need to be purchased, in-person, from lottery agents. This bill is currently pending in the Joint Committee on Consumer Protection and Professional Licensure.

## **V. Federal Law and Potential Intersection with DFS**

A number of federal statutes have potential application to DFS; however, none have been yet been used to challenge the industry.

### **A. The Interstate Wire Act of 1964 (“IWA”)**

The IWA begins by stating:

Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more than two years, or both.

18 U.S.C. § 1084.

The IWA has been held to apply to wagers on sporting events made over the internet, despite the fact that the internet did not exist at the time the statute was drafted. See U.S. v. Lyons, 740 F.3d 702, 717 (1<sup>st</sup> Cir. 2014). The “bets or wagers” contemplated by the IWA have been interpreted as risking money on a game that includes an element of chance. United States v. Bergland, 209 F. Supp. 547, 548 (E.D. Wis. 1962) rev'd, 318 F.2d 159 (7th Cir. 1963).

IWA has never specifically been used to challenge DFS. Applying the IWA to DFS would require evidence that DFS operators are “engaged in the business of betting or wagering” on “any sporting event or contest” and that the bets or wagers include an element of chance.

### **B. Illegal Gambling Business Act of 1970 (“IGBA”)**

In order to determine if a defendant violated IGBA the government must show that

(1) a gambling business described in the indictment was conducted which violated the laws of the state in which it was conducted; (2) five or more persons including the defendant, knowingly and deliberately conducted, financed, managed, supervised, directed or owned all or part of that gambling business; and (3) the gambling business was either in substantially continuous operation for more than thirty days, or, alternatively, the gambling business, on at least one day, had gross revenues of two thousand dollars or more.

United States v. Conley, 37 F.3d 970, 977 (3rd Cir. 1994); 18 U.S.C. § 1955.

Based on the overwhelming success and rapid growth of DFS, the second two of the three criteria cited above are likely met by DFS providers. The critical element that could result in federal prosecution would be a determination that DFS is illegal under state law. To date no DFS providers have been pursued via IGBA.

### **C. Professional and Amateur Sports Protection Act (“PASPA”)**

PASPA was passed in 1992 to effectively outlaw sports betting in all but a few specific states. The most relevant section of PASPA with respect to DFS states:

It shall be unlawful for

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a person to sponsor, operate, advertise, or promote, pursuant to the law or compact of a governmental entity, a lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly (through the use of geographical references or otherwise), **on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games.**

28 U.S.C. § 3702 (emphasis added).

Based on its broad application, PASPA could equally apply to challenge DFS in the event that DFS was defined by any state law as “a lottery, sweepstakes...betting, gambling or wagering scheme.” Again, the applicability of this federal statute is dependent upon state law categorizing DFS. While professional sports leagues have aggressively challenged any attempts to legalize sports betting in contravention of PASPA, the statute has never been used to challenge DFS providers.

## **VI. Conclusion**

As is clear from the discussion and examples set forth in this memorandum, the legal status of DFS is in flux. The common denominator to any analysis of DFS will hinge on specific state interpretation of whether DFS constitutes illegal gaming under state law, which could potentially also trigger liability under federal statutes as mentioned above.

## MEMORANDUM

October 26, 2015

**TO:** Chairman Crosby and Commissioners Cameron, Stebbins & Zuniga

**FROM:** Commissioner McHugh

**Re:** Internet Gaming

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This memorandum summarizes current issues and trends Internet gaming. It is intended to be a true summary, not a comprehensive discussion of all facets of the Internet world, for there simply is too much in that world to fit in any memo of reasonable length. Accordingly, the memorandum touches on important aspects of current Internet current activity and where that activity is likely to lead, at least in the near term. In addition to information I obtained over the past three years from various industry publications and through participation in a variety of national Internet gaming conferences, many of the specific sources on which I relied in preparing this memo are available via the hyperlinks readers of the electronic version of the memo will see throughout the text. Finally, although the memorandum discusses fantasy sports and although I am delivering it to all of you at a time when fantasy sports are on center stage, I promised the Chairman some time ago that I would pull my iGaming thoughts together before I left, so the timing is driven by my departure date, not by current issues.

### I. Introduction & Background

At the outset, several general observations are worthwhile. Although only Delaware, New Jersey and Nevada currently permit Internet gambling, Internet gambling, legal and illegal, is huge enterprise. As reported in a recently completed [study commissioned by the American Gaming Association](#), a huge amount of illegal Internet gambling opportunities are available in the United States. Indeed, their widespread availability, the risk to bettors they pose and the loss of tax revenue they create have been used as reasons for permitting state created and controlled gambling opportunities in the United States and elsewhere.

Outside of the United States, there is an enormous amount of legal and highly regulated Internet gambling activity. In Europe, for example, Internet gambling is widely available and provides a broad array of betting opportunities. [Bet365](#), just one of many UK sites, quickly shows the breadth of that array. Many European nations permit Internet gambling and have created national regulatory bodies to oversee it. Indeed, some of the smaller European jurisdictions including Alderney, one of the British Channel Islands, the Isle of Man in the Irish Sea and Gibraltar are the headquarters for many European Internet

gaming operators. The [Alderney Gambling Control Commission](#), the [Isle of Man Gambling Supervision Commission](#) and the [Gibraltar Gambling Division](#) are widely viewed as effective regulators.

For a long time, United States regulators and law-enforcement officials believed that Internet gambling was prohibited by the [Wire Act](#), 18 U.S.C. § 1084, a 1961 statute that makes it illegal to use “a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers.” In December, 2011, however, the Justice Department released an [opinion](#) stating that the Act applies only to sports betting and has no application to casino games or other forms of gambling. Among other things, that opinion opened the door for states to permit and regulate gambling over the Internet. Thus far, Delaware, Nevada and New Jersey have done so. Their approaches are discussed below.

Some members of Congress and some in the gaming industry favor new legislation designed to counter the DOJ interpretation by creating a firm statutory ban on all Internet gambling in the United States. Sheldon Adelson, one of the world’s largest brick and mortar casino operators, is a leading proponent of that approach. In public discussions of the subject, he maintains that his view is based on a belief that the Internet provides far too easy a path to addictive gambling. He often mentions addictive gambling within his own family and the experiences of his wife, [Miriam](#), a physician who specializes in addictive diseases. Last term, Sen. Lindsey Graham and others introduced [legislation](#) entitled “Restoration of America’s Wire Act” that was designed to achieve the result Adelson desires but the legislation attracted little support and failed to pass.

Some industry supporters of Internet gaming also support federal as opposed to state regulation of online activity. Those supporters point to the desirability of a single set of standards that would flow from federal regulation and the liquidity, i.e., the availability of open table spaces particularly for poker, a single, nationwide regulatory framework federal legislation would provide. In 2013, Senate Majority Leader Harry Reid and Arizona Senator Jon Kyl discussed legislation that would have created federal control over all online gambling activity and actually drafted a [bill](#) to achieve that result. Their [effort failed](#) and there has been no real focus on reviving the effort since then. As a result, the center of recent Internet regulatory activity has been in the states.

In the past, one of the strong arguments against state-by-state regulation of Internet gambling had to do with the perceived difficulties in determining the age or location of bettors. Those difficulties now have been largely solved. With the assistance of a firm

called [GeoComply USA](#), New Jersey has implemented a highly sophisticated, highly accurate geolocation protocol to ensure that online bettors are actually betting from within New Jersey state lines. [The New Jersey Division of Gaming Enforcement](#) is constantly testing that protocol and is confident that it works with a high degree of precision. The same is true of protocols the State has instituted to ensure that there are no underage bettors, though regulators agree that no protocol can ensure that a registered adult will not allow someone below the statutory betting age to use his or her identity and credit card to place wagers on an Internet site.

In the three states that do allow Internet gaming, a persistent problem facing operators has been the reluctance of credit card companies to process wagers charged to a credit card on an Internet gambling site. That reluctance stems primarily from a fear of running afoul of The [Unlawful Internet Gaming Enforcement Act of 2006](#), 31 U.S.C. §§ 5361 et seq., (UIGEA), which prohibits the acceptance or processing of a financial instrument for the purpose of “unlawful Internet gambling.” The statute does not define unlawful internet gambling but, inferentially at least, relies on other federal and state laws to do so. It is clear, however, that the prohibition applies to everyone in the acceptance and processing chain. Consequently, as state authorized Internet gambling began, the major credit card companies, which act as clearing houses for credit card debt but do not themselves pay that debt, were not convinced that they could separate legal from illegal gambling payments. Accordingly, they refused to pass the charges on to the card-issuing banks. Ultimately, the industry convinced the companies that there was a way to separate legal from illegal gambling sites and debts, so the companies agreed to process the charges and send them to the card issuing banks for payment. Convincing the banks to pay the debts, however, has proven to be a more difficult problem because of the large numbers of banks that have to be convinced and because, even if one could reach all of those banks, many still do not want to be involved in what they view as a risky effort to differentiate legal from illegal gambling obligations. Recently, however, [PayPal](#), which has a very large role in processing European Internet gambling wagers, has [begun to test payment protocols](#) for four New Jersey Internet gambling sites. If the tests are successful and if PayPal then broadens its reach to all legal US Internet gaming sites, the difficulties posed by the reluctance of banks to pay legal Internet gambling debts may be removed.

Finally, when one thinks about Internet gaming, one should also be thinking about mobile gaming. To some extent, they offer the same content but on different platforms. For example, essentially the same Internet games offered by [Borgata Casino](#), one of Atlantic City's most successful Internet gaming hosts, can be played a desktop or an iPad or other mobile device far away from the gaming establishment. Mobile devices, however, also are increasingly used to allow players to walk away from the casino floor and continue to play slot machines and other games offered by the casino at the casino's restaurants, hotel



rooms or at poolside. One system on display at last year's G2E has a tablet attached to a slot machine so that a player could effectively take that slot machine to a restaurant or other on-premises location and keep playing. When the tablet is utilized in that fashion, the screen on the slot machine says "in use elsewhere" or something to that effect and the machine is unavailable to other players until the tablet is returned. Mobile devices also are used to allow players to take the casino with them when they return home and keep playing there, for money when it is legal to do so and for non-extractable prizes when it is not. See "140630 Mobile Gaming - Always on customer" in the *Internet File* on our shared drive.

## II. Casino Style Internet Gambling in the United States

### a. *Authorized under State Law*

As noted earlier, three states, Delaware New Jersey and Nevada, permit some form of Internet gambling. Of the three, New Jersey is by far the most robust and has licensed Internet games that look like slot machines, games that look like table games and Internet poker. A [report](#) issued by the New Jersey Division of Gaming Enforcement in January, 2015 stated that the state accounts for more than 90% of the legal Internet gaming revenue in the United States. All of the Internet gaming license holders in New Jersey also run brick and mortar casinos. Each is permitted to offer five separate "brands" of games. As a result, by January, 2015, New Jersey had issued seven Internet licenses to operators hosting 16 separate brands and a total of 423 games.

New Jersey Revenues from Internet gaming have been substantially lower than initially predicted. Many believe, however, that the initial predictions were vastly overstated. Those who hold that view also believe that New Jersey actually has done quite well thus far in producing the revenue from this new form of gaming. According to the Division of Gaming Enforcement's [revenue report](#) for the first nine months of 2015, Internet gaming accounted for approximately \$108 million, an increase of nearly 16% over the same period last year. The Division recently authorized [PokerStars](#), the biggest and the most attractive Internet poker site in the world, to start offering Internet poker in New Jersey and [observers](#) anticipate a substantial increase in poker revenues as a result. PokerStars had been banned from New Jersey because it was a "bad actor," the industry label placed on several major poker sites that were operating illegally and were closed down by the Department of Justice on April 15, 2011, a day the Internet gambling industry refers to as [Black Friday](#).

Thus far, Delaware and Nevada are playing far smaller roles in the Internet world. In both states as in New Jersey, Internet gaming licenses are available only to operators of brick-and-mortar casinos. Like New Jersey, Delaware permits all forms of Internet gaming. The state has three licensed casinos all of which are associated with horse tracks. Two of the tracks, Delaware Park and Delaware Downs, are for thoroughbreds, and the third,

Harrington Raceway, is for standardbreds. Compared to New Jersey, Delaware revenues are tiny. Through September of this year, the [state's share](#) amounted to \$1,250,000, down about 23% from \$1,610,000 during the same period last year.

Overall, the gaming industry in Delaware has been suffering to the point where it has sought [legislative relief](#) in the form of tax credits. In a joint effort to increase revenues, Delaware and Nevada entered a [compact](#) under which Delaware players are allowed to play Internet poker on Nevada sites and vice versa. The compact was designed to increase "liquidity," the number of open seats at a virtual poker table available at any given time, in both states. The compact was signed in February, 2014, and [interstate play](#) began in March of this year. While it appeared to provide an initial boost to Delaware poker revenue, [month-to-month decreases](#) quickly appeared.

Finally, Nevada only permits Internet poker. Virtually all of the state's Internet poker offerings are provided by World Series of Poker, a brand owned by [Caesar's Interactive Entertainment, Inc.](#), and operates on [software](#) provided by [888 Holdings](#), a Gibraltar-based company. The Nevada gaming control board does not release Internet [poker revenues](#) but estimates suggest that they are a very small percentage of [overall Nevada gaming revenues](#).

In the main, Internet games in all three jurisdictions are entirely virtual. The potential exists, though to utilize [live dealers](#) who use a real deck of cards and interact verbally with remote players via a voice link over which all players can hear what the dealer and a particular player are saying.

In addition to the three states where Internet gambling is now operating, [ten others](#) -- Pennsylvania, Alabama, Iowa, California, Connecticut, Illinois, New York, Pennsylvania, Rhode Island, Texas and Washington -- have considered authorizing Internet play. Thus far, none have done so. In the spring of this year, it appeared that Pennsylvania would very likely have Internet gaming before the end of the year but the legislative session expired before any of the pending measures were enacted. Now, however, in the midst of budgetary discussions, the [issue may be back on the table](#). Illinois is in the middle of a very serious budget crunch and that may cause legislators to push forward with thus far unsuccessful efforts that thus far have not succeeded.

#### *b. Massachusetts*

Last term, two Internet gaming bills were filed in the Massachusetts legislature but neither made it out of committee. This year, three bills are pending, two of which deal with the Lottery. The first, [S151](#), was introduced by Sen. Flanagan and referred to the Joint Committee on Consumer Protection and Licensure. That bill would authorize the Lottery to offer online "lottery" games but would allow the Lottery to decide what those games look like. Last term a similar bill died in committee. A hearing on S151 was scheduled for

September 15 but the Legislature's website does not show whether it was actually held on that date or, if it was, what resulted. The second of the two is [S191](#), which was introduced by Sen. Rush and also referred to the Joint Committee on Consumer Protection and Professional Licensure. That bill would authorize and direct the Lottery “to implement online games of skill, including, but not limited to, fantasy sports, so-called, poker, so-called, and other games of skill, subject to the provisions of, and preempted and superseded by, any applicable federal law.” A hearing on that bill also was scheduled for September 15. Again, the Legislature’s website does not say whether the hearing was held or, if it was, what resulted.

The final bill is [S241](#). Introduced by Sen. Tarr, that bill would authorize any of our Category One or Two gaming licensee to conduct operations on the Internet under rules and regulations the Commission promulgates provided that “such operations do not include or reflect gaming mechanisms operated by the state lottery program of [sic] those simulating or resembling slot machines.” The bill was referred to the Joint Committee on Economic Development and Emerging Technologies but the Committee has not scheduled a hearing. Sen. Tarr introduced an almost identical bill last year but it died in committee. At our Internet gaming forum, he said that he carved out Internet slot machines because he believed that they had a very high addictive potential.

### *c. Tribal*

The content of Internet games tribes can offer and the platforms available for offering them do not differ from those available to commercial operators. Nevertheless, two aspects of tribal Internet gaming are worth brief mention. First of all, tribes do not need state authorization, through a compact or otherwise, to offer Class II games in brick and mortar casinos. Theoretically, those games resemble bingo games but when offered in tribal casinos on electric platforms they are virtually indistinguishable from other slot machines. In any event, some tribes have taken the position that they have the right to offer those Class II games via the Internet without any state regulation or oversight. California has taken the position that once those games are offered on the Internet, they become Class III games and do require state approval. A [lawsuit](#) on that issue is pending in federal court in San Diego.

Second, a current general theory of Internet gaming is that the [bet takes place where the server is located](#). That being the case, some tribes have taken the position that they have the right to offer at least Class II games over the Internet anywhere in the world, including any state in the United States, as long as the servers are located on tribal land. The General Counsel for Mohegan Sun, which offers Internet [money games](#) in New Jersey and [free play](#) throughout the rest of the country, is a particularly strong proponent of that theory. The theory, however, has not yet been tested.

### III. Sports Betting

A second well-established form of Internet gambling involves betting on sports. Primarily four sports -- horseracing, professional sports, fantasy sports and, now, eSports – are involved. Illegal betting on professional sports involves hundreds of millions of dollars, a fact that underlies at least some of the pressure to legalize and regulate all of the betting activity.

#### *a. Horse Racing*

Of the four, horseracing is probably the most well entrenched. Despite the Wire Act's broad prohibition of sports betting, [The Interstate Horse Racing Act of 1978](#), 15 U.S.C. 3004 et seq., permits state regulated horse racing and interstate off-track betting. As a result, betting is available on a number of Internet sites. [Twin Spires](#), a site controlled by Churchill Downs, is a prominent example. At that site, bettors can wager on races at hundreds of tracks throughout the world. The bettor makes a deposit at the site, goes to the track of choice and places a bet out of the amount that is on deposit. If he or she picks a winner, the winnings are deposited into the bettor's account. The site also contains handicapping information but stand-alone handicapping programs like one operated by [Equibase](#) also provide handicapping information, some for free and, in much more detail, some by paid subscription. Access to the betting sites is available on desktop and mobile devices. Two other major sites are [Xpressbet](#) and [NYRA Rewards](#), which is operated by the New York Racing Association.

Another approach is represented by [Derby Jackpot](#). There, the site presents a new race at a new track every five minutes or so. The bettor, who previously has created a deposit account, picks from one of three straight and three exotic bets, makes the bet from the amount on deposit and then watches the race real time as it is run. Winnings are placed in the bettor's account. Modest handicapping information for each race is available and trackside odds are displayed in real time.

All of these are using forms of advance deposit wagering or ADW as it is commonly known. With an ADW account, a bettor can place a wager via telephone, desktop or mobile device. Transmission of transactional information over the internet and telephone lines is authorized by the same federal law that authorizes simulcast betting at tracks and OTB facilities. In order to receive the racing signal, the ADW provider is charged approximately 4% of the handle, the same amount charged other simulcast sites. Because the overall takeout from the wagering pool is much lower than it is at tracks and many of the OTB sites, however, an ADW site can offer bigger payoffs. In the eyes of some observers, the proliferation of ADW sites is one of, if not the, primary reason that the racing industry has

suffered drastically declining attendance and significantly decreased revenues. A good summary of that problem is available in a [February 17, 2015 article](#) published in [Thoroughbred Racing Commentary](#), an excellent source for industry news.

#### *b. Professional and Collegiate Sports*

The Wire Act's prohibition on certain aspects of sports betting coexists with the [Professional and Amateur Sports Protection Act](#) (PASPA), 28 U.S.C. 3701, et seq., a 1992 federal law that directly bans wagers on professional and collegiate sports in all but four states. The four are Nevada, Delaware, Montana and Oregon and they are exempt under a "grandfather" provision of the statute because they allowed sports betting in 1992 when the law was passed. Nevertheless, Montana and Oregon do not currently permit any sports betting. Delaware permits sports betting only on a [parlay system](#) under which the bettor places a single bet on multiple games and must win on all of the games in order to win the parlay. In Nevada, [sports betting](#) is available through licensed bookmakers both in physical locations and online.

The PASPA law also gave New Jersey, which did not then permit sports betting, one year to enact the statutory framework for doing so. The legislature failed to meet that deadline and, therefore, sports betting in New Jersey has been prohibited just as it has been in the other 45 states. Recently, though, New Jersey enacted legislation permitting sports betting. The legislation was immediately challenged in federal court by MLB and the NCAA, NFL and NHL. The state responded by arguing, in essence, that regulation of gambling was primarily a matter of local interest and the federal desire to avoid placing a "label of legitimacy" on sports betting, the foundation on which PASPA rests, was insufficient to override the local interests. The leagues prevailed in the [District Court](#). On appeal to the Third Circuit, a [divided panel](#) likewise ruled against the state. Now, however, the Third Circuit has [granted the state's motion for rehearing](#) en banc at a date yet to be scheduled.

#### *c. Fantasy Sports Betting*

Fantasy sports is the newest, hottest and now most controversial offering in the sports betting area. As described in [an article](#) by Ben McGrath published in the New Yorker this past April, the concept began years ago in a much quieter form. That concept involved creating a fantasy team composed of real players from different professional teams, entering the team in a fantasy league at the start of the real team's season and playing through the real season, trading players as the season progressed. At the end, those who "owned" the top teams would get cash prizes made up of the money team "owners" paid to enter the league as the season began. The team's standings at the end depended on the success of the actual players on the fantasy team's roster.

That form of fantasy sports still exists but millions of people now play daily fantasy sports games offered by [FanDuel](#) or Boston's [DraftKings](#), the two major companies in this space, though others such as [StarsDraft](#), which is owned by [Amaya Gaming](#), also offer fantasy games. The typical game involves putting together a team, paying an entry fee to one of the companies and then seeing how the team does based on the success of the players on the contestant's team in the real games played that day. In addition to football, basketball, baseball and hockey, the [DraftKings](#) and [FanDuel](#) sites offer the opportunity for fantasy play on golf, NASCAR racing, college basketball and football, as well as other sports. The entry fees are relatively small but one can create and enter as many teams as one chooses. The payoffs to the winners at the end of the day can be substantial. So, too, can the payoff for other forms of fantasy betting such as [Beat the Streak](#) in which players pick two major league baseball players whom they think can beat Joe DiMaggio's 1941 consecutive game hitting streak of 56 games. The bettors stay with those players until they beat the streak or, as has thus far always happened, end their own streak far short of 56 games.

The professional leagues have embraced the fantasy concept with some enthusiasm. The Red Sox [official website](#) has a link to a fantasy portal operated by [Major League Baseball](#). The Patriots website does not have a similar link but DraftKings has entered into an [arrangement](#) with the Patriots, Cowboys and Chiefs under which there is a DraftKings fantasy area in each of the three teams' home stadiums. In addition, the Kraft Group [reportedly](#) has invested in DraftKings as have several other sports and non-sports companies.

A barrage of advertising by DraftKings and FanDuel on televised NFL games as the 1015-16 season began triggered inquiries by state regulators regarding whether fantasy sports amount to permissible or impermissible betting activity under various federal and state laws. Both companies took the position that their business was conducted exclusively over the Internet and that the UIGEA specifically carved out fantasy sports as an area of lawful Internet gaming activity. A majority of observers, however, think that the carve-out in the statute is much more limited and simply leaves the matter of legality to the law of the state in which the betting activity takes place. A succinct discussion of the legal issues appears in an article by Prof. Nelson Rose that is on file in the Internet folder on our shared drive. Running parallel to discussions of legality is a lively discussion about the policies implicated by widespread availability of fantasy sports betting. The contours of the debate are exemplified by an October 5, 2015 [editorial](#) in the New York Times and a [response](#) by the American Gaming Association.

It appears that several investigations of daily fantasy sports are now underway. Those include an apparent investigation by federal grand juries in [Tampa](#) and in [Boston](#) and investigations by the [New York](#) attorney general's offices. In Illinois, the state [Gaming Board](#) has publicly expressed the view that daily fantasy sports is illegal under Illinois law



and has asked the attorney general for an [opinion](#) on the subject. In addition, several [civil lawsuits](#) are pending in state courts arising out of alleged "insider trading" revelations about the activities of a DraftKings employee.

By far, the most definitive step thus far has been taken by the Nevada Gaming Control Board. On October 15, 2015, A. G. Burnett, the board's chair, issued a [ruling](#) stating that fantasy sports betting was prohibited under Nevada law unless the operators had the appropriate Nevada licenses. In Burnett's view, daily fantasy sports activity constituted a "game" as defined by Nevada law, thus making conduct of the "game" a form of "gambling" for which a license was required. He also stated that daily fantasy sports activities constituted a "sports pool," which also required a Nevada license. Burnett's ruling was supported by a detailed [opinion](#) issued by the Nevada Attorney General on October 16.

In Massachusetts, Attorney General Healey has on several occasions expressed her belief that daily fantasy sports [violates neither state nor federal law](#), though she is interested in ensuring that various consumer protection devices are in place to safeguard the interests of the bettors. MGC staff has prepared a memorandum outlining various statutes and decisions that are relevant to this rapidly evolving issue.

#### *d. eSports Betting*

Thus far lurking in the background but soon to emerge with far greater visibility is something known as eSports. Described on [Wikipedia](#), and more thoroughly in an [article](#) published in the New Yorker's November 24, 2014, issue, eSports is "is a term for organized [multiplayer video game](#) competitions, particularly between [professional](#) players. The most common [video game genres](#) associated with electronic sports are [real-time strategy](#), [fighting](#), [first-person shooter](#), and [multiplayer online battle arena](#). Tournaments . . . provide both live broadcasts of the competition, and cash prizes to competitors."

One of the largest eSports sites is Twitch TV. Owned by Amazon, the site [announced](#) this June that it was broadcasting an average of 1.5 million games per month worldwide to an average of 100 million monthly viewers. Two colleges recently decided to treat eSports as a [varsity sport](#), complete with scholarships. Three years ago the State Department agreed to issue foreign professional eSports players [professional athlete visas](#), placing them on the same level as all other international athletes.

Some of the [competitions](#) take place before large live audiences for prizes in the millions of dollars. Recognizing the size of the audience and the popularity of the games, Turner Broadcasting Company recently announced that it plans to run two 10 week tournaments in 2016 with a [live broadcast](#) of a contest on TBS stations throughout the country each Friday night during those 10 week periods.

The games also provide betting opportunities. A company called [Unikrn](#), for example, live streams games played by two professional contestants or teams of contestants, accompanied by a play-by play commentary and betting opportunities for those in jurisdictions where Internet betting is permitted. Rahul Sood, the company's founder and CEO, gave one of the three keynote addresses at this year's G2E conference in Las Vegas. The eSports's fan base today, [Sood said](#), is approximately the size of the NHL's fan base but he predicted that by 2017 it will grow to the size of the NFL's. Among others offering both live-streamed games and betting opportunities are [Vulkun](#) and [EGB](#).

The trajectory of this new form of sports is far from clear. What is clear is the size of the audience it currently enjoys and the certainty that it is an area the Commission ought to watch carefully. The speed of change and the [astonishing technological possibilities](#) awaiting game producers require that kind of observation and, at least at some point, commencement of contingency planning.

#### IV. Social Gaming

Running parallel to real money gambling is a form of entertainment known as social gaming. That label stems from the fact that Facebook has historically been the gateway to many of the most popular games. Today, however, the label now applies to all forms of Internet gaming in which prizes remain in the game and cannot be redeemed either for real money or for other tangible rewards.

Some of the games bear no resemblance to casino games. One of the original favorites was a game called FarmVille which one could access exclusively through Facebook, though versions of the game now are available at the website of [Zyngagames](#), its creator. Despite the genre's different origin, games that resemble casino games today proliferate. [DoubleDown](#), an IGT offering, is an example. On a desktop computer, the program often appears on the website of a casino and is initially accessed through [Facebook](#) where the user is told that "DoubleDown Casino will receive the following info: your public profile, email address and birthday" unless the user elects not to provide some or all of that information. As a second step, the casino may request additional personal information before the user is permitted to play. The site also can be accessed as a stand-alone app on a mobile device. If accessed in that fashion, the user goes directly to the DoubleDown site without providing personal information and is presented with a variety of games including those that resemble slot machines and table games.

As another example, [BeeCave Games](#) offers slots and blackjack in a sophisticated package that includes the ability to "chat" with other players at the same blackjack table and an ability to choose players with whom to play. The games can be accessed through Facebook or independently through a mobile app but, if the latter, points are offered to the player for inviting "friends" to join the play.

Virtually all of these games use the “freemium” model in which new players receive an initial amount of play money for free and can purchase more when that supply is exhausted. The vast majority do not offer any tangible rewards for successful play or any ability to convert the play money into real money or other things of value. Some, however, link success on the social gaming site to some form of recognition, tangible or otherwise, when the player visits a brick-and-mortar facility with which the social site is affiliated. Under some circumstances, that link may constitute a “prize” that completes the price, chance, prize trilogy that typically defines regulated and illegal gambling.

Social gaming of this type is a big business. Some estimates suggest that worldwide social gaming revenues will approach \$30 billion in 2015, though that includes all forms of social games, not just those that resemble games available in casinos. Insofar as casino type games are concerned, a January, 2015, report on social gaming prepared by the [UK Gambling Commission](#) observed that “[w]hen average spend per day is multiplied up, only age groups 46 and older have an average yearly spend in excess of \$1,000, on a leading casino-style game. Globally, on a leading gambling-style social game, more than 90% of customers never spend anything. Of the 10% that do spend something, 90% spent less than \$500 in the preceding 12 months (and most who spend anything spend considerably less than this). For a leading gambling-style game, less than 120 people (in the UK) spent more than \$1,000 in the preceding year.” The report and its observations are worth reading in their entirety.

In addition to their potential for generating revenue, casino type social games are also a marketing opportunity for casinos. In that regard, whether they are explicitly associated with a casino or simply presented as a stand-alone operation, an area of possible concern is whether the odds on the casino-type games approximate the odds one is likely to encounter in a real casino. Some [thoughtful commentators](#) have expressed a concern about the possibility that the social gaming odds could be set at a level much more favorable to the player than those he or she is likely to encounter in an actual casino. The extensive UK report did not draw any such conclusions but the issue is worthy of the Commission's attention as the rollout process continues.

## V. Skill Based

In addition to the games just described, some sites offer what appear to be true games of skill in which one can play against an opponent for real money. [Skillz](#), for example, offers a very realistic bowling game that one can play on a tablet either alone or in competition for real money with another player. The game has a look and feel that seems to make it a pure game of skill. Nonetheless, elements of chance such as pin placement, the algorithm that determines which pins fall when the ball strikes, the skill of the opponent, the role played by the “oil” on the lane or other game elements likely affect at least some part of the play.

In that regard, it will be important to watch the development of skill based slot machines for which the state of Nevada will likely set the standard at least for the immediate future. Indeed, many of the current versions were on display at the recent G2E gathering in Las Vegas. Many are described in reviews published by [CDC Gaming Reports](#) and [The Motley Fool](#). Some, and perhaps most, of those games can easily migrate easily to the Internet or already exist on the Internet as social games and can migrate to the gaming floor. That migration itself may be a feature of casino gaming to which regulators will have to pay attention to ensure that it does not create an environment for what amounts to loosely regulated or unregulated casino gambling.



October 26, 2015

Massachusetts Gaming Commission  
101 Federal Street, 12th Floor  
Boston, MA 02110

Dear Massachusetts Gaming Commission:

On behalf of Stop Predatory Gambling and the Public Health Advocacy Institute at Northeastern University, we write to demonstrate that a close reading of Massachusetts statutes and their interpretation by the Supreme Judicial Court show that daily fantasy sports operators such as DraftKings and FanDuel are conducting illegal gambling operations in the Commonwealth.

### **I. What Is “Daily Fantasy Sports” And Why Is It A Problem?**

Season-long fantasy sports started as a hobby and a form of community among enthusiasts. It was largely a social activity. The trophy mattered more than the money. With the introduction and massive promotion of “Daily Fantasy Sports” (DFS), it has been turned into a profit-making commercial operation that clearly incorporates the three elements of gambling: consideration, chance, and prize.

FanDuel, DraftKings and other DFS companies have corrupted the traditional structure and recreational nature of hobbyists’ fantasy sports activities (commonly known as “rotisserie leagues”). Daily fantasy sports games restart constantly and typically are played against strangers. Rather than simply hosting leagues for users, daily fantasy sports operators serve as an exchange and profit by retaining a percentage of the moneys wagered (“entrance fees”). Another contrast between traditional fantasy sports leagues and the new breed of DFS is that these companies are multi-billion dollar profit centers with rewards for very few of their players that bear no resemblance to traditional rotisserie leagues that, until recently, defined the term fantasy sports.<sup>1</sup> Most importantly, as outlined below, DFS is a form of illegal gambling under Massachusetts law.

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<sup>1</sup> See Bob Hohler, *An Uncertain Line Between Fantasy Sports, Gambling*, BOSTON GLOBE, August 2, 2015, <http://www.bostonglobe.com/sports/2015/08/02/fantasy-games-draw-scrutiny-ban-sports-gambling-blurs/XxWUs2cwrveLvJe8bFt3wI/story.html>.

## **II. Under Massachusetts Law, “Daily Fantasy Sports” Constitutes Illegal Internet Sports Gambling**

“Daily fantasy sports” is internet sports gambling that is legally indistinguishable from a privately run lottery or numbers game. Both internet gambling and commercial sports gambling are illegal in Massachusetts. Such online gambling operations fall squarely within the state’s legal definition of prohibited lottery gambling.

### **A. The Massachusetts Legislature Has Prohibited Gambling, and Has Not Created a Carve-Out Exception or Explicit Provision to Legalize Daily Fantasy Sports Enterprises**

There is a presumption in Massachusetts law that any lottery or gambling activity that is not *specifically* authorized is prohibited. M.G.L. ch. 271, § 7 prohibits individuals or corporations from setting up or promoting any private lottery. As of 2011, the statute also prohibits any gambling that is “not taking place in a gaming establishment [casino] licensed pursuant to M.G.L. ch. 23K.”

Likewise, M.G.L. ch. 271, § 16A, prohibits the provision of facilities for gambling or “assist[ing] in the provision of facilities or services for the conduct of illegal lotteries, or . . . the illegal registration of bets or the illegal buying or selling of pools upon the result of a trial or contest of skill, speed or endurance of man, beast, bird or machine, or upon the happening of any event, or upon the result of a game, competition, political nomination, appointment or election . . .” Thus, far from being authorized, providing facilities for betting on the performances of individual athletes (“the skill, speed or endurance of man”) is expressly prohibited.

In 2011, the Legislature enacted specific exemptions in these two statutes for casino establishments that are regulated under M.G.L. ch. 23K. Express exemptions are the norm in these laws. Both statutes make specific reference to an exemption the MA Legislature created in 2011 for casino establishments, embodied in M.G.L. ch. 23K. If the Legislature had intended to exempt DFS from G.L. ch. 271 § 7 and §16A, it would have included it within the purview of ch. 23K. The legislature did not do so, however, and thus there is no statutory authorization in Massachusetts.<sup>2</sup>

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<sup>2</sup> In addition, M.G.L. ch. 271, § 5B bans internet gambling. This statute, which contains express exemptions for the state lottery, for certain charitable bingo games, and supermarket sweepstakes, shows that, under Massachusetts law, any form of gambling is illegal unless there is an act of the Legislature, expressly authorizing it.



## **B. Massachusetts Statutes (as Interpreted by the MA Supreme Judicial Court)** **Prohibit Private Lottery Enterprises**

The Supreme Judicial Court has long ago settled on the interpretation of these statutes. A lottery is defined in the following manner:

- The word “lottery” signifies a scheme for distribution of prizes by chance.<sup>3</sup>
- The fact that skill as well as chance enters into a game does not prevent it from being classified as a lottery.<sup>4</sup>
- There are three elements in a lottery: (1) payment of price for (2) the possibility of winning a prize, depending upon (3) hazard or chance.<sup>5</sup>

DFS meets all of the requirements of the fundamental definition of gambling. It has ***payment of price*** (the player wagers money), ***the possibility of winning a prize*** (the player wins cash prizes), and ***hazard or chance*** (there must be at least enough variance that an unskilled or lesser skilled bettor can, at least occasionally, win the prize).

In deciding a case in which the gambling activity has a mix of skill and chance, Massachusetts applies the ***predominance test***. The MA Supreme Judicial Court first set forth the elements of the predominance test in *Commonwealth v. Plissner* in 1936, stating “With reference to cases where both elements [skill and chance] are present, the rule generally stated is that if the element of chance rather than that of skill predominates, the game may be found to be a lottery.”<sup>6</sup> Importantly, the Court further elaborated with a second, alternative test “that if the element of chance is present in such a manner as to thwart the exercise of skill or judgment in a game, there may be a lottery . . . This test is in harmony with the rule that a result is determined by chance where it is determined ‘by means making the result independent of the will of the manager of the game.’”<sup>7</sup> The performances of individual athletes on any given day, which form the basis of DFS contests, are independent of the will of the manager of the game.

In 1944, in *Commonwealth v. Lake*, the SJC revisited the issue of applying the predominance test, noting that there are an infinite number of types of games that can involve both skill and chance, and that “in order to render the laws against lotteries effectual to combat the evils at which they are aimed, it has been found necessary to draw a compromise line between the two elements, with the result that by the weight of authority a game is now considered a lottery where the element of chance predominates and is not a lottery where the element of skill predominates.”<sup>8</sup> The *Lake* Court interpreted the predominance test applying the following standard: “[I]n determining which element predominates, where the game is not one of pure skill or of pure chance, some courts have held, we think rightly, that it is permissible in appropriate instances to *look beyond the bare mechanics of the game itself* and to consider

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<sup>3</sup> *Commonwealth v. Mackay*, 177 Mass 345 (1901).

<sup>4</sup> *Commonwealth v. Plissner*, 295 Mass 457 (1936).

<sup>5</sup> See *Commonwealth v. Lake*, 317 Mass 264 (1944); *Commonwealth v. Frate*, 405 Mass 52 (1989).

<sup>6</sup> See *Commonwealth v. Plissner*, 295 Mass 457, 464 (Mass. 1936).

<sup>7</sup> *Id.* at 466.

<sup>8</sup> *Commonwealth v. Lake*, 317 Mass. 264, 267 (Mass. 1944).

whether as actually played by the people who play it chance or skill is the prevailing factor.”<sup>9</sup> The crux of the jury’s decision properly focused on:

1. Whether the players have any “appreciable degree of skill;”
2. Whether “to the great majority of players the game would be primarily a game of chance;” and
3. Whether “the appeal of the game to the public would be a gambling appeal, with all the evil consequences of a lottery.”<sup>10</sup>

DFS operators deceptively claim that DFS is “a game of skill” but the presence of skill is largely irrelevant. Even if one were to argue that a “skilled” DFS player is not gambling, then it would also be true that a lesser or unskilled player is, in fact, gambling. The very existence of skilled DFS players – playing with an edge and for a profit – depends on the presence of lesser skilled players willing to gamble at a disadvantage against them.

A recent analysis of DFS winners and losers concluded that the majority of DFS customers lack the skill to ever have success and thus are relying largely on chance to recoup some of their investment: “While any player might get lucky on the back of a handful of entries, over time nearly all of the prize money flows to a tiny elite equipped with elaborate statistical modeling and automated tools that can manage hundreds of entries at once and identify the weakest opponents.”<sup>11</sup> Another study demonstrates that DFS enterprises reap profits by relying on a huge pool of unskilled players who win a smaller percentage of the time (1.3%) than those who make sports bets legally in Las Vegas (4.5%) or even those who play completely randomly. As more fully explained below, for the great majority of DFS players, the game is primarily a game of chance.<sup>12</sup>

#### **IV. “Daily Fantasy Sports” Profit Only By Attracting Unskilled Players**

FanDuel, DraftKings and similar commercial sports gambling operators (*e.g.*, Victiv, Kountermove, BetAmerica, HotRoster, DailyMVP, FanNation, ScoreStreak, Tradesports) are not the result of a grassroots citizens movement demanding internet gambling. Rather, they are the end result of powerful financial interests seeking to exploit what they wrongly believe is an unregulated area of law at the expense of everyday people.<sup>13</sup>

DFS’s business model only works by attracting unskilled players – sometimes referred to as the “minnows” - to feed the skilled ones – known as the “sharks.” The “sharks” are the

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<sup>9</sup> *Id.* at 267-268 (emphasis added).

<sup>10</sup> *Id.* at 268.

<sup>11</sup> Joshua Brustein & Ira Boudway, *You Aren’t Good Enough to Win Money Playing Daily Fantasy Football*, BLOOMBERG BUSINESSWEEK, September 10, 2015, <http://www.bloomberg.com/news/articles/2015-09-10/you-aren-t-good-enough-to-win-money-playing-daily-fantasy-football>.

<sup>12</sup> See Ed Miller & Daniel Ginger, *For Daily Sports Operators, the Curse of Too Much Skill*, STREET & SMITH’S SPORTS BUSINESS JOURNAL, July 27, 2015, <http://www.sportsbusinessdaily.com/Journal/Issues/2015/07/27/Opinion/From-the-Field-of-Fantasy-Sports.aspx>.

<sup>13</sup> Sacha Feinman & Josh Israel, *The Hot New Form of Fantasy Sports Is Probably Addictive, Potentially Illegal And Completely Unregulated*, THINK PROGRESS (May 7, 2015, 8:31 AM), <http://thinkprogress.org/sports/2015/05/07/3648832/daily-fantasy-sports-gambling/>.

players whose successes are used in marketing to attract masses of “minnows” who place less sophisticated wagers in order to generate a substantial amount of winnings for the “sharks” and profits or “rake” for the game operators. These “sharks” are experts, designing and using highly sophisticated proprietary algorithms to win consistently.

“Minnows” are those who tend to be new sign-ups with limited experience and who lose their money. Finding new “fish” to feed to the “sharks” is the most important requirement for this enterprise to succeed over the next few years, and DFS operators’ unprecedented mass advertising campaigns and marketing deals with pro sports teams and leagues are a key to making it happen. The only real driver of growth and profit for these operations lies in finding as many new “minnows” as possible, without which, the model falls apart.<sup>14</sup>

A recent study<sup>15</sup> breaks down the divide between the benefits the sharks reap versus the losses the minnows suffer:

- The top 11 players paid on average \$2 million in entry fees and profited \$135,000 each. They accounted for 17 percent of all entry fees. The winningest player in the study profited \$400,000 on \$3 million in entry fees.
- The rest of the top 1.3 percent of players paid on average \$9,100 in entry fees and profited \$2,400 each, for a 27 percent ROI, which is extremely impressive. These contestants accounted for 23 percent of all entry fees and 77 percent of all profits.
- 5 percent of players are the big fish; they lost \$1,100 on entry fees of \$3,600 on average.
- 80 percent of players were the minnows; they lost \$25 on entry fees of \$49 on average.

Even if the DFS companies try to disguise the nature of their business, their winningest customers (of whom there are only a few) are clear-eyed about what is taking place. As highly successful DFS players recently told the *Wall Street Journal*,

[T]he future of the industry is based on attracting casual fans. "If this is going to get huge, we need the guys who are going to buy in for \$20. They do it for fun," Wiggins says. *But if that happens, number-crunching sharks like Albertson will be lying in wait.* If casual players embrace daily fantasy in bigger numbers, Albertson says, "then we'll really be a printing press."<sup>16</sup>

## **V. Sports Gambling Operators Are Targeting Massachusetts Youth**

A key demographic for internet sports gambling operators like FanDuel and DraftKings is youth. This should concern everyone because it is well-established that the younger children start gambling, the more likely it is they will become habitual gamblers and also problem

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<sup>14</sup> See Miller, *supra* note 12 (analyzing how DFS enterprises reap profits by relying on a huge pool of unskilled players who win a smaller percentage of the time (1.3%) than those who make sports bets legally in Las Vegas (4.5%) or play completely randomly); see also Brustein, *supra* note 11.

<sup>15</sup> See Brustein, *supra* note 11.

<sup>16</sup> Brad Regan, *A Fantasy Sports Wizard's Winning Formula*, THE WALL STREET JOURNAL, June 4, 2014, <http://online.wsj.com/articles/a-fantasy-sports-wizards-winning-formula-wsj-money-june-2014-1401893587>

gamblers.<sup>17</sup> One report cites data from the Fantasy Sports Trade Association estimating that almost 10 million of the estimated 51.6 million fantasy sports players are under 18.<sup>18</sup> One of the companies to launch its own sports gambling operation, Yahoo, has recruited thousands of minors to play free fantasy sports. The obvious business model is for Yahoo to convert these “for-free” players into “real-money” gamblers. Such youth is at risk for being lured into real-money gambling whether at Yahoo, other DFS gambling sites, or with other illegal gambling operations. This approach is directly akin to the unfair practice used for years by tobacco companies to get youth addicted to smoking by offering them free cigarettes.<sup>19</sup>

Internet gambling is especially addictive for youth who have grown up playing video games. By deceptively luring the Commonwealth’s youth into online gambling, these sports gambling operators are setting up an entire generation of young people to become problem gamblers by making exploitive forms of gambling omnipresent in everyday life, whether in their own homes or on the smartphones they carry with them everywhere. When that ubiquitous presence and availability are combined together with the intense passion many young people have for their favorite athletes and sports, and then blend in sophisticated targeted marketing, player data tracking and tendency exploitation, it is clear that DFS presents a dangerous, predatory mix to children in the short and longer term.

## VI. Other States Have Recognized That DFS IS Gambling

Nevada is only the most recent state to recognize that DFS is “gambling.”<sup>20</sup> A statement released by the Nevada Gaming Control Board states “DFS involves wagering on the collective performance of individuals participating in sporting events, under current law, regulation and approvals, in order to lawfully expose DFS for play within the State of Nevada, a person must possess a license to operate a sports pool issued by the Nevada Gaming Commission.”<sup>21</sup> Likewise, the Washington State Gambling Commission has specifically declared that fantasy sports constitutes gambling, declaring “[F]antasy sports have never been authorized as gambling activities in Washington and are illegal.”<sup>22</sup> In addition, the states of Arizona and Louisiana treat DFS as gambling, and prohibit it because the operators are commercial businesses that receive a share of the amounts wagered.<sup>23</sup>

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<sup>17</sup> NEW YORK COUNCIL ON PROBLEM GAMBLING - KNOW THE ODDS, THE DANGERS OF YOUTH GAMBLING ADDICTION, (May 2013), [http://knowtheodds.org/wp-content/uploads/2013/05/NYCPCG\\_ebook\\_YouthGambling\\_052114.pdf](http://knowtheodds.org/wp-content/uploads/2013/05/NYCPCG_ebook_YouthGambling_052114.pdf)

<sup>18</sup> Robert DellaFave, *Identify Verification, Financial Checks At Yahoo Daily Fantasy Sports Lag Far Behind Industry Standards*, LEGAL SPORTS REPORT, July 29, 2015, <http://www.legalsportsreport.com/2405/problems-with-yahoo-dfs-platform/>

<sup>19</sup> Ronald M. Davis & Leonard A. Jason, *The Distribution Of Free Cigarette Samples To Minors*, 4(1) AM. J. PREV. MED. 21 (1988 Jan-Feb), <https://industrydocuments.library.ucsf.edu/documentstore/z/x/b/b/zxbb0142/zxbb0142.pdf>.

<sup>20</sup> Callum Borchers & Shelley Murphy, *Nevada Orders Fantasy Sports Sites To Shut Down*, BOSTON GLOBE, October 15, 2015, <https://www.bostonglobe.com/business/2015/10/15/nevada-orders-fantasy-sports-sites-shut-down/xgzblWGDtcwskI6mIsGvYI/story.html>.

<sup>21</sup> A.G. Burnett, Chairman, Nevada Gaming Control Board, *Notice To Licensees, Legality of Offering Daily Fantasy Sports In Nevada*, (October 15, 2015), <http://gaming.nv.gov/modules/showdocument.aspx?documentid=10481>.

<sup>22</sup> Bobby P. Meek, *Exploring the Fantasy World of Internet Gambling*, 18 (May 14, 2015), <https://uarkive.uark.edu/xmlui/bitstream/handle/10826/1161/MEEK-THESIS-2015.pdf?sequence=1>.

<sup>23</sup> *Id.*

Like these other states, Massachusetts has clearly delineated, through the courts and its statutes, the types of gambling that it deems appropriate and allowable under the current law (a state-run lottery, charitable bingo games, state-regulated casino establishments). The Commonwealth's prohibition on all other gambling contains no exception for DFS enterprises, yet they are proliferating to the point of ubiquity in Massachusetts.<sup>24</sup> The lack of any action to stop this illegal enterprise and either to tolerate it or wait until some future legislative action allows it sends the wrong message: that it is acceptable to engage in an illegal enterprise now and, if it generates enough revenue, wait until lobbyists and corporate interests change its legal status. We urge you to take affirmative action to clarify that this type of business enterprise is illegal in the Commonwealth.

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<sup>24</sup> Bob Hohler, *An Uncertain Line Between Fantasy Sports, Gambling* (August 2, 2015), <http://www.bostonglobe.com/sports/2015/08/02/fantasy-games-draw-scrutiny-ban-sports-gambling-blurs/XxWUs2cwrveLvJe8bFt3wI/story.html>.

## MacLachlan, Amy (MGC)

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**From:** MGC Website <website@massgaming.com>  
**Sent:** Monday, October 26, 2015 11:01 AM  
**To:** MGCcomments (MGC)  
**Subject:** Contact the Commissioner Form Submission

**Categories:** Green Category

### Name

Justin Evans

### Email

[j.evans03@gmail.com](mailto:j.evans03@gmail.com)

### Subject

Daily Fantasy Sports

### Questions or Comments

I understand that there is a hearing on the legality of daily fantasy coming up. I would just like to weigh in as an avid player for the last 2 years. I have not won millions, nor do i expect to. I play for fun, the same reason I play fantasy football on Yahoo or ESPN.

Massachusetts is a hub for innovation, and one of those innovators has been DraftKings. Even now that Ethan has been found free of any wrongdoing, it is clear that there needs to be some kind of oversight board. But to prevent over complicating the matter this should occur at the federal level. Other states have been fighting back against Daily Fantasy, seemingly unaware that these sites generate enormous revenue as all income is taxed. Since DraftKings is based in Boston that is doubly true for Massachusetts.

Given that the attorney general has already given her approval, and the sites have already begun the process of creating a regulatory board, I would ask you to let this process play out. This was an innovative industry born from the UIGEA that shut down online poker, and has done everything within the law. It has simply grown too fast and needs to develop the tools to keep its users protected. As one of those users I am fully confident in their ability to do so.

Thank you for your time,  
Justin