

MASSACHUSETTS GAMING COMMISSION
MEETING
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P R O C E E D I N G S

>> CHAIR JUDD-STEIN: Good morning. We are calling to order Commission meeting number 283 of the Massachusetts Gaming Commission on Thursday, December 5th, 2019, at 10:00 a.m. at our offices here at 101 Federal Street in Boston. As you can see today, we are missing Commissioner Zuniga who is under the weather. We'll proceed with all of our matters, and as always, we'll reserve for him the opportunity to address any of them at a later Commission meeting.

Before we begin with Commissioner Stebbins who is at my immediate left today, I want to note that we have changed the order of today's agenda. After item 5, which Mr. Grossman will address a matter, we will take up the racing division items that were originally set forth in item number 9. So we're just going to move that item up, and then we'll move back to the IEB, which is under item number -- originally item number 6, now item number 7.

Commissioner Stebbins.

>> COMMISSIONER STEBBINS: Good morning, Madam Chair. In your packet you have the minutes of the November 21st, 2019, meeting. I would move their approval always subject to correction for any typographical errors or any other nonmaterial matters.

>> COMMISSIONER CAMERON: Second.

>> CHAIR JUDD-STEIN: Any comments or suggestions? I do have a couple that I would just like to go over. Shara, I'm not sure if I have the facts straight, but we might want to supplement a couple of items. On page 5 at the top, 11:09 a.m. entry, I'm wondering -- I might be wrong. I thought that the fiscal years were '18 and '19. And I wondered if we could include Mr. Mathis's report. If my memory is correct, he said -- and it might be 30%, but it might have been 35% that the -- I don't know if you remember -- that the accommodations and meal taxes had gone up from '18 to '19. And he reported that he believed that 50% of that would have been attributed to MGM Springfield. The point was that he was pointing out they hadn't cannibalized, and that was an important fact. And we've asked our facilities to start to track those local taxes.

So if we could add that in, please, if we agree.

And then -- oh. I think we're going to get clarity on page 8 with respect to the report that I had asked for. So I think we'll be all set. I think that's all I have, Commissioner Stebbins.

>> COMMISSIONER STEBBINS: Okay. Shara and I can go back and look at Mike's presentation and add those figures because I agree with you. It's important and something that we've been trying to keep an eye on to see what the impact of our casinos have had on the local hotels and other local restaurants.

>> CHAIR JUDD-STEIN: Well, I do have another one, I'm sorry.

>> COMMISSIONER STEBBINS: That's okay.

>> CHAIR JUDD-STEIN: On the bottom of page 7, the Chair then asked if Commissioner Zuniga would look into -- this is on the staffing issue of the troopers. I believe it would have been Commissioner Cameron that I asked rather than Commissioner Zuniga. On the bottom of page 7 at 12:55 P.M. entry. Commissioner Cameron, do you remember that?

>> COMMISSIONER CAMERON: Yes, I do.

>> CHAIR JUDD-STEIN: I might have said Zuniga erroneously, but it would have been Commissioner Cameron.

>> COMMISSIONER STEBBINS: You were thinking about the money.

>> CHAIR JUDD-STEIN: That's right. That's right. Okay. That's all I have.

Thank you.

>> COMMISSIONER STEBBINS: Okay. Great.

>> CHAIR JUDD-STEIN: So we have a motion and a second. Perhaps we could -- how would we do this? We'd have to agree -- oh, we've agreed to the edits and amendment?

>> COMMISSIONER CAMERON: Yes.

>> CHAIR JUDD-STEIN: Second? Okay. And I'm not sure if that's actually procedurally correct, but it will reflect that edit.

>> COMMISSIONER CAMERON: I think Commissioner Stebbins always makes that statement at the beginning, subject to technical corrections.

>> COMMISSIONER STEBBINS: Yeah. It's typographical, nonmaterial matters. I don't think this changes any of the essence. We're just adding to it and making a correction.

>> CHAIR JUDD-STEIN: Okay. Great. Thank you. All those in favor.

[Vote taken]

Opposed? 4-0. Thank you.

Moving on to item number 3. We have guests this morning to start us off from VeraCloud. Derek, would you like to introduce this?

>> MR. LENNON: Yes. Good morning, Madam Chair and Commissioners.

>> COMMISSIONER STEBBINS: Good morning.

>> CHAIR JUDD-STEIN: Good morning.

>> MR. LENNON: I'm joined today by Doug Rutnik and Todd Bida from VeraCloud, and we're here to give a presentation on the efforts of the MGC supplier diversity program. As you're aware, we work diligently and we ask our licensees to work diligently on diversity and inclusion. VeraCloud is a company that is built helping agencies and other entities attain these goals. I can say that it's been a pleasure

working with the company. They have helped our program at length. And at this point I don't want to take any of their thunder, so I'll let them walk through their presentation.

>> MR. BIDA: Thank you, Derek. Madam Chair, Commissioners, thank you very much for the opportunity to speak today. Thank you very much for the opportunity to serve the Commission and the Commonwealth. At VeraCloud we're extremely passionate about the mission that you have which is similar to our mission which is your commitment to diversity in both your worker and supplier base. VeraCloud is focused on bringing diversity, access and inclusion to the public sector contracting market. And we are a Boston-based company. And today we're here to talk about the results of our work here over the last three years or so with the Commission.

Why we are here. Since 2017, when we started working with VeraCloud, after we were accepted into the Massachusetts OSD, IT small business incubator pilot, we were grateful to be hired by the Commission to begin the process of helping you further address and further succeed in your diversity and inclusion goals. We serve the MGC mission as we serve those diverse businesses in the Commonwealth. And we activate -- engage, activate diverse vendor marketplaces and diverse companies within those marketplaces on behalf of the Commission for participation in MGC opportunities, creating access and opportunity for everyone above and beyond the tremendous commitments that you have to diversity in the Commonwealth.

With that I'd like to introduce our founder, Doug Rutnik, to talk about what we do and specifics on the impact that we've had for the Commission and the Commonwealth.

>> MR. RUTNIK: Thank you again, Madam Commissioner and Commissioners. Okay. Why we're here. I'm going to talk about what we do. We're experts in procurement optimization. We do this in realtime during the open periods of procurements for the Commission. We optimize these procurements to ensure that the diverse vendors and the marketplaces are made aware of these opportunities. We also provide support to those vendors because a lot of them are first-time bidders, and COMMBUYS are first-time government contractors.

We do everything with thoroughly documented efforts, and we have an amazing positive impact that tends to be lasting. And I'll go over that on a couple future slides. We just increase awareness. We recruit stronger participation, more bids, lower costs, better value and just a more effective means by which to address inclusion goals.

Why it works. It's really interesting why it works. Why it works is because we found a way to work directly with the Commission and not impact them in any negative manners. We have no incremental demands on their personnel. There's no changes to any existing technologies or procedures that the Commission has. And there's no changes to process. So what we do is basically an overlay onto business as usual in the Commission, and we ensure that these marketplaces are made aware, supported and participatory in any opportunity that comes through the Commission.

Some success with MGC. So we've done a lot of these procurements at MGC, and I'll just go over one of them in particular. This was a travel services solicitation, looking for an agency to help book travel for the Commission to go about their business. So on this particular procurement in 2018, we found out that the marketplace was pretty extensive. So we increased by 12 times the number of diverse vendors that were actually aware of this opportunity and got them to take a look at it. Nine of them participated in the RFR in some means, whether it was asking questions. We had five

new COMMBUYS accounts created from this, so five first-time COMMBUYS users from this one effort and four times the number of bids from the previous solicitation. And we ended up recruiting this company -- I think it was Travel Leaders of Farmingham (sic), a WBE. They had been certified since 2009 and they had never done business with the Commonwealth. So it's not like they were a new business. This is an established company that had been around and part of the program. This was their first-ever contract with the Commonwealth. So we found that, you know, quite telling that the businesses are out there. They just need a little bit of support and a little bit of technology to keep them informed about what's happening, and that's the part that we provide.

And then we provide -- we create this avenue for direct feedback. And I'll go more into that on another slide. But the feedback is invaluable in helping the Commission actually inform future procurements and shape policy and strategy on engaging diverse vendors. If you don't know the capabilities of a marketplace or their capacity, it's really hard to interact with them and expect to get participation. So this feedback channel has been really amazing.

We'll talk about another success with MGC with some work with Plainridge Park Casino. Plainridge was, you know, looking to engage veteran vendors. They were struggling in that area, and they basically -- the Commission said, hey, can you see what you can do? See if there's any way we can help Plainridge? So on one of their opportunities, we first looked at their upcoming procurements, and they had a high-limits gaming lounge. We were able to find a marketplace of -- I think there were 20 or so veteran contracting companies. Plainridge hadn't been able to find any. So we got 20. We also, as a result, we got 13 veteran contractors requesting site visits, documents, and submitting bids. We thought that was a tremendous success for Plainridge. And that they went from zero to the head of diversity at Plainridge saying, you know, my mailbox is full of people interested in this opportunity. This is a fantastic problem to have. That was another great success for us.

And then success -- another success story is cultivating marketplaces for future RFPs. This was a really interesting -- another project we did with the Mass. Gaming Commission. This was for promotional items. It was an enormous marketplace. There were 78 vendors in it. We had all kinds of feedback and interest from these vendors. 17 minority. 58 women. 4 veteran. 16 disadvantaged. 3 disability business enterprises. This was a great example. We ended up cultivating this huge marketplace. We got a lot of positive feedback from these. And the Commission ended up hiring a WBE off of a statewide contract that ended up, you know, winning this solicitation. It was part of our recruiting, but it was an incumbent, so we have positive results whether or not a new vendor is selected or not. The activation of the marketplace has absolute lasting results.

>> CHAIR JUDD-STEIN: Are you able to share that marketplace with other state agencies? Are you working with OSD or other state agencies so that -- you know, because this is -- this was an RFP for promotional items, so something that is generally sought after by so many state agencies because this is quite a collection.

>> MR. RUTNIK: Yeah. No, we would love to do business with OSD down the road and have a lot of great initiatives lined up. That would be fantastic. Perhaps optimizing statewide contracts for diversity and inclusion. I don't think anyone has ever

taken a look at the statewide contracts available to all the agencies. Found out whether or not there were diverse vendors and whether or not there's any way to tell there are diverse vendors.

>> CHAIR JUDD-STEIN: You can't tell that on COMMBUYS?

>> MR. RUTNIK: Yeah. We would love to do that.

>> MR. LENNON: This is one of the areas that Todd and Doug have really helped us. Their data mining efforts are tremendous. They get people registered as diverse firms that weren't registered before. They find people who are on contracts that are capable of performing services, but they may just not have signed up for those services. So their ability to dig into the data and at a really reasonable cost has provided a lot of these outcomes. So if you look on the statewide contract that this person -- that we hired to promote this company, hired to promote promotional items came off of, they wouldn't look like they could provide promotional items because they had just signed up for one separate NAICS code. They dug into their business after looking and cross-referencing and saying hey, you guys are diverse. This opportunity is out there. You probably didn't get notified because COMMBUYS works all off of NAICS code when it comes to notifying people. And they said, hey, why don't you apply to this or take a look at this one, and this is what they've done for a lot of our -- a lot of our work. And we have tried to get them to in contact with OSD and OSD said well, why don't you work with the Commission for a while and let's see the results.

>> CHAIR JUDD-STEIN: A pilot.

>> MR. GROSSMAN: Yeah.

>> CHAIR JUDD-STEIN: Good. Good. Thank you, Todd.

>> MR. RUTNIK: Another success came out of a procurement we just optimized this fall. It was a solicitation -- what was the solicitation? Gaming research. Yeah. It was a gaming research facilitation in September. In the middle of our activation of this marketplace, we started getting feedback in realtime during the open period of this procurement. Some of the feedback was really interesting. And we were able to take that feedback directly back to the Commission. And there were 11 diverse vendors that had -- well, there was a handful initially that expressed interest in doing a portion of this RFR. I thought about that, and I said if there's a handful that are interested, I bet you there's a lot more that just didn't bother to say anything that might be interested in doing a portion of the RFR. The Commission allowed us to go back into this RFR, pull this marketplace again and found out that there were 11 diverse vendors interested in doing a portion of this RFR. So in essence we were able to unlock this RFR for potential teaming and partnerships. We submitted this vendor marketplace to the Commission. They actually added it to the RFP. And it enabled even prime contractors to find diverse vendor partners as part of this bid. And this was all done in realtime during the open period of this RFP. This was an amazing innovation for us, an amazing result because it taught us that the larger opportunities with the Mass. Gaming Commission may need to be unbundled or can be unbundled for diverse participation and the ability to access these marketplaces so that a prime contractor could utilize one of these vendors in realtime was quite a breakthrough for us. And it was absolutely amazing.

>> MR. BIDA: And I think just to reinforce, the breakthrough came as Derek enabled us to be able to reach back out to the community and then in realtime, amended the

process to be able to include -- we can't tell you over the years how many times we've heard let's try next time. Let's try next time. There was no trying next time. Next time was too far away, and Derek stepped in and made that change immediately and we did it and for immediate positive comment for the Commission and the Commonwealth. So kudos and thank you to Derek.

>> MR. LENNON: Yeah. And this was one of those areas where it was a really good idea coming from good feedback that we normally wouldn't have received. So having VeraCloud here really assisted us because the contract manager wanted one prime, wanted one person to head up the research. And with that comes their group of people they're used to working with. And some of them may not be diverse. By having a list of 11 diverse vendors who are interested in doing a piece of it, it made it very easy for us to look at someone across the table who's saying I can't find a diverse vendor or diverse partner and say, well, then you're really going to get a zero on that piece of the scoring because we've got a list of 11 right here you could be using that have showed an interest and say they can do a piece of this work. So it was -- it was very impactful. It's something we'd like to do going forward, especially when, you know, someone says we want one prime, but there's multiple components that we can say, hey, are there people interested in doing this? And if so, we'll update the list in the future with potential partners you could partner with on this.

>> CHAIR JUDD-STEIN: And it wasn't a sub -- sorry. Go ahead.

>> COMMISSIONER CAMERON: You first.

>> CHAIR JUDD-STEIN: Was it a subcontractor was it a joint partnership? You know, really bringing the diverse company to the table?

>> MR. RUTNIK: It was an initial theory as well as prime contractors selecting one of those to partner with them and team on the actual bid submission. So it was a level of inclusiveness that did not exist before the procurement started, and it was one we were able to open up in the middle of the procurement, and it's going to inform how we do future large procurements with the Commission.

>> CHAIR JUDD-STEIN: That's really smart.

>> MR. RUTNIK: Amazing.

>> COMMISSIONER CAMERON: Does your system track results?

I know a big piece of this is getting the diverse vendors to the table. I understand clearly. But do you also track where they may not have been successful in order to help them the next time?

>> MR. RUTNIK: We do. We provide an open feedback channel that actually has been utilized in the past. I talked about that travel services RFR we did in 2018. About four months after that, we got a phone call from a travel service vendor that we had, identified and recruited that said hey, I'm trying to bid on this thing for the building Commission or some other Commission in the Commonwealth. And the RFP disappeared from COMMBUYS. Can you help us out with that? I was absolutely thrilled, one, that they looked at us as a resource, but also, that's a lasting impact. Here is someone that we had recruited that didn't win the award but was actively pursuing new business with the Commonwealth. They went from isolated and unaware to an actively engaged and vibrant company. We're making these marketplaces more vibrant, and we're teaching prospective vendors about opportunity and future opportunities.

>> CHAIR JUDD-STEIN: Yeah. Wasn't your point that perhaps those that struggled, do you provide capacity building assistance after that?

>> MR. RUTNIK: We do. We help them with COMMBUYS accounts. We help them through any aspect of the procurement and answer any questions they might have.

>> COMMISSIONER CAMERON: So is there a way to help them understand why they may not have been competitive with that particular bid so that they can improve the next time?

>> MR. RUTNIK: We've done that. We've actually sent, says because COMMBUYS is such a -- it's a pretty thorough system. The scoring reports are posted to COMMBUYS after an RFP. We've actually forwarded scoring reports back to people that we've recruited to show them, here's where you may have fallen short. And part of that we've provided feedback to the Commission is that we have diverse vendors that score zero on diversity, which is a problem with the rules, but it's, again, if you didn't know about these things, you would not be able to change them in the future. But it's kind of, you know, if you bid on something and get no credit in the RFP even though you're a diverse vendor, it's counterintuitive. It's just what the rules are.

>> CHAIR JUDD-STEIN: I think one of the problems with the -- well, it's actually -- it's through our constitution, but the -- a diverse company still must, under our rules in Massachusetts, must supply a -- must gain and actually record a supplier diversity partner. And so often a diverse applicant won't think that applies to them so they believe it blank, and then they end up getting zero points. There needs to be clarity around that. You know, WBEs will say, hey, I'm a WBE. I don't need to fill that out, but they still need to get a diverse partner through the supply chain.

>> COMMISSIONER CAMERON: I see.

>> CHAIR JUDD-STEIN: It's hopefully they're correcting that with their forms because it's --

>> MR. RUTNIK: Access to the feedback is invaluable. It's incredible to be able to help these marketplaces grow and thrive. We see it. I mean, it's amazing.

>> CHAIR JUDD-STEIN: Excellent.

>> MR. LENNON: And that's what Doug and Todd have helped us with some of our scoring by saying hey, they are a diverse firm. They might not have the certification. They're working through it right now to get it, but they're a diverse firm so we can give them the scoring points. We've received actual requests from these -- from these solicitations of firms to come in and get a debrief on where they may have broken down. Now, we can't -- as you're well aware, we can't compare them to other scores. But we can say this is where you may have fallen a little short.

>> COMMISSIONER CAMERON: That's a really critical piece.

>> MR. LENNON: Yeah.

>> COMMISSIONER CAMERON: Equation.

>> MR. LENNON: We try to be quite transparent on our scoring criteria and be up front with it and give as much information as possible which is some of the feedback we got on early procurements, giving more details about what your scoring will be allows us to write a better application. So we've tried to really use the feedback that Doug and Todd have received to make this a better procurement process as well as -- I mean, the activation that they've gotten from the community and the lists that were already out

there that OSD already had created and the certifications that were out there to just apply them to our specific procurements would have taken us an additional one or two people. And we get to pay just for that one engagement. So the value feedback and the minimal costs that they are to us is -- and the results they've given us are amazing. And we have a lot of work to continue to do. As we've reported to you. That's why we went out and engaged Todd and Doug. We still have a lot of work to do to focus. You know, that's some of the stuff Doug and Todd are talking about, unbundling our statewide contracts, using them as a wherever some of our prime contractors are willing, using them as a resource to them to say, hey, sit down. Go through your budget. Figure out where you have some capacity to do some discretionary spending and see if they can find you some vendors. You know, that takes a lot of opening the doors with our prime vendors and them being willing to do it. But if they -- if that's ingrained in them like it is in PPC, they welcome it. When we offered this to PPC, they asked if they could have them for more engagements. We just ran out of money that year.

>> MR. RUTNIK: So, yeah. I guess next up, this is about the statewide contracts. We touched on this a little earlier. Is unlocking these statewide contracts. And that's -- it's really a three-part process for us. Researching the approved vendors to find out which ones are capable of satisfying the demands of the contracts, identifying the marketplaces, comparing the marketplace with the authorized statewide contract list, finding out the delta, are there any diverse vendors on there. And then, you know, a campaign to basically include these vendors and help them get on statewide contracts. I'm not sure of the process, but it's certainly something that we're willing to do to help these vendors get on these contracts so that when the Commission goes to buy something off contract, they know exactly who's diverse on that. And if there wasn't anybody before, we would optimize that contract for diversity and inclusion.

>> MR. BIDA: Part of the beauty is the power of the COMMBUYS plate form and the power of the statewide process. We saw the opportunity years ago when we founded the company to create well-lit Pathways to these tremendous resources in the Commonwealth, to be able to illuminate a clear path forward for vendors who are focused on their primary business of doing their business. They're not -- if they're painters, they're painters. They're not focused on the process of navigating a large, complex tools that are COMMBUYS and the statewide contract process. So we found that there's a tremendous opportunity to create, again, create these pathways for these underserved populations to be able to continue to raise their hand, and we found, as we described today with some of these case studies, the amazing power of even one opportunity, just being recognized as a potential vendor and then as a diverse vendor, then knowing that there are more opportunities, like you said, Madam Chair, across other agencies as well. It's not just promotional items don't just exist in the gaming Commission. They are across all of the state agencies. So now those vendors know, my gosh. In addition to my regular promotional business, there is a marketplace out there. And by training those vendors, so to speak, to access the power of COMMBUYS and access the power of statewide contracts, we create a lasting impact in the Commonwealth and a lasting impact in these communities and the families and the other businesses that they serve, creating a rising tide raises all ship as approach to these diverse communities. Thank you.

>> COMMISSIONER STEBBINS: Well, I would just add and say, you know, appreciate the work you've done for Derek and his team and on behalf of the Commission. You know, Doug, we had a chance to meet a long time ago. You were persistent in showing up at our access and opportunity committee meetings, and that helped you, one, not only get in front of our licensees but also eventually in front of us. So I thank you for that persistence because it's had some results not only for us but in the case of Plainridge, they've been able to utilize you as well. Thank you for your good work.

>> MR. BIDA: Thank you very much, Commissioner.

>> MR. RUTNIK: And what it means to you. Greater diversity and inclusion. We've talked a lot about these different opportunities and the impacts we've been able to have and the feedback from the vendor marketplaces. And what we haven't mentioned is the validation that the vendors feel when someone reaches out to them. They're, like, oh, my gosh. This is great. No one's ever done this before. These are a lot of first-time users. And they need that little jump start to get into the COMMBUYS system. COMMBUYS is very mechanical. It's based on NAICS codes. The solicitations that go out for people have a lot of overlap, and we found a lot of vendors tend to ignore them over time because they're not a fit. What we've been able to achieve here is we create no noise in the marketplace when we go out to people. It's a direct fit, and there's relevance. And we try to humbly relate to them and try to support them, and we ask -- there's a whole behavioral science component to reaching people and getting them involved and getting them to provide feedback and interact. And it's that extra bit that's really making the difference. You know, as far as the Commission goes, you're touching all these vendors. You have this mission of being inclusive and diverse. And now everything that runs through this Commission, it touches the marketplace. It actually touches everyone in the marketplace. So we strive for this 100% inclusiveness, meaning when the opportunity goes public, we ensure that that marketplace, every vendor -- and we jump through a lot of hoops with the databases to ensure that we find every vendor. We search even blank data fields because some people don't put a code in. Some people, when they've done their certification, just fail to realize the importance of a robust description of having as many codes for the services that you provide. I could code stories that are very funny.

The typical one is snow plowers. A lot of these people needed someone to plow for snowed. There's a code for snowplowing. But most people that plow snow are in property management and landscape. That's a different code. Now, to get a really interactive piece of that marketplace, you have to go after the property maintenance and landscapers, not necessarily snowplowing. Snowplowing will have a few people. That's all they do is plow snow. But you're missing two-thirds of the marketplace. So these are the types of things that we have been able to do for the Commission, and it's just had a transformative result. It's been really amazing.

>> MR. BIDA: And we'd like to reinforce that the only reason we're able to do this is because starting with the diversity commitment of the Commission. Were it not for your solid commitment to this marketplace, to creating diversity, access and inclusion, we wouldn't be able to sit here today. We wouldn't have been able to serve the Commission or work with Derek and serve him and his leadership over the last three years now. And it's not -- it's not to be underestimated. The power of that

commitment as a leader in the marketplace. And when we spoke with OSD years ago and it was, you know, see what happens with MGC, it was a valuable opportunity for us as a company. It's also a valuable opportunity for those diverse vendors in the marketplace to recognize your leadership. So thank you.

Sorry, just to really wrap up and confirm, we work with -- we work with all sides of the marketplace. We're trying to create new sides of the marketplace and new opportunities for both public and private sector vendors, agencies, governmentals to be able to work together in ways that are intended by mission statements and are able to be able to deliver results in ways that are previously not possible. And we are grateful through our procurement optimization programs and our diversity works programs to be able to find ways with innovators like Derek and with the Commission to be able to constantly provide incremental value and deliver incremental, powerful impact and results on diversity missions like yours. And we're grateful for the opportunity to serve the Commission, grateful for the opportunity to serve the Commonwealth and the diverse vendors of the Commonwealth. Thank you, Madam Chair. Thank you, Commissioners, for the opportunity to be here today as well. Thank you, Derek.

>> COMMISSIONER CAMERON: Thank you. Great service. And I hope many others take you up on this niche that you saw a need for, and it's so necessary and helpful.

>> MR. BIDA: Thank you, Commissioner.

>> CHAIR JUDD-STEIN: All set. Thank you so much. Excellent.

>> MR. LENNON: I keep getting the credit but it really is Agnes that does the majority of the work with Doug and Todd. And it's the managers who actually bring forward the procurement and are willing to -- because this takes extra time, right? It builds in time to each procurement. And they are willing to go with us down this path, and it speaks volumes to the message the Commission has given the staff, that this is a vital part of the act, a vital part of our community and vital part of the Commission. So thank you.

>> CHAIR JUDD-STEIN: Well, Derek, you're always good at making sure you share credit with your team, and Agnes is out today. We are thinking of her and know that she's a vital partner for you and for our entire team. So thank you.

>> MR. BIDA: Thank you very much.

>> COMMISSIONER CAMERON: Thank you.

>> CHAIR JUDD-STEIN: Moving on to item number 4, our administrative update. You have two parts today, Ed.

>> MR. BEDROSIAN: I do. And I'm going to actually ask Derek to hang around. So I will start with the administrative update. As you know and I mentioned last time, the racing season is over. Commissioner Stebbins, Zuniga and I went down after the last meeting and had lunch with our seasonal racing staff to thank them. I think they were probably more appreciative to see pizza than us. But they got to see us, and we thanked them. And they do a wonderful job, and we're very fortunate to have them. So, again, thank you to that staff.

Chair, you had mentioned this in your amendment to some of the minutes. But I did want to report back on some of the GEU staffing and overtime issues. We've had a number of meeting on those, actually, this week. And I'm fortunate that we have a lot of law enforcement experience on the Commission to help meeting with Detective

Lieutenant Connors on staffing issues and risks and what overtime is being used for which leads me to the second issue, which is just a clarification on some of the overtime costs which Detective Lieutenant Connors helped us understand. Much like happens in other areas of Boston, there's a nightclub in Encore called Memoir. It is staffed on weekend nights with some additional police officers, whether state troopers or local officers. There's a switch. Those are what is called in the vernacular detail officers. Those are folks who are not associated with the GEU who come from the state police troop in that area or Everett police officers, and they are paid directly by Big Night Entertainment, the nightclub operator. So that is not a cost to us. And that is similar to what they do in their clubs in Boston and everywhere else. So just to clarify that.

However, there is -- there has been, since opening, a request by Encore on certain nights, usually weekend nights or holidays, for enhanced GEU presence. And sometimes they will want those folks in uniforms as opposed to the -- I don't want to say dress-down, but the less-formal GEU attire. Those items -- those billing items are going to be absorbed directly by Encore. So there is a little bit of clarification. We will do in the overtime budget. And we are also working on the staffing issues with Detective Lieutenant Connors.

>> CHAIR JUDD-STEIN: So I think that that clarifies -- I had that understanding, and I think Derek, in your last report, there was a little bit of ambiguity. So I think that's -- is that correct now?

>> MR. LENNON: That's correct.

>> CHAIR JUDD-STEIN: Okay, good. Excellent. And I think we'll hear more on the staffing at a later date.

>> MR. BEDROSIAN: Yep. Absolutely. So thank you. The other thing -- and Derek is here, but I just wanted to tell you Derek and his folks are over at Encore this week doing our statutory audit, which will be a little bit abbreviated because it's obviously a half year in a start-up mode. But they still -- there is a statutory requirement, and they're over doing that. So thank you, Derek, and your folks. And also I want to give a shout-out to our gaming agents. Despite the weather, we were fully staffed at all the casinos despite the weather. We, as we all know, was not an unchallenging commute in weather time, so thank you to those folks who keeping our facilities well staffed. So that is -- before I get into item B, that is my administrative update. I don't know if anyone has any questions on that. Okay. Great. Thanks.

All right. So let's get into item B which is the potential questions concerning a potential RFI. And what I'd like to do is try and break this down into two processes. So as you well know, the Commission has considered what, if any, information it needs to help evaluate the future of Region C and at previous meetings you had potentially discussed seeking either public and/or expert opinion on a number of issues related to Region C. What we're attempting to do here is provide a framework for the beginning of that discussion. And I'd like to suggest there are two related issues. One is process and one is substance. In terms of process, the Commission has a number of tools available to it. First, it has an RFI which is an acronym for a request for information. And this is one of the reasons I have Derek here. He is a little more proficient in this area. But an RFI presupposes but not requires a subsequent procurement process. An RFI is a way to help clarify a subsequent procurement process. Public comment, as you know, is public comment is -- I don't want to say -- I

don't want to diminish what it is -- it is a different vehicle. And actually, Derek make a good point. This Commission is uniquely situated maybe from other public bodies because of these meetings, because of our transparency. You do have an ability to do public comments, I think, in a way other bodies may not get responses for, just putting out public comments.

I also understand RFI and public comment are not mutually exclusive. That is something that could be combined. An RFI process is something that goes through COMMBUYS which is you just heard about, which may tend to get different types of responses than maybe just a public comment response. So that is something to think about.

The other issue, process and substance, the substance is obviously you will see the questions, the sort of areas of questions I have proposed, market study, impact on Region C and potential mitigation in Region C are things you might want to think about. What is the type of information, whether it's through an RFI or public comment, that is most valuable to you as you think about going forward? I just wanted to take one more minute and just remind you of some of the statutory criteria that are in either the expanded gaming act or 23K that could potentially influence your thoughts.

In Section 1, which is the enabling section of 23K, Section 2 talks about establishing -- this is the general court talking about why they passed expanded gaming, and Section 2 it talks about establishing the financial stability and integrity of gaming licenses, as well as the integrity of the source of financing. Is it an integral and essential element of the regulation control of gaming under this chapter?

In Section 4 of 23K, which is the powers of the Commission. Section 12 talks about develop criteria to assess which applications for gaming license will provide the highest and best value to the Commonwealth and -- that's my emphasis -- the region which the gaming establishment is located.

In Section 18, which is the objective by which licensees would be measured and granting them, Section 18. Section 11 talks about maximizing the revenues by the Commonwealth. And finally, you know this. I'll just remind you of this. Section 19 that talks about the issuance of Category 1 licenses. It is a permissive statute. The Commission may issue not more than three Category 1 licenses. It is not required.

I don't want to delve too deeply, but I would be remiss if not mentioning Section 91 of the Expanded Gaming Act that did talk about the difference initially in Region C in terms of a set-aside for tribal gaming. And that could be a whole another discussion. But I did want to mention it. While I'm not going to mention much about tribal gaming, my presentation -- obviously Todd and Justin are going to give you an update on what's going on in that.

The other thing I will mention before taking questions is that in the packet with Todd's materials is a letter from the lawyers from Mass. Gaming and Entertainment in which they suggest their own RFI questions. And I know you've had an opportunity to look at, and I know they have representatives here today. So I did want to mention all of those things by way of introduction.

So maybe, as I said, the sort of two areas I suggest talking about are both process and substance. An RFI versus public comment. Again, not mutually exclusive. And then the areas that I have suggested some questioning on which, again, are not exclusive. There may be other areas you all are thinking about.

>> CHAIR JUDD-STEIN: Commissioner?

>> COMMISSIONER CAMERON: Yeah. Executive Director Bedrosian, you mentioned that you thought that the -- it's typically presupposed that the RFI then will help inform the RFP, correct?

>> MR. BEDROSIAN: The RFI is generally used to help inform a future procurement process.

>> COMMISSIONER CAMERON: Yes.

>> MR. BEDROSIAN: But does not main date.

>> COMMISSIONER CAMERON: Right.

>> MR. BEDROSIAN: Future procurement process.

>> COMMISSIONER CAMERON: When I thought about the RFI, it was information valuable to help think about timing as well as the appropriateness of when and if that should happen. I did not think about it as, well, you know, we're going to presuppose that we will -- one will lead to the other. So I just kind of wanted to clarify the difference.

>> CHAIR JUDD-STEIN: I think that's a really -- I think that's fair. And I think I did the same, Gayle, Commissioner Cameron. I think that the footnote is noted. But one of the questions that is laid out here is about the timing. My thought was an RFI could be a vehicle. And maybe it is also public comments, either one, to find out if we're going to spend money on doing a market study, we would want to do it at an optimal time as opposed to receiving a market study that starts with the premise, well, this is not the optimal time, but if we make certain assumptions, this is what you could -- you could -- you might find to be the case. So an RFI, if we were to issue it -- and correct me, Executive Director Bedrosian, if I'm wrong -- could be what factors do we have to consider when we are thinking about the timing of getting a market study? And that would inform, if we do do an RFP for a market study, one would issue it.

>> COMMISSIONER CAMERON: Yes. That's how I looked at it.

>> CHAIR JUDD-STEIN: Yeah. So I guess in that case it's not informing what's in it but when we actually issued it.

>> COMMISSIONER O'BRIEN: I mean, my conundrum with the RFI versus public comment, too, is you're different audiences and different questions. And my concern with putting what are broader questions that we all have into an RFI is it goes into COMMBUYS, and that is structured -- it's not mandated to have anything that follows a procurement process that follows, but that is somewhat what is anticipated. So while you may be getting some responses from people who will give you a market study, there are a number of other questions that are in this proposal that is in front of us to think about and what we've all talked about. So not only are they not mutually exclusive, but I'm not so sure we should be grouping them together. I think there might be a more streamlined RFI question that really does speak to potential vendors and then a broader question of public comment in terms of the bigger questions and the statutory questions we have in front of us that I think we're going to want to answer before and maybe at the same time as soliciting vendors.

>> CHAIR JUDD-STEIN: You're saying those questions are more appropriate for public comment.

>> COMMISSIONER O'BRIEN: Right. And I'm concerned that it might you clutter an RFI too because the conversation that we just had about you might have people that

are looking at their codes, looking at redoing. You may see all this other chatter on there and they may turn a blind eye or deaf ear to it and think so much of that is beyond what I'm doing. I'm not so sure it's going to be very effective if we do it that way. I'd be curious to know your experience in the past with the RFIs in terms of what they've looked like and the types of things that you've looked for.

>> MR. LENNON: So most RFIs are what Ed led to is a way of gaining information that most state agencies don't have like what we have here. Public meetings, you can bring people in, get points of view, you can talk about the policy of it, and most state agencies have to put together a roundtable or a discussion group and you don't get the big thoughts. So you would start off with those concepts that you're coming up with here, and then you would pare them down into an RFI to get the business community to then engage and get that thought process. So what you're talking about, I have seen wide-ranging RFIs that don't get much response or you don't get what you're looking for. And then I've seen the roundtables followed up by a very specific RFI for information. And some of them have led to procurements, and other ones haven't led to procurements. So it isn't a requirement, but it usually is in the whole procurement process, which is what you're talking about with Region C anyways. Do you do it or don't you? Do you do the actual application or don't you? So I think it's an appropriate vehicle for what you're looking for. I think if you can streamline it down after you've had public discussion or public meetings over the broader discussions, it would probably be more effective. But it doesn't mean you have to do it that way. And that was my conversation with Ed. We have a very unique platform here with the public meetings and with the awareness of our public comments that you can pare the RFI down quite a bit and do a public comment process first.

>> COMMISSIONER O'BRIEN: Thank you.

>> COMMISSIONER CAMERON: Yeah. That's helpful. And I really thought it was interesting, the idea of not doing both to give us the same information, maybe utilizing the two vehicles in a different way to gather different information.

>> CHAIR JUDD-STEIN: And from different audiences.

>> COMMISSIONER CAMERON: Correct. Yes.

>> CHAIR JUDD-STEIN: Yeah, different stakeholders. Even the folks who come here are going to be different from folks who might be responding to COMMBUYS. You might get folks who aren't following us, which might be interesting. Commissioner Stebbins, do you have a question right now?

>> COMMISSIONER STEBBINS: No. I mean, I agree with the comments that have been made. Maybe there is opportunity -- and I've had some of this conversation with Executive Director Bedrosian about maybe tailoring more narrowly defining some of the questions. I think, you know, the first question right off the bat, what obligation does the Commission have? I think we know that. You know, our Executive Director just pointed out the places in the statute where we have that authority I think to help answer that question for ourselves, I think where we get into the meat is on the second page with a list of questions that continue as well as the questions under impact on Region C. Again, you know, it's a way to kind of tailor the questions. I think to both your points, put it out there not only solicits some public comment. We do that a lot. But also hopefully engage some folks that are really -- this is their market niche. This is what they do and try to get them to step up and offer a response. Again, we want to make

sure the RFI does not exclude anybody who responds from participating in an RFR or an RFP, if we move to that next step. But I think some of the questions are right on. What is the impact? What's the market look like in Region C? What does the impact of what neighboring states, you know, neighboring states have been doing in terms of the impact on the marketplace? So I offer those comments and, you know, I know this isn't up for a vote. Do we narrow down the specific list of questions and come back at a future meeting and do a vote to officially endorse the RFI? I think it is a helpful step for us to take.

>> CHAIR JUDD-STEIN: Well, I think we can get to the ultimate process at the end of our discussion. Maybe just right now address some of the substance -- if you have any substantive questions about -- that are put forward by the Executive Director and then also, of course, we appreciate -- I'm sorry, I'm stepping back from my microphone -- my point was that we want to make sure that substantively, when we are addressing any questions. And also I want to note my appreciation for Goodwin Procter for submitting its public comment and the others who have submitted public comments. We heard also from Denton which represents Mashpee Wampanoag Tribe. And we also heard from the state of Rhode Island. So we thank always folks for submitting public comments. It's very instructive, as Executive Director Bedrosian mentioned, the Goodwin submission does include potential questions. I thought this is certainly something that we heard during the motion for reconsideration, whether, in fact, there would be interested parties in Region C who would be inclined to even engage in an application process. That might be a question that we do want to put forth. It's straightforward. With that said, I don't know if we'd want to in any way -- that wouldn't tie anyone down in terms of if they didn't respond, if there's no application requirement in front of us, we wouldn't make a company commit at this point, but that might be an interesting question to present.

Substantively, I am -- I do think one thing that is -- would be hard for us to assess, and I think expertise through an RFI might be helpful is how would we structure any kind of a request for a market study to properly assess the implications for the Commonwealth?

>> COMMISSIONER CAMERON: That's critical.

>> CHAIR JUDD-STEIN: Versus the region -- for some reason the region seems more straightforward to me. How we assess the Commonwealth. And I think we do have an obligation to consider the best interests of the Commonwealth as well as the region. The questions do reflect the struggle that we have with respect to equity. And it's not lost on, I don't think, any of us here that Region C folks, not all, may be interested in having a casino because of the economic benefits that we've seen are coming through both Region A and B. Yet we are not obligated, as you mentioned, through our statute to issue the -- another license. So I am particularly interested in the question around the impact of a Region C in the absence of our issuing a license. So that's a little bit of a different twist. And I'm not sure if it would be in the same market study or if we could ask, under the same RFP, for both a market study of Region C and the Commonwealth and also the absence of an issuance of a license. Would that be -- would that -- could that be served -- could that question be answered by the same RFP? So, again, the vehicle for answering questions is one --

>> COMMISSIONER CAMERON: Are you thinking RFI? Not RFP?

>> CHAIR JUDD-STEIN: Right. So RFI --

>> COMMISSIONER CAMERON: Okay.

>> CHAIR JUDD-STEIN: Would a single market study be able to address so many diverse questions?

>> COMMISSIONER CAMERON: Yeah.

>> CHAIR JUDD-STEIN: Or would it be better to parcel it out?

>> COMMISSIONER CAMERON: Yeah. Well, I think informed opinion on that would be invaluable. I do remember from the last times we participated in this process with market analysis that we conducted for Region C, they did, in fact, talk about different parts of the region and how they would affect other regions, meaning out of state as well as our own other licensees. So we did have access to some of that information previously, and I do think it's really important that we look at it the entire Commonwealth. So I think it's possible I guess is what I'm saying because we did have some of that information available to us when we were reviewing Region C the first time.

>> COMMISSIONER O'BRIEN: Did you have it gaming only or other economic impacts?

>> COMMISSIONER CAMERON: We really -- they really -- well, they gave us different regions of the -- and we did this for all of the regions. This wasn't unique to Region C. They talked about the market analysis. If you put it in this side of the region, it had the ability to make this kind of money for the Commonwealth as opposed to here. But here you may be able to make more money, but you will be cannibalizing from your other licensees. So it's not so straightforward. There were lots of considerations that we talked about and factored into our decisions with the slots as well as the other licensees. So I know that was valuable information to us the first time, and we were able to gather that kind of information.

>> CHAIR JUDD-STEIN: And so including jobs and economic factors.

>> COMMISSIONER CAMERON: Yes, yes.

>> CHAIR JUDD-STEIN: Well, I think maybe a next step -- and please chime in -- would be perhaps to think about these questions and including any questions that are both directly raised in our public submissions or less directly raised and see -- and think about which would be best addressed --

>> MR. BEDROSIAN: RFI.

>> CHAIR JUDD-STEIN: -- which vehicle. An RFI, a public comment or something else that we're not thinking about right now. What do you think, Commissioner Stebbins? Is that the proper next step?

>> COMMISSIONER STEBBINS: I think that's a great approach. You know, regardless of the questions we put in the RFI, to put those out for any member of the interested public to weigh in is valuable also. It might also help us guide some direction as to our next steps.

>> MR. BEDROSIAN: Yeah. I think that's -- that's a good path because I could, you know, see some of these very easily lending themselves to public comment. They're more policy based, public comment based, and some around the granularity of a market study when that should happen, what are the best factors to consider seem to be more lending themselves to an RFI. So you'd have, you know, the people put eyes on that and hopefully respond that you'd want. And I do appreciate the fact that if you -- there

could be some mixing up of interests, you know, if you grouped them all together. But why don't -- why don't I go back with staff. We've heard the conversation. And come up with a list of RFI questions, a list of public comment questions with the idea that the RFI questions will be more specific on sort of the metrics and granularities of when to potentially do a study, how to measure impacts, and I think the public comment questions might be more policy-based. You know, as I think issues about the Expanded Gaming Act or maybe the authority of the Commission or something like that.

>> COMMISSIONER CAMERON: And do we think information -- a critical piece of Region C the first time it was opened was the fact that because the tribal casino, potential casino, was the backdrop, that really restricted those -- some of those potential applicants from finance, from obtaining finance. So I don't know if that would be a public -- a public comment question, you know, how much -- is that changed in the number of years? Is there still the same thought that because that is still out there as a possibility, that that hurts competition? So I think that's -- that was really important.

>> CHAIR JUDD-STEIN: So you remember in the early reports that financial institutions were just not prepared to make the capital investments because they thought the tribe -- potential for the tribe undercutting that business --

>> COMMISSIONER CAMERON: Yes. Yes.

>> CHAIR JUDD-STEIN: So a fair question would be given where we are now and what we're about to hear from Mr. Grossman, does that status shift that analysis for any financial institution? That's a very interesting point.

>> MR. BEDROSIAN: It may be that the input -- that is one aspect of the potential tribal gaming. I think there are probably other implications of what is the -- from a commercial side, how are they valuing that risk, if at all?

>> COMMISSIONER CAMERON: Correct.

>> CHAIR JUDD-STEIN: And you've certainly got --

>> MR. BEDROSIAN: Financing may be one. I'm sure there's a whole bunch of others, experts and commercial casinos would maybe also comment on.

>> COMMISSIONER CAMERON: Well, that would be informative.

>> CHAIR JUDD-STEIN: So I think a natural next step, if we're extending to public comment, public comments are, as I understand, we have requested are usually done in writing.

>> MR. BEDROSIAN: Yes.

>> CHAIR JUDD-STEIN: This is different from a public hearing, which I understand you've conducted in the past where you would go to the various regions to hear from the people of the regions. At this juncture, are we asking for that, or are we going to ask for more technical -- the more technical policy-driven questions and comments now through both the public comment request and the RFI? The reason why I ask is because we have already received, of course, through public comment letters from folks who live in Region C. They've stated their position with respect to I believe all that I've seen are Brockton-based, right?

>> COMMISSIONER CAMERON: Yes.

>> CHAIR JUDD-STEIN: Are we inviting that now, or do -- and is that an important piece to ask for at this juncture?

>> COMMISSIONER CAMERON: I would think this information gathering, public comment and RFI would help inform us if, in fact, we then would need a hearing.

>> CHAIR JUDD-STEIN: And that's a better vehicle for getting that community input.

>> COMMISSIONER CAMERON: I think so.

>> MR. BEDROSIAN: Right. I would suggest that let us go back, sort of delineate and make more granular the questions, separate out our public comment. Having said that, Chair, I think you make a good point. There's members of the public who listen and are aware and want to send their thoughts in. And that public comment we'll always accept. They may just say, this process is crazy or it's not crazy or whatever their feelings are and they're entitled and we take those at any time. So we never say we're not accepting public comment. It just may be slightly different once we --

>> CHAIR JUDD-STEIN: It's a different form right now than what you've done in the past with respect to a public hearing. But, of course, they can always submit through the public comment process.

>> MR. BEDROSIAN: Absolutely. Absolutely.

>> COMMISSIONER STEBBINS: Yeah. I would -- I would share that -- be in agreement with that. You know, looking ahead to -- we've had numerous public hearings. We've had them as part of a process for looking at applications. If we find ourselves getting to a more meatier stage of a conversation, either we have, you know, we're moving to an RFP phase where we have maybe selected somebody to come in and give us their analysis, I would think that might be a more opportune time to have a public hearing to share more of that meatier detailed information with the public.

>> MR. BEDROSIAN: Good. So I think I have some direction.

>> CHAIR JUDD-STEIN: Sufficient direction.

>> MR. BEDROSIAN: Yes.

>> CHAIR JUDD-STEIN: This will allow you to also speak with Commissioner Zuniga. He's not here today. I know that he would have input. You can update him and see if he has additional thoughts.

>> MR. BEDROSIAN: I will.

>> CHAIR JUDD-STEIN: Excellent.

>> MR. BEDROSIAN: I will. Thank you. So that's the rest of my -- yeah.

>> CHAIR JUDD-STEIN: It helped very much in our thinking.

>> COMMISSIONER STEBBINS: Thanks, Derek.

>> COMMISSIONER O'BRIEN: Thank you, Derek.

>> COMMISSIONER CAMERON: Thank you.

>> CHAIR JUDD-STEIN: Thank you, Derek. So this is a simple exercise. Thank you. We're now moving on to -- I've lost my notes.

>> COMMISSIONER STEBBINS: Item 5.

>> CHAIR JUDD-STEIN: Item 5. We've completed item 4, and now we have our Interim General Counsel, Todd Grossman, with Attorney Justin Stempeck. And we've asked them to provide a status of the tribal litigation and federal legislation regarding the tribe. And as I said, it's not -- it is complicated. So thank you for this effort.

>> MR. GROSSMAN: And thank you, Madam Chair, and Commissioners. Good morning.

>> COMMISSIONER STEBBINS: Good morning.

>> COMMISSIONER CAMERON: Good morning.

>> MR. GROSSMAN: As the Commission has requested, Mr. Stempeck and I have put together a presentation relative to the status of the litigation involving the Mashpee

Wampanoag Tribe as well as the federal litigation -- legislation related to that subject matter. Before we dive in, though, there are a couple of points I just wanted to make about our presentation, if I may. The first is that we will not attempt to project or predict or handicap the outcome of any of these pieces of legislation. They are all being litigated by very able, capable, competent attorneys on both sides. And it would be unfair of us to sit in this forum without the benefit of them arguing directly to us in an attempt to assess who has the better arguments, who's going to win anything of that nature.

There's been ample public pontification. But nobody can predict with any amount of certainty. We don't intend to get into that realm here today. We will, of course, present you with the facts of the matter and the status and answer any other questions that we may be able to. The second is that we will offer you a broad overview of the law and jurisprudence affecting these pieces of litigation and legislation.

To enable you, as Commissioners, to guide your decision-making relative to Region C. However, there have been master classes taught on some of the areas that we'll discuss here today. We've attempted to distill these issues, though, down to their essence to just provide you with the best information we can, again, to help inform your decision-making. We are, of course, prepared to expand on any areas that are of interest to any particular Commissioner.

With that, if I may, Madam Chair and Commissioners, I'll kick things off by jumping into the first couple of slides. Then I'll turn the presentation over to Justin who will take it from there. And we'll start with the first slide here. As you can see, the law actually mandates that the Commission do precisely what it is that we're doing here today. And Section 67 says that the Commission shall continue to evaluate the status of Indian tribes in the Commonwealth including, without limitation, gaining federal recognition or taking land into trust for tribal economic development.

The next slide is designed to offer a roadmap of the presentation and help put these matters into chronological perspective. While it's not an exhaustive list of all things related to tribal gaming, we have selected those matters that we believe are necessary to inform decision-making by the Commission relative to Region C. We'll discuss most of these items in the further slides that will come and detail them as best we can for you. And, of course, we can reference back to this slide if that would be helpful as well.

The only -- not the only -- but one of the issues that we realized that was not included on this particular slide that may be an interesting point of reference is just that the Commission's decision on the application in Region C for the gaming establishment in Brockton was made on April 28th of it 2016. So that would be the top of the second column here.

On slide number 3, before we move into the litigation involving the Mashpee Wampanoag Tribe, we thought it would be helpful to touch on a bit of the law and jurisprudence that's at the core of the cases and adds some context to the discussion that will follow. The first thing to just be aware of is the Indian Reorganization Act, or IRA, as it's commonly referred to. The IRA, as you may be aware, is a piece of what has been referred to as the Indian New Deal. It was enacted in 1934 at a time when efforts were being made to assimilate Indians into American society, to the detriment of preserving their culture and their history. So the IRA was a recognition that this was

not the proper policy direction for the United States.

The law set out to strengthen, encourage and perpetuate Indian trips and their historic traditions and culture. The Supreme Court recognized this in a 1974 case where it said that the overriding purpose of the IRA was to establish machinery whereby Indian tribes would be able to assume a greater degree of self-governance, both politically and economically. And finally on this point, there's a passage in one of the cases that Justin will discuss. This is the case out of the D.C. circuit. Judge Collier there summed up the IRA better than I could. So I thought we would just include her language right in here where she said that the IRA was adopted in 1934 to change a century of oppression and paternalism in the relationship of the United States and its Native American tribes. And this is the part that's relevant to our discussion here today. Its purpose was to create the mechanisms whereby tribal governments could be reorganized and tribal corporate structures could be developed as well as to make the acquisition of lands easier to be held in trust by the United States to enlarge or create new Indian reservations. The United States Secretary of the Interior has delegated the authority to acquire land in trust for Indian tribes. The secretary's authority under the IRA is cabined by whether a tribe meets the statute's definition of Indian found in the IRA. And we'll discuss that definition momentarily.

But before we get there, I just wanted to point out that it's notable what the IRA does not discuss, and that is gaming. The IRA was not a gaming act in any way. The gaming piece of the equation is addressed in 1988 by Congress when it enacted the Indian Gaming Regulatory Act. That's the federal law that governs Indian gaming contains the familiar class 1, 2 and 3 categories of Indian gaming. What it also does, though, is essentially requires that Indian gaming be done on what is referred to as Indian land. This is how the gaming act ties into the IRA. The IRA governs how land is taken into trust and becomes Indian land. And specifically the IRA authorizes the secretary of the interior to acquire land and hold it in trust, quote, for the purpose of providing land for Indians. It is the definition of the term Indian that forms the basis of most of the litigation that we will get into momentarily.

So we can have a look at that definition here on slide number 4. Where we talk about an important case relative to this, which is *Carcieri v. Salazar*. It is the widely cited and oft-referenced 2009 U.S. Supreme Court case in which an important part of the definition of Indian, under the IRA, was interpreted by the Supreme Court. And as we say here on the slide, the case addressed the authority of the Secretary of the Interior to take land into trust on behalf of a tribe based on that IRA definition of Indian. Prior to *Carcieri*, it appears from a number of commentators and otherwise that the BIA's position was that the IRA applied to all federally recognized Indian tribes. So it wasn't until the court addressed this issue that the jurisdictional issues became really part of the landscape.

So the IRA defines the term Indian, as we have up here on the slide, and it has three components to it. It's really the first two that we will focus on here today. The third has never really been part of this litigation. So *Carcieri* itself talked about the first definition of Indian, which is all persons of Indian descent who are members of any recognized Indian tribe now under federal jurisdiction. And it's that underlined and highlighted language that the court focused on in *Carcieri*. The second part of the definition that became relevant to the Massachusetts litigation that you'll hear about.

And that part provides that an Indian includes all persons who are descendants of such members who were, on June 1st, 1934, residing within the present boundaries of any Indian reservation. So those are the two important parts of the definition of the term Indian from the IRA.

The Supreme Court held specifically that the authority of the BIA to take Indian lands into trust hinged on the phrase "now under federal jurisdiction." The court held that the term "now under federal jurisdiction" unambiguously -- and this is a quote from the case -- refers to those tribes that were under the federal jurisdiction of the United States when the IRA was enacted in 1934. So that was really the subject of the case. What does the word "now" mean and "now under federal jurisdiction" and the court concluded -- and it was a majority decision, although there were concurrences, and there was one dissent, but it was a majority decision. The court held that "now" meant, in 1934, when the IRA was enacted. So that obviously had a big impact on Indian law and how the BIA was able to take land into trust on behalf of Indian tribes.

Carcieri is interesting for what it did not address and that has led to some of the further litigation in the memo that we'll talk about briefly on this slide as well. Majority did not address the timing under which the tribe had to be recognized under the definition, nor did it determine how it should be determined what "under federal jurisdiction" actually means. And that's what the solicitor of the DOI addressed in the M memo that we describe a little bit below. But she picked up on a theme that Justice Breyer talked about in his concurrence. And he pointed out that an interpretation that reads "now," the word "now" as meaning in 1934, may prove to be somewhat less restrictive than it first appears. That is because a tribe may have been under federal jurisdiction in 1934 even though the federal government did not believe so at the time. So that has left the door open to the DOI, the Bureau of Indian Affairs, and others to assert that a tribe may be covered, even in light of Carcieri, under the IRA and land may be able to be taken into trust.

So there's the distinction between formal recognition and being under a jurisdiction that is a critical component to the upcoming litigation. So with that, if there aren't any specific questions, we can move right into the Mashpee Wampanoag case.

>> MR. STEMPECK: And so I'm going to be addressing the three federal cases, as Todd mentioned, just also with respect to his partial disclaimer at the beginning. Each one of these federal cases has dozens of filings comprising hundreds if not thousands of pages. So this is really a sample, really to distill it down to the key factors that are relevant in each case. There's a lot to discuss and unpack with each one of these cases. So I'll try and touch on all of it. But if there's any further discussion on specific points, I'm happy to get into that possibly at a later date with a later presentation.

So if we look at the slide here, there's three cases. Littlefield case that took place in the district of Massachusetts. There's the -- which was then appealed to the first circuit in *Littlefield v Mashpee Wampanoag Indian tribe* and there's a separate and independent case out of the district court in Washington, D.C., which is the Mashpee versus the secretary of interior, Mr. Zinke and Mr. Bernhardt. This case was a citizen group challenge to the land and trust status of the Mashpee Wampanoag tribe. As Todd mentioned, this was a challenge under that second definition in the IRA. So really what was being analyzed was the phrase "such members" was the focus. Descendants of such members. How is that interpreted? So what Judge Young in

this case was looking at was when you're referring to such members, what does that mean? How do we interpret that under rules of statutory interpretation? And what Judge Young concluded was he said such members refers back to the first definition in the IRA of -- this is also from that same definition -- all persons of Indian descent who are members of any recognized tribe now under federal jurisdiction. So he says -- what he said was since the tribe was not under federal jurisdiction in 1934, it could not qualify as Indian under the IRA, and thus the secretary could never have taken it -- the land into trust. And as a result of that decision, he remanded it back to the DOI for further proceedings along the lines of the other definitions of Indian in the IRA.

Critically, the factual question of whether the tribe was actually under, quote, unquote, federal jurisdiction was not before Judge Young. And he was actually asked to clarify his original opinion with a motion for reconsideration and clarification. And he explained that. He said, oh, my decision was not -- I was not analyzing that particular factual issue. That was not before me. That can go back to the DOI for further interpretation by them as they are the administrative agency charged with interpretation of that statute.

So what then occurred was -- so the Department of the Interior accepts that clarification decision. And they go back, and they come up with another record of decision, interpreting tribal status and land and trust. They requested evidence from the tribe. They received what I understand to be reams of evidence, hundreds if not thousands of pages of historical documentation and the like. And then in a secondary record or decision which came out in September of 2018, they determined that the tribe did not qualify as under federal jurisdiction in 1934. And so that was pursuant to the -- that first definition, and then they referred back to Judge Young's judicial decision and said, okay, so the tribe doesn't qualify for land -- as Indian under either the first or the second definition as put forth in the IRA.

So that then takes us to the appeal of the decision. So after the decision by Judge Young, originally The Department of Interior actually appealed the decision to the First Circuit. But then with the change in the presidential administration, they voluntarily dismissed their appeal which created some procedural issues in the federal district court which I don't need to get into too much depth, but basically there were questions raised as to whether that -- the cause of action in the First Circuit still was valid in light of what was going on in D.C. because the D.C. action in a nutshell is challenging the decision of the Department of the Interior, the secondary decision in September of 2018. So the judge in the First Circuit asked the parties in the first circuit to show cause as to why is this not moot by what's going on in D.C. if D.C. is challenging the actual decision, isn't that kind of moot what's going on here in the first circuit? And then there's a secondarily this procedural issue about the fact that since the department of the interior dropped out of the First Circuit case, is there really -- and there's only a tribe which is essentially a private actor challenging an administrative action which was remanded, there are some questions of whether there's proper jurisdiction and standing.

So what's happened most recently in the first circuit case, they've filed an appeal mostly focused on the interpretation of the quote, unquote phrase such members. So there's a lot of statutory interpretation and rules of construction, dozens of pages on

how you are to read that and how it could be interpreted differently than what Judge Young's conclusion was. The opposing brief has yet to be filed. That First Circuit case remains pending.

>> CHAIR JUDD-STEIN: Justin?

>> MR. STEMPECK: Yes.

>> CHAIR JUDD-STEIN: When -- can you remind me -- it's not -- it wasn't Ken Salazar. His successor under the -- it would have been under the last administration, Obama administration, his name or her name? The Secretary of the Interior?

>> MR. STEMPECK: The Secretary of the Interior that rendered the 2015 decision?

>> CHAIR JUDD-STEIN: Right.

>> MR. STEMPECK: I actually have the 2015 decision right here.

>> CHAIR JUDD-STEIN: Did that secretary in the appeal actually file briefs with their arguments before the administration changed? I know it was a close time period.

>> MR. STEMPECK: No. There was no briefs -- it was voluntarily dismissed before appellate briefs were filed in the first circuit.

>> CHAIR JUDD-STEIN: By the new administration.

>> MR. STEMPECK: Yes.

>> CHAIR JUDD-STEIN: So the old administration never filed any briefs?

>> MR. STEMPECK: No. They did not file any substantive brief.

>> CHAIR JUDD-STEIN: They filed a notice of appeal but did not have the opportunity to file briefs.

>> MR. STEMPECK: Right.

>> CHAIR JUDD-STEIN: And the name of that interior secretary? It was a woman. Okay.

>> MR. STEMPECK: And the author of the original -- the original, I think, record of decision -- that may have been Jewel as well.

>> CHAIR JUDD-STEIN: So she just had the chance to file the notice of appeal and did not file briefs. So I just am -- I was curious to get the benefit of those arguments that would have been presented by that secretary, but we don't have the benefit of a written brief.

>> MR. STEMPECK: Right. Thus why there's been this sort of procedural and substantive wrangling that's taking place right now as to whether the tribe -- because the tribe wasn't originally a party to the district court decision. They came in as an intervenor. And some procedural questions are being raised now about whether they can properly maintain the appeal since the original appellant has now voluntarily dismissed itself.

>> CHAIR JUDD-STEIN: Right. I understand that.

>> MR. STEMPECK: Filed judgment.

>> CHAIR JUDD-STEIN: But there were no documents, no briefs filed. Thank you. That just clarifies.

>> MR. STEMPECK: Sure. Now we're on to 11. Okay.

>> CHAIR JUDD-STEIN: I think you were going on to the next.

>> MR. STEMPECK: Yes. We're on to the next case, which is the D.C. case. So as I mentioned in the district court in Washington, D.C., what this case is, is the tribe's challenge to the record of decision from 2018. So that was the second record of decision put out by the Department of the Interior, the one that found that the tribe was

not under federal jurisdiction in 1934, despite the record of evidence submitted by the tribe. So the tribe's argument in very basic terms here is that the secretary failed to properly consider all the factual evidence that was submitted and failed to properly evaluate that it was under federal jurisdiction in 1934. The Department of the Interior has responded and asserted that it did properly consider all of the evidence in reaching its conclusion. They make the traditional arguments that most administrative agencies would make and that there's a deference to administrative agency. But there's a narrow scope of review. That their decision was supported by the administrative record and that they properly evaluated all the evidence.

Now, the tribe -- the tribal interest aside from the sort of factual challenge and calculating the weight of the evidence, they referenced the fact -- sort of swinging all the way back to the IRA, they say what's happened here is the original purpose of the IRA is not being met by -- in terms of what the policy guides were there and also that there's an Indian canon of construction which loosely says its statute should be construed liberally in favor of Indian tribal interests. So in that D.C. case, the Littlefield plaintiffs from Massachusetts moved to intervene. They are also now part of the D.C. case. They moved to try to transfer the case back to Massachusetts, which was denied by the Washington, D.C., judge. But they have also filed briefs arguing in support of the DOI decision in D.C. So right now you have a number of motions and cross-motions for summary judgment and oppositions thereto filed by both the citizen group, by the Department of the Interior, and by the tribe. So those are all currently pending. No action has been taken on any of those motions thus far. And each one of those is a fairly significant piece of litigation on its own. But that's a very, again, a thumbnail sketch of what's happening in D.C.

>> CHAIR JUDD-STEIN: And any anticipated time line on that?

>> MR. STEMPECK: I -- what I've seen -- what I've seen sort of referenced was a six to nine months possibly for a decision. But these are fairly -- some of those filings are fairly recent as well. So they were this fall, about a month ago. So the ink is still wet on those documents. So I think six to nine months. I would think probably on the longer end of that estimate. Because there's a lot of issues that need to be unpacked here by the judge.

And now if there's no other questions on the litigation, I'll turn it back to Todd for a moment to discuss the federal initiative legislation.

>> MR. GROSSMAN: Thank you. Before we do that, there's one other case that there was some interest in discussing and that's the K.J. Urban matter.

>> CHAIR JUDD-STEIN: Is that the right time for that?

>> MR. GROSSMAN: I think this is probably a good time to break into that. If I may, Madam Chair, quickly tee it up and point out that as Commissioner Cameron and Stebbins will recall, as having been named defendants in that case, it was decided by the First Circuit on August 1st of 2012, essentially there was an argument by K.G. Urban who filed this litigation literally the day the new gaming act was enacted, asserting that really Section 91 of the Gaming Act which we'll get into in a little more detail in a bit, discriminated on the basis of race and violated the state and federal equal protection clauses of the respective constitutions.

So those cases were -- it's important to recall -- that case was decided at a time before the Commission had really done much of anything as far as making decisions or

opening Region C or anything of that nature. So I don't know if there are specific questions, we can try to get into those. But there has been an assertion that the -- some of the language highlights equal protection concerns relative to not immediately opening Region C by the Commission. We have always been of the opinion that where the Commission has already opened Region C and already rendered a decision, that the equal protection argument has dissipated in that there's no present indication that the Commission is not opening Region C because it's waiting to see what happens with any of these cases or that Section 91 precludes any action or anything like that. So it is my and our opinion, at least the legal staff, that the language in K.G. Urban does not, in any way -- at the moment, anyway -- preclude -- preclude the Commission from taking a close look at Region C in that there's no real equal protection concern at the moment.

>> COMMISSIONER O'BRIEN: Can you just give me a short -- what's the holding of K.G. Urban?

>> MR. GROSSMAN: K.G. -- well, basically -- I'm trying to remember exactly. The holding was that -- part of it -- yeah, thanks -- part of it talked about the Gaming Policy Advisory Committee, which isn't really relevant to this particular conversation because the tribe had a seat on the Gaming Policy Advisory Committee so there was some question as to the legality of that. The court held that the company's equal protection challenge was ripe for judicial review, so it sent it back to the trial court to take a look at that. And that it also found that based on the information it had before it at the time, that the factors weighed against any injunctive relief so the step wasn't going to step in and order the Commission to not enforce the gaming act or to open up Region C immediately or anything like that. So it was really -- a lot of it centered on whether injunctive relief was appropriate and things of that nature. Anything?

>> MR. STEMPECK: I think one of the things Todd mentioned as well should be kept in context is the K.G. Urban first circuit decision was decided in 2012. So if you went back to the time line slide here, you'll see a whole host of things that have happened after 2012. If we had a K.G. Urban today, I believe that I could speak for Todd as well here, we'd have a very different analysis because there is a whole -- the factual landscape has changed. Region C, we had opened it, we considered one applicant already. And not to mention all the things, as I mentioned, with the litigation involving the tribe and the Carcieri decision, all of these things have happened post-K.G. Urban issue. Raising the equal protection issue and highlighting it there, we do have to recognize the time line of significant actions that have taken place in the intervening seven years and how those would lead to potentially a very different decision if it were the same question were to come before the first circuit today.

>> CHAIR JUDD-STEIN: Thank you.

>> MR. GROSSMAN: If there are no further questions on K.G. Urban -- and, of course, we can circle back on any of these issues and provide you with further information as we move forward. We can move on to slide number 12. And just like with a lot of the litigation, commentators have offered a variety of opinions as to the likelihood of the outcome of this particular piece of legislation, both politically and legally and what have you. But the facts of the matter are that in January 2019, Representative Keating introduced the Mashpee Wampanoag Tribe Reservation Reaffirmation Act. It was a refile from the previous session. Though this time he had

35 co-sponsors who joined at a variety of times and it includes the entire Massachusetts delegation, I believe.

The bill itself, which was actually approved and passed by the House, would reaffirm the tribe's trust land and ratify and confirm the Secretary of the Interior's decision to take the land into trust. It would also preclude the filing of any further matters and dismiss any pending federal litigation concerning anything involving that particular land. So it was passed in the House in May of this year. It was sent over to the Senate. There was no further activity that we could find that's been reported in the Senate. Again, there was an identical bill that was filed last session by Senator Markey in the Senate. That was sent into committee and no action was taken on that. So that's the status of the Mashpee Wampanoag Tribe Reservation Reaffirmation Act.

There has always -- not always -- there has been ample so-called Carcieri fix legislation that's been pending at different times in Congress, which would essentially allow the BIA to take land into trust on behalf of Indian tribes regardless of the dates of their recognition. So it would take out the whole 1934 piece of Carcieri. There's never been any tremendous movement as far as I'm aware on any of the so-called fix legislation, but that is always out there and that is always a possibility.

So that's the legislation.

>> MR. STEMPECK: And finally, on slide 13, we'd just like to briefly address the tribe's position which came in via this letter from Chairman Cromwell on November 30th and perhaps of most interest is his quote where he says unless and until the land is taken out of trust pursuant to a plain reading of the Massachusetts Gaming Act, MGC lacks authority toward a category 1 license in Region C and the absence of a determination that the United States would not take land in trust for the tribe.

Now, he doesn't cite exactly where he's getting that from, but he appears to be referencing either Section 91, Paragraph E, which is the cited language here, or possibly he may be referring to the Section 2.6 of the compact between the state and the tribe. There's -- I don't --

>> MR. GROSSMAN: I'm sorry, let me -- because I dug these out last night and Justin and I didn't have a chance to discuss this, so we're kind of working off the cuff here. There were actually letters filed by both the tribal attorney and Rush Street Gaming attorneys, arguing this very point. It first came up in 2013. It was then reinstated in 2016 right before their Commission was about to make its decision in Region C. It was a matter, as I was able to go back last evening and look at some of the transcripts, as Commissioners Cameron and Stebbins may recall, and it was a part of the broader question as to whether the Commission should open Region C. It was a very complicated and difficult question dating back to 2013. Ultimately, of course, the Commission did reopen Region C and did actually accept a bid and did make a decision on it. But the tribe has been clear in its position that as Justin mentioned, both Section 91E of the Gaming Act and some language in the compact would preclude the Commission from opening Region C to any nontribal so-called commercial entity. And if it's helpful, we have the language from the compact where essentially in the background section, it's not in this PowerPoint, but in the background section to the compact, what we would call recitals oftentimes, the parties agreed that Section 91 of the act provides that if a compact negotiated by the Governor is approved by the general court by July 31st, 2012 -- and that's a whole other issue -- it was and then it

was rejected by the DOI and what have you -- the MGC will not issue a request for a Category 1 license application in Region C unless and until it determines that the tribe will not have land taken into trust for it by the United States Secretary of the Interior. And then it has a little more language. But that's the applicable language.

I don't want to speak on behalf of the Commission because this is well documented in Commission meetings and obviously the Commission opened up Region C, so it was of the belief that that did not stand as an absolute barrier to doing so. But the essential position was that Section 91 of the Gaming Act -- it's not in Chapter 23K, it's just in the Gaming Act -- does not, on its face -- and that's the language you have here in the PowerPoint -- actually say that. It basically just mandates action in certain circumstances, but it doesn't preclude action otherwise in the discretion of the Commission. That was the discussion that revolved around Section 91.

It's important, I guess, for today's purposes -- and we can certainly get into it a little further -- but just to understand and recognize that this issue does exist and that obviously there are new Commissioners who weren't part of the initial discussions who may have a different take on these provisions. So in the event we move forward or even in advance of moving forward, it's important to recognize that this is an issue that will come up.

>> COMMISSIONER CAMERON: But you and your colleagues, the legal department, made a clear -- had an opinion that they disagreed with the interpretation of the tribe. That has not changed.

>> MR. GROSSMAN: That was my opinion then and it remains my opinion today.

>> CHAIR JUDD-STEIN: It would have been the tribe and the Governor's office because it's in the compact, correct?

>> MR. GROSSMAN: Well, if -- just to drill down a little further on that point. I don't want to in any way suggest a disagreement with the Governor's office because that's not --

>> CHAIR JUDD-STEIN: Well, I'm just wondering because I want to make sure that the language you just read from 2.6 is the compact which was between only -- was with the tribe and the Governor is the other signature?

>> MR. GROSSMAN: The Governor on behalf of the Commonwealth.

>> CHAIR JUDD-STEIN: Right.

>> MR. GROSSMAN: It's important if we want to kind of put the whole thing in context. And this is a whole -- we could spend and probably should spend way more time on this than just the couple minutes we may talk about it right now. But it's also important to read the compact holistically and not just that one provision.

>> CHAIR JUDD-STEIN: This is a recital.

>> MR. GROSSMAN: That, I would argue, is part of the so-called recitals. It's in the background. And you also have to understand that further on down in the compact, it specifically addresses what will happen if a commercial casino is awarded to a licensee in Region C. And it talks about how the tribe will not have to pay any part of its revenues to the Commonwealth. And there are other similar provisions where the compact recognizes that it was -- it is a possibility that the Commission will award the license in Region C. So there's more to it than just the fact that this language exists in the background section of the compact.

>> CHAIR JUDD-STEIN: Because I wasn't here, I just would like to walk through

what I think was the Commission's thinking. So the language that the tribe has quoted that Chairman Cromwell has quoted in his letter says that if at any time after August 1, 2012, the Commission determines that the tribe will not have land taken into trust, then the Commission has an affirmative obligation to consider bids. But if the Commission determined that the tribe would have land taken into trust, we weren't barred from going ahead. Between bids, and that's your position. And that's why you did, in fact, back in 2016, open up Region C for applications.

>> MR. GROSSMAN: Essentially that's right.

>> CHAIR JUDD-STEIN: And that would make sense because in order for the tribe to have a casino, it has to have the land and trust decision. But certainly the tax structure assumes that there could be both the tribal casino and a commercial casino.

>> MR. STEMPECK: Right. The compact itself -- and Todd mentioned this briefly -- it actually has more of a discussion about exclusivity and what the value of exclusivity is and sort of balancing the interests of exclusivity vis-a-vis the Commonwealth versus the tribe and then ultimately concluding on this revenue adjustment based on the existence of a Region C casino or the nonexistence of a Region C casino and how that would affect the tax rate on a tribal casino in Region C.

>> CHAIR JUDD-STEIN: I understand. It might be worthwhile to have an amendment that does spell this out a little bit more carefully, given that it is the tribe's consistent position, for those of us who are newer. What do you think, Commissioner O'Brien? Would you like that, just a -- or are you fine? You've got it.

>> COMMISSIONER O'BRIEN: (Away from mic) it wouldn't hurt.

>> MR. GROSSMAN: An amendment?

>> CHAIR JUDD-STEIN: An amendment in terms of just another page to describe.

>> MR. GROSSMAN: Oh, to the PowerPoint.

>> COMMISSIONER O'BRIEN: Adding in the compact.

>> CHAIR JUDD-STEIN: Just adding a page for the future.

>> COMMISSIONER STEBBINS: (Away from mic).

>> CHAIR JUDD-STEIN: That's really helpful. And just for the record, I think you just have a little typo on the bullet just so that folks know the Gaming Act was 2011. We just celebrated the eighth anniversary.

>> MR. GROSSMAN: A typo.

>> CHAIR JUDD-STEIN: That's helpful.

>> MR. GROSSMAN: I can't believe we missed that.

>> CHAIR JUDD-STEIN: Commissioner Stebbins, did you have any question on that? You were here so you may remember this.

>> COMMISSIONER STEBBINS: No. No. It was -- the presentation was helpful, going over it the other day with Todd to kind of get an update on all the pending litigation and the three ongoing cases -- two ongoing cases.

>> MR. BEDROSIAN: If it's not complicated enough, I know you've all heard this, there is currently land and trust.

>> CHAIR JUDD-STEIN: Yes.

>> MR. BEDROSIAN: And as we've understand, there's not a mechanism to take land out of trust. The Department of Interior hasn't done that. That doesn't mean it can't happen, but it just goes -- there's just layers of complicated procedure here.

>> CHAIR JUDD-STEIN: And the PowerPoint does show that these decisions are

quite fluid from the DOI. So that if we did have a change in the administration -- I know this is contemplated by folks who have appeared in front of us or who have made public comment -- if there were a change in administration next year, does the possibility that DOI could issue or have an opinion that reflects the prior Secretary of Interior who initiated that appeal?

>> MR. STEMPECK: Anything's possible.

>> CHAIR JUDD-STEIN: Can I ask this? At a certain point in time, there must be -- there's some reliance that they have to be able to build on the land and trust despite a change in administrations' opinion. It wouldn't be --

>> MR. GROSSMAN: That would be nice.

>> CHAIR JUDD-STEIN: Some kind of degree of reliance. In other words, if it were to change, with a change of administration and someone began building, another change from DOI to suggest that there's a change. Yeah. We haven't seen it, but there has been a lot of fluid decision-making here.

>> COMMISSIONER CAMERON: And/or the Senate could change and decide to take the matter up in the Senate. Of the House bill that was passed.

>> CHAIR JUDD-STEIN: Another Senate might. Exactly. So it wouldn't just necessarily be the change in administration. A change in the Senate as well.

>> MR. BEDROSIAN: It would have been to be signed by the same administration.

>> CHAIR JUDD-STEIN: It would have been to be signed by the same administration. Any more questions? This has been -- you know, I did ask for this when we looked at the motion for reconsideration. I personally really appreciate you simplifying it. I understand how complicated it remains. This was very helpful as a next step. Commissioners, do you have any further questions?

>> COMMISSIONER CAMERON: No. Agreed. I find it helpful. Thank you.

>> MR. GROSSMAN: Thank you.

>> CHAIR JUDD-STEIN: Thank you.

>> COMMISSIONER O'BRIEN: Thank you.

>> CHAIR JUDD-STEIN: We are going to take a ten-minute break before we move on to our new number 6 with Dr. Lightbown.

[A break was taken at 11:57 a.m.]

>> CHAIR JUDD-STEIN: We're now reconvening meeting 283. We'll restart with the racing division, Dr. Lightbown, please.

>> DR. LIGHTBOWN: Good afternoon, Commissioners.

>> COMMISSIONER STEBBINS: Good afternoon.

>> DR. LIGHTBOWN: Today I have the COO of Suffolk Downs, Chip Tuttle, with me to discuss some of their items. The first item is the Suffolk Downs request for approval of their simulcast import locations. Normally these items are taken care of when track applies for their live racing dates. So, for instance, when you approved Plainridge's application a few months ago, their locations were included in that as part of it. So since there isn't a live application in front of us now, this is being done separately. And their locations are locations that they've done in the past. The recommendation is to approve these locations.

>> CHAIR JUDD-STEIN: Do you want to go over the implications of the deadline? There is a pending deadline?

>> DR. LIGHTBOWN: Yes. There's a deadline of January -- what do we got -- 15th.

And that's for all the tracks, for all their simulcasting and account wagering. So obviously, we're hoping to have something from the legislature, an extension or a new bill in place by then so that we don't have a disruption in racing. But until that point, we do need to go ahead and have these sites confirmed so that the tracks can send out letters to their sites that they are approved to use them.

>> CHAIR JUDD-STEIN: So simulcasting would be disrupted if there is not an extension?

>> DR. LIGHTBOWN: Right. Correct.

>> COMMISSIONER STEBBINS: Alex, is it appropriate under the -- we have -- we're taking two votes. One is on ADW and the other one is on the simulcast import locations, but the introduction of FanDuel racing, is that under the ADW piece?

>> DR. LIGHTBOWN: Yes.

>> COMMISSIONER STEBBINS: That's the ADW piece?

>> DR. LIGHTBOWN: Yes. Just the simulcasting part -- there's different simulcasting sites.

>> CHAIR JUDD-STEIN: But the two items are addressed in the one letter?

>> DR. LIGHTBOWN: Yes. Mr. Tuttle addressed them both in the same letter.

>> COMMISSIONER STEBBINS: Madam Chair, I'd move the Commission approves the Suffolk Downs request for approval of the simulcast import locations listed in their November 8th, 2019, letter.

>> CHAIR JUDD-STEIN: Do I have a second?

>> COMMISSIONER CAMERON: Second.

>> CHAIR JUDD-STEIN: All those in favor, unless there's any further discussion?

Okay. All those in favor?

[Vote taken]

Opposed?

4-0.

>> DR. LIGHTBOWN: So the next item is the Suffolk Downs request for approval of their account wagering providers. Several of these have been long-term ones. The Xpressbets, TVG, TwinSpires are all from the early 2000s. NYRA Bets, the gaming Commission approved in 2016 as a new provider. And Suffolk is also asking for this year for FanDuel Racing, which is going to be based on the TVG backbone. The companies are the same now, but together. And basically, the phase of it will be FanDuel, so it will attract customers hopefully from the FanDuel site to racing. And Chip Tuttle is here if you have any more questions about that.

>> COMMISSIONER CAMERON: I know we have a presentation on the FanDuel platform. So we're voting on it, and then we'll look at the presentation?

>> DR. LIGHTBOWN: Well, that's part of your packet. If you want to look at the slides, we can flip through the slides that shows what they are and what they're --

>> CHAIR JUDD-STEIN: Would you like to have that?

>> COMMISSIONER CAMERON: I would love to talk about it before we vote on it. I think that makes sense.

>> DR. LIGHTBOWN: Okay. What do I click?

>> CHAIR JUDD-STEIN: Yeah, I think we have additional questions on the FanDuel and just the process, too. So if you could go through that.

>> MR. TUTTLE: Sure. I'll do my best.

>> CHAIR JUDD-STEIN: Mr. Tuttle, that would be great.

>> DR. LIGHTBOWN: Okay. This is the first slide.

>> MR. TUTTLE: This slide was sent to us -- this presentation was sent to us by the FanDuel group. As a way of background, Paddy Power Betfair of the British book making company acquired TVG several years ago. And then Paddy Power Betfair merged with FanDuel, the daily fantasy sports company. I think that was about 2 1/2 years ago. And, you know, they launched, as the Commission is aware, the daily fantasy sports company as they've gone into sports betting. This company also had a background in pari-mutuel wagering and horse racing by way of TVG. They're now the leading provider of sports betting services in New Jersey. They're in Pennsylvania. They're in West Virginia. They're expanding into various states under the FanDuel brand.

One of the things that they're trying to do is take advantage of exposing horse racing to the daily fantasy sports audience that FanDuel has built up through the years. They have 6, 7 million account holders. And so FanDuel Racing is really an effort to expose horse racing to these daily fantasy sports customers on the FanDuel platform, on the existing platform. So it's not being marketed to existing racing fans. It's basically just on the FanDuel platform, now there's going to be an additional platform and integrated content where you're going to be able to click, if you're a daily fantasy sports player, and open an account to play horse racing as well through advanced -- the TVG advanced deposit wagering platform. It's sort of the TVG back-end system. The Oregon Hub, the multijurisdictional Oregon Hub is the licensing authority for this. And it has been approved in California, Kentucky, New York. They plan to launch in 20 to 25 states shortly after the first of the year or around the first of the year. And they've asked us if we would come to you and include FanDuel Racing as one of the Massachusetts-authorized advanced deposit wagering entities.

>> COMMISSIONER CAMERON: Yeah. So it really is the same company, just a few platform and an ability to reach a different audience?

>> MR. TUTTLE: That's the intent, yes. And -- but they put it under the FanDuel brand because --

>> COMMISSIONER CAMERON: It's popular.

>> MR. TUTTLE: Yeah. And those customers -- I think the idea was those customers want to stay under the brand as opposed to introduce a new brand that they may not have heard of or understand.

>> CHAIR JUDD-STEIN: Commissioner Cameron, I learned a little bit about the background on the approval of ADW from Dr. Lightbown, but the Commission did not require additional licensing requirements like we do, for instance, should sports betting be approved -- the operator of a sports book would likely be subject to our licensing processes that are currently in place for our gaming establishments or some sort of level of licensing. But we don't do that for horse racing, correct?

>> COMMISSIONER CAMERON: Well, we've talked about doing a more robust licensing process. But because license -- rather racing was in such flux and the legislature needed to play a role, we made a decision to kind of hold off on that, expanding our licensing requirements when it comes to ADWs until we had some certainty. I think we all thought the certainty would happen before now.

>> CHAIR JUDD-STEIN: Mm-hmm.

>> COMMISSIONER CAMERON: So that -- that is something we certainly could revisit. Because I do believe we need to do a little more work here. A little more due diligence when it comes to ADWs.

>> CHAIR JUDD-STEIN: So the ADWs in the past that had been approved are all the ones that are listed in this letter?

>> COMMISSIONER CAMERON: As part of the license, they've been approved in the past.

>> MR. TUTTLE: I may be able to add some color to that, Madam Chair. In 2001, in the annual update or the semiannual sometimes update of racing and simulcast statutes, there was a change to specifically authorize ADW in Massachusetts. And so the only licensing requirements were that any ADW provider, you know, it had to be through an existing Massachusetts pari-mutuel licensee. It could have been any of the four at the time. And that it was approved by your predecessor agency, the racing Commission. And so that's just been the process since 2001.

>> COMMISSIONER CAMERON: But we've made a lot of changes to the racing application, to the requirements, to the work that the state police in racing do. So we have improved the process, I would say. There is more due diligence, but this is an area that we've identified as something that we could -- we could do some more work along the lines of looking at these companies. But, as I said, we really made a decision to hold off doing that until we've had some certainty, and maybe we will have that certainty with the legislature working on or considering a number of bills.

>> CHAIR JUDD-STEIN: Dr. Lightbown --

>> DR. LIGHTBOWN: In talking to the legal department, we're going to go ahead and start looking at it over the dark season that we have for the winter. It gives us a good time to catch up with some different projects that we don't have time for during the season. And, you know, start looking at these regulations. We've already pulled a bunch of them from different states and kind of start to see where we might want to go. And then obviously see where the legislature goes with the different bills that are out there and take that into account.

>> CHAIR JUDD-STEIN: So you said that California approved FanDuel Racing.

>> DR. LIGHTBOWN: Yes.

>> CHAIR JUDD-STEIN: Last month?

>> DR. LIGHTBOWN: Yes.

>> CHAIR JUDD-STEIN: Did they do it based on the same information that we would be approving? Or did they have additional information?

>> DR. LIGHTBOWN: They have a detailed application procedure. Their application for account wagering is almost similar to our application for a racing license. So, you know, it was a very detailed application.

>> CHAIR JUDD-STEIN: So it was a rigorous review.

>> DR. LIGHTBOWN: Right. They've gone through it in California.

>> COMMISSIONER CAMERON: As well as the states that use FanDuel for sports betting, I.E. New Jersey. They have gone through a rigorous licensing process there in order to -- in order to operate in New Jersey. So the company has --

>> CHAIR JUDD-STEIN: And it has the same corporate entity, correct?

>> COMMISSIONER STEBBINS: Can I just ask you a quick question?

>> MR. TUTTLE: Sure.

>> COMMISSIONER STEBBINS: I'm somewhat encouraged by what FanDuel is trying to do or positioned for the players in terms of introducing new folks to horse racing and race betting. I guess who approached you? Was it TVG saying, you know, if you're going to reapprove us or use us again next year, let us tell you about the FanDuel piece? How did the conversation start?

>> MR. TUTTLE: Yeah. It was TVG basically saying we're launching FanDuel Racing, and there are certain states that require specific regulatory authority approval. There are others that don't where they're active already and they can just do it under the existing umbrella. They identified Massachusetts clearly as one of the states along with New York, Kentucky, California, Illinois, I believe, that required specific approval and came to us and said as part of your licensing and application process for 2020, could you please include FanDuel Racing as an ADW provider? And based on our 18-year relationship with TVG, you know, TVG has always been sort of the gold standard of advanced deposit wagering companies. Specifically, you know, it doesn't do business in Texas. Other companies sometimes do because, you know, TVG has had a corporate policy to only do business in states where it's specifically authorized. They stay out of the sort of quote, unquote, gray states. And so they made the request, and we followed up with this action.

>> COMMISSIONER STEBBINS: I noticed a couple of the FanDuel slides, again, I look at this as they're trying to introduce racing to their existing customer base. Have you had a chance to go through it and just kind of see from a tutorial viewpoint, does it offer somebody who's new to race betting enough information, enough kind of, like, background as to how to do it and what to look for?

>> MR. TUTTLE: They showed me the platform a few weeks ago out in California at the corporate headquarters in Los Angeles, but I haven't, you know, gone on on my own mobile device or laptop to experiment myself yet. I suppose I could do that because I have opened a FanDuel account. But, you know, for daily fantasy, but I haven't yet. I don't think it's -- you know, I think it's in beta. I don't think it's, you know, it's active yet. But I could find that out.

>> COMMISSIONER STEBBINS: All right. Just curious.

>> MR. TUTTLE: Yeah.

>> COMMISSIONER STEBBINS: See how they plan to measure whether this is going to be a success or not. Okay.

>> CHAIR JUDD-STEIN: Okay. Additional questions for Mr. Tuttle and Dr. Lightbown?

>> COMMISSIONER STEBBINS: Madam Chair, I'd move the Commission approve Suffolk Downs' request for Xpressbet LLC, TVG, TwinSpires, NYRA Bets and FanDuel Racing as account deposit wagering providers.

>> COMMISSIONER CAMERON: Second.

>> CHAIR JUDD-STEIN: Any further discussion or questions? I've encouraged by Dr. Lightbown's report that we'll be exploring next steps on how to review the ADW accounts, so thank you. Those in favor?

[Vote taken]

Opposed? 4-0. Thank you.

>> DR. LIGHTBOWN: The next couple of items are Chad Bourque, our Chief Financial Officer, will go through those for you.

>> MR. BOURQUE: Good afternoon, Commissioners.

>> COMMISSIONER STEBBINS: Good afternoon.

>> CHAIR JUDD-STEIN: Good afternoon.

>> MR. BOURQUE: So throughout the racing season, funds are deposited into a capital improvement trust fund and also a promotional trust fund for both standard and thoroughbreds. Funds are then distributed upon the Commission's approval of both a request for consideration and also reimbursement. So the first item in front of you is a request for consideration and reimbursement of payment from the promotional trust fund submitted by Suffolk Downs in the amount of \$192,971.10. I have reviewed all the supporting documentation to ensure funds requested were used for advertising purposes, and I also reconciled the vendor invoices against payments to ensure the correct amount is being requested, which I found that it was. This item does require a vote.

>> COMMISSIONER CAMERON: So Madam Chair, I move that the Commission approve Suffolk Downs' request for consideration and reimbursement in the amount of \$192,971.10 to the Suffolk Promotional Trust Fund.

>> CHAIR JUDD-STEIN: Do I have a second?

>> COMMISSIONER STEBBINS: Second.

>> CHAIR JUDD-STEIN: Questions? Those in favor?

[Vote taken]

Opposed? 4-0.

>> COMMISSIONER STEBBINS: I just wanted to point out to Chad on my rant about the promotional trust fund.

>> COMMISSIONER CAMERON: You did not.

>> CHAIR JUDD-STEIN: I did hear about that position, Commissioner Stebbins.

>> MR. BOURQUE: There's plenty in the archive.

[Laughter]

>> CHAIR JUDD-STEIN: Well said, Chad.

>> MR. BOURQUE: The next item we have is a request for consideration for the Capital Improvement Trust Fund. And this is submitted by Plainridge Park Casino in the amount of \$40,338. I have reviewed all the supporting documents and found them to be in good order. Also included is an opinion letter from Dixon Salo who is the architect that's charged with ensuring that the items being requested or funds that are being requested are necessary, and in his opinion, these are necessary, and he's recommending that the consideration be approved.

>> CHAIR JUDD-STEIN: And this is just for the consideration at this time? Not the reimbursement, right?

>> MR. BOURQUE: Correct.

>> DR. LIGHTBOWN: Correct.

>> COMMISSIONER CAMERON: So Madam Chair, I move that the Commission approve Plainridge Park Casino's request for consideration in the amount of \$40,338 for the Capital Improvement Fund to purchase a replacement tractor at Plainridge Racecourse.

>> COMMISSIONER STEBBINS: Second.

>> CHAIR JUDD-STEIN: Those in favor?

[Vote taken]

Opposed? 4-0.

>> COMMISSIONER STEBBINS: Again, I didn't rant about the Capital Improvement Fund. Before we let Mr. Tuttle go, we're taking up an agenda item a little bit later, a letter of consideration to the legislature about the extension of the racing and simulcasting statutes. I know you have been party to those conversations. Any thoughts or viewpoints on the looming deadline and any suggestions for the Commission?

>> MR. TUTTLE: Yeah. Well, I mean, we've been part of the discussions, and I certainly don't presume to speak for the legislature at any time. Indications we've received are that, you know, as part of the discussion of sports betting and sports wagering bills in the spring, that, you know, the legislature may include longer-term examination of racing and simulcasting issues as part of that. And if that's the case, I think it means we're looking at another short-term extension, you know, probably through July 31st or through the end of the calendar year of 2020 between now and January 15th. And given past precedent, my guess is, you know, sometime around January 10th or 11th or so, you know, there will be another -- a move to extend the racing and simulcast statutes as they are. You know, there's -- I don't think there's going to be opportunity for a lot of discussion about significant changes between now and January 15th.

>> COMMISSIONER STEBBINS: Thank you.

>> CHAIR JUDD-STEIN: Any further questions for Dr. Lightbown, Chad? Thank you, Mr. Tuttle.

>> COMMISSIONER CAMERON: Just one for Mr. Tuttle. Is FanDuel originally a Scottish company?

>> MR. TUTTLE: They were formed in Edinboro, yes, Chairman -- I mean Commissioner Cameron, yes. Where I know you've recently visited, as have I. So it's a wonderful city.

>> COMMISSIONER CAMERON: Thank you.

>> DR. LIGHTBOWN: Thank you.

>> CHAIR JUDD-STEIN: We'll move on to item number 7. Investigations and Enforcement Division, Director Wells, and Chief Enforcement Counsel, Loretta Lillios. You have two items today for us.

>> MS. WELLS: Ms. Lillios is going to handle that (away from mic) Mr. Curtis.

>> CHAIR JUDD-STEIN: Mr. Curtis, please join us. I'm well. How are you?

>> MR. CURTIS: Very good.

>> COMMISSIONER CAMERON: Good afternoon.

>> MS. LILLIOS: First I have the suitability of two MGM qualifiers and they are Mr. Patrick Madamba and Mr. Paul Salem. Each of them submitted all of the required forms and complied with all of the IEB's requests for supplemental and updated information. The IEB also interviewed each of them in person. They were cooperative and forthcoming in all regards and in keeping with our established protocols for background reviews of casino qualifiers. We verified identity, confirmed financial stability and integrity, reviewed litigation history, searched criminal history, verified that no prohibited political contributions were made in Massachusetts, and conducted checks of open source and law enforcement databases.

Turning first to Mr. Madamba, he is Vice President and Legal Counsel of MGC

Resorts International which is the ultimate parent company of MGM Springfield, our licensee. He took that position in August of 2017. And in that role, he has legal oversight responsibility for all of MGM's properties inside the U.S., apart from Las Vegas, which numbers, I believe, seven properties including our licensee.

He also is responsible for MGM's regulatory matters in the U.S. as they impact all of MGM properties. Mr. Seth Stratton, VP and Legal Counsel for the Springfield property, reports directly to Mr. Madamba and he, in turn, reports to Mr. Hagopian who is chief corporate counsel and also a qualifier for this license.

Before joining MGM in house in 2017, Mr. Madamba was a partner at the firm of Fox Rothschild in Atlantic City and he was there approximately ten years where almost all of his work was performed for MGM and he did that until MGM brought him in house, as I mentioned. He actually started working in the industry at casino properties in security before completing his undergrad and law degrees. And during law school he worked in the legal department at Claridge Casino in Atlantic City where he got his introduction into gaming law. He previously worked as counsel for Players International in Atlantic City and as an attorney at multiple law firms representing clients in the gaming industry. And he also worked for a number of years at a firm that specialized in patent law.

He has a bachelor's degree from Stockton College in New Jersey and political science and recently obtained another bachelor's degree in biology, also from Stockton, and his law degree is from Rutgers. He's currently licensed or has been found suitable in multiple jurisdictions and a check with Maryland, New York and New Jersey regulators indicate that his credentials are in good standing with no derogatory information found.

I should mention that the IEB has had extensive firsthand dealings with Mr. Madamba, Director Wells, myself, the GEU from the time that MGM was an applicant for the Region B license. He has a wealth of information and experience. He's a veteran gaming law attorney, and he takes a highly proactive approach with his communications and disclosures to the IEB about activity at the MGM corporate level. He's always responsive to inquiries by the IEB and is forthcoming in all of his dealings with the IEB.

He has demonstrated to the IEB by clear and convincing evidence that he is suitable under our criteria and our regulations and statute, and the IEB recommends that the Commission vote to find him suitable as a qualifier for the Springfield license.

>> CHAIR JUDD-STEIN: Any questions?

>> COMMISSIONER O'BRIEN: My only question is the timing between the submission of the application and the interview. Can you provide any clarity as to the gap?

>> MS. LILLIOS: I think the -- there can sometimes be some time before the application's actually transmitted to the IEB while the licensing division goes through and ensures that, you know, all of the materials have been submitted in the format required. And, you know, like all of our investigations, we are prioritizing, you know, juggling multiple investigations and, you know, given what we were dealing with in the past year and our familiarity with Mr. Madamba, we combined him and Mr. Salem who was a newcomer and you'll hear about in a moment, all part of our risk-based approach.

>> COMMISSIONER O'BRIEN: Thank you.

>> COMMISSIONER CAMERON: I agree with IEB's conclusion here, and reading this investigation report, very clean report. No issues of note at all. So I would -- I would move that the Commission find Patrick Madamba suitable as a qualifier.

>> COMMISSIONER O'BRIEN: Second.

>> CHAIR JUDD-STEIN: Any further comments? Questions?

All those in favor?

[Vote taken]

4-0.

>> MS. LILLIOS: Turning to Mr. Paul Salem, he was appointed to the Board of Directors of MGM Resorts International in August of 2018. He's an independent nonexecutive member of the board, and we performed the same sort of comprehensive review of independent directors of our casino licensees as we do on the inside directors. Mr. Salem sits on the real estate committee, the community service committee, and most notably, the audit committee of the board. He graduated from Brown University with a bachelor's in economics and later received an MBA from Harvard Business School. After receiving his MBA, he worked briefly for Morgan Stanley and left there within a year. He went on to start a private equity firm, Providence Equity Partners, with two fellow alumni from Brown. That firm is based in Providence, Rhode Island, and under Mr. Salem's tenure there as a senior managing director, the firm grew to manage \$60 billion in assets. He stepped down from Providence Equity Partners in June of 2019.

Of interest to sports fans here, he is a part owner of the Pawtucket now the Worcester Red Sox. He's currently undergoing a review by gaming regulators in Pennsylvania and Michigan. Maryland recently completed its review and reported to the IEB that he's in good standing with no derogatory information revealed.

I do want to note that before the recommendation that it was Trooper Morris and financial investigators David MacKay and Matthew Jordan who performed the review of these two qualifiers. And as for Mr. Salem, he, likewise, has demonstrated by clear and convincing evidence to the IEB his suitability. Our recommendation is that you approve his suitability as well.

>> CHAIR JUDD-STEIN: Any questions?

>> COMMISSIONER STEBBINS: I would just point out, Director Lillios did some quick follow-up yesterday on a couple of questions I had about our qualifiers. Thank you for turning around that information so fast.

>> MS. LILLIOS: Of course.

>> CHAIR JUDD-STEIN: The reports were very thorough. Thank you.

>> MS. LILLIOS: That's thanks to the investigators. They did a great job.

>> COMMISSIONER CAMERON: Concur. Another clean investigation. And I would further move that the Commission find Paul Salem suitable as a qualifier for Blue Tarp Redevelopment LLC.

>> COMMISSIONER STEBBINS: Second.

>> CHAIR JUDD-STEIN: Those in favor?

[Vote taken]

Opposed? 4-0.

>> COMMISSIONER CAMERON: Thank you. Thanks to the team for good work.

>> MS. LILLIOS: Thank you. We have another matter on the agenda today

regarding an application form for independent directors of gaming vendor primary applicants and licensees. So the IEB and the licensing division have proposed an application form that's in your packet, the proposed form's in your packet as well as a memo on this subject. And we're proposing that this form be utilized by independent directors of gaming vendor primary companies. These are the companies that manufacture and sell gaming-related products to our licensed casinos, so they are slot machine manufacturers, card and dice manufacturers, et cetera.

These independent or outside board members are not management employees of the companies, but they may be board chairs or sit on board committees like the compliance committee or the audit committee. These individuals, we have found, are often involved in many companies, may sit on many boards, and may have a lengthy history of employment in gaming-related companies before their appointment to the board -- to the relevant board of our applicant.

Under our regulations, the independent board members of these gaming companies are not automatic qualifiers, and we have not been performing background reviews of them. We would, however, like to identify those independent directors that have substantial responsibility for the company's business in Massachusetts and perform an appropriately balanced background review of them. And to that end, the positions we would be most interested in are board chairs and compliance committee members, possibly audit committee members.

We have found that the committee memberships on these boards -- I'm sorry, the committee memberships often rotate on a one or two-year cycle. So the background review utilizing the same form that we do for the inside directors does not lend itself to such a constant turnover. The attached form and proposed protocol would allow us to streamline our focus so we could concentrate on whether there are any concerns with an independent director's criminal history, licensing and regulatory history and any information in the public realm that calls suitability into question. So if, for example, an independent director was previously running or a top executive at a company that has a history of malfeasance, we would want to know that.

By contrast a risk-based approach to this group of individuals suggests that we not perform a net worth analysis, which is time consuming and intrusive, and we feel does not appropriately reflect their involvement or contributions as an independent member.

It's important to be mindful that we can always require supplemental, additional material if the information takes us -- the investigation takes us down that route, and the qualifier would be required to cooperate in that part of the investigation. Attorney Hartigan did perform some research into what other jurisdictions do here, and the finding, not surprisingly, is that the regulations are not always an apples-to-apples comparison, but in the jurisdictions we looked at -- or she looked at and reported on, significant discretion is given to the investigative team on whether to investigate independent directors with a focus like our regulation on whether the individual is making a substantial impact to the company, the direction of the company, and its focus and strategy in the governing jurisdiction.

It's our suggestion that we implement a protocol like this, revisit it in a number of months after we've had a chance to work with it for a while. We do suggest going back and revisiting our current applicants and licensees and identifying those independent

directors who we feel are making that kind of contribution or impact on the company and revisit it in six months and report back to you. And we think this strikes a balance that gives us a meaningful review of integrity and suitability but takes into account that these are not the inside executive team at the company. So I'm sure you may have questions. Happy -- Mr. Curtis is here as well -- happy to try to answer any questions that you have.

>> COMMISSIONER CAMERON: So because of their role on compliance committees and/or audit committees, you see some control, which warrants some further investigation.

>> MS. LILLIOS: And particularly with compliance where matters impacting or occurring and involving the Massachusetts licensee may make their way up through the compliance committee could be important to evaluate how the compliance committee is dealing with those matters. We do try to review minutes of compliance meetings now, but membership on those committees, especially chairs of those subcommittees of the board, feel have an impact on the potential impact on the Massachusetts licensee.

>> COMMISSIONER CAMERON: I know that the research demonstrates that everyone's regs are different, the laws are different, so different jurisdictions treat the matters differently, right? But there are some that use a form like this or --

>> MS. LILLIOS: I think the common theme through the jurisdictions that we looked at was that discretion is given. So typically from what we can tell, not all of the independent directors are routinely investigated, but the team, like in the scoping meetings that IEB conducts jointly with Bill and his team, we get the company's leadership on the phone, and we really try to understand who's doing what at the company. You know, we have our organizational chart that they provided us. We have our list of committee membership that they provided us. And we ask how things actually work. And through that discussion process, we try to identify who is having an impact on the strategic direction of the company, and in particular, who has the potential to impact what's happening with the licensee here in Massachusetts. And that's a common theme in other jurisdictions as well. It appears that a case-by-case review is conducted in other jurisdictions as well.

>> CHAIR JUDD-STEIN: But at this time you are not doing any reviews of these independent directors?

>> MS. LILLIOS: That's correct.

>> CHAIR JUDD-STEIN: Under your current guidelines. So the touch is with respect to our jurisdiction, and that would include chairs, or would you propose that you're likely to always look at independent directors who are also chairs?

>> MS. LILLIOS: That is our suggestion. The typical role of a chair is to implement and set the strategic direction of the company. And, you know, I should note that it's my impression that none of these companies will object to this process because in other jurisdictions, you know, they may already be doing it, and they, you know, our independent directors of gaming, it's a process that they would not be surprised at is my assessment.

>> COMMISSIONER STEBBINS: Do we have -- and maybe Bill can answer this question -- do we have a -- I'm trying to get a sense of the landscape, how many people we're talking about. How many gaming vendor primary companies do we have?

>> MR. CURTIS: Currently we have 24.

>> COMMISSIONER STEBBINS: Okay. So I -- you know, I like Deputy Director Lillios's suggestion. I'd like to come back and look at this within six months, just see how it's rolling out. You make the point that these chair seats turn over periodically.

>> MS. LILLIOS: That's right.

>> COMMISSIONER STEBBINS: Not really enough time to maybe do an in-depth look at somebody, but I'd be curious if that person was a chair, all of a sudden, is no longer the chair, they're still serving on that committee, to kind of track where their progression goes or do they move between committees.

>> MS. LILLIOS: Well, assuming your -- you know, we get the green light, we can calendar coming back in six months and reporting.

>> CHAIR JUDD-STEIN: Any further questions for Deputy Director Lillios? I think it's an excellent proposal. I do. I think it's practical but also conservative enough that we are preserving the integrity of the gaming as required by statute. So thank you. Questions? Do I have a motion?

>> COMMISSIONER STEBBINS: Madam Chair, I'd move the Commission approve the independent director qualifier application as included in the Commissioners packet. This form shall be completed and submitted by independent directors designated as qualifiers for gaming vendor primary applicants and licensees pursuant to 205 CMR 134.04, 4b, 2d.

>> COMMISSIONER O'BRIEN: Second.

>> CHAIR JUDD-STEIN: All those in favor?

[Vote taken]

Opposed? 4-0.

>> MS. LILLIOS: Thank you very much.

>> COMMISSIONER CAMERON: Thank you.

>> CHAIR JUDD-STEIN: Thank you. Thank you, Mr. Curtis, too. Additional work. We are now going to break for lunch. I do want to just explain that we will not be turning to Commissioner Zuniga's report on the gaming Commission's annual report this afternoon. We're going to be looking at the Ombudsman's report and a report from -- I guess it will be just them -- well, and also Director Griffin will have an item as well. Thank you. We'll break for -- it's 10 of 1:00, 1:30?

>> COMMISSIONER CAMERON: Good.

>> CHAIR JUDD-STEIN: Thank you so much.

[A lunch break was taken at 12:52 P.M.]

>> CHAIR JUDD-STEIN: We are reconvening Massachusetts Gaming Commission meeting number 283 at 1:35. We'll begin with number 8, Ombudsman Ziemba, please.

>> MR. ZIEMBA: Good afternoon, Chair and Commissioners. We're here today to propose final guidelines for the 2020 Community Mitigation Fund for your consideration. The next funding round begins February 1st, 2020. Joining me today are Construction Project Oversight Manager Joe Delaney, director of workforce development, Jill Griffin, and Mary Thurlow, our Community Mitigation Fund manager. I want to thank them, Shara Bedard and Commissioner Stebbins to develop these guidelines. Chair and Commissioners, in your packets you'll find the final draft community mitigation guidelines, a red line of the guidelines versus the prior draft. I've also included a memorandum which highlights changes that were made based on the meetings with the local community mitigation Advisory Committees, the subcommittee on community

mitigation, and the Gaming Policy Advisory Committee. Additionally the Commission received three comments as a result of the public comment request that we posted on October 25th.

In a minute I'm going to turn it over to Joe for a brief outline of some of the comments that we heard in our series of meetings. We very much thank the members of the LCMACs, the subcommittee, the GPAC and other groups that have provided very valuable input.

Jill will also provide a brief overview of our outreach and our workforce development and some of the issues that were discussed. However, first I'd like to just give a brief summary of the guidelines and some of the changes that we proposed. First, let me address the overall recommended level of funding. After our last meeting, we continued to review the recommended award target of \$11.5 million that was included in the draft. Since the time of the last meeting, we've seen another month's worth of revenue from our two category 1 facilities. We also did another deep dive into the totals of our past awards, factoring in how much of the reserves have been utilized for each of those grants. Detailed charts regarding these revenues and awards are included in your packet. But the bottom line is that we feel confident, absent something extraordinary, for the last two months of revenues that an \$11.5 million program is reasonable for next year.

Although it's significantly bigger than the prior year, the revenues will, in all likelihood, be able to support it. We also believe that continuing a regional allocation of target awards is warranted, as was our practice in the last year's guidelines. And as you recall, we are recommending a \$6 million Region A target and a \$5 million Region B target, and we typically have had a \$500,000 limit waivable for category 2 impacts. Joe will describe a little bit of the input that we received on this matter.

We also continue to believe the grants for transportation construction are warranted. We received some comments that more spending could be made available for transportation construction. In the revised guidelines, we put in new language emphasizing the Commission's ability to increase funding for some categories based on its review. Specifically we stated that the Commission could increase funds for transportation construction if other awards -- if other awards made for other categories do not reach the regional spending targets. Now, annually we always include a provision giving the Commission the ability to move up or down in different categories and up or down on awards and up or down on the total amount of awards based on its discretion, but we thought just additional language would be warranted here to give the Commission's inclination that we could take a look at transportation construction, especially if we are falling below those regional targets.

In regard to workforce development grants based on conversations at these Commission meetings, we are recommending a target spending amount of \$800,000. The number is closer to the actual spending from this current year. Although last year's guidelines in a \$600,000 target, which is what we had in our prior draft, we actually authorized awards of \$813,400. The additional \$200,000 added to workforce since the draft includes recommendations for two potential awards of \$50,000 for regional cooperation on workforce programs and an additional \$100,000 for significant regional needs. At a prior Commission meeting, the Commission noted that there may actually be different needs in each region and that targeting an equal amount of workforce funds

for both regions may not actually address specific needs in one region that may be experiencing some significant needs.

And so with those points as a general overview, let me just turn it over to Joe, and then he will, in turn, turn it over to Jill.

>> MR. DELANEY: Thank you. Throughout the fall, we held six meetings with the various committees and subcommittees. We had some fairly robust discussions with these groups on the proposed changes to the guidelines from previous years. As John mentioned, one of the main areas of interest was the transportation construction grants as being a new program. It tended to generate the most discussion. All of the groups seemed to be in support of using funds for construction grants, but we did have a number of discussions around the best way to implement this program. Again, the first item that John talked about was we got one written comment and several verbal comments about the amount of money that we're putting toward that program. I think our thought was that we wanted to start this program small. You though, we're sort of at the very beginnings of this. Let's see how things go and then we can ramp it up as we go along, but we did add that additional language that allows us to bring that level up if there's demand and there's space within the overall cap established for each region.

The second item with respect to that was a requirement for local matching funds and what percentage that should be. It was the consensus of the groups that we should encourage a significant match from the communities. But without establishing an exact percentage. And the argument for that was that, you know, the scale of the projects and their relation to direct casino impacts could vary and should be considered on a case-by-case basis. So we added language to the guidelines that emphasized the significance of matching funds and the extent to which the project mitigates casino-related traffic impacts will be strongly considered in the evaluation of proposals.

We also discussed the possibility of having multiyear construction grants. Due to the complexities involved with community borrowing, the Commission's inability to guarantee the availability of funds over multiple years and the fact that this is our first foray into providing construction funds, it was decided to defer the consideration of multiple-year grants to the next round of funding. One of our subcommittee members offered to help us set up a meeting with bond counsel so that we can develop a better understanding of the intricacies of municipal bonding and how that could work within our framework.

In addition to that -- or in the guidelines, we've proposed, during the course of this year, issuing a statement of interest to the nearby communities to help determine, you know, what types of casino-related multiyear construction projects might be under consideration in those communities. And in doing that, that will give us an idea of sort of what the universe of projects is and, you know, dollar values and so on, and that will help us in crafting our guidelines going forward for some of these larger transportation-related projects.

Some of the other things that we talked about at the meetings. We talked about the split of funds between Region A and Region B. And there definitely is a consensus among the regions that the money should stay within the regions. We also talked about the rollover of funds within the region if they were underutilized. Again, all were in agreement that the funds should remain in the regions and that the rollover funds should be the first money used when awarding grants.

Also a few questions around, you know, sort of how strong the nexus to the casino must be in order to obtain funds. And we reiterated what we've said multiple times is that while there certainly can be ancillary benefits that are not casino related, the project must address a casino-related impact. And there was also some discussion about the allowance of administrative costs on workforce grants, and with that I will turn it over to Jill to talk about workforce.

>> MS. GRIFFIN: So in addition to putting the guidelines out for public comment, I also sent the guidelines specifically to our workforce partners and other training entities. And we additionally met with the workforce skills cabinet, the undersecretaries of labor and workforce development, education, housing and economic development and a representative from Commonwealth Corporation was there and received feedback on the guidelines, very positive feedback. One discussion point was leveraging and coordination of the public funding that might be available through workforce competitiveness trust fund, the skills capital grants, or the Department of Secondary Education, the ESOL or ABE program funding, Department of Higher Education grants. And so, you know, that seems to be something that we can really emphasize this year and should to our potential applicants, especially in the areas around hospitality and culinary.

Additionally, we did receive one comment from the Jobs Action Network as a result of this outreach. And we appreciate that response. They have mentioned some activities to be included in the guidelines. Some of the activities that we believe are allowable, as we have already funded some of these areas. So, for example, workforce development assistance such as resume preparation, interview practice, and career counseling as long as the applicant makes the strong connection to the casino or to the backfill opportunities in hospitality or culinary, you know. There is one point that maybe changes the direction of the grant. The retention assistance would be a departure from what we have currently funded. And this connection is -- may be attenuated. I'm not sure that I would recommend going in this direction, but we certainly appreciate the feedback from these community organizations. And I think that would be it.

I think the message this time around, as we really expect collaboration, and we're encouraging collaboration between the organizations in the entire region, and we've incentivized it as well.

>> MR. ZIEMBA: Thanks, Jill. Our goal for today is if the Commission is comfortable publishing these guidelines or if it would like any other information on its components. As such, we welcome any questions you may have. If the Commission approves the guidelines today, we would aim to get them posted by sometime next week. One thing if the Commission does authorize the guidelines, we do ask that it gives us some flexibility on minor wording changes in the event that we see something that needs correction. So with that, I'm open for any questions.

>> COMMISSIONER STEBBINS: I first want to say having the opportunity to serve as the Commission's representative on these committees, it's -- it was unique this year to see the involvement of the committee members. I mean, some of them have been giving of their time for now two or three years. The conversations are more detailed. They're more strategic. Even some of the new members that we've added, you know, kind of jumped in with both feet and have gotten engaged. So I credit you, John, and

Mary and Joe and Jill on kind of bringing those committees to kind of coalesce around their work and be engaged and partnered with us on this effort. So kudos to all of you for helping to do that.

I want to talk just briefly about workforce development, and some of this is kind of in light of the conversation we had with the skills cabinet just this past Monday night. And this doesn't necessarily need to be reflected in a change in the guidelines, but I would like to maybe see it built into the application. I think it's time because we've been doing these -- this will be our fourth year of workforce development grants. I would like to see our applicants to go back and have a conversation with our licensees, and we can help convene that conversation if it's appropriate just to make sure that some ongoing workforce development needs are being considered by our applicants with respect to our licensees. We know in the past there's been support for the gaming school out in Western Mass. We've not seen as much connection to the gaming school provider in Eastern Mass. And yet we still know that there are dealer positions that continue to go unfilled.

I think as we tie some money to a demonstration of significant needs, that obviously we need to see that our applicants are actually making that assessment by talking to the local employer community. It shouldn't just be all based on projections or anecdote. It's let's see that they're really having a conversation to demonstrate that significant need in the region.

Jill brought up an interesting point, again, that was shared with us by the team at the skills cabinet talking about new training dollars that might be made available. Again, not to necessarily change the guidelines, but if an applicant wants to demonstrate to us that they plan to pursue other available monies from other stakeholders, it would be great for them to note that. At the end of the process, we might be open to trying to match some of those monies. I think it was two years ago we had really supportive hard and fast cash matches from some of the communities surrounding Everett. I'd like to see if we can have an opportunity to get back to that point and have a bigger impact with our infusion of dollars. But, again, I think some of that can be folded into the application, not necessarily change the guidelines as you've had them presented.

>> MR. ZIEMBA: Commissioner, I think those are excellent points. To the extent that they're not addressed, we'll do so. Specifically the question of how are they working with our current licensees, we could include a section in the application saying can you please describe the contents of your conversation regarding this application with the licensee. Annually as part of our reviews, we always reach out to the licensees to see what their opinions are about all of the applications, but sometimes the comments are more general in nature, and they don't really give us the benefit of the true conversation that happened. But asking the applicants to do that as part of the application, I think, makes a good deal of sense in addition to spelling out some of the matching funds and the other things that you described. So I think those are great suggestions.

>> MS. GRIFFIN: And I think we can certainly add a question about their discussions with regional employers as well.

>> COMMISSIONER STEBBINS: Yeah. Again, if we're -- and I like this idea of making an extra \$100,000 available to address significant regional needs. They've got

to be able to back that up somehow, right? It's either through data or it's conversation with, you know, the employers in the region. You know, they've got to have something to be able to demonstrate there's significant need in the region still.

>> MR. ZIEMBA: It would be good to have it up front because as you know with our process, we bring in all the applicants for conversations, and we have pretty lengthy follow-up questions and get detailed responses. But to have that from the start would actually be beneficial to, I think, them and to us in part of the review.

>> COMMISSIONER STEBBINS: Right. It gives them time to do it before the application deadline. Even beyond that it gives them time to be prepared for that when you do have those one-on-one visits.

>> MR. ZIEMBA: It makes a lot of sense.

>> COMMISSIONER CAMERON: I just wanted to -- I concur with Commissioner Stebbins that your use of committees is no better example here at the Commission of working so effectively, how much input, how much time they provide to this, not only with the guidelines, but I know on the review end as well when the applications are submitted. So -- and, you know you're just thoughtful about tweaking the application because every year the needs change. So you're very -- your group is really thoughtful about making those changes, really listening to the stakeholders. So once again, I'm really impressed with the work that's done up front to make these the strongest guidelines possible.

The other thing, I think, that is noteworthy is no guidelines are guidelines, but how hard the team works to make sure the applicants understand and are submitting exactly what you need to give them a fair shake. I know how much work goes in there as well. They know they can pick up the phone or send an email and get a quick response. So I just, you know, certainly am supportive of the changes you've made this year and you've laid them out well. So thanks for the work up front.

>> MR. ZIEMBA: Thank you, Commission. I couldn't agree more. We continue to get more and more input as Commissioner Stebbins mentioned, some really valuable input. Sometimes we even joke in the meetings how even a staff member might have a different opinion from the community member, the community member is winning these arguments lately.

>> COMMISSIONER CAMERON: Mm-hmm. Wow.

>> MR. ZIEMBA: So much to staff members' chagrin.

>> COMMISSIONER CAMERON: Ha. That's funny.

>> MR. ZIEMBA: But that's okay. One thing I wanted to mention in the guidelines I didn't mention in my brief overview. We have public safety grants and we put limitations on public safety grants. And there was a figure that was left out of the initial draft of should there be an overall limit on the amount of public safety grants for this next year. And we did put a \$200,000 marker in there per grant. But again, that is waivable based upon cause.

>> COMMISSIONER CAMERON: And we've already done that once before.

>> MR. ZIEMBA: Yes.

>> CHAIR JUDD-STEIN: I have -- oh.

>> COMMISSIONER O'BRIEN: No, I was just saying it looks good.

>> CHAIR JUDD-STEIN: It does look good. I just have a couple of questions or comments. On the -- I think that -- did you say for just next year you're going to solicit

statement of interest with respect to the multiple-year joint transportation -- to just gather interest, but we won't be funding any of those?

>> MR. DELANEY: That's correct. So the plan is that sometime in the new year, you know, perhaps by May or so if things work out, we would issue a request for statement of interest. And that wouldn't be a funding round. The funding rounds only occur on the date, February 1st, date. But what that would do is we would get the -- we would learn about what projects are out there that would require multiple years of funding.

>> CHAIR JUDD-STEIN: Yep.

>> MR. ZIEMBA: That would help us build the guidelines for the future year, and it would help us learn more about the specific applications that might be before us in the future year. You never -- one project that we have talked about in some of the meetings is there's the pedestrian bridge that has been discussed. And I think in some of the conversations that we've had in the regional meetings is that based on where that project stands right now, actual construction dollars may not be necessary for next year. And that project is rather complicated. So it could just need special legislation. So if something moves on that project, we could certainly have conversations between now and next year. But I wouldn't anticipate that actual funding would be necessary to come out of the fund for construction dollars within this next fiscal year. But we may be back before the Commission if things develop on that project.

>> CHAIR JUDD-STEIN: And one point you mentioned was the difficulty in the bonding issues.

>> MR. ZIEMBA: Yes.

>> CHAIR JUDD-STEIN: Is there -- are we able to do any outreach during the course of the next year to find out if there's innovation out there with respect to bonding that we might be -- might not be aware of? I don't know if we've solicited public comment for that or if we're able to get any expertise?

>> MR. ZIEMBA: Yeah. Joe mentioned that one of our subcommittee members recommended a couple of names of bond counsel that we can talk to.

>> CHAIR JUDD-STEIN: And we can use them.

>> MR. ZIEMBA: So we talk to them just as a purely informational basis.

>> CHAIR JUDD-STEIN: Okay.

>> MR. ZIEMBA: In addition, I think we would rely upon if a municipality has a project that they want to move forward, they have some resources as well. Some counsel, if they can take a look at some of the issues.

>> CHAIR JUDD-STEIN: Right. I was just wondering if there was an opportunity -- and I thought I had understood about the bond counsel. To the extent that we can provide that education to municipalities who might be skittish or not have the immediate resources to look into it.

>> MR. ZIEMBA: Yep. Yep.

>> CHAIR JUDD-STEIN: There might be innovations out there.

>> MR. DELANEY: Yeah. And I think we want to just understand sort of what the nuances are of how we could use our money to help, you know, pay debt service on loans taken out by a community. It's a little bit of a -- a little more unorthodox arrangement.

>> CHAIR JUDD-STEIN: That's right.

>> MR. DELANEY: And typical.

>> CHAIR JUDD-STEIN: That's right.

>> MR. DELANEY: We want to understand, A, if it's doable. And B, if the, what we would have to do to make that happen and sort of what mechanisms we'd need to put in place.

>> CHAIR JUDD-STEIN: Yeah, I wasn't sure if I understood you correctly. We can go ahead and do that outreach.

>> MR. ZIEMBA: Yep.

>> CHAIR JUDD-STEIN: That's excellent. And secondly with respect to outreach, we want to get the wide universe of interest and applications, our communications director. That would be Elaine Driscoll, works closely with you in terms of advertising this wonderful program.

>> MR. ZIEMBA: That's right.

>> CHAIR JUDD-STEIN: So folks should stay tuned and watch our website on these opportunities.

>> MR. ZIEMBA: That's good.

>> CHAIR JUDD-STEIN: Because we want lots of applicants. And then finally, John, I've mentioned this in the past. Your leadership on this effort is, as Commissioner Cameron mentioned, is just outstanding.

>> MR. ZIEMBA: Thank you.

>> CHAIR JUDD-STEIN: It is a program that, you know, really could be replicated across the Commonwealth. So at a certain point in time when you have nothing else to do, we should think about how you could almost, you know, bundle this for a template for others because it's outstanding work.

>> MR. ZIEMBA: Thank you. I mean, this team is just tremendously outstanding. And kudos go specifically to Mary for the last month. We've been torturing poor Mary on all of these figures on these reserves every single day. I guess I apologize, Mary. [Laughter]

>> CHAIR JUDD-STEIN: Duly noted, Mary?

>> MR. ZIEMBA: Thank you.

>> CHAIR JUDD-STEIN: And that's Project Manager Mary Thurlow. Thank you. We know exactly how much you provide behind the scenes and here in front of us, so thank you. Great work. Any other questions?

>> COMMISSIONER STEBBINS: Madam Chair, I'd move that the Commission approve the final Community Mitigation Fund guidelines for the 2020 Community Mitigation Fund applications.

>> COMMISSIONER O'BRIEN: Second.

>> CHAIR JUDD-STEIN: All those in favor.

[Vote taken]

Opposed? 4-0. Excellent.

>> COMMISSIONER CAMERON: Thank you all.

>> COMMISSIONER STEBBINS: Nice work.

>> MR. ZIEMBA: Thank you very much, team. Okay, Commissioners. I'm going to move on to the next item which is a letter that's in your packet. I believe Alex is going to take a seat.

>> CHAIR JUDD-STEIN: Welcome back, Dr. Lightbown.

>> DR. LIGHTBOWN: Thank you.

>> MR. ZIEMBA: So Commissioners, in your packet is a letter for your consideration that has been drafted to be sent to the Speaker, the Senate President and the Chairs of the consumer Protection and Professional Licensure Committee relative to the upcoming expiration of the Commonwealth's racing and simulcasting laws. As the Commission is aware, this past summer, the legislature and the Governor signed an extension of these laws which were due to expire on July 31st. Pursuant to Chapter 47 of the acts of 2019, these laws were extended to January 15th, 2020, because this January 15th date is soon approaching, we recommend that the Commission submit a letter expressing its support for a further time-limited extension of the current racing and simulcasting statutes as the legislature contemplates why or what larger reforms are warranted for the industry.

As the Commission is aware, the Commission filed legislation regarding racing for consideration during this legislative session. At the November 21st Commission meeting, the Commission discussed this legislation. A Commission openness to review provisions of this legislation, and other legislation that has been filed regarding racing. I won't attempt to repeat that conversation. However, I will note that the proposals put forward in some of those pieces of legislation are likely to require some significant review by the legislature. Although a major reform of the Commonwealth's racing and simulcasting statutes is not impossible in the time between now and January 15th, enactment of a major reform by that time would certainly be challenging. For one reason as the Commission is aware, the legislature concluded its planned formal sessions for the year back at the end of November. And formal sessions are not expected to resume until after the legislature reconvenes in the new year.

The draft letter in your packet has been drafted mindful of these time and logistical constraints. While we know that the legislature is aware of the upcoming deadline, we believe that the letter would be beneficial to respectfully express the Commission's support for a further extension. The letter also extends an offer of any Commission input that could be helpful in any larger review of the racing and simulcasting laws. We hope that these two components of the letter demonstrate the Commission's support for the legislature as it contemplates how to ensure that this important industry is not disrupted after the new year.

We do note that the draft letter anticipates a discussion by the Commission about whether or not it wants to recommend how long an extension could be. I further note that even in the absence of any specific date, the legislature does face another internal deadline of July 31st, 2020, which is the last day for formal sessions for the 191st General Court. Director Lightbown is here to help answer any questions you may have, and with that I'd turn it over to the Commission.

>> COMMISSIONER STEBBINS: I, for one, I was impressed with the letter, John. I know you and Alex and other folks worked on it. And I've given you, you know, some thoughts on kind of a first version have floated around. Another kind of quick edit, on the first paragraph -- the end of the first paragraph on page 2, the last sentence says "should such input be useful," I would strike that. I would suggest any input is useful in that, you know, we would welcome the opportunity to review those suggestions and input. I don't think it's a question of would it be useful. I think it all is useful.

The -- with respect to setting an expiration date or recommending an expiration

date, as you pointed out to me -- as you pointed out to us, the fact of what the legislative calendar looks like in 2020 and their wrapping up of official business by July 31st, which would be midway almost through our racing season, so I was originally thinking a date past that, and maybe past the end of the year. But as we heard from Mr. Tuttle today, there might be action on Beacon Hill with respect to sports betting and how sports betting might tie in racing, you know, before the July 31st deadline or kind of legislative deadline next year. I don't know. I don't know where that leaves us in terms of making a recommendation as to an extension. You know, whether we set it for July 31st.

>> CHAIR JUDD-STEIN: Do you see the language in the first paragraph? The question is whether we want to supply a date or leave it where the sentence would conclude after the word "date." My recommendation would be to leave it to the legislature's discretion.

>> COMMISSIONER CAMERON: I agree. I would agree. No sense putting a date in. I think it's going to be up to them. This is a reminder letter that --

>> COMMISSIONER O'BRIEN: Well --

>> COMMISSIONER CAMERON: -- things happen if no action is taken.

>> COMMISSIONER O'BRIEN: So my memory of the letter was twofold. One was reminding -- sort of a general reminder of January 15th and then the other was more -- a more forceful reminder that maybe it's time to look at this, you know, holistically and make decisions on where to go for the industry.

>> COMMISSIONER STEBBINS: Right.

>> COMMISSIONER O'BRIEN: And Dr. Lightbown and I talked about it, a couple of the comments that I had on the letter -- and maybe we don't want to do this -- but the comments I have speak more to drawing that point out, which is pointing out the number of times that this has only been extended as a stopgap rather than addressed substantively, pointing out sort of the negative impact that can happen on the industry in terms of the uncertainty. That's a question -- it would speak to not putting a specific date on because it would speak to sort of encouraging them to really take a look at and decide how much time they would need to extend to then accomplish, you know, a deeper dive on what the statute should look like. In terms of suggested edits, toward the end of the second paragraph on the first page, that last sentence that talks -- it says "thus a temporary shutdown would affect the funding available." Maybe to emphasize thus even a temporary shutdown to emphasize that even these short of short-term disruptions and shutdowns can have a negative impact. And then the second page, the concluding paragraph where you talk about how there have been examples of success in the industry. Dr. Lightbown and I talked about getting a stat on -- my memory was there was a presentation on the number of mass-born foals and how that had gone up significantly given what has been in place. And I don't know if that's possible to get a hard figure in terms of -- I know there was some example. They did a number of years of how that had really gone up exponentially in showing the success of the program.

>> DR. LIGHTBOWN: I have some figures on the number of standard-bred broodmares that were in the state from 2015 and then in 2019 where, you know, tripled, basically.

>> COMMISSIONER O'BRIEN: Right. I thought there might be one or two

sentences in there to point to an example of concrete of improvement in the industry or noneconomic benefit.

>> COMMISSIONER STEBBINS: As many notes as we can take around the standard-bred industry and the vibrancy that's been returned to the standard-bred industry I think is extremely helpful. I think this is -- I think we all agree this is how the legislature, when they passed the gaming act was hoping the contributions and arrangements would work. This kind of lurching from deadline to deadline, I mean, I can't think of another industry in Massachusetts which faces a deadline as to how they're -- whether they're going to be able to operate the next day.

>> COMMISSIONER CAMERON: But do we want to tell them how many times?

>> COMMISSIONER O'BRIEN: No. That's why I threw that out there. It could go either way. I did want there to be another message in terms of we also think ripe to look at this substantively and reminders about the fact that we already have evidence of success I think would help in that regard.

>> COMMISSIONER STEBBINS: Yeah.

>> CHAIR JUDD-STEIN: To your point, Commissioner O'Brien, about the uncertainty that it creates, do you want to add a clause on that last sentence, even a temporary shutdown would affect the funding available for it to regulate the industry once it resumes, comma, creating continued uncertainty for the -- something like that?

>> COMMISSIONER O'BRIEN: Right.

>> CHAIR JUDD-STEIN: Uncertainty? I don't think it's probably lost on the legislature that they use this mechanism of extending the deadline. I think it's helpful for us to provide the reminder, and I would probably not recommend going back and counting them up. But I do think this is a helpful letter to just say January 15th is coming around the corner because, as John points out, they're in informal session. The holidays come up. And like everybody else, they're busy. And we don't want them to, at the last second, forget that there are some significant implications if an extension isn't in place.

>> MR. ZIEMBA: Chair, I want to point out there was one number that was included in the final paragraph that Alex and I caught today. The number of race days this year was not 110. It was 108.

>> COMMISSIONER CAMERON: Yes. Next year will be 110.

>> MR. ZIEMBA: Next year will be 110.

>> COMMISSIONER CAMERON: Yes. I really like the --

>> CHAIR JUDD-STEIN: For this year.

>> COMMISSIONER CAMERON: Yes. And I really like the idea of putting in a couple lines about the successes of standardbred and hopefully they can extrapolate and think, okay. It would be possible to do that with thoroughbred as well, right?

>> MR. ZIEMBA: So why don't Alex and I try to find a sentence or two and then we can recirculate the letter.

>> COMMISSIONER CAMERON: Great. Thank you.

>> CHAIR JUDD-STEIN: I think that's really a response to our request, and thank you so much.

>> MR. ZIEMBA: Great.

>> DR. LIGHTBOWN: Thank you.

>> MR. ZIEMBA: Thank you.

>> COMMISSIONER STEBBINS: Great work.

>> CHAIR JUDD-STEIN: Now, back to Director Griffin. Director Griffin, please, on item -- now item number 9, our earlier item 8 on the Workforce, Supplier and Diversity Development RFR for small business technical assistance.

>> MS. GRIFFIN: Good afternoon, Commissioners.

>> COMMISSIONER CAMERON: Good afternoon.

>> COMMISSIONER STEBBINS: Good afternoon.

>> MS. GRIFFIN: Nice to see you again. Commissioners, as you are well aware, the Expanded Gaming Act was an economic development bill. Its intentions were to ensure that Massachusetts residents and businesses benefited both from the jobs and procurement opportunities provided by the new industry. Working with licensees, vendors and community leaders, the Commission ensures that the new state -- that the state's new industry is inclusive and provides opportunities that reflect the diversity of the Commonwealth. Licensees were required to set hiring goals and submit strategy plans for utilizing minority women and veterans in the construction and operations of their gaming establishments. The Workforce, Supplier and Diversity Development department is tasked with aiding and monitoring the licensees through these phases.

But with additional focus on the operations phase of the casino, the Commission has a mission to maximize the equity and inclusion and opportunities for local businesses looking to do work with the casinos as a vendor or a supplier. We are seeing evidence of the intended impact, and we want to ensure that the Commission does everything possible to work with our licensees to maximize these results. So with that express purpose of ensuring that Massachusetts small businesses continue to be successful in the expanded gaming industry, we have posted a request for responses as available as part of the public bid record on COMMBUYS. We did this on December 3rd, earlier this week. That's www.COMMBUYS.com. The Commission intends this grant program to provide targeted, intensive, one-on-one consulting expertise to small and medium-size Massachusetts-based companies who are current vendors to one of the three casinos or a company that is identified by a casino as a potential vendor. Business, technical assistance could include designing and executing business growth strategies, providing technical expertise around finance, capital management, Human Resources, back-office infrastructure, legal and other operational efficiencies.

The grant program is intended to fund a qualifying business -- to fund a business assistance entity which can achieve the following objectives, offering technical assistance to companies that have existing business relationships, as I mentioned, but may need consulting or technical assistance on a specific issue to ensure continued success as a vendor. Also working with the casino procurement representatives to identify Massachusetts-based and minority, women and veteran enterprise businesses in the procurement categories identified as needed by the licensees. The Commission may award grants totaling \$150,000 in a competitive process to support these focus -- work focuses. We expect grant amounts to range from approximately \$25,000 to \$150,000. You know, the grant funds must be expended by the end of the fiscal year, June 30th, 2020, but may be eligible for additional funding cycles based on performance and budget availability.

We are asking applicants to demonstrate that they currently operate a business technical assistance program. The grant program, and they need to demonstrate that

they have existing infrastructure and recent indicators of success with business clients. Proposals are due on Friday, January 3rd, by 3:00 P.M. And with that, I'll ask if you have any further questions.

>> CHAIR JUDD-STEIN: Director Griffin, just on your very last point, I'm wondering about the due date.

>> MS. GRIFFIN: Yes.

>> CHAIR JUDD-STEIN: January 3rd. You've offered four weeks because you posted December 3rd. I'm wondering if you might want to extend it out another week given the holidays. You might lose some applicants because of just scheduling demands. Did you consider that?

>> MS. GRIFFIN: Possibly. We actually had an earlier date planned and extended it to the 3rd, but we could -- we could certainly consider it. We think --

>> CHAIR JUDD-STEIN: Because you really want to turn it around fast.

>> MS. GRIFFIN: We do. Just -- the funds need to be spent by the end of the fiscal year.

>> CHAIR JUDD-STEIN: End of the fiscal year.

>> MS. GRIFFIN: So we're concerned about that time line as well.

>> COMMISSIONER STEBBINS: Go ahead.

>> COMMISSIONER CAMERON: No, I was just going to say, it is a good point. I don't know that people focus as much until after the first of the year. I'm just not sure.

>> COMMISSIONER O'BRIEN: You could give them till Monday or Tuesday. Not a whole week. You could at least give them until the beginning of the next business week. Split the difference.

>> MS. GRIFFIN: We could certainly do that. Our legal advice -- I think in the RFR, we have the ability to amend, you know, so we could certainly do that.

>> COMMISSIONER STEBBINS: I think this is spot on, Jill, and kudos to you and your team, which kind of just includes you and Crystal.

>> MS. GRIFFIN: My entire team.

>> COMMISSIONER STEBBINS: Your entire team. But I think this is interesting, kind of where this has evolved is that, you know, I think from the experience that you've had and the calls you've gotten, you're finding some individual vendors that have specific issues they're trying to get over. And as a way to help our licensees not lose an opportunity to have a vendor relationship. I think this is spot on. To take note of kind of the tight timeframe, are there conversations you can start to have with our licensees to get them to think about the companies they might want to suggest would be good candidates for assistance, just to kind of tee up some of this work?

>> MS. GRIFFIN: I've had initial conversations with all of the licensees to introduce and really ascertain if this would be helpful, and they each -- each of the licensees came up with at least a handful of companies that could potentially be aided from this program.

>> COMMISSIONER STEBBINS: Okay.

>> MS. GRIFFIN: But I will certainly continue those conversations.

>> COMMISSIONER STEBBINS: Okay. Great.

>> COMMISSIONER CAMERON: Great. Really good work.

>> CHAIR JUDD-STEIN: And you don't need a vote to move forward.

>> MS. GRIFFIN: I don't need a vote.

>> CHAIR JUDD-STEIN: (Away from mic) posted. So moving on -- any further questions for Director Griffin?

>> MS. GRIFFIN: So we will look at changing or extending the date to the following week, maybe the following Monday.

>> CHAIR JUDD-STEIN: Yeah, think about it. Think about it. I suspect maybe Mr. Grossman's thinking is see how your responses look and what -- you know, whether you're getting them in.

>> MR. GROSSMAN: (Away from mic).

>> CHAIR JUDD-STEIN: But I just think it might be -- people might be right on the ball and getting it done before the holidays, but just that 3rd, because the 1st would be a day off for most people, right?

>> MS. GRIFFIN: Mm-hmm.

>> CHAIR JUDD-STEIN: So that's -- that would be --

>> COMMISSIONER CAMERON: Wednesday.

>> CHAIR JUDD-STEIN: -- Wednesday. And then I suppose then they go back to work Thursday, Friday, you know.

>> COMMISSIONER CAMERON: Or if they have the week off, Monday would be appropriate, right?

>> CHAIR JUDD-STEIN: Right. So just a thought.

>> MS. GRIFFIN: Okay. Thank you.

>> CHAIR JUDD-STEIN: We want to make -- maximize the opportunity. So it's a great proposal. So thank you. Anything else? Excellent. As I mentioned --

>> COMMISSIONER CAMERON: Thank you.

>> CHAIR JUDD-STEIN: Thank you, Jill. As I mentioned, Commissioner Zuniga is not here, so we will not be going over the draft that is included in today's materials for the Gaming Commission's 2019 annual report. We'll take that up at our next public meeting. With respect to item 11, one I had, but it was relevant to Commissioner Zuniga, so I won't be bringing that up. Do you have any -- using my brain -- any updates?

>> COMMISSIONER STEBBINS: No.

>> CHAIR JUDD-STEIN: Okay. Then barring no further business, do I have a motion?

>> COMMISSIONER CAMERON: Move to adjourn.

>> CHAIR JUDD-STEIN: Second?

>> COMMISSIONER STEBBINS: Second.

>> CHAIR JUDD-STEIN: Thank you. All those in favor.

[Vote taken]

4-0. Thank you.

[The meeting concluded at 2:25 P.M.]