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THE COMMONWEALTH OF MASSACHUSETTS  
MASSACHUSETTS GAMING COMMISSION

75TH PUBLIC HEARING

CHAIRMAN

Stephen P. Crosby

COMMISSIONERS

James F. McHugh

Bruce W. Stebbins

Enrique Zuniga

(Not in Attendance:) Gayle Cameron

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August 22, 2013, 9:30 a.m. to 12:14 p.m.

Division of Insurance

1000 Washington Street

1st Floor, Meeting Room 1-E

Boston, Massachusetts

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

CHAIRMAN CROSBY: I will call to order the 75th meeting of the Massachusetts Gaming Commission on August 22nd, 2013 at 9:30 a.m. at the Division of Insurance, 1000 Washington Street.

We will start with the adoption of the minutes. Commissioner McHugh.

COMMISSIONER MCHUGH: The minutes, Mr. Chairman, are in the book, and apart from some typographical errors, of which there are at least one, I would move their adoption as contained in the book.

CHAIRMAN CROSBY: Second?

COMMISSIONER STEBBINS: Second.

CHAIRMAN CROSBY: Anybody have any comments besides typos? All in favor?

COMMISSIONER STEBBINS: Aye.

COMMISSIONER ZUNIGA: Aye.

COMMISSIONER MCHUGH: Aye.

CHAIRMAN CROSBY: Aye. Opposed?  
The ayes have it unanimously; unanimous being four to zero. Commissioner Cameron has had her

1 knee replaced and won't be back with us for a  
2 little while.

3                   Next on the agenda is a report from  
4 Jill Griffin, the director of workforce  
5 development and supplier diversity. Director  
6 Griffin.

7                   DIRECTOR GRIFFIN: Good morning,  
8 Chairman Crosby and Commissioners.

9                   CHAIRMAN CROSBY: Make sure you  
10 speak into that thing a little bit.

11                   DIRECTOR GRIFFIN: So good morning,  
12 Commissioners, Chairman Crosby. It's my pleasure  
13 to be here today to introduce our friends from  
14 the Commonwealth of Massachusetts Division of  
15 Marine Fisheries. And they're going to present  
16 on the Massachusetts seafood industry. And in  
17 addition to presenting to you today, the Division  
18 of Marine Fisheries has agreed to join a  
19 statewide Mass. Gaming supplier task force. And  
20 statewide task force members will serve as  
21 resources for our applicants and licensees to  
22 create relationships with small businesses,  
23 potential vendors, and the applicants and support  
24 the preparation of small business owners across

1 the state in becoming capable, qualified  
2 suppliers and vendors to the casino industry.

3 So as Mass. Gaming director of  
4 workforce supplier, development, and diversity,  
5 my role is to make sure applicants are aware of  
6 the contacts and resources in our partner state  
7 agencies that support Massachusetts small  
8 businesses.

9 And the presentation that follows  
10 is similar in intent to the presentation by the  
11 Department of Energy and Resources, the  
12 Department of Agriculture, and the Mass. office  
13 business developments creative economy  
14 presentation. And I hope that these  
15 presentations help applicants better understand  
16 the Massachusetts economy and make it easier to  
17 support the diverse small businesses that make up  
18 our industries, and today, the seafood industry.

19 After all, Commissioners, every  
20 visitor wants to try some local seafood when they  
21 visit Massachusetts, don't they.

22 CHAIRMAN CROSBY: Of course.  
23 That's what they come here for.

24 COMMISSIONER MCHUGH: Right. Or at

1 least should.

2 DIRECTOR GRIFFIN: So I'd like to  
3 introduce director --

4 CHAIRMAN CROSBY: Can I just  
5 interrupt, Jill, before. Would you expand on  
6 that task force a little bit? Is that something  
7 you're setting up? Is that already -- What --  
8 Say a little more about that.

9 DIRECTOR GRIFFIN: So this task  
10 force is something that, yes, the Mass. Gaming  
11 Commission is going to be setting up, and we are  
12 starting to invite other state agencies that  
13 support businesses or have relationships with  
14 business to act as resources.

15 So, for example, you know, if any  
16 of the applicants are interested in making  
17 connections with local seafood companies, the  
18 Division of Marine Fisheries has agreed to be a  
19 resource.

20 CHAIRMAN CROSBY: Okay. So this is  
21 something that you're pulling together?

22 DIRECTOR GRIFFIN: That's right.

23 CHAIRMAN CROSBY: That's great.  
24 That's what we've been waiting for. But I would

1 like, and I bet others would too -- I think you  
2 were involved in this already, Commissioner  
3 Stebbins. But I'd like to have an outline pretty  
4 soon about what you have in mind, how it works,  
5 give us an opportunity to brainstorm about it.

6 DIRECTOR GRIFFIN: Sure.

7 CHAIRMAN CROSBY: So as soon as you  
8 can, I'd like to have that be on the agenda for  
9 something we can talk about.

10 DIRECTOR GRIFFIN: Very good. I'd  
11 be pleased to come back.

12 CHAIRMAN CROSBY: Okay.

13 DIRECTOR GRIFFIN: Without further  
14 adieu, I'd like to introduce Director Paul  
15 Diodati and Story Reed, an analyst from the  
16 Division of Marine Fisheries. And the Department  
17 of Fisheries has also invited Laura Foley  
18 Ramsden, owner of Foley Fish Company, to  
19 represent the Commonwealth seafood industry, and  
20 she will join in a few minutes.

21 But Director.

22 DIRECTOR DIODATI: Thank you, Jill.

23 CHAIRMAN CROSBY: Hey, Paul.

24 DIRECTOR DIODATI: Good morning,

1 Chairman Crosby, and good morning Commissioner  
2 Stebbins. Nice to see you both again. And nice  
3 to meet the other commissioners who I don't know.  
4 But as Jill indicated, I'm Paul Diodati, and I'm  
5 director of our state's Division of Marine  
6 Fisheries.

7           The division is the state's  
8 fisheries agency responsible for managing marine  
9 fisheries resources; although, we do a fair  
10 amount of advocacy and marketing programs for the  
11 Commonwealth of fisheries as well. We're a part  
12 of a larger department of fish and game headed by  
13 Commissioner Mary Jane Griffin, who apologizes  
14 for not being able to be here this morning, but  
15 Commissioner Griffin will be available in the  
16 future to assist the Commission in any way  
17 possible.

18           In addition to managing our state's  
19 local fisheries, the division's involve at  
20 federal, interstate, and international levels and  
21 many councils' commissions and other similar  
22 conventions.

23           As Jill indicated, we're joined  
24 here by one our fisheries analyst, Story Reed,

1 who's going to give the broader overview  
2 presentation of our fisheries, and by Laura  
3 Ramsden, as she has indicated, one of the owners  
4 of Foley Fish. And just about that, Foley Fish  
5 has been a Boston-based seafood company here for  
6 over a hundred years. So it's a familiar sight.

7 CHAIRMAN CROSBY: You started  
8 young.

9 MS. RAMSDEN: The fish don't have  
10 it as good, 107 years now.

11 DIRECTOR DIODATI: It's a familiar  
12 sight to see a Foley Fish truck running through  
13 the streets of Boston.

14 MS. RAMSDEN: Thank goodness.

15 DIRECTOR DIODATI: Laura is also  
16 one of Governor Patrick's appointments to the New  
17 England Fisheries Management Council and serves  
18 as a council member, which is the federal body  
19 responsible for providing management conservation  
20 programs for our federal fisheries.

21 So that's about all I'm going to  
22 say for now. I'll ask Story to begin his  
23 presentation, unless you have any immediate  
24 questions or comments, and then we'll answer some

1 questions. And Laura will follow up with a short  
2 presentation as well, if that's okay.

3 CHAIRMAN CROSBY: I would just say  
4 welcome, Director Diodati. We've had the  
5 pleasure of working together in the past.

6 DIRECTOR DIODATI: We certainly  
7 have.

8 CHAIRMAN CROSBY: You're a great  
9 advocate for the industry, and it's good to have  
10 you here.

11 DIRECTOR DIODATI: Nice to see you  
12 again, Chairman.

13 Story, why don't you begin.

14 MR. REED: Thanks Paul. And thanks  
15 again Commissioners, Mr. Chairman, for having us  
16 here to do this presentation.

17 I'll look around the Commonwealth  
18 at various landmarks including the codfish  
19 hanging in the House chamber at the State House,  
20 the Man at the Wheel in Gloucester shows you how  
21 steeped in tradition of the Commonwealth the  
22 fishing industry is. It's a part of our history,  
23 a part of our culture, and it's still a large  
24 part of the economy of Massachusetts. In fact,

1 the Commonwealth is the second ranked state in  
2 the nations in terms of landings value of seafood  
3 behind Alaska. And as we've said, it's a  
4 destination for tourist, both to come to taste  
5 our seafood, but also to come recreationally  
6 fish. So we'll talk a little bit about that.

7           What you see in this slide is a  
8 measure of the economic impact of the commercial  
9 seafood industry. And the red line on the bottom  
10 shows over time the ex-vessel value by year of  
11 the fishery, and by that, we mean this is the  
12 price, this is the amount paid to the fisherman  
13 by the dealers. So seafood dealers report to us  
14 what they pay the fishermen, and so that's the  
15 tally on the bottom by year. And in 2012, that  
16 was approaching about \$600 million paid directly  
17 to the harvesters by seafood dealers in  
18 Massachusetts.

19           Now, that fish is coming from both  
20 state waters and federal waters. This is just a  
21 measure of it being landed in Massachusetts.

22           And then if you look at --

23           CHAIRMAN CROSBY: Are these  
24 inflation adjusted dollars?

1 MR. REED: They are adjusted for  
2 2012 dollars. Good question. And what the blue  
3 line is, is using a 3.1 economic multiplier,  
4 which is kind of a conservative generally agreed  
5 upon multiplier on what the impact is of those  
6 ex-vessel landings and that's approaching \$2  
7 billion in 2012. So it's a significant impact to  
8 the economy.

9 COMMISSIONER MCHUGH: So that would  
10 take into account the retail price.

11 MR. REED: Correct.

12 COMMISSIONER MCHUGH: What else?

13 MR. REED: The shore side  
14 businesses, ice, fuel, ship chandleries.

15 COMMISSIONER MCHUGH: All the costs  
16 of getting that --

17 MR REED: All the costs of getting  
18 that product.

19 COMMISSIONER ZUNIGA: I'm wondering  
20 if you're going to get into this, but what  
21 happened during the '90s that is now being  
22 reversed?

23 MR. REED: It's a good question.  
24 What's driving the landings value in the

1 Commonwealth right now is the sea scallop  
2 industry that's really picked up since around  
3 late '90s, early 2000s, and you'll see that in a  
4 few slides, the value of our sea scallop industry  
5 is really driving this.

6 What you see in the '90s there is a  
7 decline, both in the sea scallop landings value  
8 and ground fish and a few other things.

9 MS. RAMSDEN: If I may. The stocks  
10 crashed in the late '80s, early 90's and that's  
11 also about the time the Sustainable Fisheries Act  
12 was enacted. So we went through a growth period  
13 during that time where, you know, we locked down  
14 on fishing, and it put a large series of  
15 restrictions in place. And fortunately, we've  
16 seen growth from that, and sea scallops would be  
17 a wonderful example of a fully rebuilt fishery  
18 and with actual dollars coming back to that  
19 industry in great multiples. But the '90s, early  
20 '90s in particular, were a particularly tough  
21 time for the industry and fishermen.

22 MR. REED: Okay. The employment  
23 impact of the industry. And these numbers of  
24 jobs are taken from a recent study put out by

1 NOAA fisheries office of science and technology,  
2 and this is for the 2011 calendar year. And  
3 they're estimated that the total number of jobs  
4 created by the seafood industry in Massachusetts  
5 is close to 100,000 jobs. And it breaks down  
6 roughly how they have it below in terms of  
7 fishermen, the harvesters, around 13,000. Then  
8 you get down to the dealers and the number of  
9 jobs they create. Importers, clearly, there's a  
10 lot of seafood imported into Massachusetts. It's  
11 then processed and distributed to those importers  
12 to contribute to that 100,000 number. And then  
13 you have the seafood wholesalers and  
14 distributors. Those are there the dealers. And  
15 then the retail jobs, the fish markets, the  
16 supermarkets that sell those to restaurants, I  
17 think, are included in that number, all retail  
18 seafood.

19                   This is an interesting slide that  
20 visually depicts the value of -- the total value  
21 of the landings in the top ten ports in  
22 Massachusetts in 2012. So what you see here  
23 right off the bat is New Bedford being number one  
24 at 411 million and that is largely driven by the

1 sea scallop industry. Most of those landings are  
2 in New Bedford and Fairhaven for the sea scallop  
3 industry. There's also some ground fish in there  
4 and others, but it's really sea scallops that are  
5 driving that number.

6 COMMISSIONER MCHUGH: And is that  
7 number the same as in the red line on this  
8 earlier chart?

9 MR. REED: Yes, that's included.  
10 And then Gloucester is still a major hub at  
11 number two, 57 million being driven by ground  
12 fish and that's our number one lobster landing  
13 port in the state. But the other take home here  
14 is the landings of seafood through the  
15 Commonwealth are spread out. They're not just in  
16 one or two ports. They're still spread out in  
17 smaller communities like Scituate, Provincetown,  
18 Barnstable, Sandwich.

19 And this is only the top ten.  
20 There's still significant lobster fishery in  
21 Rockport, Beverly, Salem. So this is really  
22 spread out throughout the Commonwealth.

23 CHAIRMAN CROSBY: How does New  
24 Bedford rank nationally?

1 MR. REED: Number one.

2 CHAIRMAN CROSBY: Number one, wow.

3 MR. REED: Because of sea scallops.

4 DIRECTOR DIODATI: And I was going  
5 to add, and it has been for more than a half  
6 dozen years.

7 CHAIRMAN CROSBY: For sea scallops  
8 or for the total?

9 DIRECTOR DIODATI: It's for the  
10 total, but it's driven by sea scallops. And  
11 ground, just to clarify that, includes a complex  
12 of species that are cod, haddock, your more  
13 popular flounders. We refer to those as a ground  
14 fish. It's managed as a complex.

15 MS. RAMSDEN: The sea scallops are  
16 only indigenous to our waters. There isn't a  
17 West Coast or a Gulf equivalent. So that helps  
18 New England.

19 MR. REED: This is just a table  
20 showing by value the top six commercial species  
21 in 2012 in the Commonwealth. So you see the sea  
22 scallops clearly at the top, 364 million. But  
23 there's also diversity of species here, including  
24 shellfish and fin fish and lobster. So we do

1 have a diverse local seafood landings.

2 CHAIRMAN CROSBY: So is there no  
3 West Coast scallop?

4 MS. RAMSDEN: Well, they have a  
5 bay, but not a sea. They have like a singing  
6 scallop up in the Seattle area.

7 CHAIRMAN CROSBY: Singing scallop.

8 MS. RAMSDEN: Yes. If you wanted  
9 to travel to hear it.

10 DIRECTOR DIODATI: It's quite  
11 subordinate in terms of level of landings in  
12 value. We should point out that the American  
13 lobster, which we're all familiar with, is the  
14 most valuable state waters fishery that we have.  
15 Lots of that landings come within three miles of  
16 the shore.

17 COMMISSIONER MCHUGH: Is that sea  
18 scallop yield sustainable?

19 DIRECTOR DIODATI: It has been, and  
20 it's a very successful fishery, and it's managed  
21 under a sustainable fisheries management plan.  
22 So, so far, we're demonstrating that we're  
23 maintaining levels, but there are ups and downs,  
24 but they're slight. We seemed to have smoothed

1 it out, those peaks and valleys.

2 MS. RAMSDEN: If I may. I serve on  
3 the scallop committee for the New England fishery  
4 management council. And it's been completely  
5 impressive to me how tightly industry -- And  
6 we're not a scallop processor, so I'm not  
7 speaking of myself -- but industry and science  
8 have worked hand and hand. And in fact, the  
9 scallopers come to the council and say give us a  
10 reduction. It's taking too long to harvest this  
11 many scallops from this fishing ground. It's  
12 called CP lead, so catch per unit effort. It's  
13 too high right now, and it's going to do damage  
14 to the smaller juvenile scallops.

15 So for instance, we've reduced  
16 their catch by 29 percent this year, which is  
17 driving prices. It's making it harder for me to  
18 sell scallops, but it's better for the resource.  
19 But they know that if they reduce now in 2013,  
20 their catch levels are likely to be better in  
21 2015. And they're definitely aided by the fact  
22 that scallops don't move much. And so they're  
23 really able to go in and get a finite count of  
24 what is happening on the different scallop beds

1 so that they really understand how much can come  
2 out of the water on any given time. That's  
3 something that we don't have as much of a luxury  
4 on the ground fish.

5 So they're very protective of their  
6 resource, and, like I said, the science and the  
7 industry really work hand and hand taking  
8 reductions, asking for special access trips to be  
9 rotated into areas that are more plentiful, even  
10 if it means giving up trips just to make sure.  
11 They don't want to hurt the golden goose, if you  
12 will.

13 COMMISSIONER MCHUGH: All right.

14 CHAIRMAN CROSBY: Is that it?

15 COMMISSIONER MCHUGH: I'm sorry.

16 CHAIRMAN CROSBY: Maybe you're  
17 saying the same thing. Go ahead.

18 COMMISSIONER MCHUGH: I was going  
19 to say, is that also true of the management of  
20 the cod fishery?

21 MS. RAMSDEN: Well, the management  
22 of the cod fishery has been very difficult, as  
23 I'm sure, if you read the papers. We've set -- I  
24 mean, we took a 78 percent reduction in cod

1 landings.

2 COMMISSIONER MCHUGH: This was the  
3 federal council?

4 MS. RAMSDEN: The federal council  
5 in January. So the issues with cod are very  
6 complicated. We're not sure whether it's water  
7 temperature pushing them further north. If you  
8 look at the bio mass in a place like Iceland,  
9 it's the highest they've ever seen.

10 So we don't know what's happening,  
11 and it's not all related to fishing. But we are  
12 ratcheting down to one thing that we can control,  
13 which, unfortunately, is the fishing.

14 COMMISSIONER MCHUGH: Right.

15 CHAIRMAN CROSBY: Is the model of  
16 the success of managing the scallops, is that  
17 helpful in the -- do the other fisherman  
18 categories --

19 COMMISSIONER MCHUGH: Yeah. A  
20 little bit of both.

21 CHAIRMAN CROSBY: -- understand in  
22 the long run this is going to help? I know  
23 there's tremendous resistance from the fishermen.

24 DIRECTOR DIODATI: We actually have

1 a very unique situation with sea scallops, and  
2 actually, nationally, the Division of Marine  
3 Fisheries has this special partnership with the  
4 five campuses with the University of  
5 Massachusetts, and through it, we call them  
6 Massachusetts Fisheries Institute. And through  
7 that body, the University of Massachusetts, SMass  
8 in particular at UMass Dartmouth, has developed a  
9 program of cooperatively surveying scallop beds  
10 on Georges bank with the fishermen using fishing  
11 vessels as their platform. The fishermen  
12 contribute a very costly amount, by the way, for  
13 the survey time and supplies needed to do that.

14           And the survey is unique in that it  
15 actually photographs what's on the bottom. So we  
16 get a realtime count of what's out there from  
17 year to year. And that's difficult to duplicate,  
18 but we're currently working today with --  
19 Traditionally, the way we survey other types of  
20 fish is by catching them in nets, bringing them  
21 on board, counting them, and so forth. Well,  
22 now, we're applying specially designed cameras  
23 that take stereo images of these fish, measures  
24 them, and enumerates them with infrared lasers.

1                   So we're going to drag nets, but  
2 not catch any fish. We'll be imaging them and  
3 doing something very similar as we did with the  
4 sea scallop survey. So it's a few years away, I  
5 think, before we can implement and do that, but  
6 it's going to be, I think, a turning point for  
7 the way we assess the condition of the stock.

8                   And cover more area. They don't  
9 have to stop and start the troll, pick up the  
10 fish, and count them. We can just keep going and  
11 take a look at these fish without having any  
12 impact. A passive survey, in a sense.

13                   CHAIRMAN CROSBY: Probably get NSA  
14 to help you collect data on them.

15                   DIRECTOR DIODATI: We'll take any  
16 help we can get, including from the Gaming  
17 Commission.

18                   MS. RAMSDEN: And there'll be  
19 buy-in from the fishermen as well because when  
20 you said there's resistance, I think that there  
21 isn't resistance to doing the right thing in the  
22 fishing community from all the comment I hear at  
23 the meetings that we attend. There's resistance  
24 to buy-in sometimes on the science because they

1 say, that's great, you drag a net at that time,  
2 you took two tows in November, and now you're  
3 going to say we've got an issue, because it's so  
4 different from what they may be seeing in the  
5 ocean.

6 So what Paul's taking about will  
7 lead to just more belief in what's coming out and  
8 may actually change what's coming out, and that's  
9 what they have had the luxury of having in the  
10 scallop industry with the HabCam.

11 CHAIRMAN CROSBY: Yeah. That's  
12 neat.

13 MR. REED: We talked a lot about  
14 the sea scallop, so I won't stick on this slide  
15 too long. But the bottom line, I guess, for  
16 consumers if there's a relatively steady supply.  
17 It is a relatively costly product, but consumers  
18 love it, and there's a steady supply. So it's  
19 good for consumers, retailers, and restaurants.

20 COMMISSIONER MCHUGH: All of the  
21 shucking is done by hand, right?

22 DIRECTOR DIODATI: Yes, it is.

23 MR. REED: That's right.

24 COMMISSIONER MCHUGH: So all 300

1 million pounds --

2 MR. REED: Shucked at sea.

3 COMMISSIONER MCHUGH: -- are  
4 shucked.

5 DIRECTOR DIODATI: And it's done at  
6 sea aboard the vessels.

7 CHAIRMAN CROSBY: Really.

8 DIRECTOR DIODATI: Which could be a  
9 two week trip or longer in some cases.

10 MR. REED: Up to 17,000ish --

11 MS. RAMSDEN: They are well  
12 compensated for their shucking. At the current  
13 market values, everyone wants to get out there  
14 and shuck.

15 MR. REED: That's why it cost \$10 a  
16 pound.

17 DIRECTOR DIODATI: It's hard to get  
18 one of those jobs.

19 MS. RAMSDEN: Costs are at \$13  
20 dollars a pound right now.

21 COMMISSIONER MCHUGH: Really?

22 MS. RAMSDEN: Yes.

23 COMMISSIONER MCHUGH: Is it hourly  
24 or is it piece work?

1                   DIRECTOR DIODATI:  It's basically a  
2 trip.

3                   MS. RAMSDEN:  Trip values.

4                   DIRECTOR DIODATI:  So you get a  
5 share.

6                   COMMISSIONER MCHUGH:  Oh, I see.  
7 Everybody gets shares, that's right.

8                   CHAIRMAN CROSBY:  Is there anything  
9 you can do with the shells?  Can you recycle the  
10 shells somehow?

11                  DIRECTOR DIODATI:  They have been.

12                  MS. RAMSDEN:  There are people that  
13 sell them.

14                  DIRECTOR DIODATI:  There are all  
15 types of recycling programs that have been  
16 established, not only for sea scallop shells, but  
17 shellfish in general.

18                  CHAIRMAN CROSBY:  Right.

19                  DIRECTOR DIODATI:  You'll see them  
20 in driveways remanufactured into paving.

21                  CHAIRMAN CROSBY:  Yeah.  It would  
22 be nice if you could figure out a value to the  
23 shell as well.

24                  DIRECTOR DIODATI:  And some

1 fertilizers.

2 MR. REED: And then on to the  
3 lobster, which we talked a little bit about.  
4 Catches have been increasing in the Commonwealth  
5 over the past five years. We're at about 14  
6 million plus pounds were landed in 2012.

7 So there's a steady supply for  
8 consumers. It's definitely an increased supply  
9 in the summer and fall and that's when the price  
10 is lowest. I think what you hear is the  
11 lobstermen complaining about a lot is that people  
12 think this is a luxury item when you see it at  
13 Market Basket for \$5 a pound. So when the price  
14 does go down, as it has for the past several  
15 years this time of year for a number of reasons,  
16 including the increased supply, it is available  
17 for consumers and it is relatively inexpensive.  
18 They like to say, "eat a lobster, save a hot  
19 dog." I've seen that bumper sticker around  
20 lobster, so.

21 MS. RAMSDEN: In Gloucester.

22 MR. REED: Yeah. Gloucester is a  
23 unique place. That's where I'm based out of.

24 There's also been increased retail

1 sales by lobstermen as they try to get more value  
2 out of their products. So they -- You know,  
3 maybe the dealers don't like this, but they're  
4 finding little niche markets where they can sell  
5 directly to the consumer. We allow them to do it  
6 through a retail boat dealer permit, so there's a  
7 little bit more of that.

8 So, again, people now like to see  
9 where their seafood's coming from. So if they  
10 buy from the lobstermen directly, it's kind of a  
11 neat thing. And it's happening a little more.  
12 We've seen a spike in those types of permits that  
13 we're issuing.

14 COMMISSIONER MCHUGH: Is the price  
15 during those months high enough to sustain the  
16 cost of harvesting?

17 MR. REED: It's marginal.

18 DIRECTOR DIODATI: It's very  
19 marginal.

20 CHAIRMAN CROSBY: It depends on who  
21 you ask, right?

22 COMMISSIONER ZUNIGA: Yes.

23 MR. REED: The cost of diesel is  
24 up. The cost of bait is up three to four fold

1 over the past few years.

2 COMMISSIONER MCHUGH: Right.

3 MR. REED: There's a lot of  
4 increased costs, so it's tough for them. You've  
5 seen in Maine, their catches are way up too, and  
6 they've had shut downs. They're kind of in a  
7 little bit of disarray where the price is worse  
8 than ours.

9 COMMISSIONER MCHUGH: Right.

10 MR. REED: Then the eastern oyster.  
11 I think when ag was here, you heard a little bit  
12 about the burgeoning aquaculture industry in  
13 Massachusetts, and it really is an immerging  
14 industry right now. The harvest of oysters in  
15 Massachusetts has doubled since 2008 and that's  
16 largely because of aquaculture. There's not a  
17 whole lot of wild harvest of oysters in  
18 Massachusetts, but it's a product that consumers  
19 want, raw bars, fried oysters. There's a high  
20 demand for it. It's available year around for  
21 the most part with a slight decrease in the  
22 winter.

23 The aquaculture industry is very  
24 well organized. They have a good association.

1 We participate in some of their meetings, listen  
2 to some of their concerns. But I think this is a  
3 segment of the fishery that's really growing. So  
4 it's a product that's readily available.

5 MS. RAMSDEN: We -- In my dad's  
6 generation, we had two oysters. One was from New  
7 York and one was in Connecticut, the Long Island  
8 Sound blue point oyster. And now, in any given  
9 day, we have 13 different oysters with the  
10 majority of them -- maybe two are from Maine, but  
11 the majority of them are Cape Cod oysters. It's  
12 so interesting how the different flavor and size  
13 profiles are truly evident, depending on which  
14 part of the Cape they're coming off of or out of  
15 Duxbury, and our customers across the country  
16 definitely value that.

17 CHAIRMAN CROSBY: Are they  
18 different species, or what different --

19 MS. RAMSDEN: No. It's all the  
20 same species across the terrace virginica.  
21 Forgive -- My Latin teacher will not forgive me  
22 for that. But they're all the same, but it  
23 really is water temperature, it's abundance of  
24 feed, it salinity of the water, it's length of

1 time in the beds. It's really, if you think  
2 about like a vineyard --

3 CHAIRMAN CROSBY: Yeah.

4 MS. RAMSDEN: -- grapes tasting  
5 different.

6 CHAIRMAN CROSBY: That's what I was  
7 thinking. Yeah.

8 MS. RAMSDEN: There's slight,  
9 subtle nuances of the oysters.

10 CHAIRMAN CROSBY: Amazing.

11 MS. RAMSDEN: Yeah. It is really  
12 neat.

13 COMMISSIONER ZUNIGA: Where are  
14 these farms, if you will? Whereabouts? All  
15 over?

16 MR. REED: All over Cape Cod.  
17 You've got Duxbury, Island Creek Oyster in  
18 Duxbury. I think they have a restaurant in  
19 Boston now.

20 MS. RAMSDEN: Powder Point.

21 MR. REED: Right. So really from  
22 the South Shore down to the Cape. And Buzzards  
23 Bay has bay scallops and it's also cohogs, clams,  
24 hard shell clams, that are being farmed as well.

1 MS. RAMSDEN: And Wellfleet has a  
2 big clam business as well. The Wellfleet clams  
3 are quite well know, and they're distinguished  
4 with a special ring, which is nice because their  
5 shells are distinguishable. So if you're out in  
6 the middle of Missouri, you know it's a Wellfleet  
7 clam. You kind of fall into that every menu says  
8 Chatham cod or every menu says a diver scallop.  
9 These clams have sort of a distinguished marking  
10 on them so you really know that they are the  
11 Wellfleet clam.

12 CHAIRMAN CROSBY: That's neat.

13 MS. RAMSDEN: It's neat.

14 COMMISSIONER STEBBINS: Does the  
15 aquaculture piece extend to fish as well? You  
16 kind of include that in your industry sector?

17 DIRECTOR DIODATI: Yeah. Well, we  
18 certainly include it where it exists, but there  
19 hasn't been the economic success that there has  
20 been with shellfish. Shellfish is really the  
21 immerging industry and the one that we're most  
22 optimistic about for aquaculture. Growing fin  
23 fish seems to require much more controls and  
24 space, and costal properties are difficult to

1 acquire in a state that's highly populated like  
2 Massachusetts, acquire it at economic -- a  
3 reasonable economic fee.

4           So we're not seeing a lot of  
5 aquaculture on fin fish. That that does take  
6 place is typically done in a land-based  
7 operation. A lot of times, it's fresh water  
8 species or hybrids of different species, but  
9 we're not seeing a lot of that yet. But there's  
10 always entrepreneurs and researchers that are  
11 testing the waters with that type of initiative.

12           MS. RAMSDEN: A fish farm just went  
13 out of business this past week in New York which  
14 had been sort of the poster child and was being  
15 featured -- their species were being featured in  
16 big chains, in Wegmans and Price Shopper, and it  
17 just went out of business.

18           I think that, as Paul said, it's  
19 much more difficult, and capital would be the  
20 thing that's lacking in addition to ocean space.  
21 I mean, if you think of an oyster or a clam,  
22 we're talking 30, 40, 50, 60 cents. So if  
23 there's a blight, if there's a warm water  
24 temperature and you have to reseed, you don't

1 have financial ruin; whereas we're talking big  
2 dollars in terms of feeding cost and the actual  
3 cost of the fish when you lose harvest. So it's  
4 much harder to raise fish.

5 COMMISSIONER STEBBINS: Thanks.

6 MR. REED: In addition to some of  
7 these species that are available primarily year  
8 around, we also have some seasonal offerings or,  
9 for a number of reasons, these fish are only  
10 available at certain times in Massachusetts and  
11 that's either because of their migratory patterns  
12 and/or their managed by a strict quota. So we  
13 open it, the fishery, on a certain date, and then  
14 once by dealer landings we see that we're about  
15 to reach 100 percent of Commonwealth's quota, we  
16 have to shut that fishery down.

17 So black sea bass, striped bass,  
18 summer flounder or fluke, and northern shrimp are  
19 examples of some of these seasonal offerings.

20 For instance, our striped bass  
21 commercial fishery opened this year July 14th,  
22 and we met our quota about a week and a half ago.  
23 But the point here is that there is some  
24 different products, some different seafood that's

1 available seasonally that --

2 CHAIRMAN CROSBY: What's happened  
3 to bluefish? I haven't seen it on the menu  
4 anywhere.

5 MR. REED: Sure.

6 MS. RAMSDEN: It's year around.

7 MR. REED: Yeah. It's almost --

8 CHAIRMAN CROSBY: Yeah, but I  
9 haven't seen it on the menu. I thought maybe  
10 something had happened to it.

11 MR. REED: No. It's still here.  
12 We do have a quota, but generally it lasts most  
13 of the year because it's a pretty high quota.

14 MS. RAMSDEN: If -- You know,  
15 speaking as someone trying to sell bluefish, it's  
16 a very affordable fish, but the darker meat and  
17 the higher oil content makes it less palatable  
18 nationwide. But that being said, a local  
19 retailer like a Roche Brothers, they just ran it  
20 on special two weeks ago.

21 So it is definitely available, but  
22 the bigger box retailers that go through  
23 warehouses, it's just it's too perishable a fish.  
24 And it's not landed in quantities where you can

1 put it in a hundred chain stores. So you don't  
2 see it at your Shaws and Stop and Shops of the  
3 world.

4 CHAIRMAN CROSBY: Yeah.  
5 Interesting. But I was at McCormick & Schmick's,  
6 and it wasn't on the menu.

7 MS. RAMSDEN: Yeah. Because it's a  
8 national chain, so their buyers wouldn't --

9 CHAIRMAN CROSBY: Same thing, yeah.

10 MS. RAMSDEN: That's sort of some  
11 of the things we come up against.

12 CHAIRMAN CROSBY: Interesting.  
13 Yeah.

14 DIRECTOR DIODATI: It's very highly  
15 available to recreational fishermen as well. So  
16 it's one of those fish that if you're fishing on  
17 the ocean, you're likely to bring home a bluefish  
18 during the summer, and so it makes it less  
19 valuable to market.

20 MS. RAMSDEN: And some use it as  
21 bait for the bigger fish as well.

22 DIRECTOR DIODATI: Yes, they do.

23 MS. RAMSDEN: That I know.

24 DIRECTOR DIODATI: It's one common

1 tuna bait.

2 MR. REED: Exactly. One seasonal  
3 fish that's not on here is blue fin tuna that  
4 Paul just mentioned. And that's certainly a  
5 species that's landed in Massachusetts in the  
6 summertime. A lot of that fish is exported, but  
7 it is available fresh in the Commonwealth from  
8 June through October, at least in most markets.

9 And there's your bluefish pictured  
10 in the affordable and available species slide.

11 CHAIRMAN CROSBY: Oh. Thank you.

12 MR. REED: But there are immerging  
13 markets for some of these healthy and  
14 underutilized species, and they do include  
15 bluefish, redfish, monkfish, and dogfish.  
16 There's generally a steady supply of these fish.  
17 And on the right, you've got dogfish coming up on  
18 a long line.

19 CHAIRMAN CROSBY: So that's a  
20 dogfish on a hook on each one of those?

21 DIRECTOR DIODATI: Yes, it is.

22 CHAIRMAN CROSBY: That's an amazing  
23 picture.

24 MR. REED: It is a pretty clean way

1 to catch dogfish. It takes decent, good care of  
2 them coming up. They're not in a net.

3 MS. RAMSDEN: Of course, they meant  
4 to be getting swordfish, and they're a little sad  
5 all these dogs are on their line. No, just  
6 kidding.

7 MR. REED: They were probably  
8 trying to get codfish, but no. They're  
9 available, and we have a high quota now with  
10 dogfish. A lot of dogfish is exported to the EU.  
11 It's used in fish and chips and products like  
12 that in Europe. So there's a -- there really  
13 isn't much of a market domestically.

14 DIRECTOR DIODATI: There isn't.

15 MR. REED: That's a species that  
16 could be used.

17 MS. RAMSDEN: It's tough because  
18 dogfish don't garner a big dollar value at port.  
19 And so there isn't great incentive for the  
20 fishermen to take super great care of it out at  
21 sea in terms of icing, so the quality doesn't  
22 tend to be that good. Plus they're very labor  
23 sensitive to cut. So it does end up being a fish  
24 that's sort of frozen in bulk and exported rather

1 than being marketed to the domestic community,  
2 but there are certainly opportunities and that  
3 are chefs that are trying to promote it.

4 MR. REED: Moving forward with  
5 Massachusetts seafood, and I think Laura can  
6 speak to some of this as well. But Massachusetts  
7 seafood, as we've discussed, can be marketed as  
8 local, high quality. There's a new movement in  
9 the past few years to market the traceability of  
10 fish, knowing where it came from, from boat to  
11 the dealer to your plate or to the retail  
12 establishment. It's a real new way to market  
13 seafood and other products. And I think Laura  
14 might be able to speak to that a little bit more  
15 now or later.

16 MS. RAMSDEN: Yeah, I'll do it  
17 after.

18 MR. REED: Yeah. That's one way to  
19 market Massachusetts seafood is being local.

20 In terms of finding local seafood  
21 dealers, we do maintain on our website an  
22 up-to-date list of seafood dealers who are  
23 authorized to purchase certain species directly  
24 from fishermen. So anybody can look that up and

1 get their contact information. Where this list  
2 is lacking is it has no measure of activity. So  
3 a dealer may get a permit with us and say -- and  
4 ask for the permission to purchase these species,  
5 but we don't know if they're, based on this list,  
6 whether they are active or not. So Laura may be  
7 able to speak also how you can get in touch with  
8 seafood dealers and processors.

9           One thing that definitely shouldn't  
10 be overlooked in our seafood industry is the  
11 recreational fishing industry. It's a big  
12 industry in Massachusetts. Some measures have it  
13 over a billion dollars. That 2011 NOAA study  
14 that I referenced earlier says that creates 5,300  
15 jobs, and I would say that's probably low if you  
16 think about all the tackle shops, gas pumps,  
17 marinas that benefit from this industry. The map  
18 on the right of this slide is one that's from our  
19 website and shows where tackle shops exist  
20 throughout the Commonwealth. But people can go  
21 fishing on their own in their private boats, from  
22 public access sites on the shoreline, or the many  
23 charter boats that are scattered around the  
24 Commonwealth and take people out for everything

1 from blue fin tuna to cod to striped bass to  
2 bluefish.

3           And I think we got a little shot in  
4 the arm in the past few years with the advent of  
5 the television program Wicked Tuna, which you see  
6 here Captain Dave Marciano. That has brought  
7 people into our office in Gloucester to find out  
8 where they can find these boats, how they can get  
9 a charter trip, and we've definitely seen an  
10 increase in the people that want to go out on  
11 their own private boats and try to catch a blue  
12 fin tuna.

13           So it's interesting that these  
14 television shows, these reality shows are really  
15 drumming up interest in this industry in  
16 Massachusetts. I think we saw with The Perfect  
17 Storm ten years ago, and now this show, it's  
18 really building up the interest in tourism and  
19 the seafood industry. So it's --

20           CHAIRMAN CROSBY: Cheers before  
21 that.

22           MS. RAMSDEN: That's right.

23           MR. REED: That's right.

24           MS. RAMSDEN: Beer and fish, what's

1 better, says the Irish girl.

2 MR. REED: That's really what we  
3 have for our presentation, unless there's any  
4 questions. I think Laura can add a few things  
5 from her perspective.

6 MS. RAMSDEN: So I prepared a  
7 presentation, sort of a brief overview aligned to  
8 what Story is saying. So there's some crossover,  
9 so I won't bore you with anything you've already  
10 heard.

11 Just a brief introduction. As Paul  
12 said, I am the fourth generation Foley running  
13 Foley Fish, and when my parents came and said we  
14 want to transact this business, we took a hard  
15 look at the state of the industry and the oceans  
16 and the competitors and the fishery management  
17 that was going on to say is this a smart business  
18 to go into, and based on what we found, we said,  
19 yes, there is definitely a future and a chance  
20 for a fifth generation; though don't tell my  
21 children that, because I don't think that's their  
22 career plan, though Charlie has worked the past  
23 couple of summers packing fish.

24 I put on the cover of your

1 presentation a map of -- showing where  
2 Massachusetts is and just highlighting the  
3 different fishing grounds where we pull fish.

4           And my great grandfather was an  
5 immigrant from the County Tipperary in Ireland.  
6 And they say that the first son gets the farm,  
7 and he was the second son.

8           So when he came to Boston and  
9 joined a cousin in the fish business, this sort  
10 of became -- he thought of this as his farm, if  
11 you will. And we really do have a bountiful  
12 harvest here in New England. And it troubles me  
13 when the media talks a lot about disaster and the  
14 end of the -- the demise of the fishing industry,  
15 because if we look at the numbers, the bio mass  
16 in full is actually growing, thanks to the strict  
17 fishery management measures that have been in  
18 place. The problem is maybe it's not exactly the  
19 species that we want. We might have more dogfish  
20 than we do have codfish, but unfortunately, when  
21 you are in a multiplex ecosystem, you don't  
22 always get to pick and choose which species are  
23 growing at what rate. And we have haddock at  
24 record levels, but juvenile haddock will eat

1 juvenile cod.

2           So that's -- there is going to be  
3 balance that goes on. And we're under a law that  
4 says that all species have to be at the same  
5 level at the same time, and I think whoever wrote  
6 it might have missed bio class, because it's a  
7 little tricky to do that.

8           So I wanted to say that we are  
9 located here in midst of these beautiful fishing  
10 grounds that are well managed, that are -- do  
11 yield incredible amounts of seafood of all  
12 diverse types.

13           So I spend a lot of my time -- We  
14 sell into 38 states with over 500 customers. And  
15 we look at numbers, 80, 87 percent of imported  
16 seafood, and we say, hell, no. Let's get New  
17 England seafood on the menu. Let's fight for  
18 menu share for our fish right here, you know,  
19 shellfish and fish, in retail cases and on menus  
20 throughout the country. And when I think about  
21 casinos coming in, I mean, we were the first  
22 order into the MGM Grand in Las Vegas. And we  
23 sell to a gaming company in -- down in  
24 Birmingham, Alabama. But those people are crying

1 about shipping rates, and I think, oh, my  
2 goodness, you could have something right here  
3 where you can get all this amazing, well managed  
4 seafood without having to pay \$2 a pound to UPS  
5 or American Airlines. It could be right at your  
6 door every single day. And that's really  
7 exciting for us.

8           So I just went through, and, again,  
9 it's very similar to what you just saw, but in a  
10 sort of consolidated. You see a list of fish  
11 that are available year around. You see a list  
12 of shellfish that are available year around, and  
13 then you see seasonal opportunities. And it's  
14 very -- For us, we talk to our customers about  
15 menu planning, and we talk to them about mother  
16 nature provide -- or the government providing  
17 seasonal opportunities through closures or  
18 openings. But you can basically build an entire  
19 menu from appetizer -- I haven't quite figured  
20 out how to work dessert into it, but appetizer,  
21 soup, salad, dinner, entree just using New  
22 England fish thanks to the bountiful harvest.

23           So I just included in the steady  
24 availability of the majority of just, again, some

1 photos, like you just saw on the slides. These  
2 are a variety of New England ground fish that are  
3 available.

4           These are Jonah cocktail claws.  
5 People think they have to get the Florida stone  
6 crab claws. These are harvested right here along  
7 side the lobster, and they're half the price of a  
8 Florida stone crab claw, and you don't have the  
9 shipping on top of it.

10           So, you know, really exiting things  
11 that a casino or restaurant affiliated with the  
12 casino could put onto their menus without ever  
13 having to step out of the state of Massachusetts.

14           Oysters. These are the Wellfleet  
15 clams. I talked about the distinguished markings  
16 on them you can see to know that you are getting  
17 a real Massachusetts clam.

18           You know, Jasper White, a famous  
19 chef in Massachusetts, has done a great job with  
20 the steamer clams, something that's not found on  
21 menus. A really, truly differentiable items that  
22 they're not going to get in Vegas that they can  
23 get right here in Massachusetts.

24           The mussels we didn't talk about,

1 but there are both a wild and farmed mussel  
2 opportunities here. The -- Skipping a page. Of  
3 course, no one says no to lobster.

4           Again, harvested right here in New  
5 England. And then the scallops that we've talked  
6 about. So you see that's a cheese cloth bag, and  
7 they mark the days that they come in, so that's  
8 day 11 of a 12-day trip. And the harvest that  
9 you see, again, that has all been shucked at sea.

10           The last page, I just point your  
11 attention to. Because we are fighting for menu  
12 share, and we want to give credit to the local  
13 fishermen. I mean, I sit in these council  
14 meetings, and these men and women that are out  
15 risking their lives every day are really --  
16 they're bringing in amazing product, and yet  
17 they're getting pushed to the side of menus for  
18 fish like tilapia that's being imported or other  
19 fish that are coming from further abroad. And we  
20 want to say -- further afield. And we want to  
21 say, hey, let's really promote what's being  
22 landed locally so that in the middle of Kansas,  
23 you can see the fishing boat, the method of  
24 catch, the captain's name, the area that it was

1 harvested.

2                   So what we're doing now for all of  
3 our local fish is when someone gets an invoice  
4 from Foley Fish, they'll have a code at the  
5 bottom of it, and they can then translate that to  
6 a QR code and put it on menus or in their retail  
7 cases, and then their smart phone will show --  
8 will give them data about where it was harvested,  
9 how it was harvested, what fishing grounds.

10                   And then we have interns spend the  
11 summer last summer collecting -- You know, we  
12 have over 250 vessel photos in our bank, in our  
13 data bank, so that we're able to demonstrate that  
14 this was caught by a Massachusetts or, I should  
15 say, a New England fisherman. But the majority  
16 of these species are landed right here on the New  
17 England ports.

18                   CHAIRMAN CROSBY: That's great.

19                   COMMISSIONER MCHUGH: That's really  
20 very fascinating.

21                   MS. RAMSDEN: So that's what I have  
22 for you.

23                   COMMISSIONER MCHUGH: That's great.

24                   MS. RAMSDEN: Any questions on the

1 processing?

2 CHAIRMAN CROSBY: Well, I have a  
3 feeling that -- I don't have to tell you this,  
4 but we have been very aggressive about talking to  
5 the industry, the casino industry, saying we want  
6 to use local everything, employers, suppliers.  
7 That's what Jill's job is, is not only to make  
8 sure they're sensitive to that, but that we  
9 prepare the market well enough so that there are  
10 suppliers who are ready to do the work.

11 But they are now putting together  
12 their proposals to persuade us that they should  
13 be the licensees. And one of the sets of  
14 criteria is economic development and within that  
15 is use of local suppliers and so forth.

16 So now is the time -- and this is  
17 everybody, not just Foley -- but for people to be  
18 very proactive, knock on every door. You know,  
19 because now is when the leverage is there to get  
20 them to say, yes, we're buying locally and make  
21 commitments to do such and such.

22 So somebody had said -- Paul might  
23 have said something about when -- or somebody,  
24 Jill, when the casino companies come to you, and

1 I'm just thinking don't wait for them to come to  
2 you. You know, reach out and make sure that they  
3 are fashioning local purchasing strategies now,  
4 because now is the time of maximum development of  
5 these strategies.

6 Anybody else? That's fascinating.

7 COMMISSIONER MCHUGH: Great.

8 DIRECTOR DIODATI: Thank you for  
9 having us. On behalf of the entire industry,  
10 thank you.

11 CHAIRMAN CROSBY: Yeah.

12 DIRECTOR DIODATI: And we're  
13 available, and we look forward to working on the  
14 task force with everyone.

15 CHAIRMAN CROSBY: Great.

16 COMMISSIONER MCHUGH: Thank you  
17 very much.

18 COMMISSIONER STEBBINS: Thanks very  
19 much.

20 COMMISSIONER ZUNIGA: Thank you.

21 CHAIRMAN CROSBY: Thanks for coming  
22 in.

23 MS. RAMSDEN: It's warmer than the  
24 fish plant.

1                   COMMISSIONER STEBBINS: Now, I'm  
2 hungry.

3                   CHAIRMAN CROSBY: Yeah. Yeah, you  
4 could have brought in some samples.

5                   MR. REED: We thought about it.

6                   MS. RAMSDEN: We thought about it.  
7 Actually, I could bring some smoked salmon.

8                   CHAIRMAN CROSBY: There you go.

9                   COMMISSIONER MCHUGH: A breakfast  
10 menu, right.

11                  CHAIRMAN CROSBY: Yeah. Thanks  
12 again.

13                  Okay. Director Day.

14                  DIRECTOR DAY: I'm gathering a  
15 pointer.

16                  CHAIRMAN CROSBY: You're what?

17                  DIRECTOR DAY: Gathering a pointer.

18                  CHAIRMAN CROSBY: Oh. I've got  
19 one.

20                  DIRECTOR DAY: We got it. Thank  
21 you.

22                  CHAIRMAN CROSBY: Overall  
23 administrative topics.

24                  DIRECTOR DAY: Good morning,

1 Mr. Chairman and Commissioners.

2 CHAIRMAN CROSBY: Good morning.

3 COMMISSIONER STEBBINS: Good  
4 morning.

5 DIRECTOR DAY: On this page, I have  
6 an initial, just I guess, a heads up remainder as  
7 we look to September 4th will be our next  
8 meeting, but we'll also be at PRIM, 84 State  
9 Street. It's a little smaller space than we're  
10 used to, so I think it's probably appropriate  
11 just to encourage those that attend, if it works  
12 as well to watch via the stream, that might be a  
13 little bit easier to fit in that space. So I  
14 thought it would be worth mentioning that as we  
15 move forward.

16 COMMISSIONER MCHUGH: We're only  
17 doing that because these other spaces aren't  
18 available.

19 DIRECTOR DAY: That's correct, yes.

20 Let me talk briefly about a couple  
21 of general administrative details. Our  
22 evaluation process manager coordinator has  
23 started work, and we anticipate a proposed  
24 outline about the process from Ink & Company as

1 part of our review of a planned outline process  
2 review at our first meeting in September.

3 In addition, our procurement teams  
4 listened to oral presentations from potential  
5 building and site design advisors yesterday, and  
6 had oral presentations for economic advisors  
7 source set for next week. And at this point, we  
8 -- and still anticipate bringing forward final  
9 proposals to the Commission at the September 4th  
10 meeting.

11 Other good news, we've narrowed our  
12 CIO and our information officers -- chief  
13 information officer to the top five, and we are  
14 looking forward to an interview of those  
15 finalists beginning in the first week in  
16 September.

17 And finally, in this area, we've  
18 identified our chief accounting officer finalist,  
19 and we have started a background investigation  
20 before we make our final offers.

21 In addition, I'd like to take us to  
22 a little bit of a discussion regarding the master  
23 schedule, and the topic of the master schedule  
24 discussion will be a little bit different because

1 we were talking about organizational development.  
2 And our goal is to be staffed and fully trained  
3 in time for when the casino construction is  
4 complete, which sounds fairly straightforward;  
5 however, a major challenge is going to be as we  
6 look forward to the slot license award, slot  
7 license become operational, the key is, is to be  
8 ready for the licensing needs of the slots parlor  
9 and the quicker needs of the regulatory  
10 apparatus, but still don't staff up -- staff up  
11 for that, but on the other hand, don't staff up  
12 to the point that we have a lot of people on  
13 board with nothing to do. So it just adds a  
14 little bit more complexity to the development of  
15 our organization today.

16           What I'll do is start briefly and  
17 talk with the Commissioners about this schedule.  
18 And I'll start with this area up here, which is  
19 really the summary schedule at the top of the  
20 chart. And what the summary schedule does is it  
21 looks to provide a big picture, not much detail  
22 behind it. But a primary issue is right in at  
23 the top, which is the initial that's green, red,  
24 and blue, but what it is, is the construction

1 side. And what we're tieing the organizational  
2 development to is a construction timetable which  
3 is purely an estimate. And a lot of our initial  
4 discussion here is more estimate, and more facts  
5 have to come into being before we can be really  
6 positive.

7 CHAIRMAN CROSBY: Well, what was  
8 the source of that estimate? That was one thing  
9 I was -- It's basically, you've got 808 days,  
10 right?

11 DIRECTOR DAY: Right. We're about  
12 11 -- we're estimating about 11 months for the  
13 slot parlor and about 24 months for the casino  
14 construction. And Mr. Chairman, the estimates  
15 come from a couple of places, everything from the  
16 informal rumor to the consultants' reports and  
17 then to practical experience of other states. So  
18 I've tried to pick some areas in between that.

19 I might note as we move forward,  
20 that's casino construction complete, and it's a  
21 lot different from that perspective when we're  
22 talking about the resorts.

23 CHAIRMAN CROSBY: Right. Oh. So  
24 this is casino construction complete?

1                   DIRECTOR DAY: Casino construction.

2                   CHAIRMAN CROSBY: Oh. Interesting.

3                   DIRECTOR DAY: It's all the casino,  
4 it's 24 months, but the part of the question is,  
5 is I think it's probably pretty firm that there  
6 will be ongoing construction once the casinos  
7 themselves are complete and that's part of the  
8 process we have to -- the commissioners will need  
9 to look at in the regulation process is that  
10 whole -- once the casino is actually up and ready  
11 to run, what's the operational -- what's the  
12 approval processes, how long is that going to be,  
13 and the other factors that the Commission's going  
14 to take into consideration. How much of the rest  
15 of the resort, the infrastructure, has to be  
16 available before --

17                   CHAIRMAN CROSBY: Right.

18                   DIRECTOR DAY: -- licensing would  
19 be on business.

20                   CHAIRMAN CROSBY: Right. That's  
21 something we've never even discussed, I don't  
22 think.

23                   COMMISSIONER ZUNIGA: Right. But  
24 in addition, it's important to highlight that

1 when we talk construction, it's not getting -- it  
2 includes permitting, design, and construction,  
3 when we talk about it in this context, which  
4 could vary quite a bit among proposals. So we  
5 will see -- Because they are very site specific  
6 issues and things like that, we will see once we  
7 get the proposals just how developers are  
8 thinking about them.

9                   DIRECTOR DAY: Correct. And we  
10 have -- Any of the slots parlor here, and part of  
11 that discussion is the award of the license is  
12 actually coming in the winter. So the first  
13 three months is not necessarily a real hot  
14 construction period. So it can depend and make  
15 that difference, too, maybe ultimately longer,  
16 that might be pretty optimistic.

17                   And the Commission is poised,  
18 though, as it begins it's evaluation process,  
19 we'll actually see more detail relative to this  
20 timeline and what the applicants are proposing,  
21 which I'm also very conscious of here. So I look  
22 forward to their proposals as to how that  
23 timeline is going to move toward.

24                   We did up here, part on this right

1 in the middle here, it's the black line, is a  
2 construction monitoring phase. And that's  
3 something we haven't discussed in too much detail  
4 as well, but another kind of regulatory policy  
5 that we'll have to move forward and that's the  
6 concept that once we have the award, which we'll  
7 start with the slot parlor, the expectations and  
8 process the Commission would have to monitor that  
9 construction and what particularly might be the  
10 deliverables that the Commission will be looking  
11 at as we move forward with at least the  
12 Commission style monitoring.

13 So what we have here in this middle  
14 section is more of the organizational side as  
15 well. And the regulation and enforcement, or IEB  
16 really, is the orange; licensing is blue; and  
17 general administration is green.

18 The concept here has we move  
19 forward is trying to find when these units need  
20 to be or these parts of the organization need to  
21 be fully operational as we move forward with the  
22 time.

23 So IEB, the basic theory here is it  
24 needs to be fully operational when the casinos

1 are ready to open. There's but-ifs in between,  
2 so it's not quite that easy. But essentially, we  
3 want to make sure that IEB is prepared as the  
4 casinos open to be able to do the preopening  
5 inspection and final process and make sure the  
6 casinos, if they're ready to go and the  
7 Commission is prepared to approve, that they can  
8 go ahead in the business without being slowed up  
9 by the agency.

10                   Licensing division is blue. The  
11 overall goal here, too, is directed toward the  
12 casino resorts will have the largest number of  
13 employees, but at least the openings are going to  
14 be a couple of years out. So what that means is  
15 licensing has to be prepared relative to the  
16 slots parlor licensing that might take place, and  
17 I'll touch on this briefly as we go forward.

18                   But in the end, that demand for  
19 them is going to reach its peak as the casinos  
20 start or get ready to open, which may be  
21 essentially three, maybe four months before the  
22 casinos are actually operational.

23                   And of course the -- we have here  
24 as well is the development of the research

1 project, which is dark red, is well under way,  
2 and as we know, we'll continue to pass the  
3 opening process.

4 I'll comment briefly. This part of  
5 the chart is giving us a little bit more detail  
6 about what we've talked about with projected  
7 timelines and casino of the slots parlor, the  
8 casino opening. And then when we follow up as we  
9 move forward with the chart, we'll see that we're  
10 beginning to put in place the pieces that we will  
11 need to bring up the organization.

12 So this, of course, is the research  
13 project. And I'm going to be very wise here.  
14 This part of the process right over here is the  
15 immediate focus, which is the baseline surveys to  
16 kind of get the prevalence rates and those kinds  
17 of things. And I know that are many others that  
18 are better with this part of the chart than I am,  
19 including the Chairman. I don't know if he has  
20 any particular comments. But that part of our  
21 chart is pretty well developed and staff has done  
22 real well.

23 CHAIRMAN CROSBY: And Mark is  
24 involved in this and working with this?

1 COMMISSIONER ZUNIGA: Yes.

2 DIRECTOR DAY: Yes.

3 CHAIRMAN CROSBY: He's presumably  
4 starting --

5 DIRECTOR DAY: Right. Director  
6 Vander Linden is very involved with it, as he is  
7 with the research project and the monitoring as  
8 the project itself moves forward.

9 CHAIRMAN CROSBY: This doesn't  
10 particularly relate to the schedule, but I did  
11 want to bring it up. It just came up yesterday.  
12 I thought it was really interesting. We had a  
13 meeting yesterday of the -- a group we're going  
14 to do -- You remember we had this long discussion  
15 about two different kinds of longitudinal  
16 research studies. One is a cross sectional  
17 study; one is a cohort study. And we decided  
18 that the priority for us, and what the  
19 legislature envisioned was the priority was the  
20 cross sectional study, which is what our UMass  
21 Amherst based team had proposed. But we had  
22 always agreed that a cohort study was always  
23 important, and cohort study basically takes a  
24 snapshot of a group of individuals and tracks

1 those individuals over time to see what happens  
2 to them and how they evolve and where problem  
3 gambling comes from and how treatments work and  
4 so forth. You begin to become unrepresentative  
5 of the Commonwealth as the Commonwealth changes,  
6 but we're just tracking that same cohort.

7           But anyway, we had a meeting  
8 yesterday to start the conversation going about  
9 the cohort study, which we're going to start  
10 pretty soon. And a topic that came up was what  
11 we've heard a little bit, that there are various  
12 ways to screen individuals to determine whether  
13 or not they are problem gamblers or pathological  
14 gamblers.

15           There typically is a whole host of  
16 potential indicators: anxiety about gambling too  
17 much, those kinds of things. But there are three  
18 or four different research methodologies that  
19 will determine how much of those indicators you  
20 have to have as positives before you're  
21 considered either a problem gambler or a  
22 pathological gambler.

23           So what it means is you get  
24 different data because they're using different

1 methodologies.

2           The analysis of problem gambling as  
3 a medical condition, as I think we've all heard,  
4 it's now accepted by the, whatever it's called,  
5 the American Psychological Association or  
6 something, as a formal DSM, formal diagnostic  
7 set, a condition. And there's an opportunity now  
8 to come up with a common standard for what the  
9 criteria will be for determining problem gambling  
10 or pathological gambling. And because we have  
11 this huge project going on and we have more  
12 resources available to us than anybody in the  
13 U.S. and we're working with NCRG, National  
14 Council For Responsible Gaming, which is  
15 headquartered right here, we are going to see if  
16 we can take on the task of leading the industry,  
17 kind of like what Jennifer is doing in racing  
18 industry, trying to pull together a leadership  
19 group to lead the industry to come up with a  
20 common single standard for what determines  
21 problem and pathological gambling, which will be  
22 a huge breakthrough for the industry.

23           So it's just an aside. And Mark  
24 has now got it on his to-do list, and I wanted to

1 make sure you were aware of it. We might even,  
2 you know, in the next few months, have a sort of  
3 a mini conference and pull everybody in and  
4 debate it and figure out and get all the key  
5 players to buy into it and so forth.

6 So it's sort of a tangential effect  
7 of what we're doing, but because we have these  
8 tools and these priorities that the legislature  
9 give us, it gives us an opportunity to maybe  
10 affect the whole macro world of research about  
11 problem gambling, which will be a huge, huge step  
12 forward for everybody.

13 COMMISSIONER MCHUGH: That sounds  
14 terrific. I'm not sure it's tangential because  
15 doesn't it also provide a foundation for when  
16 intervention is appropriate and drive other kinds  
17 of decisions --

18 CHAIRMAN CROSBY: Absolutely.

19 COMMISSIONER MCHUGH: -- as to what  
20 kinds of programs --

21 CHAIRMAN CROSBY: And you end up  
22 not debating it.

23 COMMISSIONER MCHUGH: Right.

24 CHAIRMAN CROSBY: So everybody

1 agrees that this person is a problem gambler or  
2 not rather than debating whether or not they're a  
3 problem gambler.

4 COMMISSIONER MCHUGH: Right.

5 CHAIRMAN CROSBY: Yeah. It would  
6 be huge in terms of treatment, it would be huge  
7 in terms of research, and so forth.

8 COMMISSIONER MCHUGH: Right.

9 CHAIRMAN CROSBY: So it's just a  
10 really exciting product of what we're doing.

11 DIRECTOR DAY: Thank you,  
12 Mr. Chairman.

13 CHAIRMAN CROSBY: Pleasure.

14 DIRECTOR DAY: With that, I'll just  
15 move a little bit further with our process here  
16 this morning. At the bottom of this chart right  
17 here is a little more detail with the  
18 construction and modelling. It's basically an  
19 estimate, seeing as how we haven't actually dealt  
20 with that formally at the Commission at this  
21 point. But it gives a little bit of a picture,  
22 the idea of just a monitoring process that would  
23 have quarterly updates reported before the  
24 Commission and essentially a process at the end

1 that would require a Commission review and  
2 approval along with final inspection by staff.  
3 This is an option. It's not the only option that  
4 might come forward, but it gives a little picture  
5 of how that process may occur.

6 On the next page, we have is really  
7 what I'm going to talk for the most part is the  
8 bottom of the chart. The top here is evaluation  
9 process, and we'll have another presentation on  
10 that whole process as we get to December 4th as  
11 well.

12 COMMISSIONER ZUNIGA: September  
13 4th.

14 DIRECTOR DAY: September 4th, yes.  
15 And get our consultant on board --

16 COMMISSIONER MCHUGH: December 4th,  
17 we'll have a history.

18 DIRECTOR DAY: That's true. At any  
19 rate, we'll -- and this area is just the  
20 development of the regulatory enforcement arm  
21 that we're speaking of, and I'll just hit a  
22 couple of keys to that.

23 First kind of in this area, what we  
24 are beginning, are in the process of setting up

1 our discussions with the Massachusetts State  
2 Police. That's one of the critical roles that  
3 will be -- we have to kind of firm up how the  
4 agencies agree and what we anticipate as we move  
5 forward with the rest of the planning process,  
6 because that will have a great effect. We'll  
7 also have to move into a policy discussion, which  
8 will be on our list, from the concept of what  
9 that regulatory enforcement picture would look  
10 like.

11                   There's different models,  
12 obviously. There's a model that has a complete  
13 regulatory arm that's stationed at the casino  
14 with a law enforcement arm kind of side by side.  
15 There's also models that basically enforcement  
16 staff both fulfill the regulatory task as well as  
17 the criminal investigative staff.

18                   So that's kind of what we --  
19 there's options in between. So that's what we  
20 need to -- probably one of the big policies  
21 discussions that we'll be asking the Commission  
22 to take a look at anyway as we move forward in  
23 this process. We'll have some initial visits  
24 with the state police checking in to see where

1 they're at with that process. As we do that,  
2 though, we've got to come back as well, firm up  
3 understandings with the Attorney General's office  
4 and, of course, with the liquor control  
5 commission as well, all that foundation has to be  
6 taken care of.

7 As we do that part, as we get down  
8 in this part of the agenda, we've got our  
9 challenge again. We've got to try and make sure  
10 our background investigation ability is up and  
11 ready to go as we get into the initial licensing  
12 process after the slot licenses is issued, and  
13 then as well, we have got to take a look and  
14 start moving into our financial investigation  
15 unit as well.

16 CHAIRMAN CROSBY: I know you're  
17 aware of this, Rick, but if you run a line down  
18 from November, which is the opening of the slots,  
19 if you run it straight down, it runs -- it cuts  
20 off gambling regulatory training, financial  
21 investigation, analysis staff. Just you've got  
22 some target dates which are after the opening of  
23 the slots. And I know you guys work -- and this  
24 is a conversation you and I have all the time

1 reflecting my uneducated concern about getting  
2 this stuff done on time. But, you know, we  
3 really need to be done and ready to go a month or  
4 so before anything opens because we'll slip and  
5 miss times and need to shake down crews and so  
6 forth. So I just noticed those dates are outside  
7 the --

8 DIRECTOR DAY: We'll there's -- I'm  
9 surprised everybody hasn't caught me on a few  
10 other typos in here too as well. There's a few  
11 things here that we need to fine tune.

12 CHAIRMAN CROSBY: And I realize  
13 this is very much a draft, and I know you're up  
14 to your eyeballs in this, but I just keep  
15 reiterating my concern here.

16 COMMISSIONER MCHUGH: I thought the  
17 openings of the slots was 1/15.

18 CHAIRMAN CROSBY: I was thought it  
19 was November.

20 COMMISSIONER MCHUGH: The slots  
21 parlor 1/15/2015.

22 CHAIRMAN CROSBY: Oh, all right.  
23 That's why. Eleven months from December would  
24 have been --

1                   DIRECTOR DAY: December 17th is our  
2 projected date, so 11 months.

3                   CHAIRMAN CROSBY: Right. So 11  
4 months after that would have been the end of  
5 October.

6                   COMMISSIONER MCHUGH: There's the  
7 construction's done, then there's 50 days for --

8                   CHAIRMAN CROSBY: Oh, okay. Okay.

9                   COMMISSIONER MCHUGH: -- doing  
10 something else, final inspection.

11                  CHAIRMAN CROSBY: Okay.

12                  COMMISSIONER ZUNIGA: But it is the  
13 driver of a lot of things that we have to do  
14 relative to the regulatory framework, the  
15 testing. I have been thinking a little bit about  
16 our -- some of the policy decision that we've  
17 talked about relative to having a lab or  
18 contracting out or something in between. I think  
19 that question may come to fruition, for example,  
20 mostly driven by the slots parlor timeline. We  
21 may have -- just like we have done with  
22 consultants, we may have, by necessity, initially  
23 start with outside help, but then, as Rick  
24 suggested in his initial remarks, ramp up and

1 change that mix as the other --

2 COMMISSIONER MCHUGH: I wasn't  
3 disagreeing with that.

4 CHAIRMAN CROSBY: No. He was  
5 adjusting --

6 COMMISSIONER ZUNIGA: I'm  
7 reiterating.

8 CHAIRMAN CROSBY: He was adjusting  
9 the dates, which is appropriate. But I do -- As  
10 I said, you and I talk about this all the time,  
11 and I think you know stuff that I don't know and  
12 we don't know, and, certainly, David Acosta knows  
13 stuff that we don't know. But I do think it  
14 would be worthwhile as sort of a next step for  
15 this to make sure that we've really thought  
16 through carefully what are the critical path  
17 operating variables that have to be it. You  
18 know, how are we going to track the cash, the  
19 test of the machines that are going to go in, you  
20 know, whatever, the licensing, obviously, of all  
21 the individuals, the surveillance approvals,  
22 whatever all the kind of critical things are that  
23 are the end points of each of our major  
24 regulatory systems that need to be operational.

1 Have we taught about how we're going to get their  
2 machines approved. You know, I know what -- You  
3 probably have thought about that. But I think it  
4 would be interesting to have something where we  
5 can all kind of kick it around and with the staff  
6 as well, just really sort of ground test, truth  
7 test, you know, the operating assumptions. Have  
8 we really thought through every single critical  
9 variable that might trip us up.

10 I mean, I'd be doing that,  
11 certainly, and any manager would be doing this as  
12 you're setting up a big operation. But as I say,  
13 this reflects -- I'm not familiar with what all  
14 those are, so that causes me concern. You may be  
15 familiar with what all those are, and it doesn't  
16 cause you concern, but I think we'd all feel  
17 better having it put up on a piece of paper that  
18 we all get to kick it around and just make sure  
19 we're not inadvertently missing something.

20 DIRECTOR DAY: As a matter of fact,  
21 this part of the chart, part of what we are  
22 taking into consideration is sort of the core  
23 behind this is those areas.

24 CHAIRMAN CROSBY: Absolutely.

1 Right. And I realize that.

2 DIRECTOR DAY: They actually come  
3 with our regulatory approach, too, as we move  
4 forward with development of our regulations, and  
5 when that has to take place so we are in a  
6 position to do testing. So we're -- And the slot  
7 parlor is really a driver there. So as we move  
8 forward, we'll touch on that aspect of licensing  
9 regulations and when they have to be -- As a  
10 matter of fact, you took some of my lines away.  
11 There's licensing regulations that as we get in  
12 the next phase will be our initial regulatory  
13 point, at least from a development aspect that we  
14 need to have ready to go.

15 CHAIRMAN CROSBY: Right.

16 DIRECTOR DAY: But with the other  
17 areas that we have -- we will need as well is, as  
18 Commissioner Zuniga mention, machine testing.  
19 You mentioned surveillance and internal controls.  
20 So what we need to do is because the slots are 11  
21 months out, we need to focus on internal controls  
22 and surveillance requirements up front for the  
23 slot parlors so that we have that ready at  
24 least -- and the best way would be so that in

1 that period, the early part of construction,  
2 we're prepared from our regulation prospect to  
3 give guidance to those coming up with the plans  
4 and designing those elements. So that's a little  
5 bit of a process.

6 CHAIRMAN CROSBY: Right.

7 DIRECTOR DAY: Followed by that,  
8 and it's on the chart with dates, is we need to  
9 then go from that to the specific consideration  
10 about the machine approval site.

11 CHAIRMAN CROSBY: Right.

12 DIRECTOR DAY: And one thing is for  
13 sure is one thing we have to do, and I'm kind  
14 going ahead in my notes a little bit, but that's  
15 actually tied as well to when we move into a new  
16 facility. Practically speaking, obviously, we  
17 can't test any electronic gaming equipment where  
18 we are now. So what that may very well mean is  
19 we're probably talking the need to be fairly well  
20 prepared to test by June. We'll likely not be  
21 able to get there because we probably won't be  
22 moved by that time, but we are talking about a  
23 facility of 1250, 1,250 machines. What that  
24 means is we actually, as we -- we may be in a

1 good position, as Commissioner Zuniga mentioned,  
2 to be able to phase into that to take a little  
3 more advantage of private contractor initially as  
4 we finish developing our expertise and we move  
5 into the facility that actually has the space for  
6 that.

7 So -- And then as we go forward  
8 with that process of development, we've got to  
9 then have our regulations ready to go relative to  
10 tax and revenue collection and monitoring. That  
11 will be another set that we've got to have to  
12 take place.

13 The final set would go back to that  
14 regulation as we get closer. We need then to  
15 expand our surveillance and our internal controls  
16 relative to the resort complexes, and then  
17 probably the final set that we see at this point  
18 will be table games, for instance.

19 CHAIRMAN CROSBY: Right.

20 DIRECTOR DAY: And intermixed is --  
21 And part of what this chart is trying to say is  
22 intermixed in that process is the work with the  
23 state police. Because they need to increase  
24 their staff, we've also got to be involved in

1 academy training. We've got to project that  
2 forward to make sure they're available as well.  
3 And then we've got to, in the final context,  
4 we'll probably have to have, too, we'll have  
5 regulatory responsibilities with the slot parlor  
6 before we have more staff for regulation for the  
7 casinos. So we're going to end up having to  
8 have -- and there's an early training on this  
9 side, the gambling specialized training, that  
10 we'll be following later on in that picture with  
11 a broader scope training for the rest of the  
12 regulatory staff as we move forward.

13           So in this concept of really tieing  
14 these sections of regulations are kind of the  
15 first time we've had this discussion. This is  
16 kind of a process that is looking to me is real  
17 practical, because we'll also have a lot of  
18 benefits about causing discussions about  
19 objectives, risk, those kind of things about what  
20 the Commission might be looking at and even be  
21 able to help develop things like objectives for  
22 performance management as people are discussing  
23 results they may want out of those particular  
24 regulations.

1                   So I agree it's a mini-step process  
2                   in there, and I think --

3                   CHAIRMAN CROSBY: This is the first  
4                   time we've ever heard you talk -- I mean, that  
5                   was a reassuring -- You know, that was reassuring  
6                   soliloquy there, you know that you've -- and many  
7                   of the steps you're talking about are here on the  
8                   chart, which is why it was important for us. I  
9                   wanted to do this today so that we began to see.  
10                  But you obviously do have a grasp on this, and  
11                  you're very much aware of the connection that the  
12                  regs. have to proceed the operation and so forth.  
13                  So that's great. But I just want to keep talking  
14                  about that and keep making sure you're -- You  
15                  know where you're going, but we don't to some  
16                  extent, and I want to make sure we keep apprised  
17                  of that. But this is a huge step in the right  
18                  direction, and I'm pleased to see this. This is  
19                  reassuring. And to hear you talk about it, you  
20                  know, with a clear, articulated sense of  
21                  sequencing and priorities is really helpful.

22                  COMMISSIONER MCHUGH: I agree with  
23                  that. This is the first time we've had this, and  
24                  just looking through it can be begin to see where

1 we need to make policy judgments and the like,  
2 and it's going to be iterative. It's going to  
3 change as we go forward. But for the first time  
4 we've had the detail as well as this big picture  
5 thing. So I think it's going to be really  
6 helpful, as you suggest to us all, to have this  
7 and have it in this detail and begin to unpack  
8 it.

9                   CHAIRMAN CROSBY: Yeah. It's  
10 great. And I think it would be worth having part  
11 of a session, you know, sometime pretty soon just  
12 focusing on this four-inch section, you know, and  
13 really just walking through each one of these  
14 things and fleshing it out even further. But I  
15 agree this is really great.

16                   DIRECTOR DAY: I think what it is,  
17 as you and Commissioner McHugh have mentioned, is  
18 it's kind of helping focus on those policy  
19 decisions, and then it's going to help as we  
20 bring the policy decisions so they're kind of  
21 targeted. So instead of we kind of have a  
22 multiple list, we've maybe got the first ones  
23 that we for sure need the Commission to kind of  
24 decide on up front for you to take a look at and

1 then to keep moving through those as we need to  
2 move forward with the rest of these regulations.

3 CHAIRMAN CROSBY: Right.

4 DIRECTOR DAY: We talked about  
5 licensing, so we've got --

6 COMMISSIONER ZUNIGA: I'm sorry.  
7 Can I just emphasis something that's already been  
8 said. But it's very much an iterative process,  
9 of course. There's -- It's just the skeleton, if  
10 I may call it that. I anticipate that there will  
11 be a lot more detail behind each one of these  
12 mega processes.

13 CHAIRMAN CROSBY: Definitely.  
14 Yeah. Like on the research side.

15 COMMISSIONER ZUNIGA: Right.

16 CHAIRMAN CROSBY: That degree of  
17 intensity.

18 DIRECTOR DAY: You know, just --  
19 Well, go ahead, Mr. Chairman.

20 CHAIRMAN CROSBY: Well, I just was  
21 going to -- You know, on the policy thing, you  
22 clearly have made up your mind that we will be  
23 testing, we will be doing our own testing of  
24 machines and that may or may not be right, but

1 it's certainly nothing we've ever decided. And  
2 that's one -- just an example of one of those  
3 things that's sitting out there that needs to get  
4 onto our agenda quick so we make that decision.  
5 Because we're operating on the assumption, I  
6 think, that we're going to have our own testing  
7 lab, which we may or may not, but we've never  
8 talked about it.

9                   DIRECTOR DAY: Well, I do my best  
10 not to tip my hand, so to speak in this.

11                   CHAIRMAN CROSBY: We caught you  
12 this time.

13                   DIRECTOR DAY: From a regulatory  
14 aspect, I think it's a very solid approach, but  
15 on the other hand, one thing is clear, there's  
16 still a Commission approval requirement really on  
17 what equipment actually goes into place in  
18 Massachusetts casinos, and the debate, in a lot  
19 of ways, is how the Commission would actually get  
20 there. And there would have to be a monitor,  
21 really -- if it was a private lab, a monitor of  
22 that contract with private labs and someone with  
23 the ability to be able to deal with that kind of  
24 technical level of equipment.

1           So in that lot of ways, there's the  
2 old model of it used to be just the state lab and  
3 everything had to go for an approval. A new  
4 model kind of came forward. Many states just use  
5 the private lab. And there's also kind of a  
6 process in between with a certification that, to  
7 some extent, from a private lab, plus  
8 determinations by the state lab and the state  
9 having its own expertise. But we will -- just a  
10 little glimpse, that is an area that I would  
11 encourage the Commission to go forward, but I  
12 agree it's a central discussion to the regulation  
13 development as well.

14           CHAIRMAN CROSBY: Right. Exactly.

15           DIRECTOR DAY: We need to move  
16 forward.

17           This part of the chart here, this  
18 top side is licensing development, and it's sort  
19 of disconnected, so to speak, and the reason is  
20 here -- and David and I will be focusing on this  
21 again early this next week, put a little bit more  
22 meat to this. But, of course, the licensing team  
23 has got to focus on -- We've got applications  
24 coming in on the casinos and the administrative

1 completeness process with submittal of the slots  
2 parlor on October 4th. So that's a process that  
3 they're getting ready to make sure that they're  
4 ready to accept those applications and process  
5 them through to the evaluation teams initially.

6 So we've already talked about  
7 periods of developing regulations, and we're  
8 pretty much convinced we've got to have licensing  
9 regulations, and those generally are speaking of  
10 a set of general regulations that applies to all  
11 licensing fees, then the various types, whether  
12 it be vendors, manufacturers, key employees,  
13 employees, all that process has to be -- and  
14 probably violations, in essence, has to be part  
15 of the package to move forward.

16 I did forget to mention one thing  
17 is applications. That's another part of it we've  
18 got to get going in a little bit more detail in  
19 this area.

20 So it's good to have David on  
21 board. And I had a discussion with their team  
22 and be able to have that availability and extra  
23 resource to fine tune this proposal.

24 Underneath this, and I'll only

1 touch on this briefly --

2 COMMISSIONER MCHUGH: Could I just  
3 -- Before you move on. There, too, is another  
4 place, as in all of these, where it seems to me a  
5 number of policy decisions are embedded. How are  
6 we going to deal with training schools, for  
7 example. Are we going to -- What kind of an  
8 approach are we going to take in that? How are  
9 we going to deal with the licensing mechanism?  
10 Are we going to have a casino driven process,  
11 i.e., you have to have a job and then you come  
12 and apply for the license; or you get a license  
13 and then you go apply for the job? Those kinds  
14 of things just run through all this.

15 And so your idea, Mr. Chairman, of  
16 perhaps unpacking these seriatim section by  
17 section and helping -- having a discussion about  
18 what the policy decisions are imbedded there  
19 would be useful to us all, I think, at the  
20 appropriate time when you're ready.

21 CHAIRMAN CROSBY: Yeah. I strongly  
22 agree with that.

23 DIRECTOR DAY: And the last part of  
24 the chart is the administrative section or I

1 would -- the overall agency administrative  
2 infrastructure. And one thing we tried to do is  
3 even there was a little discussion about how do  
4 you set a timeline and manage under what kind of  
5 a concept and that's why we've kind of selected  
6 these major areas, which is the enforcement, the  
7 licensing, and regulatory, and the general  
8 administration so that we've got some timelines.  
9 We can definitely move forward. We can match up  
10 with regulations and policy and have those  
11 discussion, because there's a lot. The operating  
12 units like the licensing and enforcement and  
13 regulation are really going to be a little bit  
14 helpless without that infrastructure, which  
15 includes things like, obviously, the systems and  
16 the accounting ability for tax revenues and  
17 selection and recruiting and all that kind of  
18 process in HR.

19                   So that's part of what this part of  
20 the timeline, if you look down through the  
21 detail, you'll see some of those areas that come  
22 out as well.

23                   So I'm kind of, at least my  
24 point --

1                   CHAIRMAN CROSBY: Well, there's one  
2 more page.

3                   DIRECTOR DAY: The one more page is  
4 still under development.

5                   CHAIRMAN CROSBY: Yeah. But I was  
6 glad to see it. I assume Director Griffin has  
7 been already looking at her section of this.

8                   DIRECTOR DAY: This section, I have  
9 not had the opportunity to discuss too much with  
10 Jill at this point.

11                  CHAIRMAN CROSBY: Okay.

12                  DIRECTOR DAY: Up here in horse  
13 racing, though, we are in the process, we are  
14 going to actually add much or very similar to the  
15 rest of the groups, and we'll start that process  
16 with giving some deadlines to our consultant next  
17 Tuesday, and then we'll come back, and with this  
18 as well, our Director Durenberger in further  
19 development.

20                  CHAIRMAN CROSBY: Right. Great.

21                  DIRECTOR DAY: So this is our first  
22 draft, first opportunity to discuss it, and we  
23 have more to come. I have noted the possibility  
24 of being able to bring forward particular

1 sections at a meeting and maybe the policies that  
2 go with those sections. And we'll do that  
3 dependent on when we anticipate we need to move  
4 forward with those particular areas.

5 CHAIRMAN CROSBY: That would be  
6 great. Thank you.

7 COMMISSIONER MCHUGH: This is  
8 great. That is really helpful.

9 CHAIRMAN CROSBY: This is really  
10 what we were looking for in discussing. This is  
11 great.

12 DIRECTOR DAY: Well, it's very  
13 interesting to move forward, and it is a process.  
14 You ask the question, this is what we've got to  
15 do, and, of course, the question comes back, so  
16 when do you want to start it.

17 COMMISSIONER MCHUGH: Right.

18 DIRECTOR DAY: All right. Let's  
19 talk about that. Thank you very much for the  
20 time. That's all I have from my perspective.

21 CHAIRMAN CROSBY: And I guess you  
22 gave us an update on all relative procurement  
23 issues and hiring issues.

24 DIRECTOR DAY: Yes.

1 CHAIRMAN CROSBY: Okay. Great.  
2 Let's take a quick break while Jennifer settles  
3 in, and we'll be back in a couple of minutes.

4 (Break taken.)

5 CHAIRMAN CROSBY: All right. We  
6 will reconvene the Gaming Commission public  
7 meeting number 75, and I think, turn to Director  
8 Durenberger.

9 DIRECTOR DURENBERGER: Thank you,  
10 Mr. Chair, Commissioners.

11 COMMISSIONER STEBBINS: Good  
12 morning.

13 DIRECTOR DURENBERGER: Good  
14 morning.

15 COMMISSIONER MCHUGH: Good morning.

16 DIRECTOR DURENBERGER: I don't  
17 really have an administrative update today;  
18 although, I would like to replace it with the  
19 following comment that struck me after listening  
20 to the Marine Fisheries presentation.

21 I like to draw parallels to things  
22 when I can because I think it's an interesting  
23 exercise and it kind of makes you think about  
24 things in a way that you maybe haven't thought

1 about it before. And I want to just note to you  
2 two similarities between that industry and the  
3 horse racing industry.

4 One is that we heard during the  
5 presentation about industry and science working  
6 together to sustain and promote and improve, and  
7 we're going to see that reflected actually in  
8 some of these regulations that I'm about to put  
9 to you today. We'll see an example of that in  
10 the horse racing industry.

11 And other is that we talked about  
12 third -- and you heard about a lot about third  
13 and fourth and fifth generation fisheries  
14 families, and we have the same thing in horse  
15 racing. Many people who devote their lives to  
16 the industry, that is all their family's ever  
17 known. So I just thought I would point that out  
18 during my administrative update.

19 CHAIRMAN CROSBY: Interesting.

20 DIRECTOR DURENBERGER: And then  
21 turn to our proposed changes to 205 CMR 3.29 and  
22 it's parallel. 3.29 is in the harness chapter,  
23 and it's parallel regulation, 4.52 in the  
24 thoroughbred chapter. This is medications and

1 prohibited substances.

2           What we've done today is we've  
3 brought forward a redline version, which  
4 incorporates some amendments to existing language  
5 as well as two entirely new provisions that I'm  
6 going to introduce to you, along with a draft  
7 letter to the local government advisory council.

8           What we would be asking for you  
9 today is to initiate the formal rule making  
10 process. So this is the kickoff and the  
11 introduction to that.

12           So the redline version does have  
13 some amendments to existing language which  
14 basically reflect either updates that have  
15 occurred over the previous year from the  
16 Association of Racing Commissioners  
17 International, or in some instances, we have  
18 expanded existing language to reflect some of the  
19 facts and circumstances in Massachusetts.

20           The two new provisions where I'm  
21 going to spend the majority of my time reflect  
22 the culmination of about a two-year process of  
23 promulgation and review by stakeholders and  
24 numerous racing medication and testing consortium

1 committees. I've introduced that group to you  
2 before. And then, of course, ultimately the  
3 Association of Racing Commissioners  
4 International.

5 Specifically, what appears or will  
6 appear in the Massachusetts provisions section  
7 (3)(a)(2), this provision was approved by the --  
8 I'm going to use RCI for Racing Commissioners  
9 International -- board of directors on April 2nd  
10 of this year. This provision incorporates a  
11 schedule of controlled therapeutic medications  
12 and associated decision levels. I would note  
13 that as part of our regulatory reform, this  
14 racing division actually has used about 20 of the  
15 24 decision levels in its regulation of horse  
16 racing this year.

17 So in adopting the schedule of  
18 controlled therapeutic medications, the two  
19 things we'll be doing is adding the decision  
20 levels for an additional four medications and  
21 adopting what we call restricted administers  
22 times, which are, in layman's terms, withdrawal  
23 times.

24 What will appear in section (2)(f)

1 in the two rules was just recently approved by  
2 the RCI board of directors on July 31st in 2013.  
3 This provision introduces a point system that  
4 will attach to occupational licenses for  
5 medication violations and will serve to enhance  
6 suspensions incurred as a result of multiple  
7 offenses.

8           The two provisions together  
9 constitute what we've talked about for much of  
10 the year, the Uniform Medication and Drug Testing  
11 Program initiative. We've discussed this at  
12 previous meetings. Eight jurisdictions,  
13 including this one, did pledge initial support to  
14 the program this past spring, and now we actually  
15 have a rule to support. So this is very  
16 exciting.

17           I'd also note that since that time,  
18 there are four other jurisdictions that have also  
19 begun to deliberate on the matter, but the goal  
20 for the original group of eight of the Northeast  
21 and mid-Atlantic states is to go through the rule  
22 making process in parallel, and we strive for a  
23 simultaneous effective date of January 1, 2014.

24           I can either pause or give you a

1 little bit more background on the two provisions.  
2 Should I just run with it?

3 CHAIRMAN CROSBY: Anybody? Yep.

4 COMMISSIONER ZUNIGA: Yes.

5 DIRECTOR DURENBERGER: Okay. So  
6 additional background --

7 CHAIRMAN CROSBY: Gallop with it.

8 DIRECTOR DURENBERGER: What was  
9 that?

10 CHAIRMAN CROSBY: Gallop with it.

11 DIRECTOR DURENBERGER: Gallop with  
12 it. Get the bit between my teeth. All right.

13 I want to talk to you about how the  
14 two provisions, the new provisions, are designed  
15 to compliment each other and the effect they're  
16 intended to have on the industry.

17 So as you know, racing loves its  
18 alphabet soup. We're going to introduce a new  
19 one to you today and that's MMV. This describes  
20 the proposed penalty structure and stands for  
21 multiple medication violations.

22 This provision, although impressive  
23 in its length, is designed to actually reach a  
24 very, very few licensees in North America. The

1 jockey club, which is the governing board of  
2 thoroughbred racing, commissioned a report from  
3 McKinsey & Company about two years ago, and in  
4 that report, they looked at about 13,000  
5 individually licensed trainers in North America  
6 over a six-year period, 2005 to 2011. Of those  
7 13,000 or so, they discovered that 12,800 had  
8 either no or only one violation during that  
9 six-year period. About five percent of all  
10 licensees accounted for approximately two-thirds  
11 of all medication violations, and when they  
12 excluded trainers who went during that six-year  
13 period a number of years without any violations  
14 at all, only 200, or one and a half percent, of  
15 all licensed trainers accounted for one-third of  
16 this country's medication violations.

17           So it's that one and a half percent  
18 of back actors, if you will, that color the  
19 perception of our entire industry. And the  
20 previous inability to address this repeat  
21 offender notion is a serious, serious problem.  
22 That one and a half percent is the group that  
23 this multiple medication violation penalty is  
24 designed to address.

1                   When we look at the controlled  
2 therapeutic medication schedule, we see on the  
3 other hand a provision that is designed to effect  
4 everybody in the industry from occupational  
5 licensees to regulators to the betting public.  
6 This schedule is designed to draw a clear line in  
7 the sand about what is and is not acceptable, and  
8 the points that will attach to the licensee's  
9 record will reflect that distinction.

10                   In effect, if you choose to use  
11 medications which are not considered therapeutic,  
12 if you choose to use prohibited substances in  
13 your racehorses, that is an aggravating factor in  
14 the amount of points you would accrue on your  
15 license. For everyone else, the rule provides  
16 clear withdrawal guidelines in the form of  
17 restricted administration times and uniform  
18 decision levels so that horsemen and  
19 veterinarians can design appropriate healthcare  
20 regimens for athletes in their care based on  
21 science and regulatory guidance, not based on  
22 which state their target race will be held.

23                   So with that, I will entertain  
24 questions you have of both the draft letter to

1 the LGAC in the packet, as well as the redline  
2 versions of both rules as they appear in the  
3 harness chapter and the thoroughbred chapter.

4 CHAIRMAN CROSBY: These are  
5 identical to the other jurisdictions, right? Is  
6 that -- This isn't -- You haven't tweaked the  
7 language coming from the other jurisdictions?

8 DIRECTOR DURENBERGER: The language  
9 that would be imported as a result of the redline  
10 is that which just came out of the RCI board of  
11 director's meeting and is the same language that  
12 the other seven states in the Northeast and  
13 mid-Atlantic have pledged to support.

14 COMMISSIONER MCHUGH: But nobody  
15 else has adopted this yet?

16 DIRECTOR DURENBERGER: It's --

17 COMMISSIONER MCHUGH: We would be  
18 the first.

19 DIRECTOR DURENBERGER: We would --  
20 Well, we would be the first to initiate the  
21 formal rule making process, but these eight  
22 states are all on target, and they're going to  
23 initiate their process as a reflection of how  
24 long that rule making process takes so that we

1 have a simultaneous uniform flip-the-switch date  
2 of January 1.

3 COMMISSIONER MCHUGH: Right. On  
4 the -- on sort of a philosophical basis, and you  
5 and I have discussed this a little bit, the -- a  
6 reference to ARCI regulations and classifications  
7 is not anchored to any particular edition of  
8 those, and as a consequence, if ARCI changes the  
9 effective classification regime, for example, if  
10 we look at (f)(2) -- on the second page of your  
11 document, (2)(f)(1) which refers to the ARCI  
12 Uniform Classification for Foreign Substances, if  
13 the content of that changes, then, in effect, the  
14 content of our regulation changes, right.

15 So there's a philosophical question  
16 as to whether we're content with that or not. In  
17 effect, we're giving control over to the content  
18 of our regulation to somebody else without it  
19 coming back for us, as opposed to saying the ARCI  
20 Uniform Classification for Foreign Substances  
21 version "X" or in effect from date "X." It seems  
22 to me we're trying to be uniform. It seems to me  
23 we ought to stay uniform. It seems to me that  
24 this is a helpful multistate approach to horse

1 racing, and we hope to get not only the  
2 Massachusetts horses, but cross-border horses  
3 here at the race.

4 So it's a helpful thing, but it is  
5 something we ought to recognize we're doing.

6 CHAIRMAN CROSBY: Right.

7 DIRECTOR DURENBERGER: And  
8 Commissioner, I think the way -- a simple way to  
9 address that -- I'm trying to find the language,  
10 and it may be in the rule that just proceeds  
11 this, 3.28 and 4.51. After where it discusses  
12 the Association of Racing Commissioners  
13 International Uniform Classification Guidelines,  
14 in existence at that time, that language does  
15 appear somewhere in one of the other rules. So  
16 it may be as simple as adding that, "in effect at  
17 the time of the violation."

18 COMMISSIONER MCHUGH: Yeah. But  
19 that wouldn't really -- I mean, that doesn't  
20 address the issue I was trying to raise. That  
21 would make it more clear. So you couldn't have  
22 an offense and then be penalized under a post  
23 offense change, but it still would allow ARCI, in  
24 effect, to set the rules under which we were

1 operating or set a piece of the rules under which  
2 we were operating.

3 DIRECTOR DURENBERGER: Right.

4 COMMISSIONER MCHUGH: It's just  
5 something I think we ought to be aware of and  
6 decide whether we want to do that or not. I  
7 think it makes sense to do it.

8 CHAIRMAN CROSBY: I agree.

9 COMMISSIONER ZUNIGA: How is it--  
10 Well, just on that point, incorporating a rule by  
11 reference, how often is ARCI anticipating, if  
12 they are, to change some of the guidelines or the  
13 thresholds? I was thinking about it in the  
14 context of the concentration thresholds. You  
15 know, the science evolves from time to time, and  
16 maybe those thresholds change, correct?

17 DIRECTOR DURENBERGER: Right. So  
18 it is intended to be a living, breathing  
19 document. There are quarterly meetings of Racing  
20 Commissioners International. The Uniform  
21 Classification Guidelines do change from time to  
22 time based on, as you say, new developments,  
23 particularly in testing methodology. And so we  
24 do anticipate there would be changes.

1                   And when we look at other  
2 jurisdictions, they handle the incorporation by  
3 reference sort of in three different ways. And  
4 one is to do it in existence at the time of that  
5 violation. One is to cite a specific version, so  
6 version, you know, 4.3. And the other is to just  
7 go through the rule making process every time  
8 that there is a change, which for this  
9 Commission, with its frequency of meetings, is  
10 not an insurmountable obstacle as it is in some  
11 commissions that only perhaps meet quarterly.

12                   And so we see all three approaches  
13 out there. The incorporation by reference, of  
14 course, is the ideal for the reasons we  
15 discussed -- the ideal for the industry for the  
16 reasons we've discussed. It may not fit with  
17 what this Commission wants to do, but I don't see  
18 any practical effect, why we couldn't go through  
19 a rule making process if there were changes.

20                   CHAIRMAN CROSBY: We also can have  
21 a negative option. We can always, you know, when  
22 we see changes, we don't have to accept them. We  
23 can always have a meeting or a review and choose  
24 not to accept them. It's a question of where the

1 presumption is, I think.

2 COMMISSIONER MCHUGH: Well, it's  
3 also notice to the world, there is an element of  
4 that, notice to the world that we are now under a  
5 new regime. You know, we've added drug "X" to  
6 the prohibited substance list, and it wasn't on  
7 the list at the time we adopted these  
8 regulations. So ARCI has put it on their list,  
9 we now adopt that, and it's on our list as well.  
10 That's one way of doing it.

11 The other way is just make  
12 everybody go to the current ARCI list by, I  
13 suppose, adding language "in effect at the time  
14 of the violation" would help with notice. It  
15 wouldn't help with the delegation.

16 DIRECTOR DURENBERGER: And to the  
17 notice, I would just point out that when these  
18 changes occur, they have gone through the  
19 scientific advisory subcommittee with Racing and  
20 Medication Testing Consortium. So there is some  
21 industry dialogue for a number of months leading  
22 up to the time it would even leave the RMTC.  
23 When it leaves RMTC, it then goes to Racing  
24 Commissioners International.

1                   So there is always quite a few  
2 months of lead time in industry discussion. They  
3 don't come out of just the model rules committee  
4 one day and then go to the board of directors.

5                   So in terms of notice within the  
6 industry, typically these changes, one, they're  
7 not usually dramatic. They're usually an  
8 adjustment of the threshold level. But if you  
9 are adopting a new threshold for a new drug,  
10 there is a fair amount of lead up time, and, you  
11 know, this racing division staff would certainly  
12 be prepared to issue directives and notices ahead  
13 of time to sort of flag this for our  
14 participants.

15                   COMMISSIONER ZUNIGA: What, in your  
16 opinion, better gets to the goal of enhancing the  
17 product, incorporation by reference? Because  
18 ultimately that's what we're trying to do. The  
19 rule making process, even though we meet every  
20 other week, that may or may not be the case a  
21 year from now. So what's your opinion?

22                   DIRECTOR DURENBERGER: This was --  
23 This is meant to go before commissions for  
24 adoption by reference. So to the uniformity

1 piece, the adoption by reference is the way to  
2 go. To the notice piece -- And I am a big  
3 believer, as you know, in affording all of the  
4 due process that we can to our licensees. I  
5 think there's definitely -- I can't underemphasis  
6 the import of the notice.

7           So I'm comfortable being able to  
8 discuss this issue, bring it before the  
9 Commission before a rule change would be  
10 anticipated to go to RCI. But I may not always  
11 be in this position, and you may not always been  
12 on that side of the table.

13           So although I think uniformity is a  
14 very, very important goal for this industry, I  
15 think probably going through the rule making  
16 process serves a very good purpose.

17           In terms of bettering the product,  
18 which is my ultimate goal, I'm not sure that  
19 either one or the other, other than having the  
20 story to tell that this is an uniform initiative.  
21 I think that is an important story to tell.

22           CHAIRMAN CROSBY: Does it send a  
23 signal -- If we were to do one versus the other,  
24 does it send a signal to the industry? Is there

1 a trade off in that respect?

2 DIRECTOR DURENBERGER: I think  
3 being able to tell, again, the story of the  
4 uniformity is important, but I think that may be  
5 a distinction without a difference at the high  
6 level.

7 CHAIRMAN CROSBY: I didn't get  
8 that.

9 DIRECTOR DURENBERGER: Telling the  
10 story of uniformity is important for one  
11 audience, but it may -- the distinction between  
12 incorporating by reference and going through the  
13 regular rule making process, that may be a  
14 distinction that is not necessarily understood by  
15 everybody that is watching and reading in the  
16 press.

17 CHAIRMAN CROSBY: So it wouldn't be  
18 considered like a qualified adoption of the  
19 principle of stance --

20 DIRECTOR DURENBERGER: No, I don't  
21 think so. Because I'm quite certain that there  
22 are some states that can't adopt by reference.  
23 So I think you're going to find some states are  
24 not able to do that. And in fact, one of the

1 states has to go through statute rather than just  
2 the rule change on this.

3 And so I think that uniformity is  
4 the goal, but the reality is that we do still  
5 operate in a state system. So I'm comfortable.

6 COMMISSIONER MCHUGH: And the  
7 principle, even if we locked it down to a  
8 particular addition of the uniform  
9 classification, a principle would be adversely  
10 affected by that because the principle is the  
11 multiple violations penalties, which would be  
12 uniform.

13 DIRECTOR DURENBERGER: Yes.

14 COMMISSIONER STEBBINS: Does the  
15 system, in using RCI as kind of the repository  
16 for all the information on the trainers, make it  
17 easier for us to track who the bad actors are  
18 before they show up in our state?

19 DIRECTOR DURENBERGER: So it is  
20 lynchpin of this MMV provision, absolutely. So  
21 the information that is input into RCI, of  
22 course, is dependent on the individual  
23 jurisdictions that put it in, and the RCI has  
24 made it very, very clear its exception of its

1 members in making sure the information is entered  
2 a timely and accurate fashion.

3 We currently, just so you know,  
4 with our licensing process, when someone comes in  
5 and applies for an occupational license, our  
6 licensing staff does currently pull up the RCI,  
7 the licensee's ruling record, before licensing  
8 determination is made and that's something that  
9 most jurisdictions are doing or have been doing  
10 for years and that's standard practice.

11 COMMISSIONER STEBBINS: Can you  
12 walk me through the penalty process. If I am a  
13 trainer and I have been found guilty of a Class A  
14 violation for a non-controlled substance, I pick  
15 up six points. So I look at the other chart, and  
16 I find the six points, I'm going to get suspended  
17 for 60 days.

18 DIRECTOR DURENBERGER: Actually,  
19 the six points would get you the 60-day  
20 suspension if you had another violation. So this  
21 only attaches on your second violation.

22 COMMISSIONER STEBBINS: Okay.

23 DIRECTOR DURENBERGER: So the  
24 current recommendation for a Class A penalty, I

1 think is a minimum of one year. This is the  
2 really bad stuff. We don't see much of it in  
3 racing, thank goodness. There's a range. In the  
4 recommended penalty guidelines, there's always a  
5 range given, but that is the most serious  
6 penalty.

7           So the answer to your question, if  
8 there's a notice of finding in a laboratory  
9 report, you go before the stewards or judges for  
10 an administrative hearing. If the finder of fact  
11 determines that this finding is valid and you now  
12 have a violation, you have the ability, of  
13 course, to appeal that. These points do not  
14 attach. The six points would not attach to your  
15 license until all your administrative appeals  
16 have been exhausted.

17           COMMISSIONER STEBBINS: Correct.

18           DIRECTOR DURENBERGER: And if it  
19 was sent out to an outside court, if the appeal  
20 was taken to the outside court, that's noted in  
21 the ruling. And so if we had somebody who's  
22 being licensed here or had a medication violation  
23 here and our stewards and judges were looking at  
24 their record, there would be a note that those

1 points are pending an appeal.

2 So these points would not attach to  
3 a licensee until the administrative appeals were  
4 exhausted.

5 COMMISSIONER STEBBINS: Okay. Now,  
6 let's say I'm not a very good trainer, and I get  
7 found in violation again. And now I'm tipping  
8 the points to a longer range.

9 DIRECTOR DURENBERGER: Yes. So if  
10 you have --

11 COMMISSIONER STEBBINS: Are those  
12 added onto --

13 DIRECTOR DURENBERGER: Yes.

14 COMMISSIONER STEBBINS: Okay.

15 DIRECTOR DURENBERGER: So if you  
16 had a Category C penalty or a Category B penalty,  
17 and we were going to find a suspension of 15 days  
18 would be appropriate, you go in and looked at  
19 your points, you would have an extra period of  
20 time based on how many points. So you would have  
21 your 15 days, and then this multiple medication  
22 violation suspension would be added after that,  
23 not concurrently, but after.

24 COMMISSIONER ZUNIGA: Which

1 mechanism gets to precisely the point that you  
2 started, which is getting to the repeat  
3 offenders.

4 DIRECTOR DURENBERGER: Yes.

5 COMMISSIONER ZUNIGA: It's the --  
6 You accumulate points the more that you offend.

7 DIRECTOR DURENBERGER: Yes. And  
8 based on stakeholder input, there are a couple of  
9 provisions that are designed to enable an  
10 licensee to apply for expungement of those points  
11 after a given period of time being found  
12 violation free. So those can come off on the  
13 minor penalties.

14 We also have given the stewards and  
15 judges discretion if there's a situation where  
16 there are multiple findings in a short window of  
17 time. Actually, we had an example here in the  
18 Commonwealth this year where there were two  
19 violations found with the same trainer, but the  
20 way the lab results came back, they were on two  
21 separate days, but they came back on the same  
22 time on the results. So that's considered a  
23 single penalty because the licensee didn't have  
24 notice that his medication program was in

1 violation.

2                   So that's in here as well so that  
3 if there were a situation like that, the trainer  
4 wouldn't accumulate, say, three points plus three  
5 points plus three points. It would be a single  
6 offense.

7                   CHAIRMAN CROSBY: I sort of like  
8 adopting it by reference, and it seems modern  
9 sort of to do it, and it seems the strongest  
10 endorsement of the principle, but I don't feel  
11 strongly. If others wanted to go the other way,  
12 it would be fine with me.

13                   COMMISSIONER ZUNIGA: I feel just  
14 like you, Mr. Chairman. It's a group that has  
15 worked a lot to develop this system. Uniformity  
16 is a great principle, and it occurs to me that we  
17 will be appraised of developments as they  
18 continue to occur relative to updating those  
19 referenced documents. So there is any -- there's  
20 a lot of options that we may have through the  
21 rule making process, even if we incorporate by  
22 reference.

23                   CHAIRMAN CROSBY: Anybody else?

24                   COMMISSIONER MCHUGH: What about

1 adding the words "in effect at the time of the  
2 violation," would that cinch that down?

3 COMMISSIONER ZUNIGA: Would be  
4 fine.

5 COMMISSIONER MCHUGH: We'd still  
6 have a delegation, but you'd add a slight element  
7 -- not the slight, a significant element of  
8 clarity so that people would understand.

9 DIRECTOR DURENBERGER: Yes.

10 COMMISSIONER MCHUGH: Maybe look at  
11 it earlier.

12 COMMISSIONER ZUNIGA: I think  
13 that's great. That's a great recommendation.

14 DIRECTOR DURENBERGER: And it  
15 parallels existing language that's in the  
16 previous rule to this.

17 COMMISSIONER MCHUGH: The only  
18 other question I'd raise, and it's a minor one,  
19 but it's designed to add some clarity; and that  
20 is, on that next page below that first chart,  
21 which it says "MMV's are not a substitute for the  
22 current penalty system..." It seems to me  
23 clarity would be aided by a reference back to the  
24 paragraphs that we could find that current

1 penalty system.

2 DIRECTOR DURENBERGER: I agree.

3 COMMISSIONER MCHUGH: That's in a  
4 different section of regs, and I think it would  
5 help everybody if they had a reference point.

6 CHAIRMAN CROSBY: Do you want to  
7 put that into a motion?

8 COMMISSIONER MCHUGH: Sure. I move  
9 that the Commission accept and adopt the proposed  
10 changes to 205 CMR 3.29 and 4.52 with the  
11 addition of language to 2. -- to subsection  
12 (2)(f)(1) that ties the offense to the uniform  
13 classification in effect at the time of the  
14 offense and that adds a reference to the section  
15 of the regulations containing the current penalty  
16 system.

17 COMMISSIONER STEBBINS: Second.

18 CHAIRMAN CROSBY: Any further  
19 discussions? All in favor?

20 COMMISSIONER STEBBINS: Aye.

21 COMMISSIONER ZUNIGA: Aye.

22 COMMISSIONER MCHUGH: Aye.

23 CHAIRMAN CROSBY: Aye. Opposed?

24 The ayes have it unanimously.

1 Next.

2 COMMISSIONER MCHUGH: This is  
3 really a helpful thing, I think, to bring  
4 Massachusetts -- continue to bring Massachusetts  
5 to the fore of a nationwide movement that's  
6 designed to stimulate top level racing throughout  
7 the country.

8 CHAIRMAN CROSBY: Yeah. I agree.  
9 As I said, I think of this as a model for the  
10 research work, too. We're following your model  
11 on that. I think it's great.

12 DIRECTOR DURENBERGER: I think that  
13 the Commission should not underestimate the  
14 significance of that decision to the industry.  
15 The talk of uniformity, and it's been decades in  
16 the making, the momentum that we've seen in the  
17 last couple of years has never been seen before  
18 in the industry, and having this regional group  
19 come together over this year has sent a  
20 significant message, I think. So being part of  
21 this initiative, I think you should all be very,  
22 very proud of yourselves.

23 CHAIRMAN CROSBY: Thank you.

24 COMMISSIONER ZUNIGA: All thanks to

1 you.

2 CHAIRMAN CROSBY: Yes.

3 DIRECTOR DURENBERGER: With that,  
4 we will move on to the draft application to  
5 conduct a live racing in 2014. This is the  
6 second version that has come before you. And we  
7 put this out after the last meeting for public  
8 comment and sent drafts to our licensees, our  
9 existing licensees. We've received no comment to  
10 date. What I've done in the cover memo is draw  
11 your attention again to the new provisions that  
12 are in here. And what we've done is gone back  
13 and corrected some of the cut and paste typos  
14 that had occurred in the previous version, added  
15 a little bit of new language just to clarify and  
16 be perfectly in parallel with the statute. The  
17 new items there, which we can go through again if  
18 you'd like, 17, 23, 26, 27, 28, 29, and 30. I'm  
19 happy to walk through if you'd like to. We did  
20 in the previous, and I don't know that I have any  
21 new information to add, but it may be in a new  
22 context for you, so I'm happy to answer any  
23 questions.

24 Applications are due to the

1 Commission on or before October 1st, and the  
2 decision occurs November -- by November 15th.

3 COMMISSIONER MCHUGH: So if we  
4 adopt this one, then not only will the applicants  
5 have the notice as of the time we adopt it, but  
6 if we adopt it in this form, they've already had  
7 a couple of week's notice that this is going --

8 DIRECTOR DURENBERGER: On the new  
9 material, yeah. I would just add that we will  
10 be, over the winter, going through our Phase 4  
11 rule making process which will include changes to  
12 duties of licensees, and the 30 or so questions  
13 that were brought forward from previous  
14 applications are going to be reopened at that  
15 time so that they can parallel the regulatory  
16 changes that were put before you, and that was  
17 why we hadn't done any substantive changes to  
18 the existing applications, other than adding new  
19 notes.

20 CHAIRMAN CROSBY: Anybody?

21 COMMISSIONER ZUNIGA: Sounds good  
22 to me.

23 CHAIRMAN CROSBY: Somebody want to  
24 move?

1                   COMMISSIONER ZUNIGA: Sure. I move  
2 that this Commission adopt the recommendations  
3 set forth in Director Durenberger's memo and  
4 release the application for license to conduct  
5 racing meeting as presented to this Commission.

6                   CHAIRMAN CROSBY: Second?

7                   COMMISSIONER MCHUGH: Second.

8                   CHAIRMAN CROSBY: Any further  
9 consideration? All in favor?

10                  COMMISSIONER STEBBINS: Aye.

11                  COMMISSIONER MCHUGH: Aye.

12                  COMMISSIONER ZUNIGA: Aye.

13                  CHAIRMAN CROSBY: Aye.

14                  Opposed? Ayes have it unanimously.

15 Thank you.

16                  COMMISSIONER MCHUGH: Okay. Thank  
17 you.

18                  DIRECTOR DURENBERGER: That  
19 concludes the racing division's update.

20                  COMMISSIONER MCHUGH: Okay. Great.

21                  CHAIRMAN CROSBY: Now we have a  
22 combination of ombudsman and legal. Ombudsman  
23 Ziembra and Director Blue, General Counsel Blue.

24                  MR. ZIEMBA: Thank you,

1 Mr. Chairman, members of the Commission.  
2 Catherine and I make a joint presentation today  
3 as she and I have been asked to answer  
4 increasingly more involved and detailed questions  
5 from applicants and communities. Most of the  
6 questions that we receive day-to-day are  
7 answerable by just simply pointing to the  
8 relevant statutes or to the relevant portions of  
9 our regulations. Some of the questions that we  
10 receive are not answerable at this time because  
11 they involve questions of what will need to be  
12 done in our next phase of our regulations, our  
13 Phase 3 regulations. However, some questions  
14 that we receive are -- involve application of our  
15 current regulations to fact patterns or  
16 situations that could have very significant  
17 impacts, either on the Commission's policies,  
18 applicants, or communities.

19 In regard to this third grouping of  
20 the questions, are rare, but significant  
21 questions. Our regulations outline a way to  
22 reach a resolution to these questions.

23 Our regulations in 205 CMR 1. --  
24 106.05 state that the Commission may, in its

1 discretion, provide advisory services pursuant to  
2 M.G.L. 23K, § 4(7) or make advisory rulings  
3 pursuant to M.G.L. chapter 30A, § 8. However,  
4 the regulations, they do not specify how the  
5 Commission would, in these rare instances,  
6 provide advisory rulings.

7           We have, from time to time, been  
8 asked how the Commission would make such rulings.  
9 In general, we think that each question is likely  
10 to be rather unique; however, Catherine and I  
11 were hoping that today the Commission could  
12 discuss how it may want to consider such  
13 questions as we go forward as we near the  
14 application deadlines. I'll let Catherine  
15 provide a little bit more detail. However, some  
16 of the questions that perhaps could be discussed  
17 by the Commission are whether staff should  
18 present opinions to the Commission, whether or  
19 not they would involve questions of a general  
20 public hearing, or in certain instances, whether  
21 or not an adjudicatory hearing would be necessary  
22 for some of these advisory questions.

23           I'll ask Catherine if she'd like to  
24 add a little bit more about that.

1 MS. BLUE: Chapter 30A section 8  
2 does -- it allows any agency that wants to issue  
3 an advisory opinion to determine the process by  
4 which they do that.

5 So it would be within the  
6 Commission's discretion to decide. The process  
7 could be multilayered. It could have different  
8 levels for different types of decisions. It  
9 could range anywhere from a situation where maybe  
10 certain authority is delegated to staff to allow  
11 certain opinions, all the way up to perhaps an  
12 adjudicatory hearing in front of the Commission.

13 So we were hoping today we could  
14 have a discussion on how the Commission felt  
15 about certain kinds of issues. The issues that  
16 John and I are seeing tend to be very unique so  
17 far, and so they are very fact based. But I  
18 don't imagine that will always be the case. We  
19 will probably get a lot of different kinds of  
20 questions, and they will range from questions  
21 that pertain purely to our statute, maybe a  
22 section for which we don't have detailed  
23 regulations, or our regulations themselves where  
24 maybe we've drafted regulations, but there was a

1 particular fact pattern or a possible issue that  
2 would arise that wasn't contemplated at the time  
3 it was drafted. So that's what we're hoping  
4 today to maybe start that discussion and then put  
5 it into some sort of a process or a policy and  
6 then, you know, use it going forward.

7           COMMISSIONER MCHUGH: It's really  
8 hard, it seems to me, to discuss the -- to come  
9 to a definitive resolution in the abstract of  
10 this kind of a broad question. It's a very  
11 useful discussion to have and to think about, but  
12 it's very hard to come up with a firm "this kind  
13 of question is going to be answered in this kind  
14 of fashion" resolution of this issue.

15           It seems to me that one approach  
16 that we could take is one that simply gives some  
17 guidance and then decide on a case-by-case basis,  
18 which -- if there's any doubt, which of the  
19 approaches we're going to take. We can, as  
20 General Counsel Blue has suggested, delegate to  
21 staff the ability to give opinions. Frankly, I  
22 think at the outset, at least, we ought to be  
23 spare in our delegation of that kind of thing  
24 until we figure out what kinds of questions are

1 arising.

2           A second approach is to have a  
3 public hearing of the type that we have had for a  
4 lot of issues and make some decision at the end  
5 of that public hearing. And it seems to me that  
6 those kinds of -- that mechanism for resolving  
7 things really has to do with questions of policy.  
8 What are we going to do with this ambiguous  
9 regulation or this ambiguous part of a statute in  
10 general? What is our approach going to be? For  
11 example, if we are going to allow involuntary  
12 assessments to surrounding communities for  
13 traffic studies, are we going to look more  
14 favorably on requests for review of an existing  
15 studies, or are we going to look more favorably  
16 on requests for review of new studies, that kind  
17 of thing. And I just picked that as an example  
18 of things. We should probably decide and should  
19 decide after a public hearing.

20           The third kind of resolution is an  
21 adjudicatory hearing, and I think that if there  
22 is a specific fact question, are we a surrounding  
23 community, of course, that's part of our process.  
24 Are we entitled to "X" under these specific

1 circumstances? Those, I think, we have to do on  
2 an adjudicatory hearing, because they are  
3 intensely fact based, and we want to create a  
4 record so that once the decision is made, the  
5 basis for our decision making is entirely clear.

6 And so that if there is to be an  
7 appeal to some sort of other forum, the reviewer  
8 will be able to understand how we got to where we  
9 got and on what facts, because if the facts  
10 change between the time we make the advisory  
11 opinion and the time some action item occurs,  
12 that may invalidate the advisory opinion and  
13 cause us to re-examine the thing again, and it's  
14 important for us and everybody to understand the  
15 factual backdrop on which we've made the  
16 decision.

17 There will be, even if we have that  
18 kind of an approach, policy decisions typically  
19 by public hearing, fact based decisions typically  
20 by an adjudicatory hearing. There's going to be  
21 areas of gray that we're just going to have to  
22 decide which hand it falls into. And we'll have  
23 to do that on a case-by-case basis.

24 But in general, that's what I'd

1 recommend we do. And I don't think we can do  
2 much more in the abstract than say that's what  
3 we're going to do.

4 CHAIRMAN CROSBY: And I don't know  
5 how -- I was going to start at the same place,  
6 how useful that is. You know, if that's useful  
7 to you, fine. But it's not as if, unless -- And  
8 we don't have a pattern or a series of situations  
9 that have come up that are looking for advisory  
10 opinions. You know, we have -- I don't know if  
11 we have any. We have the debate about whether  
12 Boston is a host community or Everett.

13 The situation in Plainridge is a  
14 different situation. That's not looking for an  
15 advisory opinion. That's -- they may -- somebody  
16 may come to us and say, can we be a new  
17 applicant.

18 The issue in Tewksbury is a unique  
19 one about how you undo an election. That's not  
20 an advisory.

21 So I think we're torturing  
22 ourselves to come up with a general principle for  
23 something for which there is no general demand.  
24 It's only a very infrequent fact-based situation,

1 and I think that principle is interesting and  
2 useful to some vague extent, but really not  
3 helpful to anybody because it has to do with --  
4 because we can't apply it until we know what the  
5 situation is.

6 COMMISSIONER MCHUGH: I'm not sure  
7 that I agree fully with that, Mr. Chairman.

8 CHAIRMAN CROSBY: Okay.

9 COMMISSIONER MCHUGH: And I think  
10 that there are situations in which knowing that  
11 if you're looking for a factual resolution of a  
12 factual problem, we're most likely looking for an  
13 adjudicatory hearing. And if we're looking for a  
14 policy judgment, we're most likely going to have  
15 a public hearing and an ability to come in and  
16 talk to the Commission relatively informally, get  
17 a result, this is the policy that is going to  
18 apply, is of assistance to planners.

19 I think as matters currently stand,  
20 there is and can be, in the minds of some people,  
21 a wonder, a question about whether any advisory  
22 opinion is ever going to result in an  
23 adjudicatory hearing. And I think saying, yes,  
24 under some circumstances it will, would be

1 helpful, and it would be helpful to the staff to  
2 be able to say this is what the Commission's  
3 general feeling is. I anticipate that the  
4 Commission will want to do this by "X," to be  
5 sure a pattern hasn't immerged.

6 But there are questions that are  
7 beginning to arise in which I think this  
8 guidance, however broad it is, would be helpful  
9 and would be helpful to the staff in their  
10 communications with applicants.

11 CHAIRMAN CROSBY: Fine. I mean,  
12 that's fine. And you asked for it, so ipso  
13 facto, I guess it is useful.

14 But as you know, because we've  
15 talked about this before, the particular issue  
16 that we've had concern about and you guys have  
17 been tracking to some extent is this issue about  
18 the Boston and host community debate. And I've  
19 not talked about this -- I talked about this a  
20 little bit with Commissioner Cameron because I  
21 knew she wasn't going to be here, and I wanted to  
22 get a sense of where she was coming from. I've  
23 not talked about it with the other commissioners.  
24 I don't know what your views are about this.

1                   But another sort of guiding  
2 principle that we have used have been to let the  
3 local decisions be local because that's what the  
4 legislation clearly anticipated, and we've chosen  
5 to delegate quite dramatically to the local folks  
6 to resolve these threshold issues. But we've  
7 always said unless, one, it in some way runs the  
8 risk of impugning the integrity of the overall  
9 process; or, two, impedes our process.

10                   When we went through the discussion  
11 with Springfield about, you know, their process,  
12 we, at first, were concerned, but we backed off  
13 because we said, you know what, this is a local  
14 decision. As long as it doesn't have anything to  
15 do with the integrity of the process or our  
16 actual schedule, we're fine with it.

17                   In this case, in the Boston case, I  
18 am concerned that it is triggering both of those  
19 markers. That the -- where you have two parties  
20 that are spatting in public, it makes the  
21 thing -- makes everything look disorganized and  
22 suspect and political.

23                   There are allegations of bullying  
24 and browbeating and so forth, and the public

1 doesn't know whether we're being bullied or not.  
2 And we aren't, and I don't want anybody to think  
3 that we are.

4                   Similarly, people are very  
5 confused. I mean, if I were in Charlestown, for  
6 example, I wouldn't know if I was coming or going  
7 in terms of host community or surrounding  
8 community. If I were a public official, I  
9 wouldn't know how to act.

10                   And then third, we're running out  
11 of time. You know, if Boston is a host  
12 community, that's going to be an incredibly  
13 elaborate process to negotiate a host community  
14 agreement. If it's a surrounding community, it's  
15 also going to be a very elaborate process, and  
16 everybody's having a hard time getting around to  
17 negotiating their surrounding community  
18 agreements in time. Which, if they don't get  
19 done in time, it's going to put this colossal  
20 burden on us to have all these arbitrations while  
21 we're trying to get through our decision making  
22 process.

23                   So what we have repeatedly asked  
24 Ombudsman Ziemba is, is this about to get

1 resolve? Are the parties coming to the table as  
2 negotiators in good faith and putting cards and  
3 data on the table and working to the solution of  
4 what is maybe a controversial issue? I have no  
5 -- I don't know how complicated it is, but let's  
6 grant that it is complicated. Are they getting  
7 to yes here one way or the other, or no. And I  
8 don't hear that they are.

9                   So my predilection, and I believe,  
10 for what it's worth, Commissioner Cameron feels  
11 the same way, is it is pretty near time, if it  
12 isn't time, for us to intercede and say this has  
13 got to get resolved by a date certain, or we will  
14 resolve it ourselves. I don't think the public  
15 interest is served, and I don't think our  
16 interests are served by having this shouting --  
17 you know, this negotiating contest go on in the  
18 way that it's going on.

19                   So that's my -- that's where I come  
20 at this particular issue. And I'm curious to  
21 know where everybody else is.

22                   COMMISSIONER MCHUGH: Have we  
23 segued now into a discussion on the  
24 Boston/Everett issue?

1 CHAIRMAN CROSBY: Yes.

2 MS. BLUE: Well, could I make --

3 COMMISSIONER MCHUGH: That was a  
4 dramatic segue.

5 MS. BLUE: It was. I just want to  
6 bring up a point before we go on to another  
7 issue.

8 One of the more basic questions the  
9 Commission could address on this advisory opinion  
10 issue is a question that John and I get all the  
11 time, which is if I have a question for the  
12 Commission, how do I submit it to you? As you  
13 know, a lot of what we deal with are municipal  
14 officials or lawyers, and they're looking for a  
15 format. So we'll get questions about do you have  
16 a form? Do you have a particular way you want it  
17 to come?

18 So if the Commission wanted to  
19 create a process, for example, if you have a  
20 question, you must submit it in writing to a  
21 particular organization, it could go to John, it  
22 could come to legal in a format that's only so  
23 long with a direct request attached to it. We  
24 could at least make maybe a process that starts

1 that, and then folks could submit things, and we  
2 could evaluate what kind of a process it went  
3 through from there.

4 So we do get that question quite a  
5 bit, "How do I submit a question to you?"

6 CHAIRMAN CROSBY: That's fine. I  
7 didn't -- I thought -- I didn't mean to be  
8 jumping off if you still wanted to stay on  
9 another track. I thought this topic about  
10 general principles was sort of a proxy for a  
11 particular topic, so I wanted to get past the  
12 proxy and get to the particular topic. But if  
13 you want to continue to talk about it in the  
14 abstract, I'm fine with that.

15 COMMISSIONER MCHUGH: The reason I  
16 said it was a dramatic departure -- And we did  
17 talk a little bit about this specific subject at  
18 our last meeting.

19 CHAIRMAN CROSBY: Right.

20 COMMISSIONER MCHUGH: And we need  
21 to talk about it. But the reason I said it's a  
22 dramatic departure is that that topic isn't on  
23 the agenda, and I'm a little concerned about us  
24 discussing and coming to some resolution of a

1 topic that's not on the agenda.

2 I would like -- I share your  
3 concern about that particular issue, maybe not  
4 all of the ways that you articulated that concern  
5 and all of the ramifications of it, but I share  
6 your concern. But however that concern manifests  
7 itself and however we're called upon to resolve  
8 it ultimately, it seems to me helpful for  
9 everybody involved and all observers to  
10 understand that a possibility is an adjudicatory  
11 hearing, because it may be so intensely fact  
12 based that we can't do it in a general hearing.  
13 We have to decide that ultimately.

14 But it seems to me that that is an  
15 option that the participants ought to know about,  
16 because that may have ramifications --

17 CHAIRMAN CROSBY: I agree.

18 COMMISSIONER MCHUGH: -- on the  
19 speed and substance of the resolution. So that's  
20 my only point. I would like to have it on the  
21 agenda at some point, when it's ripe, and see if  
22 we can be of assistance in resolving it.

23 CHAIRMAN CROSBY: Yeah. Well,  
24 let's separate the two things. I agree on the

1 first point, and that -- and it is instructive  
2 and it is helpful and it's worth talking about.  
3 And if we want to clarify it further on what a  
4 process might be, I think that's constructive,  
5 too.

6 In my mind, as the agenda setter,  
7 it is on the agenda. We talked about this at  
8 length when we were setting up the agenda, and I  
9 thought that under general update, we would be  
10 asking Ombudsman Ziemba to tell us -- I thought  
11 we were going to be talking about all these  
12 different communities that are having a couple of  
13 sort of unique problems, including this one.

14 So I anticipated that it was on the  
15 agenda under the update from the ombudsman.

16 COMMISSIONER ZUNIGA: Can I go back  
17 to maybe the easiest thing to coalesce around is  
18 this notion of submitting question to the  
19 Commission. To me, that -- We've had the general  
20 mailbox. Everybody talks to John and Catherine.  
21 I think, you know, it's pretty straightforward,  
22 as open as we can be. I wouldn't want us to go  
23 down a path of having to be a particular format  
24 or form, you know, as long as we can get to the

1 core of the issue any which way we can.

2 I agree with Commissioner McHugh  
3 that perhaps a distinction is around the fact --  
4 the intensity of the facts that may, in the  
5 interest of the public purpose that we have, be  
6 better served with an adjudicatory process, but  
7 we can only know until we get that question  
8 formally and we have some understanding of what  
9 those facts may be or may not be. So that really  
10 ought to be, in my opinion, the test.

11 And we always have the -- we can  
12 always decide that after some public hearing, if  
13 you will, which we can always do. So just  
14 communicating those as two options out there, I  
15 think could go a long way towards the next steps  
16 on these or any other. But I think it's very  
17 important that we -- in some of the issues that  
18 you highlighted, Mr. Chairman, that we come out  
19 with advisory opinions, which is what it looks  
20 like some of these parties may be seeking.

21 CHAIRMAN CROSBY: Yeah. Are we --  
22 Which -- Are we on -- Are we still talking about  
23 this general process? Do you want to do that  
24 or...

1 MR. ZIEMBA: I think you've  
2 provided us sufficient guidance in that regard.

3 CHAIRMAN CROSBY: Okay.

4 COMMISSIONER STEBBINS: I have a  
5 question kind of to the timing of that. I mean,  
6 we're obviously allowed to create our own  
7 process, but is there a process that needs to be  
8 through emergency regulations or the formal  
9 regulatory process, or is it just something we  
10 adopt kind of in-house and that's sufficient to  
11 meet the letter of the law?

12 MS. BLUE: I think we can have  
13 something we adopt in-house. I mean, we have  
14 always been very flexible. You know, the  
15 Commission is correct that calls and questions  
16 come in to us from all kinds of sources. We're  
17 very open to talking to anybody who wants to talk  
18 to us.

19 So I don't think we need a formal  
20 regulatory driven process but just something that  
21 we know how we will generally address certain  
22 issues, and then we will raise them to the  
23 Commission if they're very specific or very fact  
24 intensive to see what you want to do when they

1     come up.

2                     CHAIRMAN CROSBY:   Can you now give  
3     us a status report on Boston and Everett.

4                     MR. ZIEMBA:   As you wish, Mr.  
5     Chairman.   Mr. Chairman, as you referenced, the  
6     Commission has been working with the parties to  
7     encourage them to work together in the interest  
8     of understanding the proposed facility and all of  
9     its impacts.   We've had numerous conversations  
10    with the parties to encourage such a dialogue.  
11    Despite these efforts and the efforts of the  
12    parties, we are perhaps less optimistic that the  
13    parties will soon reach a resolution as they are  
14    going forward under the current process.

15                    There remains a number of different  
16    ways that the parties could reach an  
17    understanding of the facilities and its impacts,  
18    such as more intense Gaming Commission staff lead  
19    discussions or direct contact and communications  
20    by counsel from the two parties.

21                    In general, while there obviously  
22    is significant time between now and December  
23    31st, as is the case around the state, that time  
24    is growing very short.

1                   CHAIRMAN CROSBY:  So if we --  
2  There's one -- So if we don't -- If we don't do  
3  anything, maybe somebody will petition us for an  
4  opinion.  We don't know whether they will or not.  
5  Maybe they'll just keep talking.  And I don't  
6  know what happens if -- We've never really talked  
7  about what happens if we get to the point of  
8  application and somebody is saying they're a host  
9  community and somebody is saying they aren't.  
10  We've never -- So I guess we would have to  
11  resolve it at that point.  Are you going to say  
12  something?

13                   COMMISSIONER MCHUGH:  Yes.  I think  
14  that's absolutely right and that's sort of like a  
15  game of chicken.  And it seems to me that we  
16  ought to prevent those kinds of games from  
17  happening to the extent we can.  We did talk last  
18  time about inviting the two to come in and talk  
19  to us as a first step.  They don't -- We are not  
20  going to issue subpoenas, but invite the two to  
21  come so that we can hear from them and perhaps  
22  make some constructive suggestions.  Then if  
23  somebody wanted to petition us for something more  
24  formal, they're certainly free to do that.  But

1 that's one way to approach it. And I'm in accord  
2 with you that we ought to see if we can't  
3 facilitate this resolution because it seems from  
4 Ombudsman Ziemba's report, to me, that it's going  
5 nowhere.

6 MR. ZIEMBA: I'm perpetually  
7 optimistic.

8 COMMISSIONER MCHUGH: Oh, I know  
9 you are. You have this perpetual optimistic  
10 halo, but even under that halo.

11 CHAIRMAN CROSBY: Even that.  
12 There's another factor, and it's a marginal one,  
13 but we've seen how marginal ones become real. If  
14 it turned out, for example, that it was  
15 determined by somebody that Boston was a host  
16 community for the Wynn proposal and Boston  
17 hypothetically elected not to negotiate with and  
18 not permit themselves to be a host community,  
19 which would be within their rights, because  
20 they've already expressed support of another  
21 idea, that would mean that Wynn couldn't go  
22 forward. Wynn could look in Southeastern Mass.  
23 If we move fast enough, they could look at  
24 Southeastern Mass.

1           I have no idea whether any of that  
2           is plausible or not, but we've seen what's  
3           happened with our other licenses, and in terms of  
4           keeping doors open and maximizing the opportunity  
5           for continuing competition, that's another reason  
6           not to let this drag out. There's not a lot of  
7           time left, but there's some.

8           So it would seem to me that -- I  
9           mean, what you two have said is that if it ends  
10          up having to be we who decide this, which is  
11          looking like it will, we are best served by an  
12          adjudicatory proceeding because that maximizes  
13          our options and our authority. And if that's  
14          right, if those two things are true, it's likely  
15          going to be we who decide it and we are best  
16          served by doing that in an adjudicatory  
17          environment, hearing environment, then I would  
18          suggest that we establish that now. I mean, set  
19          that up for -- you know, it can't be next week  
20          because we're not going to be around, but the  
21          week after, either at our meeting on the 4th or  
22          maybe there's a special meeting. I'm not quite  
23          sure of the exact logistics.

24                 But if we just invite them in for a

1 hearing, and then we have to wait again to do an  
2 adjudicatory hearing, we're going to be really up  
3 against it, never mind all the PR that's floating  
4 around out there confusing everybody about what's  
5 going on.

6           So, you know, if I'm right on those  
7 two principles, likely we -- and adjudicatory is  
8 the way to go, then my suggestion would be that  
9 we propose that under whatever the proper  
10 authorities are, if we have it, and I'm hearing  
11 from you that we do, that we have that sooner  
12 than later, perhaps as soon as our meeting on the  
13 4th.

14           COMMISSIONER MCHUGH: I don't know  
15 whether General Counsel Blue has researched the  
16 question whether we can just reach out and take a  
17 controversy that we have read about and say we're  
18 going to have an adjudicatory hearing on that, or  
19 whether we have to -- I'll put a period there.

20           MS. BLUE: We have not researched  
21 that fully. I would want to look to see -- I  
22 would want to look at that in a little bit of  
23 detail. We would also decide if we wanted to  
24 have regulations, quite frankly, that would allow

1 us to do that. That would be one way to do it.  
2 But we do need to look a little bit more closely  
3 at that.

4 COMMISSIONER MCHUGH: There's  
5 nothing that prohibits us from inviting both  
6 sides to come in and have a discussion with us.  
7 There's nothing that prohibits us from doing  
8 that. And there's nothing that prohibits us from  
9 saying as part of that discussion, if it would be  
10 helpful to resolve the issue definitively, that  
11 we would be happy to accept a petition from one  
12 side or the other to resolve it and that would  
13 clearly give us the power to do that. And we  
14 could do that fairly quickly.

15 The idea of being able simply to  
16 reach out and tell people that we're now going to  
17 have an adjudicatory hearing on a matter that  
18 really isn't before us is more tricky, and I  
19 think we need more research and figure out what  
20 we have power to do.

21 CHAIRMAN CROSBY: Well, I thought I  
22 understood from the way that Catherine was  
23 talking that we did have that authority under  
24 that very broad authority to issue advisory

1 opinions, but if you say we don't --

2 COMMISSIONER ZUNIGA: The question  
3 is not before us.

4 COMMISSIONER MCHUGH: We have the  
5 authority to use that mechanism for issuing an  
6 advisory opinion. It's a question of how do we  
7 get the controversy in front of us.

8 MS. BLUE: In front of us, yes.

9 COMMISSIONER MCHUGH: Right. And  
10 if we don't have a self -- an ability to  
11 self-generate questions, that we then issue an  
12 advisory. We may not.

13 CHAIRMAN CROSBY: I thought we did,  
14 but it doesn't -- So we don't know if we do or  
15 not, so let's do look into that. If we invited  
16 them in to come talk to us on the 4th, and we  
17 decided at that point that whatever -- we don't  
18 know what they would say, but we decide that we  
19 want to have an adjudicatory resolution for this,  
20 what would the process then be from the 4th on to  
21 the adjudicatory hearing?

22 MS. BLUE: The process would be  
23 similar to the process we would use for other  
24 adjudicatory matters for the suitability hearings

1 are a good example. So we would schedule a  
2 pre-proceeding conference where we would go over  
3 the issues with both sides, we would talk about  
4 exhibits, we would talk about witnesses and  
5 representation. Once we agreed on that, we would  
6 probably put a week or two between that  
7 conference and when the hearing would be. It  
8 would take some time, because both sides would  
9 want to be fully prepared to come before the  
10 Commission. So you probably need anywhere from  
11 two weeks to 30 days to get that all in place.

12 CHAIRMAN CROSBY: So the option of  
13 looking to Southeastern Mass. dies with this  
14 plan.

15 MR. ZIEMBA: Well, Mr. Chairman, as  
16 you know, we have a process whereby applicants  
17 that are already going through our application  
18 process do not have to abide by the September  
19 30th deadline for applications.

20 COMMISSIONER ZUNIGA: That's right.

21 CHAIRMAN CROSBY: Oh. I'd  
22 forgotten that. Good point. Thank you. Great.  
23 That was good of us.

24 MR. ZIEMBA: Very smart decision,

1 Mr. Chairman.

2 CHAIRMAN CROSBY: Good. I'm glad I  
3 thought of that.

4 COMMISSIONER ZUNIGA: Remember, I  
5 came up with that. I'm going to take full credit  
6 for that.

7 CHAIRMAN CROSBY: Well, that sounds  
8 --

9 COMMISSIONER MCHUGH: But don't --  
10 Let's not brush aside the power question here,  
11 the jurisdictional question.

12 MS. BLUE: No. That's very  
13 important.

14 COMMISSIONER MCHUGH: And I know  
15 you're not. But even -- And we need to do more  
16 research, and we can't lose sight of this. We  
17 need to do a little more research on the notion  
18 whether we have jurisdiction to say to  
19 contestants in some issue we're going to have an  
20 adjudicatory hearing and bind you.

21 CHAIRMAN CROSBY: Right. I  
22 understand.

23 COMMISSIONER MCHUGH: Okay.

24 CHAIRMAN CROSBY: And I'm agreeing

1 with your suggestion that we invite them in for  
2 the 4th. I mean, I think let's articulate this  
3 right. What is it we're saying here? It sounds  
4 like we -- either somebody can take a crack at it  
5 or I will. It sounds like we're saying that we  
6 do not think that having this continue in the way  
7 it's been going is in the public interest or in  
8 -- compatible with what we want the process to be  
9 and to be perceived to be, both.

10 COMMISSIONER MCHUGH: Right.

11 CHAIRMAN CROSBY: And for that  
12 reason, we are anxious to use our authority and  
13 good offices, such as they are, to expedite this  
14 decision.

15 COMMISSIONER MCHUGH: Right.

16 CHAIRMAN CROSBY: And we are  
17 certainly going to look to the full extent of our  
18 authority as among the range of options that we  
19 -- we're going to determine what our full range  
20 of options is, and in this context, understanding  
21 where we're coming from, we would like to ask the  
22 two parties to come to talk to us about what, why  
23 they think their position is what it is?

24 COMMISSIONER MCHUGH: I would frame

1 it more broadly. Whether they believe that  
2 they're going to be able to resolve this on their  
3 own and what the impediments to resolution are  
4 and how we can help them remove those  
5 impediments.

6 CHAIRMAN CROSBY: Okay. Good.

7 MR. ZIEMBA: Mr. Chairman, can I  
8 just say one thing for the record?

9 CHAIRMAN CROSBY: Sure. Yeah.

10 MR. ZIEMBA: There's no indication  
11 that the Wynn folks have any interest in any  
12 other area of the Commonwealth rather than  
13 Everett. Everything that we've read, everything  
14 we understand is they're fully committed to the  
15 Everett proposal. I understand you're talking in  
16 generalities --

17 CHAIRMAN CROSBY: Yeah.

18 MR. ZIEMBA: -- of the  
19 possibilities, but just so that people are clear,  
20 every indication is that they are very much  
21 committed to Everett, and there's no discussion  
22 of other facilities.

23 CHAIRMAN CROSBY: I understand.

24 And I was just winging that. If I were in their

1 shoes, that's exactly what I would say, no matter  
2 what I really thought. But I hear what you're  
3 saying.

4 Okay. I guess we don't really  
5 need -- Do we need -- We don't need to vote, I  
6 guess, to invite them in.

7 COMMISSIONER MCHUGH: I think we  
8 can simply communicate the invitation through the  
9 good offices.

10 CHAIRMAN CROSBY: Yeah. Is there  
11 anything else that would be helpful from us,  
12 John, in moving this ball down.

13 MR. ZIEMBA: No. I think that's  
14 sufficient, Mr. Chairman.

15 CHAIRMAN CROSBY: All right. What  
16 about the -- is there anything to talk about on  
17 the other two situations, the Tewksbury and  
18 Plainridge?

19 MR. ZIEMBA: Yes. So as a matter  
20 of my general report, I'll just go through sort  
21 of the litany, and I'll get to that.

22 CHAIRMAN CROSBY: Okay. I'm sorry.  
23 Go ahead.

24 MR. ZIEMBA: No problem.

1           As you know, we recently sent out a  
2 notice to all geographically adjacent communities  
3 reminding them of the impending deadlines, and we  
4 provided direct contact information of all of the  
5 applicants to those communities and urged them to  
6 be in contact with those applicants to understand  
7 either the positive or negative impacts or the  
8 lack of impacts that may result from the  
9 facility. That recently went out.

10           There was a recommendation that we  
11 talk with the Mass. Municipal Association about  
12 further getting the word out. I'm happy to  
13 report that they are also distributing that  
14 notice to communities, to a wide disbursement of  
15 communities. Because in our notice, we noted  
16 that just because a community is geographically  
17 adjacent, that doesn't mean that that community  
18 would be a surrounding community. And also, our  
19 notice made mention of the fact that just because  
20 one is not geographically adjacent, that also  
21 doesn't mean that one could be a surrounding  
22 community. If you're two towns away, there's  
23 still a possibility that you could be a  
24 surrounding community.

1                   So the Mass. Municipal Association  
2 notice to all communities helps further serve  
3 getting out the notice to all communities.  
4 Similarly, we posted that notice on our website  
5 to make sure that all communities are -- continue  
6 to be made aware of the impending deadlines in  
7 our hope that these dialogues happen with  
8 applicants and communities. So thanks to the MMA  
9 for that.

10                   CHAIRMAN CROSBY: Yes. Great.

11                   MR. ZIEMBA: Second item to report,  
12 as you know, earlier this week, the town meeting  
13 in Tewksbury rejected a zoning change that was  
14 necessary for the Penn National applicant. In  
15 public reports, Penn has stated that it will  
16 respect the opinion of the voters and will not  
17 continue its application in Tewksbury.

18                   However, there's an open question  
19 whether or not the local referendum can be  
20 stopped. We've had discussions with the  
21 Secretary of States's office, and the general  
22 proposition in the Commonwealth is that once an  
23 election is scheduled, there lacks the authority  
24 under the general laws to cancel those elections.

1 In many instances, special legislation is  
2 required for some municipal elections to cancel  
3 elections once they have been initiated.

4 Our conversations with the  
5 Secretary of State's office, we've indicated  
6 there this is a unique situation, our statute is  
7 unique, and the Commission has certain authority  
8 over elections. So in many ways, this might be  
9 out of the context of the normal municipal  
10 election.

11 So what we recommend is that we  
12 will continue to have conversations with the  
13 Secretary of State's office about any necessity  
14 of further action to be able to cancel the  
15 election.

16 As you can imagine, going forward  
17 with the election would require some significant  
18 time and expense that is otherwise unnecessary.

19 We've been informed by the  
20 applicant that they have had conversations with  
21 the municipality and perhaps they would withdraw  
22 the election, but to the extent that there  
23 remains uncertainty about the legality of that,  
24 we'll continue to work with the Secretary of

1 State's office, and perhaps within two weeks's  
2 time at our next Commission meeting, we might  
3 have to put forward an emergency regulation for  
4 your conversation. Our hope is that is not  
5 necessary, but we can work on that for the next  
6 couple of weeks. September 4th is well before  
7 September 21st, which is the date of the  
8 election.

9 CHAIRMAN CROSBY: It also raises  
10 the interesting question of who pays. If it did  
11 have to go forward, who pays for it.

12 COMMISSIONER ZUNIGA: Well, it  
13 would be the applicant in my --

14 CHAIRMAN CROSBY: Logically it  
15 would be.

16 COMMISSIONER ZUNIGA: Logically  
17 from the statute, notwithstanding everything you  
18 said.

19 MR. ZIEMBA: We made that point to  
20 the Secretary of State's office that these are  
21 unique elections and that they're not paid for by  
22 the public body. It's paid for by the applicant.  
23 So in that regard, this may be a different  
24 situation.

1                   COMMISSIONER STEBBINS: It's kind  
2 of somewhat of a close correlation, but when --  
3 there have been recent incidents where this has  
4 happened, but it's simply been a rescheduling of  
5 an election due to some event or what happens,  
6 but, you know, dates get moved. Does  
7 that authority to move the date still rests with  
8 the Secretary of State, or does that rest with  
9 the local clerk?

10                   MR. ZIEMBA: I think these are some  
11 of the things that we really need to talk to the  
12 election law experts about, who has the  
13 authority. Obviously, the Secretary of State's  
14 office has general authority over conduct of  
15 elections, but what authority exists at the local  
16 level versus the Secretary of State versus our  
17 authority under our regulations. We have general  
18 authority to set the parameters of elections  
19 under our powers section. So I think -- I'm  
20 sorry, I don't have a good answer for you on  
21 that.

22                   COMMISSIONER STEBBINS: No. Just a  
23 general question as to who's had that authority  
24 in the past.

1 MR. ZIEMBA: So we will --  
2 Mr. Grossman has been working with the Secretary  
3 of State's office. He will head this up upon his  
4 return on Monday.

5 CHAIRMAN CROSBY: Okay.

6 COMMISSIONER STEBBINS: We may need  
7 a bigger space on the 4th than the PRIM.

8 CHAIRMAN CROSBY: Where's  
9 Ms. Reilly.

10 MS. REILLY: I'm on it.

11 MR. ZIEMBA: So one other item that  
12 I have to report is that we are getting increased  
13 inquiry regarding the process for involuntary  
14 disbursements for communities. We've provided  
15 information about our process to dozens and  
16 dozens of communities about the ability of  
17 communities to ask for technical assistance  
18 dollars that are not voluntary by the applicant,  
19 but they are required by the Commission. We  
20 continue to remind applicants that they'll be  
21 evaluated on the -- on how successful their  
22 outreach is and the success in helping  
23 surrounding communities reach an impact  
24 agreement. And I guess this should be continued

1 reminder that it is up to the applicants to do  
2 that outreach and to assist the communities,  
3 surrounding communities, potential surrounding  
4 communities to help them understand their  
5 impacts.

6 CHAIRMAN CROSBY: Is there anything  
7 we can do to give you more tools to help?

8 MR. ZIEMBA: I think we have  
9 significant tools. Our regulations contemplate  
10 that even before the application is considered by  
11 the Commission, the surrounding or potential  
12 surrounding communities shall file its  
13 application with the applicant noting that it is  
14 coming for the Commission. There is a period of  
15 time by which the applicants will have to respond  
16 to that request.

17 So even if an application gets  
18 filed for an involuntary disbursement, perhaps  
19 there is a period of time whereby the parties can  
20 come to a resolution so that it's not a matter  
21 that appears before the Commission and would be  
22 probably negative perceived by the Commission in  
23 some instances.

24 CHAIRMAN CROSBY: Right. Okay.

1 Remind me, Rick and John, our schedule for  
2 awarding licenses in April, did that assume the  
3 appeal -- the arbitration process for surrounding  
4 communities or was that an add on?

5 DIRECTOR DAY: It would be an add  
6 on.

7 MS. BLUE: It would be an add on.

8 CHAIRMAN CROSBY: Okay. So April,  
9 that -- So the April deadline -- the April date  
10 for decision making will -- doesn't get screwed  
11 up if we have the surrounding community  
12 arbitration process, because that's in there.

13 COMMISSIONER ZUNIGA: Don't forget  
14 that that's a tight time frame, by the way, the  
15 arbitration process.

16 DIRECTOR DAY: Schedule wise, just  
17 if I could cheat and refer to because I happen to  
18 have it handy. But it looks like we had  
19 anticipated awarding the license on 4/11, but  
20 there would be an arbitration or a period. We've  
21 got about 30 days in there that will get us out  
22 to 4/30, if we had to have arbitrations.

23 CHAIRMAN CROSBY: All right. So it  
24 would --

1 MR. ZIEMBA: Yes.

2 CHAIRMAN CROSBY: So it will extend  
3 it?

4 DIRECTOR DAY: Yes.

5 MS. BLUE: Yes.

6 CHAIRMAN CROSBY: Because it's just  
7 -- You know, it's looking like we could have a  
8 whole bunch of surrounding community  
9 arbitrations. (A), the bidders need to  
10 appreciate the fact that that will reflect on the  
11 quality of their relationships with their  
12 communities and in our criteria; but (B), we  
13 don't -- where we've got this timing deadline for  
14 our licensing fees, but so we could lose close to  
15 a month if we have a lot of...

16 DIRECTOR DAY: Yes.

17 CHAIRMAN CROSBY: Okay.

18 MR. ZIEMBA: That's what I had to  
19 report.

20 CHAIRMAN CROSBY: And the  
21 Plainridge situation, we're just waiting to see  
22 if anything happens.

23 MR. ZIEMBA: There had been public  
24 reports of dialogue between the former applicants

1 and other gaming interests.

2 CHAIRMAN CROSBY: Steve and  
3 Dominick are here, so hope springs eternal.

4 Okay. Anything else for the  
5 ombudsman?

6 COMMISSIONER MCHUGH: No. Thank  
7 you.

8 CHAIRMAN CROSBY: Thank you.  
9 Great.

10 COMMISSIONER ZUNIGA: Keep up the  
11 optimism.

12 CHAIRMAN CROSBY: Yes. Item seven  
13 is other business which was not anticipated. I  
14 don't think we have any such business.

15 And item eight is an executive  
16 session. And I will switch to a more formal.

17 The Commission will now go into  
18 executive session pursuant to M.G.L. Chapter 30A  
19 section 21(a)(3) and 21(a)(5) and 21(a)(7) and  
20 M.G.L. Chapter 66 and M.G.L. Chapter 4 section 7  
21 cl. 26(f) in particular to discuss strategy with  
22 respect to the litigation with KG Urban, when  
23 discussion in an would have a detrimental effect  
24 on the litigation position of the Commission.

1                   The Commission will not reconvene  
2 in open session at the end of the executive  
3 session.

4                   Do I have a motion to go into  
5 executive session?

6                   COMMISSIONER STEBBINS: So moved.

7                   CHAIRMAN CROSBY: Second?

8                   COMMISSIONER ZUNIGA: Second.

9                   CHAIRMAN CROSBY: Moved and  
10 seconded. I would like to take a roll call vote  
11 of the Commission to go into executive session.

12                   Commissioner McHugh?

13                   COMMISSIONER MCHUGH: Aye.

14                   CHAIRMAN CROSBY: Commissioner  
15 Stebbins?

16                   COMMISSIONER STEBBINS: Aye.

17                   CHAIRMAN CROSBY: Commissioner  
18 Zuniga?

19                   COMMISSIONER ZUNIGA: Aye.

20                   CHAIRMAN CROSBY: And The Chair  
21 votes yes.

22                   Thank you, the Commission is now in  
23 executive session. All members of the public and  
24 any staff members not involved in the matters to

1 be discussed are requested to leave the room.  
2 I'd ask that all video and audio recording and  
3 live streaming be shut off and equipment removed  
4 from the room, and we will repair to a different  
5 room.

6

7 (Whereupon the hearing was adjourned at  
8 12:14 p.m.)

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1 ATTACHMENTS:

- 2 1. Agenda for August 22, 2013
- 3 2. August 9, 2013 Meeting Minutes
- 4 3. Statewide Marine Fisheries Presentation
- 5 4. Master Schedule
- 6 5. Proposed Changes to 205 CMR 3.29 and 4.52:
- 7 Medications and Prohibited Substances
- 8 6. August 20, 2013 Letter RE: Amendment of 205
- 9 CMR
- 10 7. Draft Application for License to Hold or
- 11 Conduct A Racing Meeting

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SPEAKERS:

- Jill Griffin, Director Workforce Development and  
Supplier Diversity
- Paul Diodati, Director Marine Fisheries
- Story Reed, Marine Fisheries Analyst
- Laura Foley Ramsden, Foley Fish
- Jennifer Durenberger, Director of Racing
- John Ziemba, Ombudsman
- Catherine Blue, Mass. Gaming General Counsel

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C E R T I F I C A T E

I, Amie D. Rumbo, an Approved Court Reporter,  
do hereby certify that the foregoing is a true and  
accurate transcript from the record of the  
proceedings.

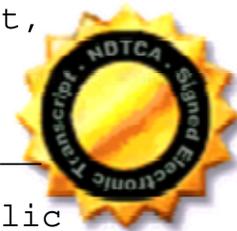
I, Amie D. Rumbo, further certify that the  
foregoing is in compliance with the Administrative  
Office of the Trial Court Directive on Transcript  
Format.

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

Proceedings recorded by verbatim Stenographic  
means, and transcript was produced from a  
computer.

WITNESS MY HAND this 26th day of August,  
2013.

*Amie D. Rumbo*



Amie D. Rumbo, Notary Public

My Commission expires:

11/01/2013