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Sent by Hand & Electronic Mail

Commissioner James F. McHugh
Commissioner Gayle Cameron
Commissioner Bruce Stebbins
Commissioner Enrique Zuniga
Massachusetts Gaming Commission
84 State Street, Suite 720
Boston, MA 02109

Dear Commissioners:

During final deliberations on the Region A license award, Commissioner McHugh expressed significant concerns with the various risk components and complicated hurdles facing the Wynn MA, LLC ("Wynn") project that could prove fatal to its development. In the short few weeks since the decision, there have been several new developments that have created significant new problems, even beyond those noted by Commissioner McHugh. As a result, it is now apparent that the Wynn project is up against obstacles that it cannot resolve in a manner consistent with the Commission's directives, its governing statute, and other Massachusetts law.

A. Protecting the Integrity of Gaming Under The Massachusetts Gaming Act

The Commonwealth's landmark Gaming Act, M.G.L. Chapter 23K, establishes its "paramount policy objective" to be "ensuring public confidence in the integrity of the gaming licensing process and in strict oversight of all gaming establishments through a rigorous regulatory scheme." M.G.L. c. 23K, § 1(1). Given the recent federal and state indictments of two of the three disclosed owners and one undisclosed owner of the land which Wynn must buy to develop its project (the "Everett Parcel"), it is now apparent that Wynn's project cannot go forward consistent with that high standard.

Among the most important provisions of the Gaming Act designed to protect the integrity of expanding gaming in the Commonwealth are the suitability requirements.

Section 12 requires the Investigations and Enforcement Bureau to investigate the suitability and overall reputation of applicants, including "the suitability of all parties in interest



October 8, 2014

Page 2

to the gaming license, including affiliates and close associates and the financial resources of the applicant.” M.G.L. c. 23K, §12(6). Similarly, under Section 14, “[t]he commission shall require anyone with a financial interest in a gaming establishment, or with a financial interest in the business of the gaming licensee or applicant for a gaming license or who is a close associate of a gaming licensee or applicant for a gaming license to be qualified for licensure.” Id. § 14(a).

If, during the course of suitability review, the applicant fails to “overcome any other reason, as determined by the commission, as to why it would be injurious to the interests of the commonwealth in awarding the applicant a gaming license, the bureau shall cease any further review and recommend that the commission deny the license.” Id. §12(b)(iii)).

Complementing these provisions, the statutory licensing conditions of Section 21 of the Gaming Act require that a gaming licensee “do business only with those vendors licensed or registered by the commission,” id. § 21(a)(14), and, in parallel, Section 31 broadly states that “[n]o person shall conduct business with a gaming licensee unless such person has been licensed or registered with the commission,” id. § 31(a). The IEB and the commission are prohibited from licensing or registering persons who are disqualified from licensure under the suitability standards of Section 16 or who may be unsuitable for licensure under any of the criteria set forth in Section 12. Id. § 31(g). This provision is not waivable by the Commission.

To demonstrate that the sellers of land on which a gaming establishment will be located are not immune from the Commission’s investigation, either as vendors of a licensee or as persons with a financial interest in the business of a gaming applicant or licensee, the Gaming Act requires that an applicant submit the ownership interests in the land for the past 20 years as part of its application. See id. §9(15). There is no other purpose for this statutory provision and it must be given effect.

These provisions of Chapter 23K were crafted in order to prevent unscrupulous individuals from benefiting from the implementation of expanded gaming in the Commonwealth and to assure that casino licensees do not conduct significant business with unscrupulous individuals.

B. The MGC’s Prior Review of Wynn’s Suitability Relative to the Everett Parcel

On December 13, 2013, the Commission held a public meeting in which it discussed the MGC’s Investigations and Enforcement Bureau’s (“IEB”) investigation into, and discovery of, dishonest conduct and unsuitable associations regarding the current owners of the Everett Parcel. After hearing from Wynn representatives (Kim Sinatra, Matt Maddox, and others), Commissioner McHugh introduced a motion to address and remedy “the issues that arose out of the land transaction about which we’ve heard today.”



October 8, 2014

Page 3

The resolution, which McHugh characterized as having been “proposed by Wynn Mass,” (*i.e.*, by the party in interest) had three elements. First, the proposed sale price to be paid to FBT Everett Realty, LLC (“FBT Realty”) would be lowered to \$35 million, of which \$10 million would be set aside for environmental clean-up. The idea was to set the price at an amount that would remove any price premium attributable to the end-use being a casino. Wynn presented the Commission with an appraisal it commissioned, based on its own directives (and not the Commission’s). The appraisal assumes the property is clean and has adequate access for commercial development. The appraiser, Robert LaPorte of Colliers International, valued the Everett Parcel at \$35 million for a commercial, non-gaming use. Second, the IEB would be directed to deliver its entire file regarding possible criminal violations to state and federal prosecutors for such action as might be deemed warranted. Third, the Commission required that “the three members of FBT, LLC, who are nominally going to receive the proceeds be required to sign a document saying that they are the exclusive recipients of the proceeds, and that they do that on a notarized document under oath.”

In remarks introducing the resolution, Commissioner McHugh voiced the expectation that execution of these signed documents by the owners of the Everett Parcel: “would mean that none of the appreciation of this property that came from the sale at this commercial price goes to somebody who’s been dishonest, or lack of candidness.” (emphasis added). McHugh explained, “the crux of the problem is that nobody has been candid with us. And so a simple signed document that nobody else is going to get any money out of this is not, quite frankly, good enough for me.” In that context, McHugh said he perceived “the necessity for having everybody who’s going to get something out of this sign that document saying we’re the people who are going to get it, and sign it under oath, have it notarized. So that we, finally, can get to the bottom of where this money is going.”

Commissioners Zuniga, Stebbins and Cameron each voiced strong support and the Commission adopted the motion on a 4-0 vote.

C. Stated Owners Execute “Confirmation of Representation” Document

Pursuant to the MGC’s directive, Dustin DeNunzio and Paul Lohnes signed a “Confirmation of Representation,” dated December 23, 2013. This document, which is sworn and notarized, mirrors certain language and factual assertions found in the Ninth Amendment to the Wynn / FBT Realty option agreement for the Everett Parcel. Its provisions disclaim the existence of any hidden ownership interests or unnamed and undisclosed beneficiaries in the event of a sale and reiterate that the only owners are those enumerated in a certain attachment to the option (namely, Gattineri, The DeNunzio Group, LLC, and Lohnes.).

The certificate produced by Lohnes and DeNunzio indicated that Jamie Russo, a longtime business partner of Charles Lightbody, would receive a consulting fee from FBT Realty



October 8, 2014

Page 4

following the sale of the property to Wynn. Until that time, the involvement of Russo had not been disclosed to the public. It remains unknown to the public when it was disclosed to the Commission, or when Wynn learned of Russo's role and whether Wynn disclosed it to the Commission.

In subsequent testimony before the MGC on September 8, 2014, Karen Wells, director of the IEB, stated that Lohnes and DeNunzio told the IEB that Russo was going to receive a 3% fee from the deal for his work as a "consultant/lobbyist." It remains unclear precisely what Russo did to receive his fee, with whom he may be sharing it, or even how much it will be. Wells noted that Lohnes and DeNunzio denied there being a written agreement with Russo, and neither could say whether the fee is based on the gross sale proceeds or the profit (presumably net of FBT Realty's initial \$8 million investment). It is also unclear whether the payment is calculated based on the now nominal purchase price of \$35 million or the \$25 million to be received by FBT Realty initially, pending completion of the environmental remediation work. In any case, the payment to Russo is at least \$500,000 and could be over \$1 million. I can assure the Commission that it is highly unusual, and perhaps unprecedented, for this type of arrangement to be an unwritten part of a commercial real estate transactions. Mr. Russo has not shed any light on these ambiguities, as he refused to speak with the IEB. These payments, if appropriate at all, are likely related to permitting and approval assistance for the benefit of the Wynn project.

FBT Realty's third principal, Anthony Gattineri, refused to sign the Confirmation of Representation, reportedly based upon advice from his criminal defense attorney. Six months later, Gattineri produced and signed his own "Certificate," dated June 14, 2014. This document differs substantially in language and content from that of his partners and from that required by the Commission. Whereas the earlier attestation includes a broad denial of the existence of "any agreement" regarding "any payments" to "any other person or entity," other than those disclosed to the Commission, the Gattineri document employs language that appears deliberately parsed and limited. Gattineri asserts that he has not mortgaged or assigned his interest in FBT Realty or the "economic interests represented thereby" to any other party. But Gattineri does not explicitly rule out future payments and is silent with regard to the identities and circumstances of any others within FBT Realty. Additionally, Gattineri includes a striking caveat: that his Certificate is "executed and delivered to the Massachusetts Gaming Commission" only, and any representations contained in it "may not be relied upon by any other person or entity," except with his written prior permission.

D. The \$35 Million Appraisal of the Everett Parcel Wynn Presented to the Commission Is Based on an Erroneous "Extraordinary Assumption."

No later than early October 2013, two months before the Commission's directive to lower the proposed sale price of the Everett Parcel to \$35 million to reflect the value of the property for nongaming uses, the City of Everett had determined that access to the Everett Parcel through its



October 8, 2014

Page 5

existing driveway (and sole legal access) on Horizon Way was grossly insufficient for the Wynn casino or any significant commercial development. On October 3, 2013, Everett's Chiefs of Police and Fire informed Mayor DeMaria that *"to avoid a potentially catastrophic occurrence," access to the land parcel must be "drastically improved" by means of two routes*, both entailing use of adjacent land owned by the MBTA known as the Everett Shops. The chiefs wrote that such "access is critical to providing adequate and necessary public safety to the planned site." Several days later, on October 7, DeMaria informed the state's transportation secretary, Richard Davey, that access via the MBTA parcel is imperative to developing the site: "this [Horizon Way] access configuration, discussed above, makes significant development of the Monsanto site, as the City has envisioned, almost impossible." These letters were obtained from the City of Everett pursuant to public records requests and copies are enclosed. To the best of my knowledge, these important and pertinent letters have not been disclosed to the Commission or relevant permitting authority (and certainly none of these pertinent authorities (including the Commission) have disclosed these important documents to the public).

On November 12, 2013, LaPorte provided Wynn with Colliers International's appraisal report valuing the Everett Parcel at \$35,000,000 — a figure that, as noted, became central to the revision of the land sale by which Wynn sought to cure the transaction of the defect that some of its purchase money would benefit unsuitable persons. Colliers's Letter of Transmittal and the appraisal report itself explicitly state that the appraisal assumed, as an Extraordinary Assumption,¹ that Horizon Way (also known as Chemical Lane) "would be adequate for access to the site." Yet that assumption had already been rendered untenable by findings of the City of Everett, made and memorialized weeks before, at the beginning of October 2013.²

¹ According to the professional appraisal standards quoted by LaPorte, an "Extraordinary Assumption" is "an assumption, directly related to a specific assignment, which, if found to be false, could alter the appraiser's opinions or conclusions. Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal, or economic characteristics of the subject property; or about conditions external to the property such as market conditions or trends; or about the integrity of data used in an analysis." (emphasis added)

² This is, of course, not the only problem with the appraisal. For example, the appraiser was instructed to assume that the land was environmentally clean. No one has pretended that this assumption was true. Indeed, Commissioners pointed out that the land is so contaminated that it is questionable that any other type of development would support a clean-up. Wynn and FBT Realty attempted to make this assumption palatable by dedicating \$10 million of the revised purchase price to clean-up costs. However, there has been no independent verification of that cost estimate, and the land owners' liability for the clean-up is capped at \$10 million even though the actual costs could greatly exceed that amount. This is another way in which FBT Realty could end up receiving much more than the fair market value of the property for a nongaming use.



October 8, 2014

Page 6

On December 16, 2013, three days after LaPorte presented his appraisal to the Commission during its hearing on the Wynn land transaction, Wynn submitted a Draft Environmental Impact Report that asserts the existence of two viable options for site access, one making use of the MBTA parcel, the other relying solely on Horizon Way. This submission was made fully two months after Everett public safety leadership had concluded otherwise.

In subsequent filings, statements and presentations, Wynn continued to insist that Horizon Way-only access was a viable alternative, even after Everett's top public safety officials and Mayor not only had concluded otherwise and declared routes utilizing the MBTA parcel to be a public safety imperative, and but also used those conclusions in an attempt to convince MBTA officials to sell part of its land. This is true despite the fact that Wynn, as the applicant, was under a continual duty to inform the Commission of material developments related to approvals. The Commission's regulations (at 205 CMR 120.01(2)) require:

(2) As long as the RFA-2 application for a Category 1 or Category 2 license is pending before the commission, and in the event that a conditional or final Category 1 or Category 2 license is issued, the applicant shall have a continuing duty to timely provide to the commission an updated permits chart and all documents and information listed in 205 CMR 120.01(1), as well as any updates relative to the MEPA process, such that the commission is continuously apprised of all material developments with respect to all permits and approvals required for the gaming establishment.

It is apparent from the Police and Fire Chiefs' letter in October 2013 that they would not approve necessary permits for the Wynn gaming establishment if it did not provide for the two routes of access they described. In light of the close relationship demonstrated between the City and Wynn — beginning with Mayor DeMaria's introduction of Wynn to the Everett Parcel and continuing through the favorable (to Wynn) Host Community Agreement, and Everett's attempts to secure land necessary for Wynn's project from both public and private landowners — it is difficult to believe that Wynn was unaware of the Chiefs' position or that the position, so critical to the operation of the gaming establishment, was conveyed to the Department of Transportation as part of an effort to secure the MBTA's land for Wynn's benefit. If Wynn was aware, it raises serious questions as to why it did not report the matter to the Commission instead of continuing

In addition, the appraisal is based on hypothetical leases to big box stores Lowes and Home Depot on the Everett Parcel. The terms relied on the appraiser were those *proposed by FBT Realty* the prospective tenants, not rents that Home Depot and Lowes had agreed to. Indeed, we have information that Lowes and Home Depot concluded that the site was undevelopable, in contrast to the key assumption of the appraisal.



October 8, 2014

Page 7

to pretend in statements to the Commission and filings with environmental regulators that Horizon Way constituted viable access for the casino.

Not mentioned anywhere, including any filing with MEPA or disclosure to the public or the Commission, is that to complete this secondary access, now known to be so critically important to the gaming establishment, Wynn needs still more property to the north (in addition to the MBTA parcels) to actually get to the Everett Parcel. The MBTA parcels that it seeks do not connect to each other. Incredibly, Wynn has failed to demonstrate how this crucial aspect of the casino can be accomplished or to evaluate its impact on traffic, access, or the environment. In making this omission, Wynn has failed to even define what the actual site of the gaming establishment is.

E. DeNunzio, Gattineri, and Lightbody Indicted

On October 2, 2014, Lightbody, DeNunzio, and Gattineri were indicted in federal and state court in Massachusetts for their actions in connection with the sale of the Everett Parcel. The federal indictment charges them with conspiring to commit, and committing, wire fraud. The indictment alleges that they devised a scheme to enrich themselves by selling the Everett Parcel to Wynn "on the basis of materially false and fraudulent pretenses, representations and promises," the most important of which was "concealing from Wynn and the MGC the financial interests of Lightbody... in the Everett Parcel." The indictment identified "an individual known to the grand jury" referred to as John Doe who "resided in Lynnfield, Massachusetts and had a financial interest in the Everett Parcel." (We believe this could be Jamie Russo.)

The indictment included the following allegations:

- DeNunzio and Gattineri knew that Lightbody's "criminal history and NELCN associations" would "adversely impact FBT's negotiation of an option agreement" with Wynn, and therefore in December 2012 "conspired to conceal" Lightbody's financial interest in the property.
- On December 19, 2012, Wynn and FBT Realty executed an Option Agreement for the purchase of the Everett Parcel for \$75 million and which also provides that Wynn would pay FBT Realty \$100,000 per month for the option right. It remains unclear which persons have benefited from the monthly payments, which would now total \$1,900,000.
- In December 2012, DeNunzio and Lightbody "falsely represented to FBT's attorney that Lightbody had agreed to transfer his interest in FBT to Gattineri," such that the attorney would prepare paperwork documenting that transaction.



October 8, 2014

Page 8

- On January 28, 2013, DeNunzio fraudulently arranged for Lightbody and Gattineri to execute a Memorandum of Transfer and Promissory Note, both of which DeNunzio backdated to December 14, 2012. Later, in July 2013, DeNunzio backdated the documents a second time, to reflect the date August 15, 2012.
- On January 17, 2013, DeNunzio sent an email to Wynn's general counsel, Kim Sinatra, which "falsely stat[ed] that DeNunzio, Gattineri and [Lohnes] were the only people who had an interest in FBT," while in fact, Lightbody and "John Doe" also had financial interests in the land. In that email, he also stated: "I assume that you receive [sic] the quote that was sent to the Boston Herald. If you want the party line to be changed at all please let us know." This exchange raises the question as to precisely what the party line was, how and when it was developed, and by whom.
- Between December 2012 and July 2013, the defendants misled the IEB investigators about Lightbody and "John Doe's" interest in the Everett parcel by stating that Lightbody had transferred his interest to Gattineri in 2012 and that only DeNunzio, Gattineri and Lohnes would benefit from the sale, when in fact Lightbody and "John Doe" "maintained financial interests" in FBT Realty.
- In July 2013, DeNunzio instructed DeCicco "not to meet with IEB investigators" and falsely informed him that Lightbody had been "bought out [from the Everett parcel] a long time ago."

F. Wynn Has Not Obtained the Essential MBTA Parcels and Likely Cannot Do So In a Timely Fashion.

Recently, the MBTA initiated an Request For Response process to solicit bids for the parcels at the Everett Shops that Wynn seeks for the access ways that he has described as "preferred" but which it is now known are essential, given the needs of public safety as determined by the Everett police and fire chiefs. The RFR itself is unusual in that it seeks to obtain a higher offer for a land transaction pre-negotiated with Wynn and therefore raises questions as to whether it complies with the MBTA's public bidding obligations. Putting that unresolved issue aside for purposes of this letter, it is clear that the fact that the MBTA has begun an RFR process does not at all mean Wynn can timely secure the necessary parcels that we now know are so critical to the operation of the gaming establishment.

The MBTA's sale of land constitutes "agency action" under the Massachusetts Environmental Policy Act ("MEPA"). MEPA provides in part



October 8, 2014

Page 9

All agencies, departments, boards, commissions and authorities of the commonwealth shall review, evaluate, and determine the impact on the natural environment of all works, projects or activities conducted by them and shall use all practicable means and measures to minimize damage to the environment. Unless a clear contrary intent is manifested, all statutes shall be interpreted and administered so as to minimize and prevent damage to the environment. Any determination made by an agency of the commonwealth shall include a finding describing the environmental impact, if any, of the project and a finding that all feasible measures have been taken to avoid or minimize said impact.
(M.G.L. c. 30, § 61).

MEPA's regulations provide (at 301 CMR 11.12(4)(a)) as follows:

Unless otherwise required by other applicable statutes or regulations, an Agency may not take Agency Action on a Project that is subject to MEPA jurisdiction and meets or exceeds any review thresholds unless and until the Secretary has determined that an EIR is not required or the Secretary has determined that the single or final EIR is adequate and 60 Days have elapsed following the publication of the notice of the availability of the single or final EIR in the Environmental Monitor.

On August 15, 2014, the Massachusetts Department of Transportation ("MDOT") submitted a letter to the Secretary of Energy and Environmental Affairs ("EEA") in which it noted that the land transfer by the MBTA to Wynn was under consideration but required "further analysis" and that more information had to be "laid out explicitly and with sufficient detail in the SFEIR so that the MBTA can determine whether or not this proposal would adversely affect critical transit operations." We now also know that the land transaction is not limited to the MBTA's maintenance facility, but also includes a portion of the commuter rail right of way behind the Everett Shops. The impact of the proposed transfer of the commuter rail right of way has never been evaluated, nor has it been publicly disclosed.

Also on August 15, 2014, the EEA Secretary issued to Wynn a Certificate indicating that the project did *not* adequately and properly comply with MEPA and its implementing regulations, and set forth a scope of work to be addressed in a supplemental FEIR ("SFEIR") to be filed with MEPA. The Certificate incorporates by reference MDOT's comment letter, making further analysis of the impacts to the MBTA property a necessary condition of the required subsequent filing. Since no filing to date has evaluated the impact of any proposed conveyance on the MBTA's commuter rail line, that impact must also be evaluated as a part of the SFEIR.

By law, the MBTA is constrained from conveying the land now so obviously necessary to the casino until the SFEIR has been filed, a Secretary's Certificate has been issued



October 8, 2014

Page 10

determining that the SFEIR has adequately analyzed the impact of sale of the MBTA's land (as well as the other elements in the SFEIR scope of work), and the 60-day notice period under 301 CMR 11.12(4)(a) has expired.

G. A Re-Evaluation of Risks Relating to the Viability of the Wynn Proposal Under Massachusetts Law is Needed

Given the facts set forth above, it is now clear that Wynn cannot implement its proposal for a gaming establishment consistent with Massachusetts law. The numerous hurdles are as follows:

1. The Gaming Act's Suitability and Licensing Provisions, and the Terms of the Commission's Approval of the Revised Land Sale Transaction, Preclude Wynn from Buying the Everett Parcel from FBT Realty.

It goes without saying that Wynn cannot operationalize its casino license without acquiring the Everett Parcel from FBT Realty and thereby enriching its disclosed and undisclosed owners, Lohnes, DeNunzio, Gattineri, and Lightbody. With three of those four individuals now indicted for conspiracy, fraud and other crimes in direct connection to the gaming licensing process, it cannot be denied that FBT Realty is unsuitable for licensure under the standards of the Gaming Act and the Commission's regulations.

At the Wynn suitability hearing, Commissioner McHugh specifically demanded that "none of the appreciation of this property that came from the sale at this commercial price goes to somebody who's been dishonest, or lack of candidness." Likewise, the federal indictment notes that the "MGC would not award a Category 1 destination resort casino license if it determined that Lightbody would profit from the award of such license." Yet, this is exactly what has occurred and will continue to occur unless the Commission acts. Notwithstanding their disqualification from licensure, these unscrupulous individuals have been profiting handsomely from the introduction of expanded gaming in the Commonwealth for almost two years now and will be greatly enriched if Wynn is awarded the Region A license. Since December 2012, Wynn has been making option payments to FBT Realty in the amount of \$100,000 per month. These payments have presumably benefited the three individuals who have now been indicted for their role in the transaction. Based on the revised option agreement approved by the Commission, the purchase price of the Everett Parcel is \$35 million, which would be an astronomical 437%, multi-million-dollar profit on the \$8 million in paid only a few years ago by FBT Realty in 2009 for the property.

It appears that, to date, the Commission has operated from the premise that FBT Realty and its owners are not so-called qualifiers of the Wynn applicant. Even if that premise is sound (although it would be easy to conclude that people who have received almost \$2 million in



October 8, 2014

Page 11

option payments from an applicant and will receive \$25 million after the license award “have an interest in the business” of the applicant/licensee), the suitability and disqualification standards of Sections 12 and 16 of the Gaming Act apply to FBT Realty through Section 31’s restrictions on persons conducting business with a casino licensee. FBT Realty meets the definition of a vendor to Everett proposal and, as such, should be required to meet the vendor licensing standards under Section 31 of the Act, as well as Commission Regulation 205 CMR 134.04. This provision cannot be dismissed by the Commission by fiat.

As noted above, the licensing requirements for vendors were crafted to ensure that those conducting business with gaming licensees and profiting from the state’s gaming industry meet strict personal suitability standards. Given that FBT Realty and its principals are conducting business with the Everett proposal for a substantial sum of money well in excess of the threshold set by the Commission, it is logical that the vendor standards and terms apply in order to effectuate the Act’s intention of ensuring that all parties conducting business with casino licensees be licensed or otherwise approved by the Commission.

2. Contrary to the Commission’s Directive, the Price Wynn Would Pay to FBT Realty Under the Revised Land Sale Is Inflated Above the Fair Market Value for Nongaming Uses

An important element of the revised land sale transaction that the Commission approved was a reduction of the price down from \$75 million to the fair market value of the Everett Parcel for nongaming use. However, the appraisal relied by the Commission in approving the \$35 million price clearly overstates the value of the land and therefore these unscrupulous individuals will receive an even greater windfall if the transaction is allowed to continue.

As detailed above, the public record establishes that the City of Everett has expressly determined that the Everett Parcel requires additional land and a secondary access in order to be redeveloped for its highest and best use. This information did not figure into the appraisal Wynn submitted to the Commission, which was based on the extraordinary assumption – incorrect on the date it was made – that existing access over Horizon Way was adequate to support development of the property.

According to the binding offer Wynn has made for the MBTA land, incorporated into the RFR documents, the cost of obtaining the necessary access is \$6 million in cash plus the cost of creating a new entrance for the MBTA to the Everett Shops facility, including a new signalized intersection with Broadway. The unquantified costs presumably include acquisition of the privately owned parcel on which the new entrance will be located, which currently is a McDonald’s restaurant, and other land that is needed to make the revised access and necessary roadway improvements work.



October 8, 2014

Page 12

3. The Indictment of FBT Realty Owners Raises Questions Regarding Wynn's Ability to Comply with M.G.L. c. 23K, § 15(3).

The Gaming Act requires that a licensee acquire the land on which the gaming establishment will be constructed within 60 days of being awarded the license. M.G.L. c. 23K, § 15(3). The federal indictment of the FBT Realty owners contains criminal forfeiture allegations pursuant to which the defendants, upon conviction, are to "forfeit to the United States any property, real or personal, which constitutes or is derived from proceeds" traceable to their crimes. The Commission should inquire whether the land transaction even could be completed within 60 days of Wynn being awarded the gaming license, in light of the fact that federal forfeiture actions typically take years (not months) to resolve. In addition, it is unclear whether the FBT Realty owners would proceed with a sale in the face of the pending forfeiture charges, particularly when the sale price of the Everett Parcel must again be adjusted to reflect the access limitations that are such a critical element of value.

4. Wynn's MEPA Hurdles Raise Questions Regarding Its Ability to Comply with M.G.L. c. 23K, § 15(3).

In August 2014 the Secretary of Energy and Environmental Affairs found Wynn's FEIR to be deficient and ordered it to file a Supplemental FEIR. As explained above, the MBTA cannot convey the land Wynn needs for its essential access until the MEPA process is concluded, because the sale constitutes agency action within the purview of MEPA.

As set forth in the Secretary's August determination, Wynn has significant work to do before submitting the required SFEIR. This includes not only evaluation of the impact of the sale of the MBTA land (including the newly revealed right-of-way portion) but also resolution of the myriad traffic issues that were inadequately addressed in the FEIR, including not only those that were so concerning to the Commission during its deliberations such as Sullivan Square, but also issues on Revere Beach Parkway and elsewhere and issues related to public transportation. In addition, it may be that Wynn's forthcoming redesign of the project in response to the Commission's conditions will require further MEPA analysis.

Even if the MBTA is willing to proceed with the transaction after the impacts are studied and commented upon, there is significant doubt that the process can be completed within 60 days of the anticipated award of the license. And, of course, the acquisition of the MBTA land does not accomplish the necessary secondary access, as still more land must be acquired to complete the route.



October 8, 2014

Page 13

H. Conclusion

Recent developments have combined with existing circumstances to demonstrate that Wynn will not be able to develop its proposed casino while abiding by the Gaming Act and the Commission's standards and directives adopted in its implementation of the statute. In particular, Wynn can acquire the land for its project only by doing business with the patently unsuitable owners of FBT Realty, which it is forbidden to do. Also, under the option agreement as amended, the purchase price of the Everett Parcel exceeds the fair market value for nongaming uses because it does not account for the multi-million dollar cost of obtaining essential access for the property. Moreover, there are grave doubts about whether Wynn can comply with the 60-day deadline for acquiring the land for its project, given the forfeiture requirements in the indictment and the fact that the MBTA cannot convey any land until Wynn submits its SFEIR and it is deemed adequate under MEPA, a process burdened by the fact that to date no analysis at all has been presented on the additional property needed for access.

The Commission has important statutory obligations to protect the integrity of the gaming industry in Massachusetts and has been given broad statutory powers to achieve that "paramount policy objective." The Commission has limited time to exercise its regulatory authority to ensure the protection of the public welfare. The Act contains many provisions that empower the Commission to exercise considerable discretion to take swift and substantial corrective actions in response to new developments that affect the dynamics of the Commonwealth's gaming industry. As the Commission transitions from its initial establishment phases to its ongoing monitoring and law enforcement role, this authority provides a crucial set of tools to ensure that the Act and Commission policies continue to enforce policies that achieve the objectives of the Commonwealth.

The Commission should use that discretion and those powers to reevaluate its selection of Wynn for the Region A gaming license in light of its inability to proceed in compliance with law.

Sincerely,

A handwritten signature in black ink, appearing to read 'Charles A. Baker, III', with a stylized flourish at the end.

Charles A. Baker, III

Enclosures

cc: Karen Wells, Esq.
Catherine Blue, Esq.
John Ziemba, Esq.

City of Everett

Office of the Mayor

Carlo DeMaria, Jr.
MAYOR



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October 7, 2013

Via Facsimile & First Class Mail

Mr. Richard A. Davey
Secretary and Chief Executive Officer
Massachusetts Department of Transportation
10 Park Plaza, Suite 4160
Boston, MA 02116

Re: Urgent Public Safety Issues

Dear Secretary Davey;

As you may know, the City of Everett, in coordination with numerous local and state entities, has been engaged in an intense planning effort for the Lower Broadway section of Everett for several years. This ongoing work has included master planning, economic studies, rezoning, and the creation of a Municipal Harbor Plan. This effort was undertaken with the clear intent of creating a path to economic and environmental rejuvenation of that area that has long suffered from traffic congestion, unremediated environmental contamination, lack of river access, and overall economic stagnation. During this process, we have identified the MBTA Everett Shops parcel (identified on Exhibit A hereto) (the "MBTA Shops Parcel"), as a major obstacle to public safety and economic development in the City of Everett.

1. Public Safety.

I have been advised by the chief public safety officials for the City of Everett that additional access to several areas off Lower Broadway is necessary to ensure public safety. Such access is consistent with the Lower Broadway Master Plan undertaken by the City in 2011 and would consist of additional access to the area along the Mystic River as depicted in Exhibit A (the "Monsanto Site"). First, improved access will be needed at the intersection of Route 99 and Horizon Way to accommodate public safety apparatus responding to the Monsanto Site. See Public Safety Letter of October 2, 2013 attached as Exhibit B.

Second, both the MBTA Shops Parcel and Monsanto Site have limited or no secondary access. The MBTA Shops Parcel access is limited to a narrow curb cut off Bowdoin Street and the Monsanto Site has none. The Monsanto Site is land locked from the west by the MBTA train tracks, significantly limiting public safety access to small, locked gates on both sides of the track. These gates, accessible from the north side of the tracks through a large commercial development that hosts thousands of visitors daily, is insufficient for the City's public safety needs on the proposed development site. This point of access to the Gateway development over the tracks will need to be relocated and the MBTA Shops Parcel is an obstacle to such relocation. As set forth in the above-mentioned letter from the Everett Police Chief and Fire Chief, these restrictions on access present a significant public safety concern. Adding to this concern is the recent approval of hundreds of units of housing on Bowdoin Street, increasing the need for better access to the entire area.

To facilitate these important public safety needs, the City will need to reacquire certain parcels of land (as identified on Exhibit C) from the MBTA to provide necessary access points to the Monsanto Site, the track area, the Gateway Development and the remaining MBTA Shops Parcel.

Finally, due to very limited access and visibility, the area under the tracks, which is not utilized by the MBTA, has become a waste-strewn dumping ground and loitering location, often the site of illegal alcohol and drug activity. An easement is needed from the MBTA to allow for the creation of a public walkway in this area under the tracks connecting the Monsanto and Gateway parcels that could be well lit, clean, and patrolled.

2. Economic Development

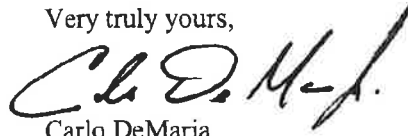
As you may be aware, the Monsanto Site is an approximately 30-acre vacant site, the largest in the City of Everett, and suffers from severe unremediated environmental contamination. The City has long identified the Monsanto Site as a critical part of the economic rejuvenation of the City. Unfortunately, there is only one access point into the Monsanto Site, a narrow private way off Broadway, shared with the MBTA. The other borders of the Monsanto Site are the Mystic River, the MBTA tracks and the MBTA Shops Parcel. This access configuration, discussed above, makes significant development of the Monsanto Site, as the City has envisioned, almost impossible. In order to provide for a safe and functional access point, the City will need to acquire the land identified on Exhibit C from the MBTA and work with the MBTA to potentially relocate the main entrance to the MBTA Shops Parcel.

As you know, the City of Everett has both appreciated and supported the presence of the MBTA site for many years. As a part of our community, we know that the MBTA will appreciate the necessity of these important public safety and economic redevelopment needs. We are also confident that the changes identified herein will not impact the ability of the MBTA to continue its current operations without interference.

Mr. Richard A. Davey
Secretary and Chief Executive Officer
Massachusetts Department of Transportation
October 7, 2013
Page 3

I would like to meet with you at your earliest convenience to arrange for the transfer of these properties and creation of an easement to the City of Everett to resolve these essential public safety and economic development issues as we complete our district and harbor planning efforts.

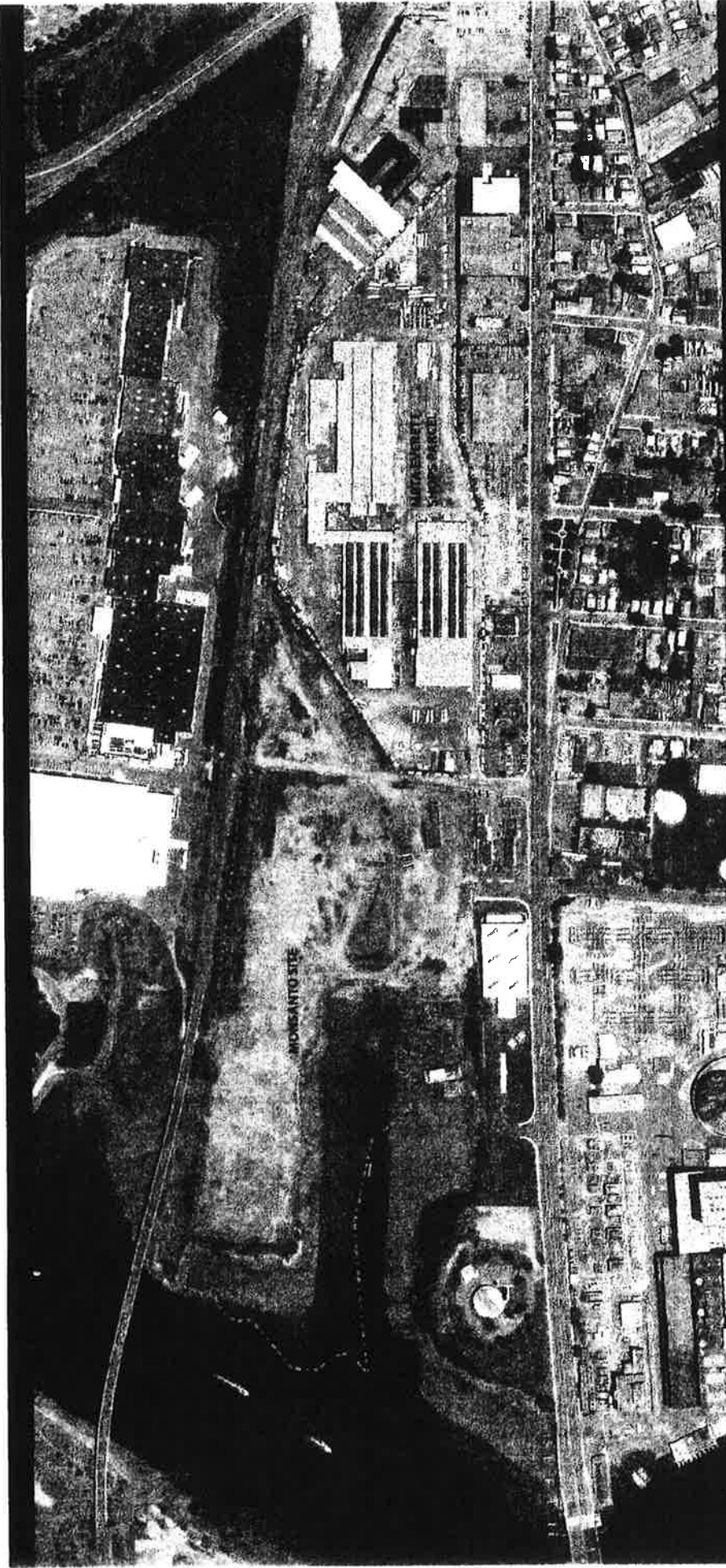
Very truly yours,

A handwritten signature in black ink, appearing to read 'C. DeMaria', with a stylized flourish at the end.

Carlo DeMaria
Mayor, City of Everett

cc.: Dr. Beverly Scott, General Manager, MBTA
State Senator Sal N. DiDomenico
State Representative Wayne Matewsky
Melissa Murphy-Rodrigues, Esq., Chief of Staff, City of Everett
James Errickson, Executive Director, Office of Planning and Development, City of Everett
Colleen Mejia, Esq., City Solicitor, City of Everett
David Rodrigues, Esq., Asst. City Solicitor, City of Everett

Exhibit A



City of Everett
October 03, 2013

LOWER BROADWAY PARCELS

Exhibit B

CITY OF EVERETT



EVERETT POLICE DEPARTMENT
Steven A. Mazzie, Chief
45 Elm Street
Everett, MA 02149

EVERETT FIRE DEPARTMENT
David T. Butler, Chief
384 Broadway
Everett, MA 02149

October 3, 2013

Via Hand Delivery

Honorable Carlo DeMaria
Mayor, City of Everett
484 Broadway, Room 31
Everett, MA 02149

Dear Mr. Mayor:

We have been apprised of the plans, site conditions, geography and access points of the planned development on Route 99 in the City of Everett. This development, although still in its planning stages, will present several challenges to the public safety personnel of the City of Everett which will be charged with the safety, security and well-being of the patrons and employees of such a development. It is imperative that such public safety concerns be addressed as soon as possible to avoid a potentially catastrophic occurrence on the current planned site.

It is our immediate and most strenuous recommendation that access to the planned site be drastically improved by providing open, public access to the site via: (1) expanded access from the intersection of Route 99 and Horizon Way and; (2) the opening of separate access road on the north side. Both expanded access routes may be achieved through the use of minimal portions of the land currently held by the Massachusetts Bay Transportation Authority.

These expanded access routes are consistent with the Lower Broadway Master Plan commissioned by the City of Everett in 2011. **It is our position that this access is critical to providing adequate and necessary public safety to the planned site.**

We urge you to exercise any and all methods to facilitate access to the site in the best interest of public safety and security. We are available to discuss this matter further at your convenience.

Best regards,

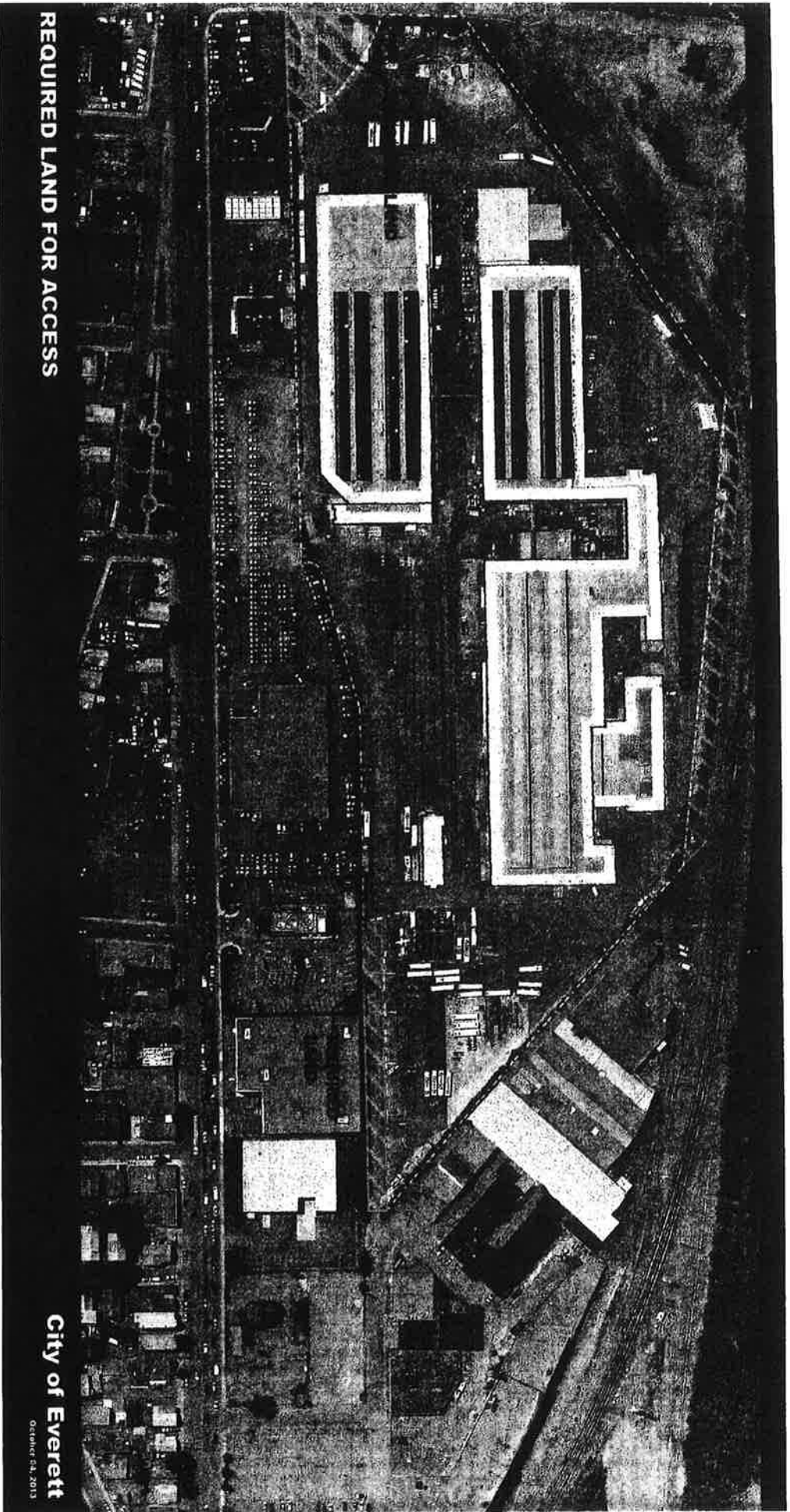
Handwritten signature of Steven A. Mazzie in black ink.

Steven A. Mazzie
Chief of Police
Everett Police Department

Handwritten signature of David Butler in black ink.

David Butler
Chief of Department
Everett Fire Department

Exhibit C



REQUIRED LAND FOR ACCESS

City of Everett

October 24, 2013