

# **Wynn MA, LLC's Presentation on the East of Broadway Development Everett, Massachusetts**

**Massachusetts Gaming  
Commission**

**February 10, 2022**

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## Question presented:

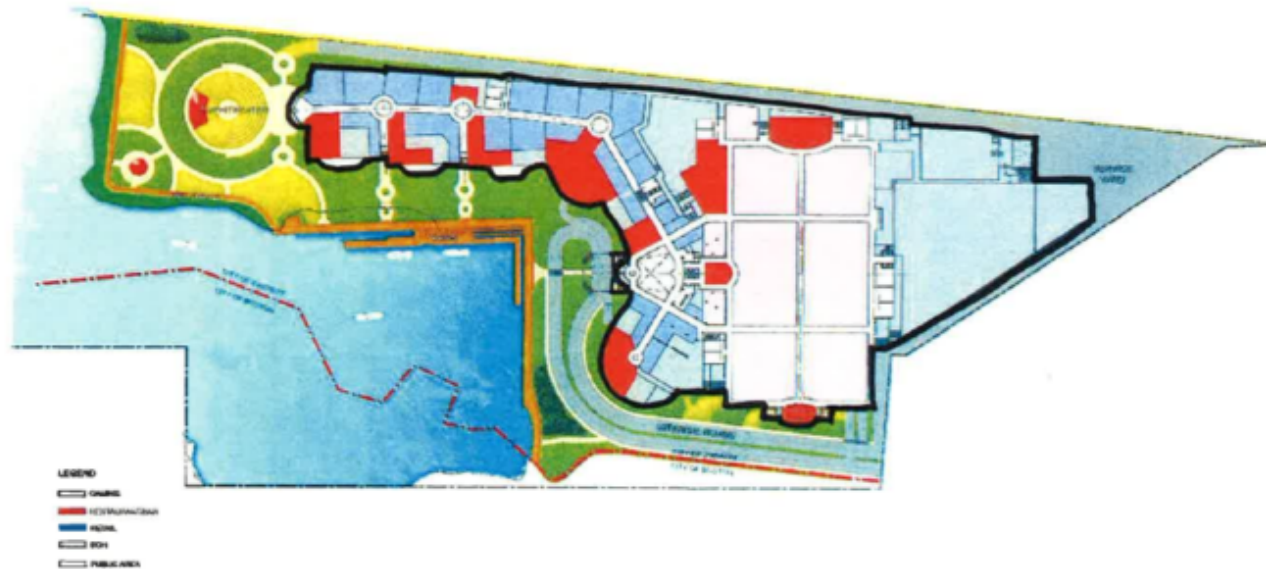
"Determine whether the proposed development is part of the premises of the Wynn MA, LLC gaming establishment."

## M.G.L. c. 23K provides the following definition:

- “**Gaming establishment**”, the premises approved under a gaming license which includes a gaming area and any other nongaming structure related to the gaming area and may include, but shall not be limited to, hotels, restaurants or other amenities.

M.G.L. c. 23K, §2

# Encore's Current Gaming Establishment (as defined by Exhibit C to the Commission's May 15, 2014 Decision)



Gaming Establishment Site  
Figure B-6

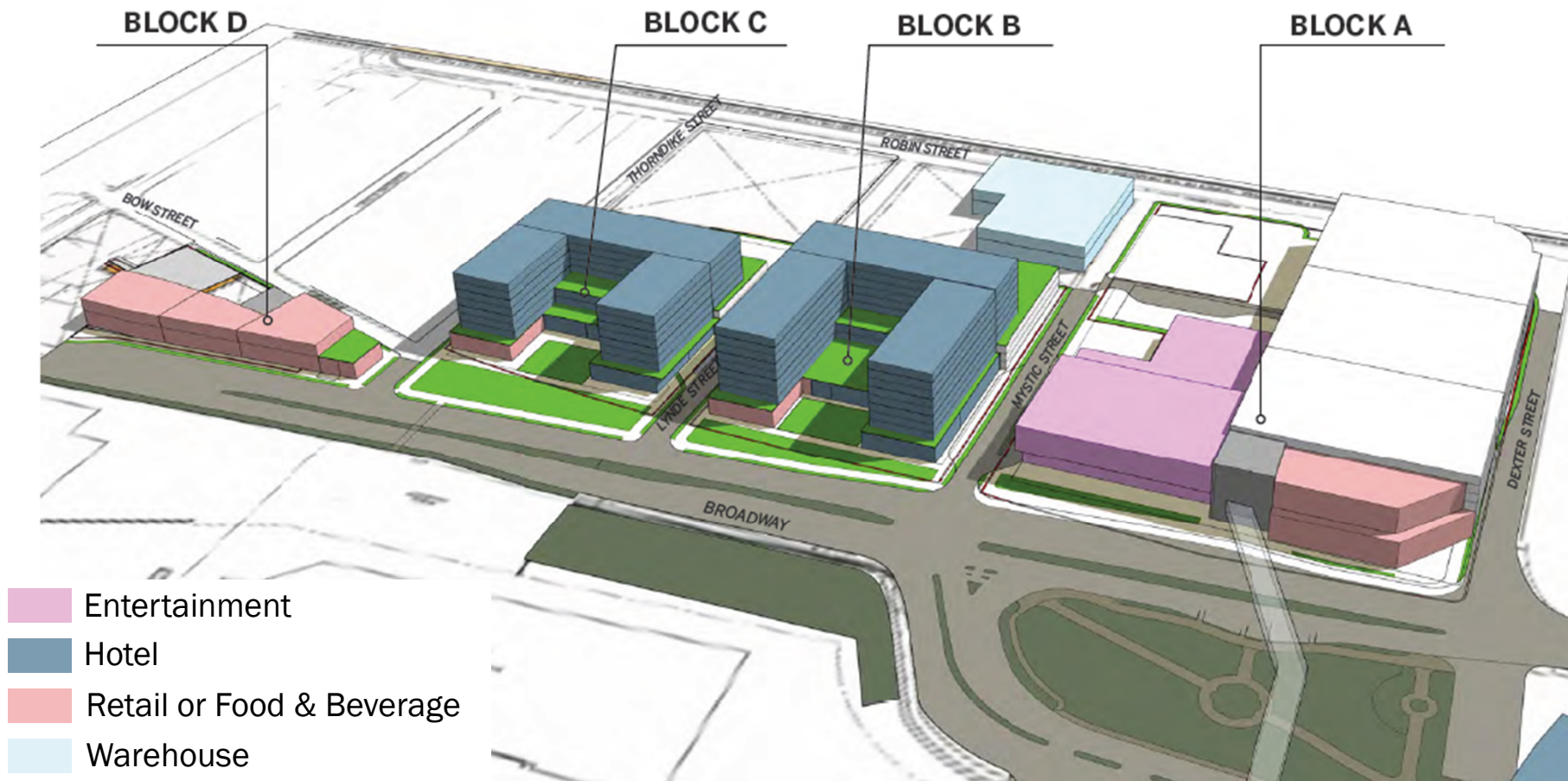


EXHIBIT C

WYNN MA, LLC

 = OUTLINE OF GAMING ESTABLISHMENT

# The East of Broadway Development Everett, Massachusetts



**The Commission Utilizes a  
Four Part Test To  
Determine the Premises of  
a Gaming Establishment.**



# The Commission articulated a four part test to determine what features will be part of a gaming establishment.

That is, whether the feature:

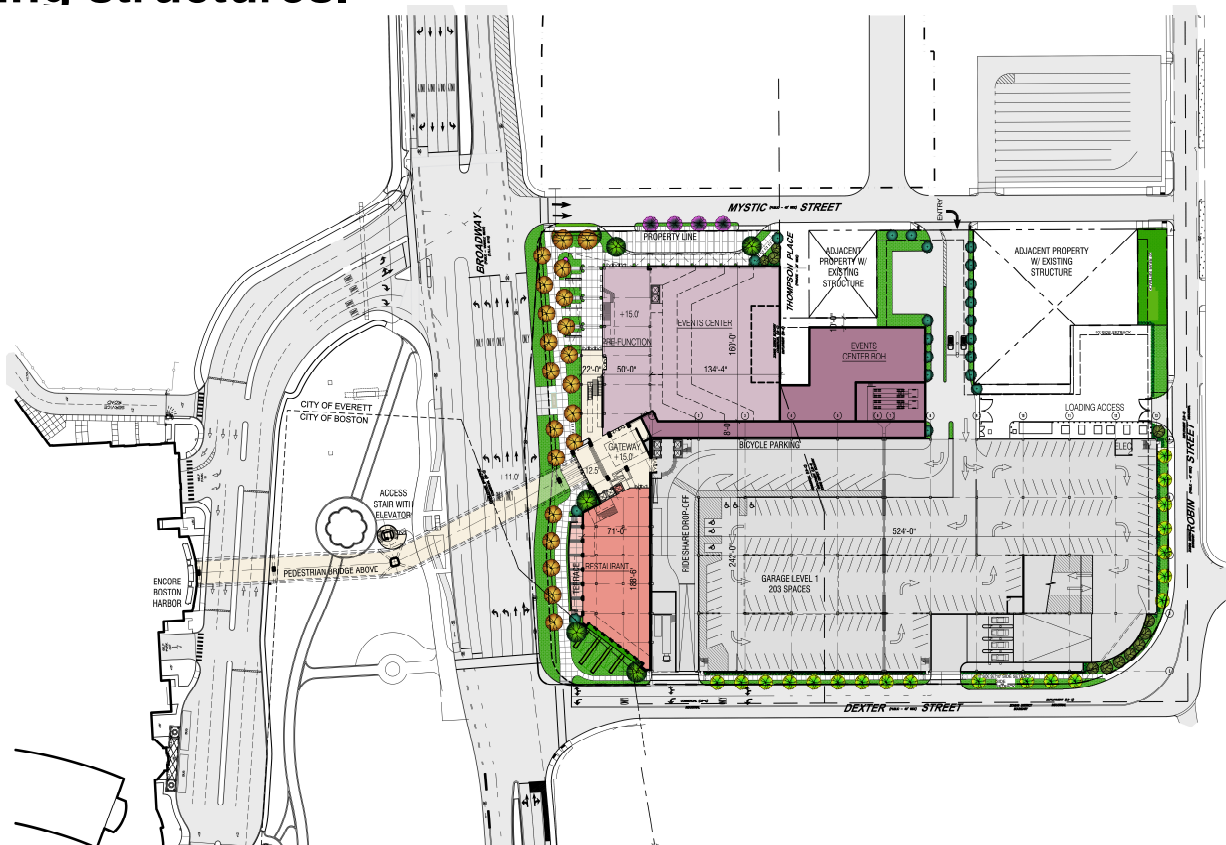
1. Is a non-gaming structure;
2. Is related to the gaming area;
3. Is under common ownership and control of the gaming applicant; and
4. The Commission has a regulatory interest in including it as part of the gaming establishment.

*See Decision Regarding the Determination of Premises of the Gaming Establishment for Mohegan Sun MA, LLC and Wynn MA, LLC at 7.*

# The Proposed Project Consists of a Non-traditional Structure and Non-gaming Structures

The pedestrian bridge is a **non-traditional structure**.

The parking garage, hotels, restaurant, events center, and utilities are all **non-gaming structures**.





**The Proposed Project's  
Non-traditional Structure &  
Non-gaming Structures  
Fail the Four Part Test.**

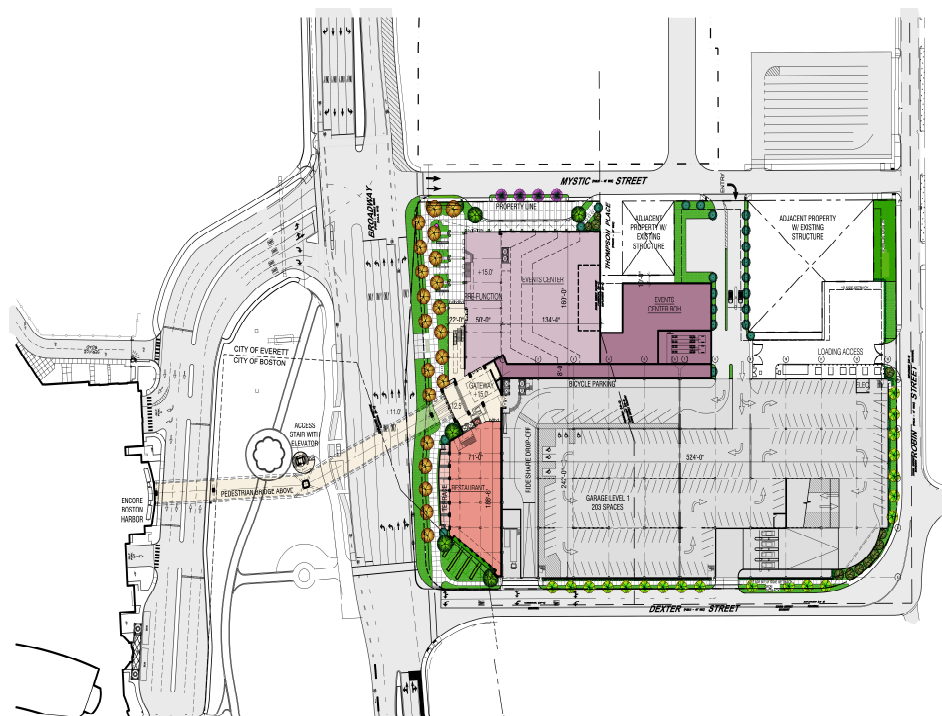


# **Pedestrian Bridge – a Non-traditional structure**

- **The pedestrian bridge will traverse the six-lane truck route on Broadway, mitigating traffic congestion and significantly increasing pedestrian safety in this area.**
- **Guests entering the Encore Boston Harbor from the footbridge will need to pass through security.**
- **The pedestrian bridge is similar to the internal roadways on the property, which the Commission expressly excluded from the Gaming Establishment in 2014.**

# As a non-traditional structure, Pedestrian Bridge is not part of the gaming establishment.

*“[B]y inclusion of hotels and restaurants as an example of an amenity in the definition of gaming establishment...the Legislature suggested that the term structure be applied in its traditional sense...where [internal roadways on the site, entrance to the property, and exterior parking areas] would not be structures in the traditional sense, they would not meet part 1 of the analysis and as such cannot be included as part of the gaming establishment.”*



**The Proposed Project's  
Non-Gaming Structures Do  
Not Satisfy The  
Commission's Four Part  
Test.**



# The Non-gaming Structures Are Not Related to the Gaming Area

- The hotels, restaurant, events center, parking garage, and utilities do not enhance Encore's gaming area by making the entire facility a more attractive destination.
- The entrances to these non-gaming structures are not in proximity to the entrance to Encore's gaming area.
- These non-gaming structures are located on a wholly different parcel from the gaming area.

# The Non-gaming Structures Will Not Be Under Common Ownership and Control of Encore.

Wynn Resorts Development, LLC (WD) will oversee the Proposed Project's construction, but once the construction is complete, the hotels, restaurant, and events center will be leased by the property owner, East Broadway, LLC, to an independent entity who will take control of the premises.

- The lessee of the Proposed Project will be responsible for keeping these premises safe and will make management decisions over these premises without WD's approval.
- The lessee will operate the hotels, restaurant, and events center and will make decisions related to pricing and entertainment.
- **In Massachusetts, commercial landlords do not have “control” over leased premises where lease provisions give control of the leased premises to the tenant. See e.g. *Humphrey v. Byron*, 447 Mass. 332, 328-30 (Mass. 2006).**

# If WD retains the option to operate the parking garage and/or utilities, the analysis does not change.

- Landlords frequently retain control over common areas like parking lots or utilities to provide maintenance or cleaning services.
- WD's operation of these areas will not affect the lessee's control of the hotels, restaurants, and events center.
- These areas are not related to the gaming area.
- The Commission's Decision excluded parking areas from Wynn MA and Mohegan's gaming establishments. See Decision at 8-9.



## The Commission's Regulatory Interest...

*The fourth component  
of the test  
“only comes into  
play...  
where the first three  
parts are satisfied.”*

*Decision at 7.*

**Because the Proposed Project’s non-traditional and non-gaming structures do not meet the first three parts of the test, the Commission should not consider whether it has a regulatory interest in including the Proposed Project as part of the gaming establishment.**



- **The Commission’s regulatory interest derives from an interest in regulating and maintaining the integrity of gaming. *Decision* at 9.**
- **In considering certain structures to be amenities to the gaming area, the Commission has an “interest in, amongst other things, ensuring that all employees working in those areas are licensed or registered in accordance with 205 CMR 134.00 and having knowledge of the flow of money through these areas.” *Id.***

# **The Commission's regulatory interest does not arise for the Proposed Project.**

- **The Proposed Project will not have any regulated gaming activities;**
- **The persons working in the Proposed Project area are not employees who would be required to be licensed under 205 CMR 134.00 with knowledge of the flow of money in EBH;**
- **No money to or from EBH will flow through the day-to-day operations of the non-gaming structures at the Proposed Project.**
- **The access point to EBH from the pedestrian bridge will have a full time security check point to ensure that only eligible guests gain access to EBH.**





**Questions?**