

BEFORE THE  
TEXAS RACING COMMISSION  
AUSTIN, TEXAS

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COMMISSION MEETING  
APRIL 1, 2011

BE IT REMEMBERED that the above entitled matter came on for hearing on the 1st day of April, 2011, beginning at 10:35 A.M. at the Texas Animal Health Commission, 2105 Kramer Lane, Austin, Travis County, Texas, and the following proceedings were reported by SHERRI SANTMAN FISHER, Certified Shorthand Reporter for the State of Texas.

APPEARANCES

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Commissioners:      ROLANDO PABLOS  
                         ROBERT SCHMIDT  
                         RONALD F. EDERER  
                         MIKE MARTIN  
                         GLORIA HICKS  
                         ANN O'CONNELL  
                         ALLAN POLUNSKY

1                   CHAIRMAN PABLOS: Okay, folks. Good  
2 morning. I have 10:35. At this time I call today's  
3 meeting of the Texas Racing Commission to order.  
4 Welcome to everyone. Thanks for coming out.

5                   At this time I'd like to recognize  
6 Carolyn Weiss to call roll, please.

7                   MS. WEISS: Commissioner Ron Ederer?

8                   COMMISSIONER EDERER: Present.

9                   MS. WEISS: Commissioner Scott Haywood?  
10 Commissioner Gloria Hicks? Commissioner Mike Martin?

11                   COMMISSIONER MARTIN: Present.

12                   MS. WEISS: Commissioner Ann O'Connell?

13                   MS. O'CONNELL: Present.

14                   MS. WEISS: Commissioner Allan Polunsky?

15                   MR. POLUNSKY: Here.

16                   MS. WEISS: Commissioner Vicki Weinberg?

17 Vice-Chairman Robert Schmidt?

18                   VICE-CHAIRMAN SCHMIDT: Present.

19                   MS. WEISS: Chairman Rolando Pablos?

20                   CHAIRMAN PABLOS: I'm here.

21                   Do we have a quorum?

22                   MS. WEISS: Yes, sir.

23                   CHAIRMAN PABLOS: Okay. Great. Thanks.

24                   We'll move on to Item II, some welcoming  
25 remarks. I'd like to at this time welcome Commissioner

1 Allan Polunsky, chairman of the Public Safety  
2 Commission.

3 Mr. Chairman, thank you for being here.  
4 We have a tradition where we would ask you to say some  
5 words on your first day. Thank you for agreeing to  
6 serve and all the good work your Commission is doing on  
7 our behalf.

8 MR. POLUNSKY: Thank you, Chairman.  
9 Certainly I'm honored to be part of this Commission. I  
10 have big shoes to fill with respect to Tom Clowe.  
11 Since everyone in this room has worked with him, you  
12 know what a fine individual he is and what an asset I'm  
13 sure he's been to the Racing Commission and certainly  
14 what he did at the Public Safety Commission.

15 But nevertheless, I'm going to give this  
16 my best shot and work hard and hopefully make a  
17 contribution here. And if there's anything that I need  
18 to be doing, please let me know. And I'm excited to go  
19 forward.

20 So again, I'm very happy to be here and  
21 look forward to working with you all in the future.

22 CHAIRMAN PABLOS: Well, thank you and  
23 welcome. Thank you for being here.

24 Just like we're about to do, last time we  
25 had a little ceremony for Commissioner Clowe. He did

1       fabulous work here. He was a true leader and helped us  
2       along many regards. At this time we have Dr. Carter.

3                 Dr. Carter, are you here? What are you  
4       doing way back there? Please come on up.

5                 You know, Dr. Carter, as many -- as all  
6       of you know, has done a terrific job here at the  
7       Commission. We've always looked to him for leadership  
8       and advice and he's always delivered.

9                 And so at this time, Dr. Carter, we have  
10       a little something for you in recognition of all your  
11       hard work, all those drives up to Austin. We have a  
12       plaque basically recognizing all your dedication and  
13       hard work. And I'd like to present this to you on  
14       behalf of the Commission, Commissioners, and staff  
15       thanking you for all your good work. Thank you very  
16       much. If you'd like to say some words, please.

17                MR. CARTER: All I'd like to say is  
18       thanks. It was a tremendous experience. I think I was  
19       here for about six or seven years. The people, the  
20       staff, everybody that works together in this industry,  
21       I really -- I really am going to miss the people. I'm  
22       not sure I'm totally going to miss the job. But the  
23       people involved and dealing with the people, I'm truly  
24       going to miss you all. So thank you very much.

25                CHAIRMAN PABLOS: Thank you, Dr. Carter.

1 Thank you for being here, Dr. Carter. I really  
2 appreciate it. And we will miss you. And when you see  
3 our Caller ID coming through, please don't ignore us  
4 because that means we're probably going to need some  
5 advice. So please be there for us. I'd appreciate  
6 that.

7 At this time I'll move on to our public  
8 comment section. I have at least one person signed up  
9 to speak, Bryan Brown. Is there anyone else signed up  
10 to speak today?

11 Okay. Mr. Brown, please come up. Good  
12 morning.

13 MR. BROWN: Good morning, Commissioners.  
14 Welcome, Chairman Polunsky. And, Dr. Carter, we're  
15 going to miss you much.

16 I wanted to comment on two things. First  
17 of all, a report on activities that we had yesterday at  
18 the capitol. We had the industry day at the capitol  
19 where we brought all sectors of the horse racing, show  
20 horse, cutting horse, breeding, greyhounds, everybody  
21 that's associated with our industry in one way or the  
22 other, to the capitol to explain to our legislators why  
23 we think that slot machines ought to be placed at the  
24 racetracks.

25 It was a great day. And quite frankly,

1 the relationship that we've had amongst those groups  
2 has been fabulous for the last several months and going  
3 back to about a year, where we've all dedicated  
4 ourselves to one mission. We had about 900 of us  
5 there. We filled the steps of the capitol. Lyle  
6 Lovett presented a check for half a billion dollars to  
7 the State. It was a fake check, but it was a check  
8 nonetheless.

9           Senator Hinojosa and Senator Wentworth  
10 spoke about the positive aspects of our initiative. We  
11 then went and met with members. And again, these are  
12 people that have been involved in the industry for  
13 many, many, many years, employees at the racetracks  
14 that have been a part of what we do for 14, 15 years,  
15 and not just some of the higher levels of the tracks.  
16 We had people from the mutuels departments, from the  
17 cleaning crews, from maintenance, from track  
18 maintenance, from admissions. And it was really,  
19 really a neat, neat thing to see.

20           We then filled the chamber, were  
21 introduced by Representative Riddle and Speaker  
22 Woolley. The noise that was made by our membership was  
23 incredible. I was not able to get into the chamber  
24 because it was so crowded, as there were many of us  
25 that weren't able to. Yet from a long way away you

1       could hear the noise that was created. And that's  
2       important for the buzz to follow our day. And I think  
3       certainly we are -- we were recognized yesterday for  
4       the importance that we bring to this state.

5                       We concentrated on a few numbers. Number  
6       one, 2.5 billion dollars is leaving this state,  
7       gambling dollars, by Texans in the surrounding states.  
8       2.5 billion dollars is going to the horse and gaming  
9       industries in Louisiana, New Mexico, and Oklahoma. A  
10      portion of that is going to the roads and to the  
11      educational system in those states. So Texans are  
12      helping out those in neighboring states. We made that  
13      point, I think, very clear.

14                      86 percent of Texans want to see Texans  
15      decide the issue of gaming at the racetracks and other  
16      places. 86 percent. Our initiative creates 77,000  
17      jobs and a 6.5-billion-dollar economic impact. Those  
18      are the things that we keyed on. And really mainly we  
19      keyed on the issue of letting Texans decide whether or  
20      not we ought to have gaming at the racetracks. And if  
21      Texans decide that we shouldn't, we'll go on and do  
22      other things. We'll figure out other things that we  
23      need to do to continue our businesses.

24                      I also wanted to comment -- follow up on  
25      some comments that were made the last Commission



1 meeting about the licensing process, the license  
2 transfer process. I think I've been through more of  
3 these than anybody in Texas. I've been through five or  
4 six. I have to say, the Commission's handling of the  
5 license transfers is really outstanding.

6           These are complicated applications.  
7 There are many, many complicated details that are  
8 involved in the process. I wouldn't want it any other  
9 way. I don't think any of us in the industry want  
10 simple transfers, want rubber-stamp approvals, want an  
11 application to be submitted one day and approved the  
12 next. We don't want that. We want details to be  
13 looked at. We want only those that should be in place  
14 as license holders to be approved by this Commission.

15           Staff's handling of the applications is  
16 great. They're tough. They put me through the  
17 wringer. They've ruined, thank you, several of my  
18 weekends over the years. Lots of my weekends. But  
19 it's important that that's the type of process that  
20 takes place, that it is hard, that it's not easy, that  
21 every detail is looked at and time is spent that needs  
22 to be spent.

23           I think this Commission, staff, and the  
24 Commissioners move about the process as quickly as they  
25 can. And personally, having gone through it several

1 times, I wouldn't want it any other way. And I don't  
2 think most in our industry want it any other way.

3 One of the things that we talk about when  
4 we meet with legislators is how strict the regulation  
5 of our industry is. And that's a positive. So that  
6 when we're asking for additional gaming or whatever it  
7 is we're asking for, we can tell our elected members  
8 that that's the way it's going to be when gaming is  
9 approved, if it's approved.

10 So thank you. I'd be happy to answer any  
11 questions.

12 CHAIRMAN PABLOS: Thank you, Mr. Brown.

13 Any questions, Commissioners?

14 Well, Mr. Brown, thank you for your  
15 comments. And I will tell you that I am also very  
16 pleased with the work staff is doing. We've been  
17 fine-tuning this organization for a few years now  
18 trying to correct issues that hadn't been addressed in  
19 the past. We've worked on the rulemaking process.  
20 We've worked on transparency and ensuring that  
21 everybody has a level playing field when they come to  
22 us with an application. I believe that Chuck is doing  
23 a fabulous job, his staff. I've never seen him work so  
24 hard and so eloquently.

25 So I just want to make sure that

1 everybody understands that we're working really hard to  
2 ensure that this Commission is ready in case VLT's  
3 comes through or whatever else the Legislature will put  
4 in front of us. We are running a tight ship. And I  
5 will tell you that I'm very confident that we're  
6 prepared to take on any challenge that the Legislature  
7 will throw our way. So I just want to make sure  
8 everybody understood that.

9                   Next what I'd like to do is I'd like to  
10 recognize Commissioner Ederer. He'd like to talk a  
11 little bit about his meeting in New Orleans for the  
12 RCI.

13                   Commissioner Ederer?

14                   COMMISSIONER EDERER: Just briefly. What  
15 this was, it's the Association of Racing Commissioners  
16 International that was held in New Orleans -- that was  
17 tough -- from March 23rd through the 26th. It was very  
18 interesting. It was an excellent forum. It was very  
19 good for giving us the opportunity to discuss our  
20 problems in Texas with problems that the other Racing  
21 Commissioners are having throughout the United States  
22 and world. Actually there were people from England  
23 there, from Jamaica, from Canada, and from Japan. So  
24 it was a fairly well attended meeting. Approximately a  
25 hundred people were there.

1                   Various things were discussed. The  
2 welfare of the horses, of course. They talked about  
3 drugs. They talked -- there was a considerable amount  
4 of time spent talking about drugs and problems. Such  
5 as in the New Jersey area, they've got -- within a  
6 hundred-mile radius, they've got four tracks running at  
7 the same time, all of which have different bute  
8 regulations. One is a .5 and another one goes all the  
9 way to a 5. Now, I don't know what .5 and 5 means, but  
10 everybody was very concerned about that.

11                   We then had an awards luncheon. And  
12 Carol Olewin from our office, of course, did receive an  
13 award, and her award was for exemplary service to the  
14 cause of racing integrity. Now, there were only four  
15 people who got awards at this convention and I thought  
16 that it was excellent that Carol did get this. She  
17 works very hard, very hard behind the scenes, and we're  
18 fortunate to have her with us as part of our staff.

19                   CHAIRMAN PABLOS: Please stand up. Thank  
20 you very much.

21                   COMMISSIONER EDERER: Texas was also  
22 mentioned throughout the conference on a number of  
23 occasions at various forums and it was primarily  
24 mentioned for its testing for licensing for trainers.  
25 Texas has been -- our Commission, our staff, has been

1 very good at putting this together; and all of the  
2 various Commissions from around the United States are  
3 looking to Texas for leadership there. No other Racing  
4 Commission in any other state has the licensing testing  
5 that we have in the State of Texas. So I thought that  
6 was very good and it was very good to be recognized.  
7 And again, that goes to the staff.

8           Of course, the problems are the same  
9 everywhere, but I thought it was very interesting the  
10 outgoing president -- and I'm not real sure what this  
11 means. But he was the executive director out of  
12 Colorado. He is leaving racing completely and he is  
13 taking over medical marijuana for the State of  
14 Colorado, the association. I'm not sure what that  
15 means.

16           But, no, the incoming president is Willie  
17 Koester. He's the chairman of the Ohio State Racing  
18 Commission. I thought it was very interesting, some of  
19 his comments. He started off, of course, identifying  
20 all of us as regulators, which we all are. All of the  
21 Commissioners are regulators. And he said but what we  
22 are is we are regulating an industry that has got real  
23 problems.

24           He made the statement that we should be  
25 concerned not to overregulate, not to strangle the

1 industry with our regulation, but to have the  
2 regulations that are needed. And again, he talked  
3 about the New Jersey thing and a few others as far as  
4 why -- all of us know why regulation is needed.

5 He also made the statement that we're in  
6 the entertainment industry and we need to realize that  
7 we're in the entertainment industry and, if we're going  
8 to survive, we have to adapt. And all of the tracks --  
9 he was making the statement that all of the tracks need  
10 to be innovative as far as what happens at the tracks  
11 and how they're going to go forward. Racing alone, of  
12 course, is not going to keep those tracks open. They  
13 have to go forward. So his comments were very good and  
14 he seems to be an innovator and it's going to be  
15 interesting to watch him and see the effect that he  
16 will have on the industry.

17 Other than that, I'll say I gained three  
18 or four pounds and had a nice time. It was a very good  
19 conference. And I do recommend that at the next  
20 conference, at the next association meeting, that as  
21 many Commissioners as can go to that meeting. I think  
22 it was certainly worthwhile.

23 CHAIRMAN PABLOS: Thank you,  
24 Commissioner.

25 Are there any questions of Commissioner

1 Ederer?

2 Commissioner, thank you for taking time  
3 out of your schedule to be up there and represent us.  
4 We have to continue with a presence at that level and  
5 we have to continue being the model Commission at the  
6 national level and international level. And so I thank  
7 you and I urge you to please stay close to that.

8 Okay. Anyone else signed up to speak as  
9 we move on?

10 Before we go into general business, I  
11 just wanted to make a couple of remarks. You've  
12 noticed that we've been having meetings more frequently  
13 and I just want to let you know that that trend is  
14 probably going to continue. We've got a lot of work.  
15 And in speaking with Chuck and Mark, we're beginning to  
16 see that a lot of these issues need to be resolved and  
17 so I'll probably be calling another meeting real soon.  
18 You'll have -- everybody will have plenty of notice.

19 But the idea here is to be able to get a  
20 lot of these issues off our table prior to veto period  
21 so that in case we do get handed something that is  
22 significant, we'll be able to tackle it. Having  
23 meetings with short agendas like this allows staff to  
24 focus on an issue and pump it out and so we're going to  
25 begin that trend at least for now.

1           So on one end, I thank you for being here  
2 today and for working with us as we move forward in  
3 getting all the work out. So I just wanted to make  
4 that announcement.

5           At this time we'll move on to general  
6 business. We have a report by the interim executive  
7 director on what's going on down at the capitol.

8           MR. TROUT: Good morning, Commissioners,  
9 Mr. Chairman. Sunset legislation continues to be our  
10 priority. Since the last meeting, a sunset bill has  
11 been filed in each chamber. Recently staff, including  
12 myself, had meetings with the offices of the sunset  
13 bill authors. We visited with Representative Anchia  
14 and scheduled a meeting with Senator Hinojosa about  
15 three ongoing issues that we would like to begin  
16 consideration as the process moves forward.

17           Representative Anchia's office seemed  
18 receptive to our three items of concern, which include  
19 providing the executive director the authority to  
20 review and modify decisions of the stewards and judges,  
21 amend the definition of the term "performance" as it  
22 pertains to greyhound racing, and amending the Racing  
23 Act to protect \$750,000 from being swept from each  
24 biennium to biennium session. Sunset staff who  
25 attended the meeting with Representative Anchia's



1 office did not voice objection to our requests.

2 Staff followed the meeting with  
3 Representative Anchia's office by providing information  
4 about the three issues to members of the House  
5 Licensing and Administrative Procedures Committee. The  
6 House Licensing and Administrative Procedures Committee  
7 is scheduled to hear testimony on the sunset bill on  
8 Monday, April the 4th.

9 In other legislative developments, the  
10 House Licensing and Administrative Procedures Committee  
11 heard several bills related to expanded gaming on March  
12 the 29th. It is clear from that meeting that the  
13 committee's intent is to roll all expanded gaming  
14 measures into one bill for consideration.

15 Finally, debate on the House floor on the  
16 House Appropriations bill is taking place as we speak.  
17 Staff is pleased with the substitute that was reported  
18 out of committee and will continue to monitor  
19 developments related to the budget.

20 The staff and I are happy to answer any  
21 questions you may have.

22 CHAIRMAN PABLOS: Thank you, Chuck.

23 Are there any questions of Chuck?  
24 Commissioner?

25 MR. POLUNSKY: You'll have to excuse me

1 since I'm the new guy on the block here. But how are  
2 you prosecuting the sunset bill or promoting or  
3 assisting the Legislature in addressing sunset for the  
4 Racing Commission? Is that something that staff  
5 does --

6 MR. TROUT: Yes, sir.

7 MR. POLUNSKY: -- exclusively? Are the  
8 Commissioners involved in that, the chairman? Or how  
9 does that work?

10 MR. TROUT: The staff does, but  
11 everything we do is with the approval of the  
12 Commission. The Commission approved when we went  
13 forward with the items. But as far as the day-to-day  
14 contact with the Legislature, staff and I are doing  
15 that.

16 CHAIRMAN PABLOS: Chairman, we are on a  
17 limited review. Last go-around we went through the  
18 full review process and weren't able to move through  
19 and so this time around we're on limited review. Chuck  
20 and staff are down at the capitol. Bill is doing a  
21 fabulous job on keeping track of everything. And  
22 there's opportunities to testify at every turn of the  
23 corner, you know. So that's really where we are on  
24 that. A lot of it has been pretty much the same as it  
25 was last time with some minor differences, but a lot of

1 this was hashed last go-around.

2 MR. TROUT: In fact, two of the three  
3 items I mentioned here were in the last bill also.

4 MR. POLUNSKY: So you would hopefully  
5 foresee no problems going forward here?

6 MR. TROUT: Right now we don't see  
7 problems with our bill.

8 MR. POLUNSKY: Thank you.

9 CHAIRMAN PABLOS: But at this time last  
10 time we foresaw no problems either.

11 MR. TROUT: That's correct.

12 CHAIRMAN PABLOS: So that doesn't mean  
13 anything.

14 MR. POLUNSKY: I understand that.

15 CHAIRMAN PABLOS: Okay.

16 MR. POLUNSKY: Actually we went through  
17 sunset last session and we were lucky to kind of slip  
18 in under the deadline there. But it was definitely  
19 tough.

20 CHAIRMAN PABLOS: Well, I failed to  
21 recognize that Commissioner Hicks had arrived during  
22 our public comment, so please let the record show that  
23 Commissioner Hicks is here.

24 We're going to skip through Item IV-B and  
25 we'll move that to the back of the agenda, so you can

1 keep track of that.

2 At this time we'll move on to proceedings  
3 on racetracks, Item A-1, report on a request by Laredo  
4 Downs on the conditional approval to change location.

5 As you may recall, last time I had asked  
6 Mark Fenner to research the question that was brought  
7 to us with respect to issuing a conditional approval on  
8 a license.

9 Mark, do you have anything to report?

10 MR. FENNER: Yes, sir. I have researched  
11 this. The Commission does have the authority to place  
12 a condition on a license and could conceivably satisfy  
13 or grant the request of Laredo Downs to allow them to  
14 move to Fort Worth with a three-year period of time in  
15 which to secure appropriate zoning. And in doing that,  
16 I looked both for case law and statutory authority.

17 In our own statute, Section 6.06(e) says  
18 that the Commission may condition the issuance of a  
19 license under this article on the observance of the  
20 rules and may amend the rules at any time and may  
21 condition the continued holding of the license on  
22 compliance with the rules as amended.

23 Then you go to the rules themselves.  
24 Rule 309.1(c) describes conditions and says that  
25 "Except as otherwise provided by this section, a

1 license issued by the Commission is a privilege, not a  
2 right, and is conditioned on the licensee's compliance  
3 with the Act and the Rules."

4 Now, when you turn to case law, there's a  
5 couple of good cases, Texas-New Mexico Power Company  
6 versus Texas Industrial Energy Consumers, 806 S.W.2d  
7 230, a case in which the Public Utility Commission  
8 granted a certificate of convenience conditioned on the  
9 utility acquiring the necessary permits from all other  
10 State and Federal agencies. That's not so different  
11 from conditioning the change of location on the  
12 granting of appropriate zoning. And that case went to  
13 the Texas Supreme Court, which held that those  
14 conditional approvals were valid and were authorized.

15 A second relevant case law, North Alamo  
16 Water Supply versus Texas Department of Health. They  
17 granted a landfill -- a construction permit but  
18 conditioned upon it that they make certain amendments  
19 to their landfill liner design, even though the liner  
20 design element was a part of the original statutory  
21 requirements. That went to the Texas Court of -- one  
22 of the Courts of Appeals, which reasoned that the  
23 condition was valid and the order was final.

24 I also looked to our own history at the  
25 Racing Commission. The Commission itself has

1 conditioned licenses in the past. The most notable  
2 example that I've had personal experience with would be  
3 Trinity Meadows. Back in 1996, which was before I got  
4 here, they entered some financial difficulties and, in  
5 fact, they used some of the horsemen's purse account  
6 money for operational expense.

7 The Commission, through an agreed order,  
8 set a number of requirements that Trinity Meadows had  
9 to satisfy in order to have their license removed from  
10 suspension. And that included the preparation of a  
11 capitalization and marketing plan as well as the  
12 securing of an additional \$300,000 of capitalization  
13 money. They had to do that by April 1, 1997.

14 They were unable to do that. And as a  
15 result of that, the conditions in the order said that  
16 if they didn't meet it that they voluntarily  
17 surrendered their license for revocation with no  
18 further action required by the Commission. And that's  
19 what happened. Because they didn't meet the  
20 Commission's requirements or conditions, they actually  
21 lost the license. And it wasn't too long ago they  
22 tried to go back to the Bankruptcy Court and challenge  
23 that, and we did prevail on that. That was a valid  
24 exercise of the Commission's policing and regulatory  
25 authority.

1           So I will tell you that conditioning a  
2 license is something that you do have the authority to  
3 do and, in fact, the Commission has taken advantage of  
4 it in the past. Whether you want to do it or not is a  
5 completely different issue.

6           CHAIRMAN PABLOS: Understood.

7           Commissioners, are there any technical or  
8 clarifying questions for Mark?

9           Okay. Hearing none, thank you, Mark.  
10 Appreciate it.

11           Next we'll move on to Item V-B,  
12 request -- B-1, request by Maxxam, Inc., for approval  
13 of 50 percent change of ownership of Sam Houston Race  
14 Park, Valley Race Park, and Laredo Race Park.

15           I'd like to recognize Mark Fenner,  
16 please.

17           MR. FENNER: Commissioners, in your  
18 materials you'll find that there are a staff report  
19 that we've prepared describing the application of Penn  
20 National Gaming, and what I would like to do right now  
21 is just take you through the required elements and  
22 describe how the application is addressed and  
23 resolved.

24           First of all, under Section 6.13(b) of  
25 the act, it says that a transaction changing the

1 ownership of an association requires submission of  
2 updated information of the type that's described in the  
3 original application; and this includes types of  
4 information such as, to begin with, the identification  
5 of the proposed owners and ownership structure.

6           They have met that requirement. We know  
7 that the goal of this transaction is to take the  
8 licenses that are held by Sam Houston Race Park, Valley  
9 Race Park, and Laredo Race Park and to move them into a  
10 new LLC called PM Texas, LLC. So these new licenses  
11 would move under that one entity as separate  
12 subdivisions underneath it. Then what they intend to  
13 do is take 50 percent of the ownership interest in this  
14 PM Texas, LLC, and transfer that to Houston Gaming  
15 Ventures, which is a wholly-owned subsidiary of Penn  
16 National Gaming.

17           They have provided information about each  
18 of the owners who own five percent or more as well as  
19 the officers and directors of Penn National Gaming.  
20 DPS has done a background investigation of those  
21 individuals and we've provided you those materials  
22 under a separate cover.

23           The act also says that the application  
24 must describe the exact location at which a race  
25 meeting is to be conducted, that includes the kind of



1 racing to be conducted and the dates requested.

2 Now, in the case of Sam Houston Race Park  
3 and Valley Race Park, that requirement has clearly been  
4 satisfied. They have race dates. They have  
5 established locations. They have race dates granted to  
6 them. We know exactly what their plans are for the  
7 immediate future. It's a little less uncertain about  
8 Laredo Race Park.

9 Now, Laredo Race Park, they have a  
10 location. It's approved by the Commission. It's Mines  
11 Road outside of Laredo. But the Commission is aware,  
12 with the exception of perhaps Chairman Polunsky, that  
13 Laredo Race Park is not satisfied with that location in  
14 terms of the current economic situation. They are  
15 looking for another site. And that's the answer that  
16 they have given to the Commission at the last several  
17 Commission meetings and it's the answer that they have  
18 given in response to the application's questions about  
19 the location and the types of racing and the dates.  
20 They said, "This is the situation. We have a site.  
21 We're not happy with it. We're exploring our  
22 options."

23 Other things that are required to be  
24 described in the application is whether the facility is  
25 leased or owned. They own those race sites, with the

1 exception of Laredo Race Park which they have an option  
2 on.

3 They have identified all their owners of  
4 their shares. They're also both publicly traded  
5 companies, so that means that the residency requirement  
6 that certain people be Texas residents for the last 10  
7 years does not apply in this case. If you're publicly  
8 traded or your parent companies are publicly traded,  
9 the Texas residency requirements are not in play.

10 They've provided a listing of the  
11 detailed statements of assets and liabilities. Penn  
12 National Gaming is worth 1.77 billion dollars according  
13 to their latest SEC filings.

14 They have provided a copy of their  
15 operating agreement, which is like basically their  
16 management agreement. We've provided copies of those  
17 to you under separate cover as well as a little  
18 description by me.

19 They have an existing tote contract with  
20 Sportech and they're not proposing any changes to  
21 that. They don't have concession agreements. They  
22 seem to run those themselves.

23 Then there's the option for us to require  
24 any other information, and we have asked for additional  
25 information. We asked for an assessment of the

1 facilities' condition. We are aware that Sam Houston  
2 Race Park is in good condition and is being used.  
3 Valley Race Park is in good condition for a  
4 simulcasting facility. They have some live race dates  
5 coming up and they're beginning the process of bringing  
6 the facility up to standard to conduct those live race  
7 dates. We don't see a problem there.

8           We've also asked for a copy of the  
9 business plan, including their financial and  
10 pari-mutuel projections. We can tell you that Valley  
11 Race Park, according to their projections, will be  
12 losing 2.44 million dollars during the next five years  
13 and will require an additional injection of 1.79  
14 million dollars in equity in order to meet that. Sam  
15 Houston Race Park will lose 17 and a half million  
16 dollars over the next five years and require 9.5  
17 million dollars in equity to maintain their net  
18 positive value. Penn National Gaming, being worth 1.77  
19 billion dollars, does have the financial capacity to  
20 withstand that.

21           They provided brief descriptions of their  
22 anticipated impact on horse breeding and on the local  
23 economy. There are no letters of support or opposition  
24 in this particular case.

25           And that basically is the relevant and

1 most important parts of the staff report. The  
2 Department of Public Safety is here to answer any  
3 questions if you have questions about the background  
4 investigation. And I'd be happy to answer any  
5 questions I can about the staff report or the  
6 application.

7 CHAIRMAN PABLOS: Thank you, Mark.

8 Commissioners, what Mark has just walked  
9 us through is a checklist that we've created over the  
10 past couple of years, a very objective checklist, where  
11 it's basically a check-the-box kind of process, where  
12 we've taken all the requirements, put them into a  
13 checklist format; and any time we have a change of  
14 ownership, especially of this magnitude, we simply go  
15 down the checklist and we analyze it. And so Mark has  
16 done that.

17 And, Mark, is it my interpretation that  
18 as you've gone down that checklist, all of those items  
19 have been satisfied?

20 MR. FENNER: The only issue that the  
21 Commission may want to discuss or that I foresee as a  
22 potential issue for the Commission to weigh is the  
23 status of Laredo Race Park.

24 CHAIRMAN PABLOS: Okay. Very well.

25 Okay. Commissioners, we have DPS here.

1 We have Wynn Reynolds. Does anyone have any questions  
2 of DPS with respect to the background report?

3 Okay. Hearing none, at this time I'd  
4 like to recognize Mr. Shawn Hurwitz of Maxxam.

5 Good morning.

6 MR. HURWITZ: Good morning. Thank you.  
7 I'm Shawn Hurwitz. I'm the president of Maxxam, Inc.,  
8 and the CEO of all of our racing operations. And thank  
9 you, Chairman Pablos and members of the Commission, for  
10 allowing me to come up and speak today. And I'd also  
11 like to -- before I start on my formal comments on  
12 this, I'd like to take a second to echo what Bryan  
13 Brown spoke about.

14 Yesterday was a great day for Texas  
15 racing at the capitol. I've never in my years seen the  
16 entire industry together in one place with such  
17 energy. And, you know, when we all come together like  
18 that and head with a single focus, I think we can make  
19 some real positive changes for the industry. So I'd  
20 like to commend the horsemen and all the tracks for  
21 coming together and creating that environment. It was  
22 really, really neat to see if any of you had a chance  
23 to see it.

24 I'll start out by saying I sincerely  
25 appreciate the opportunity to address you today on our

1 proposed transfer of a 50 percent interest in our  
2 racing operations to a subsidiary of Penn National  
3 Gaming. I'm also looking forward to formally  
4 introducing you to, hopefully, our new partner.

5           And I'd like to start out by expressing  
6 my gratitude to the staff of the Racing Commission and  
7 members of this board for your swift and efficient  
8 attention to this very important matter. Chuck Trout,  
9 Mark Fenner, and Sammy Jackson, with whom we primarily  
10 interface, have been diligent and timely in their  
11 requests for information and hopefully we've also been  
12 responsive. I think we have.

13           Also I would like to commend the Texas  
14 Department of Public Safety, led in this case by Wynn  
15 Reynolds, for their diligent and swift action on this  
16 matter. We worked with them. And they had to go out  
17 of state to do some of the background checks and were  
18 quick and efficient on that. And in that, I thank  
19 them.

20           What you probably want to hear from me  
21 today is why Penn, how did we wind up deciding to  
22 partner with Penn, and what role will those of us that  
23 you're used to seeing here every month or two months  
24 or, as Chairman Pablos said, maybe more frequently on a  
25 coming basis -- you know, what will our roles be.

1                   So first I'll start out with the first  
2 two questions. About 18 months ago I reached out to  
3 several large companies in the gaming and pari-mutuel  
4 business. I think I literally spoke to every gaming  
5 and pari-mutuel company in the United States and even  
6 one who doesn't do business in the United States.

7                   I spoke -- you know, we were -- let me  
8 just say, first of all, we were not interested in  
9 selling our business. We did get approached a couple  
10 of times. People came to us and said, "How about if we  
11 just buy -- buy you?" And we declined and that was the  
12 end of the conversation.

13                   We are not interested in selling. We  
14 were only interested in bringing in a partner who could  
15 complement our abilities to run the business that we  
16 currently have and bring the necessary capital and  
17 management expertise to expand our business should  
18 expanded gaming be approved in our state. And so we  
19 were really looking forward to what we can do, you  
20 know, should that happen, as well as what can we do to  
21 be more efficient in running our operations today. And  
22 our goals were as simple as that and limited to that.

23                   After sorting through each of the  
24 potential candidates' qualifications, I narrowed the  
25 list down to several candidates that met those

1 qualifications. And at that point the single most  
2 important criteria to me -- and this is going to sound  
3 funny to you. But even more important than financial  
4 consideration, which is darn important, was fit: Do  
5 our companies fit together; do our business  
6 philosophies mesh; do our people get along; do we look  
7 at business opportunities with the same time horizon;  
8 in other words, does one look short term, one look long  
9 term; do we approach the importance of our employees  
10 and other industry stakeholders in the same way. Those  
11 were really the things that I spent my time thinking  
12 about.

13 Financial -- at the end of the day,  
14 financial consideration happens once, but these  
15 important attributes happen every day. And  
16 ultimately -- and they ultimately determine whether or  
17 not a partnership will endure. And we're interested --  
18 we're long-term players. We're committed to this  
19 business, we're committed to this state, and we're  
20 committed to being involved in the long run. It was  
21 important that we find the right partner, not just --  
22 not just a quick partner.

23 So, you know, based on those criteria, it  
24 was clear to me from the very beginning that Penn was  
25 the right partner. They clearly are financially



1 capable, as you've heard from Mr. Fenner. They clearly  
2 have expertise in the broader gaming arena. They are  
3 the third largest gaming company in the United States;  
4 and interestingly, that's without a presence on the Las  
5 Vegas strip and without a presence in Atlantic City.  
6 They only deal in regional markets like we are in.

7           They're also the largest pari-mutuel  
8 operator in the United States and they can augment the  
9 great work that our staff has been doing for the last  
10 few years. I think Commissioner Ederer spoke earlier  
11 about being creative, and I think our staff has done a  
12 great job of being creative and trying to figure out  
13 how we can broaden the entertainment that we provide at  
14 the track, you know, beyond just racing.

15           And so -- but most importantly, with  
16 Penn, our organizations fit. Our people get along. We  
17 look at the business challenges and opportunities in a  
18 similar manner. We both value our employees and  
19 stakeholders. And we're both in it for the long haul.

20           So it was clear to me from the beginning,  
21 after going through, that they were the right fit. And  
22 so then it was just a matter of could I -- you know,  
23 could we together work and come up with a financial  
24 deal. That took awhile, but we were able to accomplish  
25 that, and that led to us submitting our application to

1     you guys and to staff.

2                     As far as running our business on a  
3     going-forward basis, not much is going to change.  
4     We've really been operating this thing as a partnership  
5     for the last three or four months anyway. And so I  
6     will remain as CEO. Andrea will remain as president  
7     and chief operating officer. And we have no plans to  
8     change any of our existing senior management other than  
9     to fill any existing vacancies.

10                    Penn will play a pivotal role in bringing  
11     their knowledge to the table and certainly we will be  
12     working together to get Texas on a level playing field  
13     with our neighboring states. So I will continue to  
14     spend 70 or 80 percent of my time on that, as Andrea  
15     is, and as are most of the stakeholders in this state  
16     today.

17                    And, you know, just as an aside, we had  
18     breakfast this morning and we were going through, with  
19     the hope that we would be lucky enough to get approved  
20     today, you know, some closing matters. And, you know,  
21     I mean, Penn, by being a big national company, brings a  
22     lot of efficiencies on things like insurance, so we'll  
23     probably be able to save hundreds of thousands of  
24     dollars in premiums and things like -- a lot of  
25     back-office stuff will work a lot better. And so it's,

1 you know, neat to see those kind of things already  
2 happening.

3 I appreciate your consideration and I'm  
4 obviously available for any questions. And I  
5 presume -- I don't want to be presumptuous, but I  
6 presume you probably want to hear from Steve Snyder  
7 from Penn at some point and I know he's available to  
8 discuss the depth and breadth of their experience  
9 across the United States. And I'll remain available.

10 CHAIRMAN PABLOS: Thank you,  
11 Mr. Hurwitz.

12 Commissioners, are there any questions of  
13 Mr. Hurwitz?

14 I'm certainly pleased to know that there  
15 won't be any management changes. I think that's very  
16 important. And you guys have been doing a great job  
17 and to know that is good.

18 Mr. Snyder, please?

19 MR. SNYDER: Thank you, Mr. Chairman.  
20 And thank you, members of the Commission. Thank you  
21 for those kind remarks, Shawn. I'm Steve Snyder. I'm  
22 the senior vice-president of corporate development for  
23 Penn National Gaming. My responsibility with the  
24 company is to search the country for the types of  
25 investments that we've decided to make here in Texas

1 subject to your approval.

2 Before getting started, I just want to  
3 recognize the team of Penn National professionals that  
4 are here. We've got our vice-president of corporate  
5 compliance, Tom Auriemma. We've got our vice-president  
6 of racing, Chris McErlean, and also our vice-president  
7 of corporate development, Alex Stolyar. So we are here  
8 to answer and address any questions or concerns that  
9 may come up as you deliberate on this application that  
10 you have before you.

11 I want to just give the members of the  
12 Commission a real shout out and a thank you. Your  
13 staff has been tremendous. The staff of DPS has been  
14 tremendous in terms of the professionalism, the depth,  
15 and, quite frankly, the speed at which they've  
16 addressed a real myriad of issues as a result of this  
17 proposed transaction.

18 The folks from DPS spent several days at  
19 our corporate offices up in Wyomissing, Pennsylvania.  
20 They spoke with all of the members of our company who  
21 are going to be officers or are on the board of the  
22 parent company or will be officers in this entity. So  
23 I really would like to compliment you on the fine  
24 professional staff and compliment DPS on the great  
25 professional work that the members of their team have

1 done in preparing those voluminous reports -- and I see  
2 the binders and everything that you have -- for your  
3 consideration today.

4 With that, I'd like to tell you a little  
5 bit -- and I hate to be repetitive. Much of this is  
6 for members of the public who are in attendance here as  
7 well. I don't like to be repetitive with what you have  
8 in your reports, but I do want to give you just a brief  
9 overview of who Penn National Gaming is.

10 We are, at our core, a pari-mutuel  
11 company. We started as a single racetrack in the  
12 1970's in central Pennsylvania. That racetrack is Penn  
13 National Race Course, from whom we draw our corporate  
14 name. It's a Thoroughbred racing facility in  
15 Grantville, Pennsylvania, about 15 miles northeast of  
16 the capital of Pennsylvania, Harrisburg.

17 That facility back in 2008 opened as a  
18 brand-new facility. We were fortunate in Pennsylvania  
19 to have had enabling legislation in the form of the  
20 horse racing renewal piece of legislation that the  
21 governor signed in 2004. That allowed for us to tear  
22 down the racetrack facility at Penn National which was  
23 built back in the 1970's and rebuild and open a  
24 brand-new facility in February of 2008 which at the  
25 time accommodated slot machines and has since added

1 table games and become a full-blown casino.

2           What that facility has allowed is it's  
3 allowed us to invest in our racing businesses. It's  
4 allowed us to invest in a new track surface, to invest  
5 monies on the backside, to invest in the facilities  
6 that affect the health, safety, and welfare of those  
7 folks who are participants in this great industry in  
8 Pennsylvania. And most importantly, it and other  
9 facilities that we've been involved with throughout the  
10 United States have seen, in some cases, five- and, to  
11 the most extreme, almost a 10-fold increase in the  
12 overnight purses for which those racehorses run for.

13           So it's that economic model that we've  
14 had firsthand experience with that I think did attract  
15 the folks at Maxxam to reach out to us and explore what  
16 our experiences around the country have been and how  
17 those experience can be imported here into Texas.

18           We will, if you are -- if we are  
19 fortunate enough for you to consider us, this will be  
20 the ninth state in which we have received approval from  
21 a pari-mutuel racing commission, a wagering commission,  
22 a racing commission. We will, when we go forward with  
23 this transaction, have ownership interests in 13  
24 pari-mutuel facilities around the United States, to the  
25 point that was made in terms of our depth of experience

1 and breadth of representation in the pari-mutuel  
2 industry.

3 In addition to that, as Shawn had  
4 mentioned, we are one of the largest United  
5 States-based gaming companies. We operate in 17  
6 jurisdictions, from Maine in the northeast through  
7 Ontario, Canada, down into New Mexico, Louisiana, soon  
8 to be Nevada, Colorado, and up and down the Midwest.  
9 So we have taken a footprint that was one facility in  
10 Pennsylvania and grown that footprint from coast to  
11 coast, to include nearly 16,000 employees around the  
12 United States.

13 We are anxious and we look forward to  
14 being involved in this great industry in Texas.  
15 Agribusiness, horse racing, the agricultural industries  
16 here in Texas obviously have long and rich heritages  
17 and we look forward to the opportunity to invest in  
18 that heritage and bring that heritage into the 21st  
19 century.

20 It's about time that the migration of  
21 industry participants from Texas to Louisiana, from  
22 Texas to New Mexico, from Texas to Oklahoma be halted.  
23 And we look forward to participating in the educational  
24 process to allow people who are in a decision-making  
25 position to make a decision that will allow this rich

1 industry, this rich heritage to really get back to firm  
2 grounds, to grow, to bring the experiences that we've  
3 had in Charlestown, West Virginia, at a racetrack which  
4 was closed and now offers daily overnight purses of  
5 nearly \$200,000 for the horses that do race at that  
6 facility.

7           So it's that experience that I think,  
8 just to amplify some of Mr. Hurwitz's comments, was  
9 what was attractive. For us, as Penn National, the  
10 attraction is that Texas is, as I said, a state with a  
11 rich heritage; but Texas is also a state with a very  
12 large population; and the opportunities that exist in  
13 this population base for this industry, if done on a  
14 competitive basis with surrounding states, is just  
15 second to none in terms of the opportunities in the  
16 United States. And it's that experience that we hope  
17 to be able to bring to bear if we're fortunate enough  
18 to have your consideration.

19           As it relates to Laredo, we have been on  
20 the ground in Laredo. Some of our representatives from  
21 our racing business have met with the county judge.  
22 We've looked at other alternative sites down there.  
23 And we will continue to work with the Maxxam team to  
24 try and identify the optimal site for this facility and  
25 work through that facility in the weeks and months to



1       come.

2                       We did hit the ground running back in  
3       September when we signed this agreement and spent quite  
4       a bit of time in Houston, in Harlingen, and getting to  
5       know these businesses in a very intimate fashion and  
6       getting to work with these businesses in trying to  
7       address some of the challenges that they've had  
8       historically from a financial perspective and bring to  
9       bear some of the purchasing power and experience that  
10      we have from our businesses around the country.

11                      We don't have a magic wand. We don't  
12      have a magic bullet that we can bring to bear to  
13      correct some of the challenges that have faced the  
14      racing industry in the years that have led to this.  
15      But we do have experiences that have allowed us to  
16      invest significant dollars in a business model that has  
17      proven to be beneficial for all the stakeholders of  
18      racing in different jurisdictions and hope to be able  
19      to bring that knowledge, that experience to bear to  
20      educate folks here in Texas and create an opportunity  
21      that provides for a level playing field.

22                      So I don't want to take too much of your  
23      time. You've heard the reports from staff. You've  
24      gotten written reports from members of DPS. If there  
25      are any questions or issues that you've seen in any of

1 those reports, I'd be glad to answer them. I will be  
2 one of the two Penn National representatives on the  
3 board of directors of the joint venture, so I look  
4 forward to being in front of you many times and many  
5 opportunities in the future.

6 CHAIRMAN PABLOS: Great. Thank you.

7 Commissioners, are there any questions of  
8 Mr. Snyder?

9 Mr. Snyder, thank you very much.

10 COMMISSIONER EDERER: Yes.

11 CHAIRMAN PABLOS: Yes, sir.

12 COMMISSIONER EDERER: I have a question.

13 CHAIRMAN PABLOS: Commissioner Ederer?

14 COMMISSIONER EDERER: As far as the  
15 operation, the gambling part of the operation if, in  
16 fact, it should occur, who will run it and who will  
17 manage it?

18 MR. SNYDER: Well --

19 COMMISSIONER EDERER: Will it be Penn  
20 National?

21 MR. SNYDER: Yeah, we would expect, I  
22 think -- and I'll defer to Mr. Hurwitz on this as  
23 well. Part of the experience that we bring to the  
24 table is developing, from the ground, new facilities  
25 for casino style gaming, managing and operating those

1 facilities for casino style gaming, and integrating  
2 them with the existing racing businesses.

3 So in our joint venture, we will be the  
4 managing member of the joint venture and we will be  
5 responsible for identifying and staffing all of those  
6 folks that would relate to the new enterprise if we  
7 were fortunate enough to have slot machines, video  
8 lottery terminals, or casino style gaming.

9 We don't have anyone in mind. It's very  
10 difficult, as you can imagine, to recruit someone for a  
11 position in an industry that doesn't yet exist. But we  
12 do -- through the bench strength that we have in our  
13 company at the general manager level of our properties  
14 around the United States and their assistant general  
15 managers, we do feel we have the bench strength that if  
16 we are fortunate enough, we can bring someone to bear  
17 pretty quickly who would have a long track record and  
18 experience to address, I believe, your concerns.

19 COMMISSIONER EDERER: The reason why I  
20 ask the question is because -- you know, let's just  
21 tell it like it is. We have heard so often and you  
22 hear the people -- the naysayers as far as VLT's and  
23 racetracks and gambling and racetracks is concerned and  
24 they say that, well, the gamblers make the money and  
25 the horse tracks continue to suffer and the horsemen

1 continue to suffer and the gambling -- the gamblers are  
2 very happy with the whole situation.

3 Now, it appears to me from what you've  
4 said that Penn National is going to have a stake in the  
5 action, 50 percent stake; so if the tracks don't make  
6 money, it seems to me that you're going to be losing a  
7 lot of money, too. So you do have a stake in the  
8 game.

9 MR. SNYDER: A very significant financial  
10 stake in the game. And as a public company, we've got  
11 a responsibility to our shareholders to invest their  
12 money wisely. So we are not in the business to lose  
13 money. We're in the business to find an economic model  
14 that will allow for economic incentives for racing,  
15 will allow us to invest in racing, will allow us to  
16 invest in the backside, and we've done it in those  
17 markets in those facilities.

18 COMMISSIONER EDERER: But as far as  
19 running the actual gaming and all, that will be part of  
20 your organization.

21 MR. SNYDER: Yes, sir.

22 COMMISSIONER EDERER: All right. Next  
23 question. What if the VLT's don't come and no gambling  
24 does come to Texas? Does Penn National have a plan,  
25 along with Sam Houston, Mr. Hurwitz, to make the tracks



1 not offensive.

2 COMMISSIONER EDERER: Of course, that all  
3 helps racing.

4 MR. HURWITZ: Absolutely.

5 COMMISSIONER EDERER: I mean, that all  
6 will help racing, the purses, and everything else. As  
7 long as the track is making money, it will continue.  
8 So there is -- of course, you don't have any details on  
9 any plan right now; but you will continue doing what  
10 you're doing now as far as the entertainment industry  
11 is concerned in developing that part of the track to  
12 help Sam Houston losing money.

13 MR. HURWITZ: Yes. And I think that Penn  
14 can do things -- like I mentioned, you know, they have  
15 buying power on a lot of the back-office stuff that we  
16 don't have buying power on. And so, you know, we'll be  
17 able to take advantage of that buying power. And so  
18 that will, you know, help us reduce some  
19 non-customer-facing and non -- you know, things that  
20 don't negatively impact the horsemen. It will allow us  
21 to be more efficient in those areas and continue to  
22 have good customer-facing operations and good  
23 operations that impact the horsemen and whatnot.

24 And we're going to continue to -- you  
25 know, we're going to continue to do what we've been

1 doing and we're going to continue to work like crazy on  
2 getting some expanded form of gaming for our state.

3 CHAIRMAN PABLOS: Thank you,  
4 Commissioner.

5 Any other questions, Commissioners?  
6 Chairman Polunsky?

7 MR. POLUNSKY: Mr. Snyder, are there  
8 any -- or, Mr. Hurwitz, are there any contingencies in  
9 the contract that would kick in in the event that  
10 gambling is -- VLT's or casino gambling is not  
11 authorized by the State of Texas?

12 MR. HURWITZ: There are -- you know, the  
13 only contingency would be, you know, there's an  
14 additional piece of property -- if it doesn't -- if we  
15 don't get gaming at a certain point in time, then an  
16 additional piece of property comes in and, you know,  
17 adds to the -- you know, adds to the other property  
18 and -- you know, but that's -- I mean, other than that,  
19 you know, both of us are planning on being in this  
20 business in the long run and both of us are committed  
21 to figuring out how to make it work.

22 And so, you know, we're not going into  
23 this with some kind of -- I mean, Penn is not coming in  
24 spending the kind of dollars in the State of Texas and,  
25 you know, we're not continuing to spend dollars in the

1 State of Texas and continuing to spend time to fail.  
2 And so certainly, in any business operation, you know,  
3 failure is a potential; but that's not why they're  
4 doing it and that's not why we're doing it and we don't  
5 intend to -- we don't intend to fail at this endeavor.

6 MR. POLUNSKY: All right. So what you're  
7 saying is in the event that VLT's or other types of  
8 gaming are not authorized by the State Legislature that  
9 there's not an escape clause that would allow --

10 MR. SNYDER: Yeah. This is not -- just  
11 to sort of address that question, this is not a  
12 part-time partnership or this is not an interim  
13 partnership. This is a partnership that will survive  
14 for decades into the future.

15 To your question, if enhancements are not  
16 made to the business, we have asked and the Maxxam  
17 folks have agreed to contribute additional land into  
18 the partnership so that we'd at least have some  
19 development opportunities for nonracing and nongaming  
20 types of amenities around the facility if we really do  
21 have to pivot and move away from what the heritage of  
22 this industry has been.

23 But this is not a three-year agreement or  
24 a five-year agreement or a seven-year agreement. This  
25 we look at as a true partnership.



1 MR. HURWITZ: This is a forever  
2 agreement.

3 MR. POLUNSKY: Thank you very much.

4 MR. HURWITZ: Okay. Thank you for your  
5 question.

6 CHAIRMAN PABLOS: Thank you.

7 Commissioners, any other questions?

8 Okay. Thank you very much.

9 We have Mr. Scales signed up to speak.

10 Mr. Scales, are you here?

11 MR. SCALES: Good morning. Good

12 morning. My name is Theophilus Scales, Jr. I want to  
13 say thank you to you, Commissioner Pablos, for giving  
14 me this opportunity.

15 Before I get into my subject on Penn  
16 Gaming, I wanted to say that the rally -- I was there  
17 yesterday as well. To use a word, awesome. That's the  
18 word that I would use. It was absolutely phenomenal.  
19 We were well received, well respected. People were  
20 very enthusiastic. It was -- I was the leader of Group  
21 No. 76 and I had a guy that worked the gate crew, a  
22 head chef from Sam Houston, and a guy that worked the  
23 concession stands at Retama. And I think that that --  
24 and I'm an owner, breeder, and trainer. I think that  
25 that kind of cross-section of the industry is the kind

1 of impact that the Legislature needed to see, that this  
2 does not just impact a bunch of rich guys.

3 I would like to be and one day I hope to  
4 be the rich guy, but right now I'm not. But that was  
5 absolutely phenomenal. And hats off to the staff that  
6 coordinated that. I'm very, very glad I took off work  
7 this week and was able to be a part of that on  
8 yesterday.

9 A couple of concerns for me about Penn  
10 Gaming and this possible merger with these racetracks  
11 and Penn Gaming. I think Penn Gaming is great for  
12 gaming. I think they bring a lot of clout, a lot of  
13 power, a lot of experience, a lot of influence that  
14 would have a potential positive impact on gaming and  
15 gaming legislation. Being a kid that was raised up in  
16 Ohio, I know about Penn National and Pennsylvania  
17 racing and where it has come from being Penn National  
18 to being Parx. And it is night and day, the two  
19 different facilities. Having raced in West Virginia, I  
20 understand, for their overnight purses and the success,  
21 that's tremendous.

22 My fear, however, as a horseman, as a  
23 horse owner, as a trainer and a breeder here in Texas,  
24 in the packet that is out today, one of the conclusions  
25 was to increase the profitability of Sam Houston,

1 there's a plan to reduce racing dates. That is not  
2 good for me and my business. I am not into racing slot  
3 machines. I am racing racehorses. And as a person who  
4 races racehorses, I need opportunities and the maximum  
5 opportunities possible to race my racehorses.

6 I am glad that the Commissioner asked  
7 about the contingency plan, what if VLT's don't come.  
8 I heard the word "commitment". I heard the word "long  
9 haul". But what is the commitment to? If the  
10 commitment is to reducing my racing opportunities for  
11 my Texas-breds in the State of Texas, I am in absolute  
12 emphatic opposition.

13 Maxxam has lost a lot of money. I think  
14 they have tried and are continuing to try and I applaud  
15 them for their efforts and would do anything within my  
16 ability to help them to become a more successful  
17 business. I think that Retama Park and what they have  
18 done, the example that they have shown to draw people  
19 into the entertainment value of the racing -- of the  
20 racing industry, is phenomenal.

21 My last point would be we in the horse  
22 racing business have got to understand that our  
23 business cannot be dependent on being recipients of  
24 funds from something other than horse racing. It's  
25 nice. It's cute. It's money. And it's a lot of it.

1 But we need to focus on being independent. That is,  
2 again, one of the reasons why I'm such a proponent of  
3 the ADW, which stands for advance deposit wagering,  
4 support.

5 ADW's allow us to have our product as a  
6 way of us making revenues generated. Our product, not  
7 Triple Sevens, not Double Diamond Deluxe, but  
8 Thoroughbred, Quarter Horse, Paint, and Arabian  
9 racehorses racing and people having the opportunity to  
10 bet on our product.

11 I would love to see slots. I was there  
12 yesterday. I will be there tomorrow. And I will do  
13 everything that I can to make them happen. But those  
14 of us -- this is the Racing Commission and we need to  
15 understand the significance of protecting, preserving,  
16 and fighting for Texas horse racing.

17 Thank you.

18 CHAIRMAN PABLOS: Thank you very much,  
19 Mr. Scales. Thank you.

20 Are there any questions of Mr. Scales,  
21 Commissioners?

22 Mr. Scales, I haven't had the pleasure to  
23 meet you in person. I want to thank you. I certainly  
24 want to applaud your passion for the business. I heard  
25 that there is a commitment to the agribusiness side of

1 things. And so I want to make sure that the  
2 Commissioners understand that; and if they didn't hear  
3 that, I wanted to reiterate that. But your passion is  
4 admirable. Thank you.

5 MR. SCALES: Thank you.

6 COMMISSIONER EDERER: I have met  
7 Mr. Scales on a number of occasions and I can assure  
8 you that that passion is real.

9 CHAIRMAN PABLOS: All right. Well, thank  
10 you very much.

11 Is there anyone else signed up to speak  
12 that hasn't had an opportunity?

13 MR. HOOPER: Mr. Chairman, members of the  
14 Commission, I'm David Hooper, the executive director of  
15 the Texas Thoroughbred Association. And I had planned  
16 to sign a card and not testify; but in light of  
17 Mr. Scales having appeared, why, my president, who's  
18 sitting next to me, asked that I come up and testify.

19 You stated some concerns about racing  
20 dates. And there's no question we've seen a decline in  
21 the industry for a number of years, a decline in racing  
22 dates, not only on the Quarter Horse side but on the  
23 Thoroughbred side as well.

24 You know, there's just so much money out  
25 there in purse money that's generated by handle; and

1 when your handle on simulcasting declines, when your  
2 handle on live racing declines, the amount of money  
3 that goes to the purse accounts continues to decline,  
4 too.

5           There's no question that we need a  
6 significant infusion of new revenue to this business  
7 not only for purses at tracks in this state but also  
8 for the breed programs in this state.

9           Sam Houston, after negotiations with the  
10 Horsemen's Partnership and with the respective breed  
11 registries, came up with a new dates plan this past  
12 year. It seemed to work quite well, with four-day  
13 weeks, seven weeks, except for Super Bowl Sunday being  
14 a holiday for all of us. The 27-day meet, which lost  
15 one live racing day, offered the highest purse  
16 structure for Thoroughbred racing ever at Sam Houston  
17 and the meet concluded with two straight weekends of  
18 full fields in general and a big increase in handle,  
19 both on-track and outbound. So they may have found,  
20 you know, a workable model while we're in this  
21 difficult period of time where we're facing significant  
22 competition.

23           I can tell you that House Bill 2111 and  
24 Senate Bill 1118 have a requirement for race dates.  
25 There are two provisions in there: That a track has to

1 offer at least a schedule that's equivalent to the race  
2 dates they held for the particular breed in 2002 or  
3 they must provide for both the major breeds, a separate  
4 Thoroughbred meet, a separate Quarter Horse meet, of 50  
5 live racing days for each breed, or 500 racing  
6 opportunities.

7 That would take the racing schedule that  
8 existed last year, with a little over 200 racing days  
9 for the two breeds, to up to 655 racing days in a fully  
10 developed 10 horse track -- 10 operating horse tracks  
11 in Texas. So there are guarantees in the bills, the  
12 enabling legislation that is before the Legislature.

13 Obviously those days can only be run with  
14 significant new purse money; but the projections are  
15 already out there that if we were successful in the  
16 Legislature, there will start to be significant new  
17 revenue streams flowing to both purses in Texas as well  
18 as breed programs in Texas.

19 CHAIRMAN PABLOS: Mr. Hooper, what is  
20 your point?

21 MR. HOOPER: I want to be on record on  
22 behalf of the Texas Thoroughbred Association in support  
23 of the change of 50 percent change of ownership from  
24 Sam Houston Race Park to Penn National Gaming. They  
25 have longtime experience. We all deal with past

1 performances. Their past performances at their home  
2 site, Penn National, put together with a new facility,  
3 has improved the racing product there significantly.

4 I cut my teeth on racing at Charlestown  
5 too many years ago, but I can tell you they have turned  
6 that racetrack from where it was offering 20,000-dollar  
7 purses per day to where it's offering over \$200,000 per  
8 day now. Their past performances are good, excellent.  
9 I've also had the good fortune of knowing Chris  
10 McErlean for more than 25 years. And his love is  
11 racing. And I'm glad he's in the position he's in.

12 CHAIRMAN PABLOS: Thank you.

13 Any questions, Commissioners?

14 Thank you, Mr. Hooper. Appreciate it.

15 Okay. So we have one more person signed  
16 up to speak.

17 Do you have a card?

18 MS. WHITELEY: Good morning,  
19 Commissioners.

20 CHAIRMAN PABLOS: I would just ask for  
21 you to please be brief.

22 MS. WHITELEY: Yes. Diane Whiteley,  
23 executive director, Texas Greyhound Association.

24 Our board had a meeting approximately  
25 three weeks ago to discuss the partnership between Penn



1 National Gaming and Sam Houston and Valley Race Park.  
2 And after much discussion, because we, too, are  
3 concerned whenever there is an acquisition particularly  
4 of a partner that we have worked well with, our board  
5 came out in full support of the partnership between the  
6 two.

7 And I wanted to also say that Valley --  
8 you know, we really had a tough time with our schedule  
9 the last two years and we have been able to work with  
10 Valley and we plan on continuing to work with Valley.  
11 And in our legislation also is a requirement for 420  
12 race performances unless otherwise agreed to by the  
13 TGA. So I think we have full support and strength in  
14 partnering with that group.

15 Thank you.

16 CHAIRMAN PABLOS: Any questions,  
17 Commissioners?

18 Okay. Thank you.

19 At this time I'd like to close our public  
20 comment section here.

21 And so, Commissioners -- Commissioner  
22 Ederer?

23 COMMISSIONER EDERER: I was going to say,  
24 is a motion in order?

25 CHAIRMAN PABLOS: A motion is in order,

1 but prior to that I'd just like to preface it with some  
2 comments. We've heard from staff. We've heard from  
3 the seller, the buyer, our industry. And so at this  
4 time I believe that we've got the information that we  
5 need; and so as we enter into our discussion, I'd like  
6 to see what you would like to do.

7 I'd like to entertain a motion, please.

8 COMMISSIONER EDERER: I would like to  
9 make a motion that we approve 50 percent change of  
10 ownership of Sam Houston Race Park, Valley Race Park,  
11 and Laredo Race Park to Maxxam, Inc.

12 CHAIRMAN PABLOS: Thank you. Motion to  
13 approve by Ederer.

14 Is there a second?

15 VICE-CHAIRMAN SCHMIDT: Second.

16 CHAIRMAN PABLOS: Seconded by  
17 Dr. Schmidt.

18 Okay. So at this time is there any  
19 discussion, Commissioners? I'd like to open the floor  
20 up for discussion on this. This is a very important  
21 matter. Staff has done a great job in ensuring that  
22 all of the T's are crossed and I's are dotted. And so  
23 now it's up to us. And I'd like to open it up for  
24 anyone who would like to have any discussion.

25 VICE-CHAIRMAN SCHMIDT: Mr. Chairman,

1 just briefly, I think it's fairly straightforward.  
2 They've met the criteria stipulated by Mr. Fenner's  
3 review. Penn National has an excellent track record.  
4 And I think it does look like an excellent fit.

5 CHAIRMAN PABLOS: Mark?

6 MR. FENNER: Could I clarify the motion,  
7 Commissioner?

8 COMMISSIONER EDERER: Of course.

9 MR. FENNER: You're really making a  
10 motion to approve the change of ownership of Sam  
11 Houston, Valley Race Park, and Laredo Race Park to the  
12 new entity, PM Texas, LLC, and then 50 percent of that  
13 ownership in PM Texas, LLC, will be then held by  
14 Houston Gaming Ventures.

15 COMMISSIONER EDERER: With that  
16 correction. Thank you.

17 CHAIRMAN PABLOS: We have the motion  
18 corrected.

19 Would you still like to second the  
20 motion?

21 VICE-CHAIRMAN SCHMIDT: Yes, sir.

22 CHAIRMAN PABLOS: So we have a second.

23 A mere technicality. Okay.

24 And so you were saying, Commissioner  
25 Schmidt?

1                   VICE-CHAIRMAN SCHMIDT: I just said I  
2 think in this particular case the transfer is  
3 relatively straightforward. They have met the  
4 criteria, the stipulations by the Texas Racing Act.  
5 Penn National has an excellent track record. And as  
6 Mr. Hurwitz said, I do think it's a nice fit, a very  
7 nice fit. I support the motion.

8                   CHAIRMAN PABLOS: Any other comments,  
9 Commissioners?

10                   Okay. Before I take this up for a vote,  
11 I'd like to thank you for your interest in coming to  
12 Texas. As you've heard here, we're all expecting for  
13 you to commit to our agribusiness side of things. The  
14 fact that you're in the casino business I don't think  
15 has any relevance at this time here because we have  
16 none of that and we're talking about racing. This is a  
17 racing commission. And we're here to authorize the  
18 license as it relates to racing exclusively today.

19                   And so at this time I'd like to take this  
20 up for a vote. All those in favor please signify by  
21 saying aye.

22                   COMMISSIONERS: Aye.

23                   CHAIRMAN PABLOS: Any opposed?

24                   That motion carries. Congratulations.

25 Thank you.

1                   We'll move on to our next item, Item 2,  
2                   request by Retama Park for approval of one change of  
3                   ownership of less than one percent.

4                   I'd like to recognize Mark Fenner,  
5                   please.

6                   MR. FENNER: Commissioners, Retama Park  
7                   has submitted a request for approval of transfer of 15  
8                   interests which is equivalent to 0.3735 of the  
9                   ownership interest in Retama Park from the Thomas  
10                  T. Keeler Marital Trust to the Straus 2003 Irrevocable  
11                  Trust.

12                  The DPS has done its background check and  
13                  found no disqualifying information. Staff recommends  
14                  approval.

15                  CHAIRMAN PABLOS: Okay. Commissioners,  
16                  are there any technical or clarifying questions of  
17                  Mark?

18                  Mark, I have a question.

19                  MR. FENNER: Sure.

20                  CHAIRMAN PABLOS: Will you please clarify  
21                  this transfer as it relates -- you said Straus trust?

22                  MR. FENNER: Yes, Straus 2003 Irrevocable  
23                  Trust. It was a trust established by Joe Straus, Jr.,  
24                  the father of Joe Straus, III; and Joe Straus, Jr.,  
25                  controls that trust.

1                   CHAIRMAN PABLOS: I just wanted to make  
2                   sure that when we speak of Mr. Straus, Jr., we're  
3                   speaking of the father of our Speaker of the House,  
4                   correct?

5                   MR. FENNER: Yes, not the speaker  
6                   himself.

7                   CHAIRMAN PABLOS: Very well.

8                   Is there anyone signed up to speak on  
9                   this item?

10                  All right. Hearing none, at this time  
11                  I'd like to entertain a motion. Commissioners, what  
12                  would you like to do?

13                  VICE-CHAIRMAN SCHMIDT: So move. Move to  
14                  approve.

15                  CHAIRMAN PABLOS: Moved for approval by  
16                  Schmidt.

17                  COMMISSIONER EDERER: Second.

18                  CHAIRMAN PABLOS: Seconded by Ederer.

19                  Is there any discussion on this item,  
20                  Commissioners?

21                  Hearing none, I'd like to take this up  
22                  for a vote at this time. All of those in favor please  
23                  signify by saying aye.

24                  COMMISSIONERS: Aye.

25                  CHAIRMAN PABLOS: Any opposed?

1                   That motion carries.

2                   Item 3, allocation of escrowed purse  
3 account revenue under Commission Rule 321.509.

4                   I'd like to recognize Sammy Jackson,  
5 please.

6                   MR. JACKSON: Thank you, Mr. Chairman.

7                   The escrowed horse purse is an amount  
8 collected by the Racing Commission from the three  
9 greyhound racetracks operating in Texas. It's a  
10 percentage of handle that's specifically dedicated to  
11 the horse purses. The Commission usually typically  
12 sets a meeting once a year whereby the industry  
13 presents an agreement before us for that money to be  
14 allocated over the next year between the specific  
15 purses at each of those tracks.

16                   At the September 2010 Commission meeting,  
17 an industry agreement was submitted for the Commission  
18 for approval. However, in that agreement an allocation  
19 has been made to Manor Downs. The agreement had been  
20 reached prior to Manor Downs' decision not to race in  
21 2011. Staff's recommendation was to approve the  
22 industry agreement at that time and requested that the  
23 Horsemen's Partnership come back with a recommendation  
24 on the Manor Downs allocation as to where that money  
25 would go.

1                   What you have in your agenda packet today  
2                   is a request by the Texas Horsemen's Partnership to  
3                   designate where the Quarter Horse portion of that money  
4                   would go. I believe Marsha Rountree, the interim  
5                   executive director, is here to lay that out for us.

6                   CHAIRMAN PABLOS: Okay. Before we do  
7                   that, Commissioners, are there any technical or  
8                   clarifying questions of Sammy?

9                   Okay. Marsha Rountree, please?

10                  MS. ROUNTREE: Good morning,  
11                  Mr. Chairman, Commissioners. I'm Marsha Rountree with  
12                  the Texas Horsemen's Partnership. It seems like a  
13                  small issue after the magnitude of the last agenda  
14                  item, but here we go.

15                  Since the closing of Manor Downs, the  
16                  horsemen's organization had to make decisions regarding  
17                  the disbursement of the escrowed horse purse being held  
18                  by the Commission; and the Texas HBPA, which is the  
19                  Quarter Horse partner in the organization, feels that  
20                  the best use of those funds is to transfer the Quarter  
21                  Horse escrowed purse funds from the Manor Downs purse  
22                  account to the Quarter Horse purse account at Retama  
23                  Park.

24                  The transfer of these funds will allow  
25                  Retama Park to write some nice races for older Quarter



1 Horses that without this money would not have been  
2 available.

3 The allocation of the Arabian, the Paint,  
4 and the Thoroughbred portions of the held escrowed  
5 funds has not been decided at this time and we request  
6 of the Commission that those funds continue to be held  
7 until a request is made to transfer those funds to  
8 another track.

9 So our request today is that we receive  
10 the Commission approval to transfer the Quarter Horse  
11 portion of those escrowed horse purses to Retama Park.

12 Thank you. And if you have any  
13 questions, I'll be happy to answer them.

14 CHAIRMAN PABLOS: Commissioners, any  
15 questions of Ms. Rountree?

16 MS. ROUNTREE: Thank you.

17 CHAIRMAN PABLOS: Okay. Thank you,  
18 Ms. Rountree.

19 Is there anyone else signed up to speak  
20 on this item?

21 All right. Sammy, any further thoughts  
22 on this?

23 MR. JACKSON: Mr. Chairman, they have  
24 come forward and did exactly what we asked of them. I  
25 think we should -- my recommendation would be to

1 approve it and let that help the racing opportunities  
2 at Retama Park coming up later this year.

3 CHAIRMAN PABLOS: Very well.

4 Commissioners, what would you like to  
5 do? What's your pleasure? I think this is ripe for a  
6 motion.

7 COMMISSIONER MARTIN: Make a motion to  
8 approve.

9 CHAIRMAN PABLOS: We have a motion to  
10 approve by Dr. Martin.

11 Is there a second?

12 COMMISSIONER HICKS: Second.

13 CHAIRMAN PABLOS: Seconded by  
14 Commissioner Hicks.

15 Any further discussion on this item?

16 I'll take this for a vote at this time.

17 All those in favor please signify by saying aye.

18 COMMISSIONERS: Aye.

19 CHAIRMAN PABLOS: Any opposed?

20 That motion carries. Thank you.

21 The next item, we'll take up Items 4 and  
22 5 together. I'd like to recognize Carol Olewin,  
23 please. We have a request by Gulf Greyhound Park for  
24 approval of an amendment to the tote contract between  
25 Gulf Coast Racing and United Tote Company and the other

1 one between Gillespie County Fair & Festival  
2 Association.

3 Good morning.

4 MS. OLEWIN: Good morning. Thank you,  
5 sir.

6 The first is an amendment to the tote  
7 contract between Gulf Coast Racing and United Tote  
8 that's been submitted to the Commission for  
9 consideration. The original contract was approved by  
10 the Commission on June 9th of 2009. This amendment  
11 would extend the current tote services to April 30th of  
12 2013 with minor adjustments in fees.

13 The staff has reviewed these documents  
14 and have found them to be in compliance with the Texas  
15 Racing Act and the Texas Rules of Racing and recommends  
16 its approval.

17 CHAIRMAN PABLOS: Okay. We have a  
18 recommendation for approval.

19 Are there any technical or clarifying  
20 questions, Commissioners? As you know, we cannot  
21 discuss tote contracts in public.

22 If there are no questions, thank you very  
23 much.

24 Is there anyone signed up to speak on  
25 this item?



1 by staff, Commissioners. Is there a motion? Do I have  
2 a motion?

3 COMMISSIONER MARTIN: I make a motion.

4 CHAIRMAN PABLOS: Is there a second,  
5 Commissioners?

6 COMMISSIONER HICKS: I'll second.

7 CHAIRMAN PABLOS: Seconded by Hicks.

8 Okay. Any discussion?

9 All those in favor please signify by  
10 saying aye.

11 COMMISSIONERS: Aye.

12 CHAIRMAN PABLOS: Any opposed?

13 Okay. That motion carries.

14 Item 6, designation by the Commission of  
15 an application period for race dates under Commission  
16 Rule 303.41.

17 I'd like to recognize Sammy Jackson,  
18 please.

19 MR. JACKSON: Thank you, Mr. Chairman.

20 Mr. Chairman, as you said earlier, staff  
21 is looking down the road trying to plan our work out.  
22 We know that Commission meetings are probably going to  
23 be changed around a little bit and this presented us an  
24 opportunity to go ahead and, in looking down the road,  
25 to start the race date allocation process.

1                   It takes two Commission meetings for this  
2                   to occur. One is to begin the process with the  
3                   announcement of it and saying when the application  
4                   dates would be due. That's what this agenda item is  
5                   for. Staff has prepared the race date request period  
6                   consistently with what we've done the last three years,  
7                   which is to open it up for the calendar year upcoming,  
8                   which would be calendar year 2012, and for the first  
9                   eight months of the year after, which is to end up in  
10                  the biennium for the agency's fiscal year. It allows  
11                  us to prepare budget and planning.

12                  The application period, if approved  
13                  today, would be opened on June 27th, 2011, with a  
14                  closing date of July 15th, 2011.

15                  I have not had the opportunity to sit  
16                  down with Commissioner Hicks and Commissioner Ederer  
17                  yet; but we will, if this is approved, soon start to  
18                  begin planning race date committee working group  
19                  meetings and the time windows of when those would be  
20                  held.

21                  One change in what we were talking about  
22                  this year and I would like to talk to Commissioner  
23                  Ederer and Hicks after the meeting is possibly not  
24                  having the committee meetings until after the  
25                  applications are filed because generally what we have

1 is meetings whereby amended application dates are filed  
2 afterwards because of the good testimony that's  
3 occurred and this gives us a good baseline to start  
4 with of what the intentions are to work from.

5 So if this is approved today, we'll know  
6 what the date applications are and we can begin to plan  
7 and work toward those goals.

8 CHAIRMAN PABLOS: Great.

9 Commissioners, are there any questions of  
10 Sammy?

11 COMMISSIONER EDERER: I do.

12 MR. JACKSON: Yes.

13 COMMISSIONER EDERER: Sammy, this last  
14 sentence here as far as your recommendation is  
15 concerned, it says it would also allow the racetracks  
16 to amend any previous allocated race dates for 2012.

17 MR. JACKSON: Correct.

18 COMMISSIONER EDERER: Now, if any  
19 racetrack does want to amend their races, it still has  
20 to be approved by the Commission. Is that correct?

21 MR. JACKSON: That's correct, yes, sir.  
22 All changes in race dates must be approved by the  
23 Commission.

24 COMMISSIONER EDERER: Okay. That's  
25 good.

1                   CHAIRMAN PABLOS: Any other questions,  
2 Commissioners?

3                   Anyone signed up to speak on this item?

4                   Okay. At this time I'd like to entertain  
5 a motion to approve, please.

6                   COMMISSIONER EDERER: So move.

7                   CHAIRMAN PABLOS: Moved by Ederer.

8                   Is there a second?

9                   VICE-CHAIRMAN SCHMIDT: Second.

10                  CHAIRMAN PABLOS: Seconded by  
11 Dr. Schmidt.

12                  Any further discussion on this item?

13                  All those in favor please signify by  
14 saying aye.

15                  COMMISSIONERS: Aye.

16                  CHAIRMAN PABLOS: Any opposed?

17                  That motion carries. Thank you.

18                  Okay. We have Item IV-B that is still  
19 pending. At this time we're going to go into executive  
20 session; and when we come out, we'll consider the  
21 item.

22                  MR. FENNER: Commissioner, so let me  
23 announce that we'll be going, under Government Code,  
24 into executive session. I'm sorry. I just want to  
25 make sure we make the announcement.



1                   CHAIRMAN PABLOS: I'll do that. So what  
2 we'll do is we'll consider this item upon our return.  
3 At this time I'd like to announce that the Commission  
4 will enter executive session under Government Code  
5 551.074 to deliberate the appointment of an executive  
6 director and under Section 551.071(2) to seek the  
7 advice of the Commission's attorney and to discuss the  
8 Open Meetings Act and the Administrative Procedures  
9 Act. The time right now is 12:03. Thank you.

10                   (Recess from 12:03 p.m. to 12:15 p.m. for  
11 executive session)

12                   CHAIRMAN PABLOS: Okay, folks. The time  
13 is 12:15 and we are reconvening out of executive  
14 session.

15                   And at this time we will move back to  
16 Item IV-B, discussion and consideration and possible  
17 action on the appointment of the executive director.

18                   At this time I'd like to call on Mark  
19 Fenner, please.

20                   MR. FENNER: Commissioners, if I may give  
21 a brief explanation of why this is on the agenda and  
22 what the issues before you are for the benefit of not  
23 only yourself but also the people who are attending  
24 today.

25                   There is a six-month limitation on the

1 ability of someone to serve in a temporary position at  
2 a State agency. Chuck Trout has been serving as the  
3 interim executive director since December 2nd of 2010.  
4 That means his eligibility to continue serving will  
5 expire on June 2nd of 2011, which is coming up pretty  
6 quickly. And in fact, we do have a Commission meeting  
7 tentatively scheduled on June 21, which is after that  
8 June 2nd date.

9 So the issue for you to resolve today is  
10 how do you want to handle this issue of an interim  
11 executive director whose current position is set to  
12 expire pretty quick and how do you want to handle  
13 that.

14 There are some duties that are assigned  
15 only to the executive director that cannot be taken by  
16 someone else, issuing cease and desist orders,  
17 protecting the horsemen's account under Section 3.22 of  
18 the act to prohibit associations from transferring bank  
19 account funds. There's also other functions assigned  
20 to him by rule, such as granting requests for stays of  
21 suspensions, denying and approving simulcasting  
22 requests, approving and denying racing officials,  
23 adopting and amending policies.

24 These are all functions that go with your  
25 standard State agency executive director role and it

1 would put us at a disadvantage to have to go through a  
2 period of time without somebody being able to fulfill  
3 that function.

4 And so we would look to the Commission to  
5 help us decide -- or to decide what it is you would  
6 like to do about that.

7 CHAIRMAN PABLOS: Okay. Commissioners,  
8 are there any questions of Mark?

9 One thing I would like to bring up is I  
10 would like to ask Dr. Schmidt -- I know he's given us a  
11 background report on his progress on his committee for  
12 the search of the permanent executive director.

13 Dr. Schmidt, could you give us a very  
14 brief background as to what your work is at this time?

15 VICE-CHAIRMAN SCHMIDT: Sure. I'd like  
16 to.

17 First of all, Mr. Chairman, I'd like to  
18 request my fellow Commissioners to seriously approve a  
19 recommendation to make Mr. Trout the executive director  
20 on a permanent basis. I'd like to add an explanation,  
21 however.

22 Our interim -- our search for an  
23 executive director continues and will continue. I  
24 think since our last meeting, however, where --  
25 everyone in this room is aware of the multitude of

1 bills that have been placed before the House and  
2 Senate. The future of the Commission can be  
3 significantly enhanced or significantly diminished. It  
4 can be combined or there could be no change at all.  
5 And as we continue to look, it's very difficult for us  
6 to interview candidates without a clear-cut job  
7 description. So it is our purpose to continue to keep  
8 the job open.

9 Mr. Trout has expressed to me a desire to  
10 retire and go to graduate school. He's done a superb  
11 job with us. He's willing to continue. And so I think  
12 it behooves us to make an appointment as -- make  
13 Mr. Trout an appointee on a permanent basis,  
14 recognizing that once the smoke clears, as it were, and  
15 the role of the Racing Commission is better defined, we  
16 will continue our application process and interview  
17 process and come with a recommendation this summer.

18 CHAIRMAN PABLOS: Okay. Thank you.

19 Any questions, Commissioners?

20 So in fact, this is somewhat of a safety  
21 mechanism. You know, I did mention that we will likely  
22 have a meeting prior to the next scheduled meeting, but  
23 I don't think it's reasonable to take a chance at that  
24 and take a chance of losing Mr. Trout with respect to  
25 his six-month deadline. And so I think it is

1 reasonable.

2 I'm glad to know that you're moving  
3 forward on your search. And you're absolutely right  
4 that the future of this agency is uncertain and so at  
5 this time it's best to have Mr. Trout lead us and lead  
6 staff for the time being.

7 Is there anyone signed up to speak on  
8 this item? No?

9 Okay. So, Commissioners, what's your  
10 pleasure? I'd like to entertain a motion.

11 COMMISSIONER MARTIN: I make a motion to  
12 approve Chuck as the permanent director.

13 CHAIRMAN PABLOS: We have a motion by  
14 Dr. Martin to approve.

15 Is there a second?

16 COMMISSIONER HICKS: Second.

17 CHAIRMAN PABLOS: Seconded by  
18 Commissioner Hicks.

19 Is there any discussion -- further  
20 discussion on this item, Commissioners?

21 One thing we haven't talked about is  
22 asking Chuck if he's willing to accept.

23 Chuck, are you willing to accept?

24 MR. TROUT: Yes, sir.

25 CHAIRMAN PABLOS: Thank you.

1 Any other discussion, Commissioners?

2 Okay. At this time I'd like to take this  
3 up for a vote. All those in favor please signify by  
4 saying aye.

5 COMMISSIONERS: Aye.

6 CHAIRMAN PABLOS: Any opposed?

7 Okay. That motion carries.

8 Thank you, Chuck, very much for all your  
9 good work. You're doing an excellent job.

10 Commissioners, is there any old or new  
11 business that you'd like to discuss at this time?

12 Okay. Again, with respect to our next  
13 Commission meeting, we're waiting to hear from Lone  
14 Star Park and from Global Gaming. As soon as we hear  
15 from them letting us know that they're ready to go,  
16 this Commission is ready, willing, and able to hear the  
17 applicants. And so that's really going to be  
18 determinative as to when our next meeting is. If we  
19 don't hear from Global Gaming prior to June 21st, then  
20 we'll just keep that regularly scheduled meeting time.

21 At this time, 12:22, I'd like to thank  
22 you for coming here today and adjourn today's meeting  
23 of the Texas Racing Commission. Thank you very much.

24 (Proceedings concluded at 12:22 p.m.)

25

1 STATE OF TEXAS )  
2 COUNTY OF TRAVIS )

3  
4 I, SHERRI SANTMAN FISHER, a Certified Shorthand  
5 Reporter in and for the State of Texas, do hereby  
6 certify that the above-captioned matter came on for  
7 hearing before the TEXAS RACING COMMISSION as  
8 hereinbefore set out.

9 I FURTHER CERTIFY that the proceedings of said  
10 hearing were reported by me, accurately reduced to  
11 typewriting under my supervision and control and, after  
12 being so reduced, were filed with the TEXAS RACING  
13 COMMISSION.

14 GIVEN UNDER MY OFFICIAL HAND OF OFFICE at Austin,  
15 Texas, this 8th day of April, 2011.

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17  
18  
19  
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21 \_\_\_\_\_  
SHERRI SANTMAN FISHER, Texas CSR 2336  
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