



## MASSACHUSETTS GAMING COMMISSION 2015 COMMUNITY MITIGATION FUND GUIDELINES

### What is the Community Mitigation Fund?

The Expanded Gaming Act, MGL c. 23K, created the Community Mitigation Fund to help entities offset costs related to the construction and operation of a gaming establishment.

### When Is the Application Deadline?

**February 2, 2015.** MGL c. 23K, § 61 states that “parties requesting appropriations from the fund shall submit a written request for funding to the Commission by February [2].”<sup>1</sup>

### Who Can Apply?

MGL c. 23K, § 61 states the Commission shall expend monies in the fund to assist the host and surrounding communities ... “including, but not limited to, communities and water and sewer districts in the vicinity of a gaming establishment, local and regional education, transportation, infrastructure, housing, environmental issues and public safety, including the office of the county district attorney, police, fire, and emergency services.” The Commission may also distribute funds to a governmental entity or district other than a single municipality.

Private non-governmental parties may not directly apply for Community Mitigation Funds. However, governmental entities may apply to the Commission on behalf of private parties provided that the governmental entity provides a program that ensures that funding will be made only to remedy impacts and provided that the governmental entity will be responsible for overseeing such funding.

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<sup>1</sup> The statutory application date is February 1 (a Sunday in 2015). However, M.G.L. c. 4, §9 specifies that certain acts which would otherwise be required to be performed on Sunday be performed on the next succeeding business day.



Massachusetts Gaming Commission

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The Community Mitigation Fund may be used to offset costs related to both Category 1 full casino facilities (MGM Springfield and Wynn Everett) and the state's Category 2 slots-only facility (Plainridge Park).

**Does a Community Need to Be a Designated Host or Surrounding Community to Apply?**

**No.** The Commission's regulations and MGL c. 23K, § 61 do not limit use of Community Mitigation Funds to only host or surrounding communities. The Commission's regulation, 205 CMR 125.01(4), states that "[a]ny finding by the commission that a community is not a surrounding community for purposes of the RFA-2 application shall not preclude the community from applying to and receiving funds from the Community Mitigation Fund established by MGL c. 23K, § 61...."

**One-Time 2015 Reserve**

In recognition that communities may not be able to demonstrate many significant impacts by February 2, 2015 and in recognition of the Commission's emphasis on proper local planning, the Commission has established a one-time local reserve for the 2015 Community Mitigation Fund program. The Commission has reserved \$100,000 for each designated surrounding community, each community which entered into a nearby community agreement with a licensee, and any community that petitioned to be a surrounding community to a gaming licensee.

This reserve can be used to cover impacts that may arise in 2015 or thereafter. It may also be used for planning, either to determine how to achieve further benefits from a facility or to avoid or minimize any adverse impacts.

Communities that choose to utilize the reserve in 2015 should simply check the "Check Box If Requesting the Creation of a Mitigation Reserve Fund for a Community" box on the application. No other description is required by the February 2, 2015 deadline. Commission staff will follow-up with each community to get the community's description of planned uses. Funds will be distributed as the needs are identified. Communities that utilize the reserve are not prohibited from applying for funding for any specific mitigation request.

Although no specific description as to use needs to be included in an application for the 2015 reserve, communities must apply by February 2, 2015 to get the reserve.

### What are the Reserve amounts?

Can communities apply both for the reserve and for a specific impact?

**Yes.** However, if a specific impact application is successful, a portion of the reserve will be used as an offset against the amount requested for the specific impact. The reserve amount will be reduced by fifty thousand dollars (\$50,000.00) assuming the specific impact request is at least that amount.

### What Specific Impacts Can Be Funded?

In recognition that no gaming facility will be operational by February 2, 2015, the Commission has determined that the 2015 Community Mitigation Fund is available only to mitigate impacts related to the construction of gaming facilities. This limitation does not apply to planning activities funded under the 2015 one-time reserve fund.

The Commission's regulation 205 CMR 125.07 defines construction period impacts as:

“The community will be significantly and adversely affected by the development of the gaming establishment prior to its opening taking into account such factors as noise and environmental impacts generated during its construction; increased construction vehicle trips on roadways within the community and intersecting the community; and projected increased traffic during the period of construction.”

Although this definition includes the types of construction period impacts that may be funded, it is not limited to those. The determination will be made by the Commission after its review.

The Fund may be used only to mitigate impacts that either have occurred or are occurring as of the February 2, 2015 application date. Although the definition in the Commission's regulations (for the purpose of determining which communities are surrounding communities) references projected impacts, the 2015 program is limited to only those impacts that are being experienced by the time of the February 2, 2015 application date.

The Commission has determined that the funding of unanticipated impacts will be a priority under the Annual Mitigation Fund. Thus the Commission will review funding requests in the context of any host or surrounding community agreement to help

determine funding eligibility.<sup>2</sup> The Community Mitigation Fund is not intended to fund the mitigation of specific impacts already being funded in a host or surrounding Community Agreement. Please note that impacts determined through any look back review likely are unanticipated impacts.

### **What Cannot Be Funded?**

2015 Community Mitigation Funds may not be used for the mitigation of:

- any operational related impacts;
- impacts that are projected or predicted but that are not occurring or have not occurred by February 2, 2015;
- impacts that are the responsibility (e.g. contractual, statutory, regulatory) of parties involved in the construction of gaming facilities (such as damage caused to adjoining buildings by construction equipment, spills of construction-related materials outside of work zones, personal injury claims caused by construction equipment or vehicles); and
- Other impacts determined by the Commission.

Please note that the Commission may determine to expand the eligible uses of funds for the 2016 program when impacts are more clearly identifiable. The Commission will also consult with mitigation advisory committees established in MGL c. 23K in determining such uses.

### **How Much Funding Is and Will Be Available?**

As a result of the license fees paid by MGM Springfield and Wynn MA LLC, \$7.5 million for each facility will be deposited to the Community Mitigation Fund. As a result of these deposits and the state's slots licensee Penn National's one-time \$2.5 million deposit in March 2014, the Community Mitigation Fund will have a balance of \$17.5 million.

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<sup>2</sup> The Commission is aware of the difference in bargaining power between host and surrounding communities in negotiating agreements and will take this into account when evaluating funding applications.

No further contributions will be made to the Community Mitigation Fund until either MGM Springfield or Wynn Everett become operational and generate revenues.<sup>3</sup> MGM Springfield currently projects to be operational in the second quarter of 2017. Wynn Everett currently projects to be operational by the fourth quarter of 2017. Once operational, MGL c. 23K, § 59 specifies that 6.5% of the revenues from the tax on gross gaming revenues from Category 1 (full casino) licensees shall be deposited in the Community Mitigation Fund.

Once the MGM Springfield and Wynn Everett facilities are operational, approximately \$18.0 million generated by these two facilities will be annually deposited into the Community Mitigation Fund using a conservative estimate provided by the Commission's financial consultants.

### **What Should Be Included in the Applications?**

- Applicants are required to complete the 2015 Community Mitigation Fund Application and may also submit additional supporting materials of a reasonable length.
- Applicants will need to describe how the specific mitigation requested will address any claimed impacts and provide justification of any funds requested. Unlike existing surrounding community agreements which were based on anticipated impacts, any community mitigation award will be based on impacts that have occurred or are occurring, as noted previously.
- Applicants will need to describe if and how such impacts were addressed or not addressed in any host or surrounding community agreements.
- Applicants may include a letter of support from the applicable gaming licensee. However, this is not necessary, as the Commission will request the licensee's opinion regarding each application.

### **How Will the Commission Decide on Applications?**

- Similar to the Commission's surrounding community review process, the Commission will ask each licensee to review and comment on any requests for funding.

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<sup>3</sup> These guidelines do not describe revenue estimates from or the participation of a Region C facility, as the Region C application deadlines have not yet been reached. Further, after the initial deposit, no further contributions from the Slots licensee will be made to the fund.

- The Commission will evaluate the submittal by the community, any input received from the community and interested parties (such as Regional Planning Agencies), the responses of the licensee, Commission consultant reviews, and any other sources determined by the Commission.
- The Commission will evaluate any funding requests in the context of any host or surrounding community agreements.
- The Commission may ask applicants for supplementary materials, may request a meeting with applicants, and reserves the ability to host a hearing or hearings on any application.
- The Commission's deliberations on Community Mitigation Fund policies will also be aided through input from the Gaming Policy Advisory Committee, the Community Mitigation Subcommittee, and any Local Community Mitigation Advisory Committees, as established pursuant to MGL c. 23K.
- The Commission reserves the ability to determine a funding limit, as additional contributions to the Community Mitigation Fund will not be made until Category 1 gaming facilities are operational.

### **When Will the Commission Make Decisions?**

The Commission anticipates making funding decisions on any requests for mitigation of specific impacts approximately by July 2015, after a comprehensive review and any additional information requests.

### **Is There a Deadline for the Use of the 2015 Reserve?**

There is no deadline. Funds may be used on a rolling basis when specific impacts are determined or the specific planning activity is determined. Once known, communities should contact the Ombudsman's Office, which will assist the community in providing the needed information. Communities with specific impacts will, at the time the impacts are known, complete the grayed sections of the 2015 Community Mitigation Fund Application (the grayed boxes 1-4 beginning on page 3). Communities with requests for planning funds will provide similar information to the Commission: a description of the planning activity, how the planning activity relates to the development or operation of the gaming facility, how the planning funds are proposed to be used, consultation with the Regional Planning Agency, other funds being used, and

how planning will help the community determine how to achieve further benefits from a facility or to avoid or minimize any adverse impacts. Each Community applying for planning funds will also need to provide detail on what it will contribute to the planning project such as in-kind services or planning funds. Please note that such details do not need to be determined by the February 2, 2015 application date. Communities must only check the box on the first page of the application to establish the reserve. Commission approvals of the use of the 2015 reserve funds will also be on a rolling basis corresponding to the rolling determinations of use by communities.

### **Who Should Be Contacted for Any Questions?**

As the 2015 Community Mitigation Fund program is the inaugural program for the Commission, communities and other parties may have a number of questions. They are encouraged to contact the Commission's Ombudsman with any questions or concerns. The Commission's Ombudsman will regularly brief the Commission regarding the development of Community Mitigation Fund policies.

The Commission's Ombudsman, John Ziemba, can be reached at 617-979-8423 or via e-mail at [john.s.ziemba@state.ma.us](mailto:john.s.ziemba@state.ma.us). The Commission's address is 101 Federal Street, Suite 23, Boston, MA 02110.

### **Where Should the Applications Be Sent?**

Applications must be sent electronically **and** via regular mail. An application received by the Commission either electronically or via regular mail by February 2, 2015 will meet the application deadline.

Applications should be sent to the:

Massachusetts Gaming Commission  
2015 Community Mitigation Fund  
Attn: Ombudsman John Ziemba  
101 Federal Street, 23<sup>rd</sup>, Boston, MA 02110

**And via e-mail to:**

[john.s.ziemba@state.ma.us](mailto:john.s.ziemba@state.ma.us)