

DRAFT

MASSACHUSETTS GAMING COMMISSION

2016 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 1, 2016. MGL c. 23K, § 61 states that “[p]arties requesting appropriations from the fund shall submit a written request for funding to the commission by February 1....”

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 to impact a mitigation measure that affects more than one municipality.

Private non-governmental parties may not directly apply for Community Mitigation Funds. However, governmental entities may apply to the Commission for funds to be used by a private party for a “public purpose” 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 and complying with all applicable state and municipal laws.



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...."

2016 One-Time Reserve

As in 2015, the Commission will make available certain funds for communities that may not be able to demonstrate significant impacts in 2015 and had not previously submitted a request for a Reserve fund in 2015. For 2016, Host Communities are eligible to submit a request for a \$100,000 reserve for 2016, and the following communities which were each a 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:

Hampden
Melrose
Attleboro
North Attleboro

A second reserve is not available for any community that sought and was awarded a reserve in 2015.

This reserve can be used to cover impacts that may arise in 2016 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 2016 and had not previously done so, 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 1, 2016 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 2016 reserve, communities must apply by February 1, 2016 to get the reserve.

Status of One-Time 2015 Reserves

In 2015, a Reserve Fund was established for communities that may not have been able to demonstrate significant impacts by the submittal deadline date. The Commission reserved \$100,000 for the following communities which were either 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:

CATEGORY 1 – CASINO/RESORT

Region A

Boston
Cambridge
Chelsea
Lynn
Malden
Medford
Saugus
Somerville

Region B

Agawam
Chicopee
East Longmeadow
Holyoke
Longmeadow
Ludlow
Northampton
West Springfield (used \$98,500 out of \$100,000)
Wilbraham

CATEGORY 2 – SLOTS

Foxborough
Mansfield
Wrentham

In some cases, communities may not be in a position to access their 2015 reserves by February 1, 2016. The Commission has extended such reserves for the 2016 Community Mitigation Fund Program. Communities may continue to access whatever portion of the original \$100,000 that remains unexpended.

The criteria for the use of the reserve remains the same. This reserve can be used to cover impacts that may arise in 2016 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.

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.

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.

Can a community apply for mitigation of a specific impact even though it has not fully utilized its 2015 Reserve?

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?

The 2016 Community Mitigation Fund for mitigation of specific impacts may be used only to mitigate impacts that either have occurred or are occurring as of the February 1, 2016 application date. Although the definition in the Commission's regulations (for the purpose of determining which communities are surrounding communities) references projected impacts, the 2016 program is limited to only those impacts that are being experienced by the time of the February 1, 2016 application date.

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

Allowable impacts for funding are as follows:

Category 1 Gaming Facility: In recognition that no Category 1 gaming facility will be operational by February 1, 2016, the Commission has determined that *the 2016 Community Mitigation Fund is available only to mitigate impacts related to the construction of Category 1 gaming facilities.* This limitation does not apply to planning activities funded under the 2015/2016 one-time reserve fund or 2016 Transportation Planning Grants.

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."

Category 2 Gaming Facility: In recognition that the Category 2 gaming facility in Plainville opened during calendar year 2015, the Commission will make available funding to mitigate any construction and operational related impacts that are being experienced or were experienced from that facility by the February 1, 2016 date. The Commission will make available up to \$500,000 in total for applications for the mitigation of operational or construction impacts relating to the Plainridge facility.

The Commission's regulation 205 CMR 125.01 2(b)4 defines operational impacts as:

"4. The community will be significantly and adversely affected by the operation of the gaming establishment after its opening taking into account such factors as potential public safety impacts on the community; increased demand on community and regional water and sewer systems; impacts on the community from storm water run-off, associated pollutants, and changes in drainage patterns; stresses on the community's housing stock including any projected negative impacts on the appraised value of housing stock due to a gaming establishment; any negative impact on local, retail,

entertainment, and service establishments in the community; increased social service needs including, but not limited to, those related to problem gambling; and demonstrated impact on public education in the community.”

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 these definitions include the types of construction or operational impacts that may be funded, it is not limited to those. The determination will be made by the Commission after its review.

What Cannot Be Funded?

2016 Community Mitigation Fund may not be used for the mitigation of:

Category 1 Gaming Facilities:

- any operational related impacts;
- impacts that are projected or predicted but that are not occurring or have not occurred by February 1, 2016;
- 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.

Category 2 Gaming Facilities:

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- impacts that are projected or predicted but that are not occurring or have not occurred by February 1, 2016;
- 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);
- Please note that the Commission may determine to expand the eligible uses of funds for the 2017 program or other future programs when impacts are more clearly identifiable. The Commission will also consult with mitigation advisory committees established in MGL c. 23K in determining such uses.

Guidance on Funding for Non-Governmental Entities

As noted, communities and other parties may apply for funds to mitigate the impact to non-governmental entities. However, the Commission strongly encourages applicants to ensure the impacts are directly related to the gaming facility. For example, an applicant could request assistance for impacts to all businesses within 1000 feet of a gaming facility. Further, applicants should demonstrate that the governmental entity, the licensee, or both will also financially contribute to any program of assistance. The Commission does not anticipate funding any applications for assistance to non-governmental entities unless the applicant governmental entity or the licensee or both provide significant funding to match or partially match the assistance required from the 2016 Community Mitigation Fund. [Please note that the Commission directed Commission staff to research and provide more detail back to the Commission on any legal limitations on assistance to non-public entities (e.g. Art. 46, §2, as amended by Art. 103 of the Amendment to the Massachusetts Constitution) prior to the granting of any funds to be used by private entities.]

How Much Funding Is and Will Be Available?

In sum, a total of \$17.5 million from the current licensees was deposited in the Community Mitigation Fund for use until Category 1 gross gaming revenues are

generated, or thereafter (if all such funds are not used prior to that date). Currently the fund has \$14.75 million available from licensing fees paid, less the reserves set aside for 2015 and other mitigation awards made in 2015.

No further contributions will be made to the Community Mitigation Fund until either MGM Springfield or Wynn Everett become operational and generate revenues.¹ Both MGM Springfield and Wynn Everett currently project to be operational in 2018. 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 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.

Limitations

Because the \$14.75 million in the fund needs to be available until the facilities are operational, the Commission anticipates expending no more than one third of the fund annually for calendar year 2016, 2017, and 2018. This amount is estimated to be approximately \$4.91 million per year.

Of that amount, for 2016, no more than \$500,000 may be expended for operational impacts related to the Category 2 gaming facility, unless otherwise determined by the Commission.

Transportation Planning Grants

For calendar year 2016, the Commission will make available funding for certain transportation planning activities for all communities eligible to receive funding from the Community Mitigation Fund, including each Category 1 and Category 2 host community and 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.

¹These guidelines do not describe revenue estimates from or the participation of a Region C facility, as the Region C gaming decision on the license has not yet been made. Further, after the initial deposit, no further contributions from the Category 2 licensee will be made to the fund.

Funding available for planning grants will likely not exceed \$982,000, approximately 20% of the estimated annual allotment for the fund.

Eligible planning projects must have a defined area or issue that will be investigated as well as a clear plan for implementation of the results.

Eligible expenses to be covered by the Planning Grant include, but not necessarily limited to:

- Planning consultants/staff
- Data gathering/surveys
- Data analysis
- Engineering review/surveys
- Public meetings/hearings
- Final report preparation

The planning projects must be clearly related to addressing transportation issues or impacts directly related to the gaming facility.

Applicants will be required to submit a detailed scope, budget, and timetable for the planning effort prior to funding being awarded.

Pursuant to the Guidelines, the Commission will evaluate requests for planning funds (including both the use of Reserve Planning Funds and Transportation Planning Grant Funds) after taking into consideration input the applicant has received from the local Regional Planning Agency ("RPA") or any such interested parties. Although there is no prerequisite for using RPA's for planning projects, consultation with RPA's is required to enable the Commission to better understand how planning funds are being used efficiently across the region of the facility. Please provide details about the applicant's consultation with the RPA or any such interested parties.

Communities that requested and received reserves in 2015 or 2016 must first expend those funds before accessing any Transportation Planning Grant funds. Transportation Planning Grant funds may be sought to expand a planning project begun with reserve funds or to fund an additional project once the reserves have been exhausted.

Springfield Historic Preservation Trust Fund

On August 6, 2015, as part of the consultative process pursuant to 950 CMR 71.00 – Protection of Properties Included in the State Register of Historic Places, the Commission determined that it would provide \$350,000 in Community Mitigation Funds to the Springfield Historic Preservation Trust Fund. The City of Springfield agreed to apply for such funds by February 1, 2016. The provision of the \$350,000 does not limit Springfield’s ability to apply for 2016 Community Mitigation Funds for other purposes.

What Should Be Included in the Applications?

- Applicants are required to complete the 2016 Community Mitigation Fund Application and may also submit additional supporting materials of a reasonable length.
- Applicants will need to describe how the specific mitigation or planning project 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.
- 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 beyond what is detailed in these Guidelines, as additional contributions to the Community Mitigation Fund will not be made until Category 1 gaming facilities **are operational**.
- [The Commission reserves the ability to fund only portions of requested projects and to fund only a percentage of amounts requested. The Commission also reserves the ability to place conditions on any award.](#)

[When Will the Commission Make Decisions?](#)

The Commission anticipates making funding decisions on any requests for mitigation of specific impacts approximately by July 2016, after a comprehensive review and any additional information requests.

[Is There a Deadline for the Use of the 2016 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 2016 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 1, 2016 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 2016 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 2016 Community Mitigation Fund program is just the second year of the 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 Ziembra, can be reached at 617-979-8423 or via e-mail at john.s.ziembra@state.ma.us. The Commission's address is 101 Federal Street, 12th Floor, 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 1, 2016 will meet the application deadline.

Applications should be sent to the:

Massachusetts Gaming Commission
2015 Community Mitigation Fund
Attn: Ombudsman John S. Ziembra
101 Federal Street, 12th Floor, Boston, MA 02110

And via e-mail to:

john.s.ziembra@state.ma.us