

205 CMR 127.00: REOPENING MITIGATION AGREEMENTS

Section

- 127.01: Definitions
- 127.02: Reasons for Reopening a Mitigation Agreement
- 127.03: Negotiations to Reopen a Mitigation Agreement
- 127.04: Commission Review of a Petition to Reopen a Mitigation Agreement
- 127.05: Renegotiation and Arbitration
- 127.06: Voluntary Reopening of a Mitigation Agreement

127.01: Definitions

As used in 205 CMR 127.00, the following words and phrases shall have the following meaning:

Mitigation Agreement or Mitigation Agreements means a fully executed host community agreement as governed by 205 CMR 123.02: *Host Community Agreement*, surrounding community agreement as governed by 205 CMR 125.01: *Determination of Surrounding Communities and Execution of Mitigation Agreements*, or an impacted live entertainment venue agreement as governed by 205 CMR 126.00: *Impacted Live Entertainment Venues*.

Significant and Material Adverse Impact means a substantial negative affect on a host community, surrounding community, or impacted live entertainment venue from an unforeseen event, act, or circumstance occurring after a mitigation agreement is executed and which directly undermines a basic premise on which the mitigation agreement was made, a principal purpose of the mitigation agreement, or a vital portion of the mitigation agreement without fault of the affected party.

127.02: Reasons for Reopening a Mitigation Agreement

Unless a mitigation agreement provides otherwise or provides a different remedy, the parties to a mitigation agreement may reopen negotiations on a signed mitigation agreement pursuant to any of the following triggering events:

- (1) In the event that an applicant or licensee is granted a gaming license subject to the issuance of the secretary of EOEEA's certificate on the applicant's final, supplemental, or single environmental impact report pursuant to 301 CMR 11.08(8) and 205 CMR 120.02: *Conditions of Licensure*, and the project as so certified and mitigated in accordance with the secretary of EOEEA's certificate would, if the applicant receives a final license from the commission, likely cause a significant and material adverse impact.
- (2) In the event that an applicant or licensee is granted a gaming license subject to the issuance of a federal, state or local permit or approval, and the permit or approval is either denied or issued in a manner such that the project would, if the applicant receives a final license from the commission, likely cause a significant and material adverse impact.
- (3) An occurrence that is likely to cause a significant and material adverse impact.

127.03: Negotiations to Reopen a Mitigation Agreement

In the event that a party to a mitigation agreement believes that a triggering event in accordance with 205 CMR 127.02 has occurred, it may take the following actions:

- (1) Request that the other party voluntarily enter into discussions to supplement or amend the mitigation agreement. A party that receives such a request shall enter into such discussions where it is reasonably clear that one of the triggering events provided in 205 CMR 127.02 has occurred. Supplemental or amended mitigation agreements must be filed with the commission promptly upon execution.
- (2) Petition the commission to mandate the reopening of the mitigation agreement. The petition shall clearly set forth the facts and circumstances supporting the request, and shall contain either:

127.03: continued

- (a) A sworn statement by the petitioning party that an impasse has been reached in the discussions referenced in 205 CMR 127.03(1); or
- (b) A sworn statement by the petitioning party that the other party has refused to engage in the discussions referenced in 205 CMR 127.03(1).

Petitions under 205 CMR 127.03(2) shall be delivered to the commission and to every party to the mitigation agreement in hand or by any form of email requiring a return receipt. Responses shall be delivered to the commission and to every party to the mitigation agreement in hand or by any form of email requiring a return receipt not later than 14 days after delivery of the petition.

127.04: Commission Review of a Petition to Reopen a Mitigation Agreement

The commission shall review any petition filed in accordance with 205 CMR 127.03(2) and grant the petition if it finds that a triggering event referenced in 205 CMR 127.02 has occurred and that re-opening the mitigation agreement and allowing it to be amended as proposed will not substantially change the project as it was described in the host community agreement or the concise summary provided as part of the ballot created for the host community election.

The commission may convene a hearing on the petition on its own volition or if requested by a party. Upon granting the petition, the commission shall order the parties to re-negotiate any affected provision of the mitigation agreement specified by the commission.

127.05: Renegotiation and Arbitration

If the parties are unable to come to terms on an amended mitigation agreement within 60 days of the commission's order, the parties shall enter into binding arbitration. The arbitration shall be limited to incorporating into the mitigation agreement measures necessary and reasonable to mitigate the significant and material adverse impact(s). The following shall apply to any such arbitration:

(1) The parties may, by mutual agreement, engage in this binding arbitration process at any time after the date the commission determines that a triggering event has occurred in accordance with 205 CMR 127.02; provided, however, the parties must engage in this binding arbitration process if no amended mitigation agreement is filed with the commission within 60 days after the date the commission determines that a triggering event has occurred in accordance with 205 CMR 127.04; provided further that the parties may execute an amended mitigation agreement at any time during the arbitration process.

(2) The parties shall file with the commission a notice of intent to commence arbitration prior to selecting an arbitrator.

(3) No later than five days after filing with the commission of a notice of intent to arbitrate, the parties shall select a neutral, independent arbitrator and submit their best and final offer relative to amending the mitigation agreement to the arbitrator and to the other party. If they cannot mutually select such single arbitrator, each party shall select one neutral, independent arbitrator who shall then mutually choose a third neutral, independent arbitrator. In the event that a third neutral, independent arbitrator is not selected within the five day period, the commission or its designee shall select the third neutral, independent arbitrator. The three arbitrators shall preside over the matter and resolve all issues, including the final decision, by majority vote.

(4) The reasonable fees and expenses of the single arbitrator shall be paid by the applicant/licensee. In the event that three arbitrators are engaged, two thirds of the reasonable fees and expenses shall be paid by the applicant and one third shall be paid by the community or venue.

(5) Within 45 days after receipt of the parties' submissions under 205 CMR 127.05(3), the arbitrator(s) shall conduct any necessary proceedings and file with the commission, and issue to the parties, a report specifying the amended terms of the mitigation agreement between the parties. In reaching the final decision, the arbitrator(s) shall select the best and final offer of one of the parties and incorporate those terms into the report. The arbitrator(s), however, may make any adjustments to the best and final offer necessary to ensure that the report is consistent with M.G.L. c. 23K, § 15(9) and (10) as applicable, and that it preserves the original mitigation agreement to the maximum extent reasonable.

205 CMR: MASSACHUSETTS GAMING COMMISSION

127.05: continued

(6) No later than five days after the issuance of the report of the arbitrator(s) as provided in 205 CMR 127.05(5), the parties shall either sign an addendum to the original mitigation agreement or an amended mitigation agreement consistent with the arbitrator's report or sign an independently negotiated addendum. In the event that they fail to do so, the arbitrator's report shall be binding on the parties.

(7) The parties may, by a mutual agreement in writing filed with the commission, extend any of the timelines set forth in 205 CMR 127.00.

127.06: Voluntary Reopening of a Mitigation Agreement

In addition to the reasons stated in 205 CMR 127.02 the parties to a mitigation agreement may reopen the mitigation agreement for any reason stated in the mitigation agreement itself, provided that in the case of a host community agreement the option to reopen the agreement and the condition under which such agreement may be reopened has been described in the fair, concise summary referenced in M.G.L. c. 23K, § 15(13) and 205 CMR 124.05.

REGULATORY AUTHORITY

205 CMR 127.00: M.G.L. c. 23K, §§ 4(37), 5, and 17.

NON-TEXT PAGE