



Region B - Local Community Mitigation Advisory Committee

Pursuant to the Massachusetts Open Meeting Law, G.L. c. 30A, §§ 18-25, notice is hereby given of a meeting of the **Local Community Mitigation Advisory Committee** established pursuant to M.G.L. c. 23K § 68.

The meeting will take place: **Tuesday, November 13, 2018 @ 2:00 p.m.**
UMass Center at Springfield
Tower Square
1500 Main Street
Springfield, MA 01115

Public Meeting:

1. Welcome/Opening Comments
2. Minutes from the October 16, 2018 Meeting – **Vote**
3. Election of Chair and Representative of the Subcommittee on Community Mitigation – **Votes**
4. Review draft 2019 Guidelines
5. Ethics Training
6. Next steps
7. Other Business – reserved for matters not reasonably anticipated at the time of posting.

I certify that on this date, this Notice was posted as “Local Community Mitigation Advisory Committee” at www.massgaming.com and emailed to: regs@sec.state.ma.us, and melissa.andrade@state.ma.us.

November 8, 2018
(date)



John S. Ziemba, Ombudsman

Date Posted to Website: Thursday, November 8, 2018



Massachusetts Gaming Commission



Region B - Local Community Mitigation Advisory Committee Meeting Minutes

DRAFT

Date/Time: October 16, 2018 – 2:00 p.m. – 3:30 p.m.

Place: UMass Springfield, Tower Square - 1500 Main Street, Springfield, MA

Members Present:	Jill Payne, Chair Jennifer Bonfiglio Greg Chiecko Judith Theocles Ellen Patashnick Greg Chiecko Richard Sullivan Lori Tanner Kate Kane	Carmina Fernandes	Attendees: Joe Delaney Jose Delgado Bruce Stebbins John Ziemba Jill Griffin Mary Thurlow Shara Bedard Crystal Howard
Members Absent:	Sean Powers Denise Menard Andrew Smith Timothy Brennan		

Call to Order

Jill McCarthy Payne, Chair, called the meeting to order once quorum was reached, and introduced herself. She asked that everyone present introduce themselves.

Approval of Minutes

The Chair then moved to approve the minutes from the November 20, 2017 meeting. Greg Chiecko of Chicopee seconded the motion. The motion was approved unanimously. The Chair then turned the meeting over to Massachusetts Gaming Commission (“Commission”) Ombudsman, John Ziemba.

Discussion of 2019 Community Mitigation Fund Guidelines to be Considered

Ombudsman Ziemba provided a brief overview of the 2019 Community Mitigation Fund Guidelines and new policy questions to consider, as there is now a fully functioning Category 1 casino. He indicated that the Commission will have an abundance of data pertaining to impacts of the casinos on the communities from research that is being conducted on behalf of the Commission. He then reviewed policy questions that remained from prior years, and provided general parameters regarding what remains in the Community Mitigation Fund. Ombudsman Ziemba requested that committee members provide the Commission with answers from the communities to the new policy questions.

Committee members discussed the new policy question #12 with the Ombudsman. In short, it needs to be determined if the Commission should split the remaining funds by source, i.e. each gaming region (based on tax revenue projection). Also, if the decision is that the funds should be

split this way, there should be a discussion as to whether or not this would be instituted during the construction period or when the casinos are operational. Ombudsman Ziemba stated that the Mitigation Fund will be replenished by taxes from the casinos. Now that MGM Springfield is operational, Massachusetts can count on approximately \$1.5 million coming from MGM Springfield by the close of 2018. The Commission anticipates approximately \$18 million into the fund once MGM Springfield and Encore Boston Harbor are up and operational and their marketing is optimized. Encore Boston Harbor is scheduled to open on June 24, 2019. The Commission anticipates one half year of revenue from Encore Boston Harbor for the fund next year. Ombudsman Ziemba stated that the LCMAC Region B committee members made it clear last year that they wanted to split by source. However the question remains as to whether or not this should start this year.

The committee reviewed calculations estimated for the regions in the upcoming fiscal year, as well as allocations for all communities in the previous year. Richard Sullivan (Regional Economic Development Organization seat) stated that these reports indicate that the funds need to be split, as most of the funds are being generated in the western region, and there was more spending in the eastern region to date. Commissioner Stebbins then clarified for the committee the geographic borders for the Massachusetts gaming regions. Region A is Worcester County and areas east of Worcester County, and Region B is comprised of the four westernmost counties.

The committee inquired about any guidelines around holding unspent funds after the end of the fiscal year. Committee members would like to establish how long funds can be held for each region. The Ombudsman suggested that a limit of one to two years be considered. Richard Sullivan stated that his expectation was that the funds would remain in each region for a long period. A suggestion was made to consider a limit of five years by Judith Theocles of Wilbraham.

Committee members discussed new policy question #11 with Ombudsman Ziemba. Specifically, the question asks if the Mitigation Fund will pay for workforce development, as there is a Gaming Economic Development Fund established, but is out of the Commission's jurisdiction.

Jill Griffin, Director of the Commission's Workforce, Supplier and Diversity Development division reported on its initiatives, such as the Hampden Prep evening program, scholarships to the gaming school, training initiatives, and long-term training programs. A question arose by the committee as to whether or not there would be a cost to the student to enroll in these programs, based on the money earmarked for education and number of students enrolled. Director Griffin stated that she will inquire and provide this information to the committee at a later date.

Ellen Patashnick (Human Service Provider seat) asked about MGM Springfield's attrition rates and how the casino is faring in terms of employment. Ombudsman Ziemba stated that this information will be contained in MGM Springfield's quarterly report, which is due in mid-November. Jose Delgado, Director of Government Affairs for MGM Springfield then stated that attrition levels are actually lower compared to other MGM casino locations. Proper training was attributed as a factor for the low attrition at MGM Springfield, as it sets expectations for new employees. Judith Theocles introduced the idea of having funds available to high schools for programs that would serve non-college bound students.

Ombudsman Ziemba encouraged committee members to continue on with workforce development being a priority in future years. He stated that he would like to talk more about the Gaming Economic Development Fund and strategies for those dollars in the future.

The committee discussed new policy question #2 that asks if the Mitigation Fund should pay for construction/implementation costs of transportation projects. Currently, the fund pays for design and permitting, but not for actual transportation construction costs. Ombudsman noted that there will be look back studies over the course of the upcoming year to determine traffic impacts. There was discussion around postponing making any adjustments for another year.

There was a discussion about whether the Commission should consider additional funding rounds. It was noted that the deadline for applying to the Mitigation Fund is statutorily set. Further, it was noted that any community requesting use of any funds must demonstrate a direct correlation with a casino.

The committee then reviewed new policy question #3. It was stated that operations-related impacts need to be known to a greater degree of specificity in order to determine how to approach issues that may arise in late 2018 and 2019. Communities will need to demonstrate to the Commission that any impacts to their areas are a direct result of the casino. The statute references housing and school based impacts, and members discussed historical concerns that a need for outside workers to move into smaller areas could result in schools being over-burdened as a result. The Committee discussed that it may be inconclusive as to whether or not studies being conducted would demonstrate any full impact by February 1, 2019.

There was discussion around housing being built as a result of casinos, and ways that the Commission would obtain proof (perhaps an affidavit from the developer) that the circumstance is in fact a result of casinos. Additional stakeholder interviews will be conducted during the Commission's studies, as noted by Commissioner Stebbins and Ombudsman Ziembra.

Ombudsman Ziembra then reviewed Public Safety training costs with the committee. The Mitigation Fund was used for training costs for the additional officers needed at the Springfield Police Department last year. The committee was asked to discuss any needs that are present in their region. The Commission is considering a transit connection to the casino for Everett, as well as the proposal for a pedestrian bridge that would connect Somerville and Everett across the Mystic River. This significant project is anticipated to keep cars off the roads at \$30 million or less.

Ombudsman Ziembra stated that the committees will be electing chairs at the next meeting.

The Chair asked if there was any further discussion. There being none, the Chair motioned to adjourn the meeting and it being duly seconded, the meeting was adjourned at 3:24 p.m. The Motion was approved unanimously.

/s/ Shara Bedard
Shara Bedard, Secretary

List of Documents and Other Items Used on October 16, 2018

1. Notice of Meeting and Agenda
2. Draft minutes from the November 20, 2017 meeting
3. Revised 2019 Policy Questions
4. 2018 Community Mitigation Fund Guidelines

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**2019 COMMUNITY MITIGATION FUND
BD-19-1068-1068C-1068L-_____**

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Massachusetts Gaming Commission



2019 COMMUNITY MITIGATION FUND GUIDELINES

BD-19-1068-1068C-1068L-_____

What is the Community Mitigation Fund?

The Expanded Gaming Act, M.G.L. c. 23K, created the Community Mitigation Fund (“CMF”) to help entities offset costs related to the construction and operation of a gaming establishment.

When Is the Application Deadline?

February 1, 2019. M.G.L. c. 23K, § 61 states that “parties requesting appropriations from the fund shall submit a written request for funding to the Commission by February 1.”

Who Can Apply?

M.G.L. 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 in order to implement a mitigation measure that affects more than one community.

Applications involving a mitigation measure impacting only one community shall only be submitted by the authorized representatives of the community itself. Governmental entities within communities such as redevelopment authorities or non-regional school districts shall submit applications through such community rather than submitting applications independent of the community.

Private non-governmental parties may not apply for Community Mitigation Funds. Governmental entities may apply to the Commission for funds to mitigate impacts provided that the funding is used for a “public purpose” and not the direct benefit or maintenance of a private party or private parties.

The Community Mitigation Fund may be used to offset costs related to both Category 1 full casino facilities (MGM Springfield and Encore Boston Harbor), the state’s Category 2 slots-only facility (Plainridge Park), and may be utilized, pursuant to these Guidelines, for a program of technical assistance for communities that may be impacted by the potential Tribal gaming facility in Taunton.

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

No. The Commission’s regulations and M.G.L. c. 23K, § 61 do not limit use of Community Mitigation Funds to only host or surrounding communities. The Commission’s regulation,



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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 M.G.L. c. 23K, § 61....”

What Cannot Be Funded?

2019 Community Mitigation Fund may not be used for the mitigation of:

Category 1 Gaming Facilities:

- Any operational related impacts in Region A except Police Training Costs;
- impacts that are projected or predicted but that are not occurring or have not occurred by February 1, 2019;**
- 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);
- the cost of the preparation of a grant application;
- requests related to utility outages, such as the mitigation of business interruptions;
- Police Training Costs in Region B; and
- other impacts determined by the Commission.

Category 2 Gaming Facilities:

- impacts that are projected or predicted but that are not occurring or have not occurred by February 1, 2019;**
- 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);
- the cost of the preparation of a grant application; and
- requests related to utility outages, such as the mitigation of business interruptions.
- Police Training Costs; and
- other impacts determined by the Commission

**These limitations do not apply to transportation planning grants, non-transportation planning grants, workforce development pilot program grants, tribal gaming technical assistance grants, and grants for police training costs.

Please note that the Commission may determine to expand the eligible uses of funds for the 2019 program or other future programs when impacts are more clearly identifiable. The Commission will also consult with mitigation advisory committees established in M.G.L. c. 23K in determining such uses.

Guidance to Ensure Funding is Used for Public Purposes Related to Gaming Facility Impacts

The Commission strongly encourages applicants to ensure that the impacts are directly related to the gaming facility and that the public purpose of such mitigation is readily apparent. The Commission will not fund any applications for assistance for non-governmental entities.

Please note that as stated by the Commonwealth's Comptroller's Office: "The Anti-Aid Amendment of the Massachusetts Constitution prohibits 'public money or property' from aiding non-public institutions.... Article 46 has been interpreted to allow the expenditure of public funds to non-public recipients solely for the provision of a 'public purposes' [sic] and not for the direct benefit or maintenance of the non-public entity."

Any governmental entity seeking funding for mitigation is required to ensure that any planned use of funding is in conformity with the provisions of the Massachusetts Constitution and with all applicable laws and regulations, including but not limited to, Municipal Finance Law and public procurement requirements.

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). After the deduction of purposes approved in 2015, 2016, 2017, and 2018 the fund has approximately \$5.2 million available.¹

This is the first year the Community Mitigation Fund will be receiving 6.5% of the revenues from the tax on gross gaming revenues from the Region B Category 1 (full casino) licensee, MGM Springfield. MGM Springfield is now operational and will generate new funds into the CMF. Encore Boston Harbor is not scheduled to open until mid-2019. The Commission is conservatively anticipating that an additional \$1.5M will be placed in the CMF from MGM Springfield revenues by December 31, 2018.

Once both the MGM Springfield and Encore Boston Harbor facilities are operational, and their marketing plans are optimized approximately \$18 million generated by these two facilities may be annually deposited into the Community Mitigation Fund using a conservative estimate provided by the Commission's financial consultants.

¹ These Guidelines do not describe revenue estimates from the potential Tribal facility in Taunton or the participation of a Region C facility, as no Region C license or Tribal facility has yet been fully authorized. Further, after the initial deposit, no further contributions from the Slots licensee will be made to the fund. As of the date of these Guidelines, the total may or may not be reduced based on a pending decision on a City of Springfield application that was placed on hold in 2018.

Amount Remaining	\$5.2M
New CMF funding for Region B - MGM Springfield - Western Massachusetts	Estimate of \$1.5 (the Commission plans to use the actual amount of new funds placed in the CMF by December 31, 2018 capped @ \$1.5M)
Total Amount Available for 2019	\$6.7 Million

Allocation by Region

The Commission intends to allocate 2019 CMF funding based on need in the regions that reflects the proportion of funds paid into the Community Mitigation Fund from the taxes generated by the MGM Springfield or Encore Boston Harbor facilities. This allocation takes into account mitigation needs outside Region A and Region B, and includes a method to utilize unspent allocations.

For the 2019 year, the Commission plans to allocate the \$5.2 million remaining CMF funds equally between the two regions, Region A and Region B, after accounting for grants that will be made for Category 2 impacts. Thus, by way of example, if the Commission awards \$200,000 for Category 2 impacts in 2019, \$5 million would be available to be split equally between Region A and Region B (i.e. \$2.5million for each region). Please note that these Guidelines establish a maximum target of \$500K for Category 2 impacts. Therefore, for another example, at the Category 2 maximum, approximately \$4.7 million would be available to be split between Region A and B (\$5.2 million - \$500K Category 2 impacts = \$4.7 million (\$2.35 million for Region A and \$2.35 million for Region B)).

In addition to the funds remaining in the account, as noted, it is expected that MGM Springfield will generate an additional \$1.5 million by December 31, 2018. It is the Commission's intention to allocate these MGM Springfield generated funds to Region B. It is the Commission's further intention that any unused funds allocated to each Region will be set aside for that Region for a period of three years. After the three-year period, the funds shall be allocated back into a combined general fund for all regions and for Category 2 impacts.

Joint Applications

The Commission continues to support regional approaches to mitigation needs and recognizes that some mitigation requires the commitment of more than one community. The 2019 Guidelines for the Community Mitigation Fund allow multiple communities to submit a joint application. In the event that any of the applicant communities has not expended its One-Time 2015/2016 Reserve ("reserve" or "reserves"), the application must detail how the reserves will be allocated between the applicant communities to meet any reserve expenditure requirement. For example, transportation planning grants require that reserves be used prior to the receipt of new planning funds. In the event of a joint application for a \$200,000 planning grant, the joint application shall specify how the applicant communities will allocate/use a total of \$100,000 in reserves between the communities. The application must specify which

community will be the fiscal agent for the grant funds. All communities will be held responsible for compliance with the terms contained in the grant.

In order to further regional cooperation the applications for transportation planning grants and non-transportation planning grants that involve more than one community for the same planning projects may request grant assistance that exceeds the limits specified in these guidelines (\$200,000 for transportation planning grants and \$50,000 for non-transportation planning grants). The additional funding may be requested only for the costs of a joint project being proposed by more than one community, not similar projects. Eligible communities may request additional funding for joint projects based on the below table.

	Base Funding	Regional Planning Incentive Award	Total Allowable Request
Non-Transportation Planning Projects Involving Two (2) Communities	\$50,000 for each community	\$5,000	$\$50,000 \times 2 \text{ communities}$ $\underline{\$100,000 + \$5,000 =}$ $\underline{\$105,000}$
Non-Transportation Program Involving Three (3) or More	\$50,000 for each community	\$10,000	$\$50,000 \times *$ 3 communities $\underline{\$150,000 + \$10,000 =}$ $\underline{\$160,000}$
Transportation Planning Projects Two (2) Communities	\$200,000 for each community	\$25,000	$\$200,000 \times 2 \text{ communities}$ $\underline{\$400,000 + \$25,000 =}$ $\underline{\$425,000}$
Transportation Planning Projects Three (3) or more	\$200,000 for each community	\$50,000	$\$200,000 \times *$ 3 communities $\underline{\$600,000 + \$50,000}$ $\underline{\$650,000}$

*Although the base amount for such grants would increase with applications involving four or more communities (e.g. \$200,000 Transportation Planning Grant per community X 4 communities = \$800,000) the amount of the Regional Planning Incentive Award will not exceed \$50,000 (e.g. 4 community transportation planning grants would not exceed \$850,000 = 4 x \$200,000 base award plus \$50,000 Regional Planning Incentive Award).

Please note that communities can apply for a portion of the planning grants for single community applications while allocating a portion for joint projects. For example, a community could apply for one \$100,000 base Transportation Planning Grant leaving \$100,000 for a joint application involving another community. In this example the community could be eligible for \$100,000 for the single community project, \$100,000 for a joint project, and a \$25,000 Regional Planning Incentive Award amount shared with a second community.

Applications seeking a Regional Planning Incentive Award amount shall allocate at least fifty percent (50%) of the base funding level towards a joint project. For example, at least \$100,000 of a \$200,000 Transportation Planning Grant seeking an additional Regional Planning Incentive Award amount shall be for the joint project with another community. No community is eligible for more than one Transportation Regional Planning Incentive Award. No community is eligible for more than one Non-Transportation Regional Planning Incentive Award.

Limitations

Because the Community Mitigation Fund needs to be available until all the facilities are operational, the Commission anticipates authorizing no more than \$6.7 million in awards out of the 2019 Community Mitigation Fund, including potential future awards of previously authorized grants. No application for a Specific Impact Grant shall exceed \$500,000, unless a waiver has been granted by the Commission. No community is eligible for more than one Specific Impact Grant, unless a waiver has been granted by the Commission. However, communities may apply for multiple purposes in one application.

Of that amount, for 2019, no more than \$500,000 may be expended for operational impacts related to the Category 2 gaming facility, unless otherwise determined by the Commission.

One-Time 2015/2016 Reserves

In 2015 and 2016, 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 a host community, designated surrounding community, a community which entered into a nearby community agreement with a licensee, a community that petitioned to be a surrounding community to a gaming licensee, or a community that is geographically adjacent to a host community:

Region A: Boston, Cambridge, Chelsea, Everett, Lynn, Malden, Medford, Melrose, Revere, Saugus, Somerville

Region B: Agawam, Chicopee, East Longmeadow, Hampden, Holyoke, Longmeadow, Ludlow, Northampton, Springfield, West Springfield, Wilbraham

Category 2 – Slots: Attleboro, Foxboro, Mansfield, North Attleboro, Plainridge, Wrentham

In many cases, communities may not be in a position to access their 2015/2016 Reserves by the February 1, 2019 deadline. Therefore, the Commission has extended such reserves for the 2019 Community Mitigation Fund Program. Communities may continue to access whatever portion of the original \$100,000 that remains unexpended. **The above communities do not need to submit any new application to keep their reserves. These reserves have automatically been extended by action of the Commission.**

The criteria for the use of the reserve remain the same. This reserve can be used to cover impacts that may arise in 2019 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 a community apply for mitigation of a specific impact even though it has not fully utilized its One-Time 2015/2016 Reserve?

Yes. However, if a Specific Impact Grant application is successful, a portion of the One-Time 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.

Specific Impact Grants - What Specific Impacts Can Be Funded?

The 2019 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, 2019 application date and police training costs in Region A that occur prior to the opening of both Category 1 facilities. Although the definition in the Commission's regulations (for the purpose of determining which communities are surrounding communities) references predicted impacts, the 2019 program is limited to only those impacts that are being experienced or were experienced by the time of the February 1, 2019 application date and police training costs in Region A that occur prior to the opening of both Category 1 facilities.

The Commission has determined that the funding of unanticipated impacts will be a priority under the annual 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.² The Community Mitigation Fund is not intended to fund the mitigation of specific impacts already being funded in a Host or Surrounding Community Agreement.

No application for the mitigation of a specific impact shall exceed \$500,000. However, communities and governmental entities may ask the Commission to waive this funding cap. Any community and governmental entity seeking a waiver should include a statement in its application specifying the reason for its waiver request, in accordance with the waiver guidance included in these Guidelines.

Allowable impacts for funding are as follows:

Category 1 Gaming Facility (Region A): In recognition that no Category 1 gaming facility will be operational by February 1, 2019 in Region A, the Commission has determined that the 2019

² 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.

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 Grant, 2018 Non-Transportation Planning Grant, 2018 Transportation Planning Grant, Transit Project(s) of Regional Significance or the 2018 Workforce Development Pilot Program Grant, or police training costs. No application for police training costs shall include costs for personnel while such personnel are serving in a gaming enforcement unit. No application for police training costs shall include costs for overtime incurred to backfill a position due to a transfer of personnel to a gaming enforcement unit.

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 and Region B Category 1 Gaming Facility: In recognition that the Category 2 gaming facility in Plainville opened during calendar year 2015 and the MGM Springfield Category 1 facility opened during calendar year 2018, the Commission will make available funding to mitigate operational related impacts that are being experienced or were experienced from that facility by the February 1, 2019 date. The Commission will make available up to \$500,000 in total for applications for the mitigation of operational impacts relating to the Plainridge facility.

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

"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 runoff, 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."

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

The Commission notes that it plans to fund grants only for operational impacts that can be determined to result directly from the facility, that can be demonstrated to be likely longstanding and non-temporary without any such mitigation, and whose impacts can be demonstrated or documented with significant evidence.

Hampden County Sheriff's Department – Specific Impact Grant

In 2016 the Commission awarded the Hampden County Sheriff's Department ("HCSD") funds to offset increased rent for the Western Massachusetts Correctional Alcohol Center ("WMCAC"). In providing assistance, the Commission stated that the amount of assistance shall not exceed \$2,000,000 in total for five years or \$400,000 per fiscal year. A provision in the grant required HCSD to reapply each year. Each grant application may not exceed \$400,000 per year. Any such lease assistance shall be included in the Region B allocation of funds.

2019 Non-Transportation Planning Grant

The Commission will make available funding for certain planning activities for all communities that previously qualified to receive funding from the One-Time 2015/2016 Reserve Fund, and have already allocated and received Commission approval of the use of its reserve. No application for this 2019 Non-Transportation Planning Grant shall exceed Fifty Thousand Dollars (\$50,000). Applications involving transportation planning or design are not eligible for the 2019 Non-Transportation Planning Grant. Communities requesting transportation planning should instead apply for Transportation Planning Grant funds.

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. The planning project must be clearly related to addressing 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. Each community applying for a 2019 Non-Transportation Planning Grant will also need to provide detail on what it will contribute to the project such as in-kind services or planning funds. Planning projects may include programs created by communities to provide technical assistance and promotion for groups of area businesses.

Communities that utilize this 2019 Non-Transportation Planning Grant are not prohibited from applying for funding for any specific mitigation request.

Transportation Planning Grants

The Commission will make available funding for certain transportation planning activities for all communities eligible to receive funding from the Community Mitigation Fund in Regions A & B and for the Category 2 facility, 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, each community that is geographically adjacent to a host community.

The total funding available for Transportation Planning Grants will likely not exceed \$1,000,000. No application for a Transportation Planning Grant shall exceed \$200,000.

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

Eligible transportation 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 Transportation Planning Grant include, but not necessarily limited to:

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

The transportation 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 transportation planning effort prior to funding being awarded.

Communities that requested and received the One-Time 2015/2016 Reserve Grant 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.

In addition to the specific impact grant factors further defined in section [“How Will the Commission Decide on Applications?”](#), the Commission will also consider whether the applicant demonstrates the potential for such transportation project that is the subject of a CMF application to compete for state or federal transportation funds.

Applicants may, but are not required, to include a description of how the project meets the evaluation standards for the Fiscal Year 2019 TIP criteria for the Boston MPO Region or the Pioneer Valley Planning Commission’s transportation evaluation criteria, or other regional transportation project evaluation standard, whichever may be most applicable.

Transit Project(s) of Regional Significance - [PLACEHOLDER FOR DISCUSSION]

Although the Commission intends to continue authorizing grants for transportation planning and design through its transportation planning grants, the Commission does not intend to expand these grants to include the cost of the construction of transportation projects in the 2019 CMF. Instead, the Commission intends to consider such expansion once more funding is placed into the fund from the taxes on the gaming revenue for Region A and Region B licensees once they both are operational. However, in 2019, the Commission will consider funding no more than one project that offers significant transit benefits in each Category 1 region and one project related to the Category 2 facility. Applicants should demonstrate how the funds will be

used to expand regional transit connections. The Commission intends that any CMF assistance provided will only be for a percentage of the costs of any such project and that significant other federal, state, local, private or other funding will be available to pay for the costs of any such project.

Such project may anticipate contributions from the CMF in future rounds. However, applicants should understand that any future year awards shall be at the discretion of the Commission in future years. Given the likely complexity of any such transit project(s) applications, applicants may consult with Commission staff before and during the CMF review on such projects. The Commission anticipates authorizing no more than **\$ X** in grants for Transit Project(s) of Regional Significance. Applicants may include a request to use funding from previously awarded CMF Reserves in any description of significant other federal, state, local, or private contributions. Similarly, applicants may include contributions from gaming licensees and private contributions.

Limitations/Specific Requirements on Planning Applications

The Commission will fund no application for more than two years for any municipal employee. The CMF will not pay the full cost of any municipal employee. The municipality would need to provide the remaining amount of any employee cost and certify that all such expenses are casino related. For non-personnel costs, 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.

Pursuant to the Guidelines, the Commission will evaluate requests for planning funds (including the use of One-Time 2015-2016 Reserve, Non-Transportation Planning Grant, and Transportation Planning Grant Funds and Transit Project(s) of Regional Significance) 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. Applicants should provide detail regarding consultations with nearby communities to determine the potential for cooperative regional efforts regarding planning activities.

Tribal Gaming Technical Assistance Grant

The Commission may make available no more than \$200,000 in technical assistance funding to assist in the determination of potential impacts that may be experienced by communities in geographic proximity to the potential Tribal Gaming facility in Taunton. Said technical assistance funding may be made through Southeastern Regional Planning and Economic Development District ("SRPEDD"), the regional planning agency that services such communities or a comparable regional entity. Such funding will only be made available, after approval of any application by SRPEDD or a comparable regional entity, if it is determined by the Commission that construction of such gaming facility will likely commence prior to or during Fiscal Year

2020. Any such application by SRPEDD or a comparable regional entity must demonstrate that any studies of impacts will address the technical assistance needs of the region which may include but not be limited to the communities that are geographically adjacent to Taunton. Such funding shall not be used to study impacts on or provide technical assistance to Taunton, as funding has been provided in the Intergovernmental Agreement By and Between the Mashpee Wampanoag Tribe and the City of Taunton. Any such program of technical assistance may be provided by SRPEDD itself or through a contract with SRPEDD.

Workforce Development Pilot Program Grant

For fiscal year 2020, the Commission will make available funding for certain career pathways workforce development pilot programs in Regions A and B for service to residents of communities of such Regions, including each Category 1 host community and each designated surrounding community, each community which entered into a nearby community agreement with a licensee, any community that petitioned to be a surrounding community to a gaming licensee, and each community that is geographically adjacent to a host community.

The total funding available for grants will likely not exceed \$600,000. No application for a grant in each Region shall exceed \$300,000 unless otherwise determined by the Commission. One grant will be considered for each Region. Each governmental entity applying for workforce development funds will also need to provide detail on what it will contribute to the workforce development project such as in-kind services or workforce development funds.

Eligible career pathways workforce development proposals must include a regional consortium approach to improve the skills, knowledge, and credential attainment of each Region A and Region B residents interested in a casino career, focusing on increasing industry-recognized and academic credentials needed to work in the most in-demand occupations related to the expanded gaming industry or a focus on occupations that could be in high demand from the casino, potentially negatively impacting the regional business community. This could include a focus on hospitality, culinary, cash handling, or customer service, etc.

Goals include:

- To help low-skilled adults earn occupational credentials, obtain well-paying jobs, and sustain rewarding careers in sectors related to hospitality and casino careers.
- To get students with low basic skills into for-credit career and technical education courses to improve their educational and employment outcomes.
- To deliver education and career training programs that can be completed in two years or less and prepare program participants for employment in high-wage, high-skill occupations related to the casino.
- To align and accelerate ABE, GED, and developmental programs and provide nontraditional students the supports they need to complete postsecondary credentials of value in the regional labor market.

- To mitigate a strain in existing resources and a potential impact to the regional labor market.

Eligible activities include: a program in Region A or Region B that structures intentional connections among adult basic education, occupational training, and post-secondary education programs designed to meet the needs of both adult learners and employers, post-secondary vocational programs, registered apprenticeships, courses leading to college credits or industry-recognized certificates, Adult Basic Education (“ABE”) and vocationally based English for Speakers of Other Languages (“ESOL”) training programs, Contextualized Learning, Integrated Education & Training, and Industry-recognized Credentials.

- **A consortium application is required.** However, governmental entities eligible to receive funds would include but not be limited to: host communities, communities which were each either a designated surrounding community, a community which entered into a nearby community agreement with a licensee, a community that is geographically adjacent to the host community of a gaming licensee, a community that petitioned to be a surrounding community to a gaming licensee state agencies, state agencies, and Regional Employment Boards. The Commission shall evaluate the use of host community agreement funds in evaluating funding requests for workforce development pilot program grant funds. Applicants should consider leveraging other funding resources.

What Should Be Included in the Applications?

- ★ Applicants are required to complete the 2019 Specific Impact Grant Application, the 2019 Transportation Planning Grant Application, the 2019 Workforce Development Pilot Program Grant Application or the 2019 Non-Transportation Planning Grant Application, 2019 Transit Project(s) of Regional Significance, 2019 Reserve Planning Application/Tribal Gaming Technical Assistance Application, and may also submit additional supporting materials of a reasonable length.
- ★ Applicants will need to describe how the specific mitigation, planning, or workforce development pilot program request will address any claimed impacts and provide justification of any funds requested. Unlike existing surrounding community agreements which were based on anticipated impacts, any Specific Impact Grant will be based on impacts that have occurred or are occurring, as described 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. Commission Staff may consider information from the report issued by the Lower Mystic Regional Workforce Group in its evaluation of transportation planning grants.

The Commission will evaluate any funding requests in the context of any host or surrounding community agreements. Factors used by the Commission to evaluate grant applications may include but not be limited to:

- A demonstration that the impact is being caused by the proposed gaming facility;
- The significance of the impact to be remedied;
- The potential for the proposed mitigation measure to address the impact;
- The feasibility and reasonableness of the proposed mitigation measure;
- A demonstration that any program to assist non-governmental entities is for a demonstrated public purpose and not for the benefit or maintenance of a private party;
- The significance of any matching funds for workforce development pilot program activities or planning efforts, including but not limited to the ability to compete for state or federal workforce, transportation or other funds;
- Any demonstration of regional benefits from a mitigation award;
- A demonstration that other funds from host or surrounding community agreements are not available to fund the proposed mitigation measure;
- A demonstration that such mitigation measure is not already required to be completed by the licensee pursuant to any regulatory requirements or pursuant to any agreements between such licensee and applicant; and
- The inclusion of a detailed scope, budget, and timetable for each mitigation request.

Additionally, the Workforce Development Pilot Programs evaluation

Supplemental Guidelines Used To Evaluate Workforce Development Applications

- ❖ Does it develop a pilot program that will address any claimed impacts?
- ❖ A program in Region A or Region B that structures intentional connections among adult basic education, occupational training, and post-secondary education programs

- ❖ Does it accomplish the goal of assisting low-skilled adults to obtain education and career training to enable them to join the regional labor market?
- ❖ Does the application address the anticipated goals of the program (see page 15 of the Guidelines)?
- ❖ Industry-recognized and academic credentials needed to work in the most in-demand occupations related to the expanded gaming industry or a focus on occupations that could be in high demand from the casino, potentially negatively impacting the regional business community
- ❖ Governmental entity applying for workforce development funds will also need to provide detail on what it will contribute to the workforce development project such as in-kind services or workforce development funds
- ❖ Does the application include a regional consortium approach?
- ❖ Does it contain eligible activities that structure adult basic education, occupational training and post second education for adult learners?

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 M.G.L. c. 23K.

The Commission reserves the ability to determine a funding limit below what is detailed in these Guidelines, as only Region B contributions to the Community Mitigation Fund are currently being made until the Region A facility is operational. The Commission also reserves the ability to determine a funding limit above what is detailed in these Guidelines. The Commission notes that it plans to target its funding decisions based on the regional allocations described earlier. However, the Commission reserves the right to make determinations that do not strictly adhere or adhere to such targets. In the event the Commission awards are not in such adherence, the Commission may make appropriate adjustments in future guidelines to bring regional allocations into more congruity with such targets.

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.

- **There is limited funding available. The Commission therefore reserves the right to determine which requests to fund based on its assessment of a broad range of factors including the extent of public benefit each grant is likely to produce.**

When Will the Commission Make Decisions?

The Commission anticipates making funding decisions on any requests for grant assistance before July 2019, after a comprehensive review and any additional information requests.

Is There a Deadline for the Use of the One-Time 2015/2016 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 Specific Impact Grant Application or the Planning Project Grant Application in its entirety. 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. The Commission will fund no application for more than two years for any municipal employee. The CMF will not pay the full cost of any municipal employee. The municipality would need to provide the remaining amount of any employee cost and certify that all such expenses are casino related. 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, 2019 application date. Commission approvals of the use of the One-Time 2015/2016 Reserve will also be on a rolling basis corresponding to the rolling determinations of use by communities.

Waivers and Variances

(a) General. The Commission may in its discretion waive or grant a variance from any provision or requirement contained in these Guidelines, not specifically required by law, where the Commission finds that:

1. Granting the waiver or variance is consistent with the purposes of M.G.L. c. 23K;
2. Granting the waiver or variance will not interfere with the ability of the Commission to fulfill its duties;
3. Granting the waiver or variance will not adversely affect the public interest; and
4. Not granting the waiver or variance would cause a substantial hardship to the community, governmental entity, or person requesting the waiver or variance.

(b) Filings. All requests for waivers or variances shall be in writing, shall set forth the specific provision of the Guidelines to which a waiver or variance is sought, and shall state the basis for the proposed waiver or variance.

(c) Determination. The Commission may grant a waiver or variance, deny a waiver or variance, or grant a waiver or variance subject to such terms, conditions and limitations as the commission may determine.

Who Should Be Contacted for Any Questions?

As the 2019 Community Mitigation Fund program is just in the fifth 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 Ziemba, can be reached at (617) 979-8423 or via e-mail at john.s.ziemba@state.ma.us. The Commission's address is 101 Federal Street, 12th Floor, Boston, MA 02110.

Where Should the Application Be Sent?

Applications **must be sent to** www.commbuys.com. An application received by COMMBUYS by February 1, 2019 will meet the application deadline. Applicants that are not part of the COMMBUYS system should contact Mary Thurlow of the Commission's Ombudsman's Office well in advance of the February 1, 2019 deadline to make arrangements for submission of the application by the deadline. Mary Thurlow can be contacted at (617) 979-8420 or at mary.thurlow@state.ma.us.

If you have any questions or concerns contact the COMMBUYS Help Desk at COMMBUYS@state.ma.us or during normal business hours (8am - 5pm ET Monday - Friday) at 1-888-627-8283 or 617-720-3197.

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20182019 COMMUNITY MITIGATION FUND

BD-~~1819~~-1068-1068C-1068L-22137-_____

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Massachusetts Gaming Commission



2018

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Massachusetts Gaming Commission



2019 COMMUNITY MITIGATION FUND GUIDELINES

BD-1819-1068-1068C-1068L-22137-

What is the Community Mitigation Fund?

The Expanded Gaming Act, M.G.L. c. 23K, created the Community Mitigation Fund (“CMF”) to help entities offset costs related to the construction and operation of a gaming establishment.

When Is the Application Deadline?

February 1, ~~2018~~2019. M.G.L. c. 23K, § 61 states that “parties requesting appropriations from the fund shall submit a written request for funding to the Commission by February 1.”

Who Can Apply?

M.G.L. 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 in order to implement a mitigation measure that affects more than one community.

Applications involving a mitigation measure impacting only one community shall only be submitted by the authorized representatives of the community itself. Governmental entities within communities such as redevelopment authorities or non-regional school districts shall submit applications through such community rather than submitting applications independent of the community.

Private non-governmental parties may not apply for Community Mitigation Funds. ~~However, Governmental entities may apply to the Commission for funds to mitigate impacts to private parties provided that such the funding is used for a “public purpose” and not the direct benefit or maintenance of the a private party; 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 including but not limited to Art. 46, §2, as amended by Article 103 of the Amendments to the Massachusetts Constitution or private parties.~~

The Community Mitigation Fund may be used to offset costs related to both Category 1 full casino facilities (MGM Springfield and [Wynn Everett Encore Boston Harbor](#)), the state’s Category 2 slots-only facility (Plainridge Park), and may be utilized, pursuant to these



Massachusetts Gaming Commission

Guidelines, for a program of technical assistance for communities that may be impacted by the potential Tribal gaming facility in Taunton.

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

No. The Commission’s regulations and M.G.L. 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 M.G.L. c. 23K, § 61....”

What Cannot Be Funded?

20182019 Community Mitigation Fund may not be used for the mitigation of:

Category 1 Gaming Facilities:

- Any operational related impacts;^{**} [in Region A except Police Training Costs;](#)
- impacts that are projected or predicted but that are not occurring or have not occurred by February 1, [20182019](#);**
- 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);
- the cost of the preparation of a grant application;
- requests related to utility outages, such as the mitigation of business interruptions; ~~and~~
- [Police Training Costs in Region B; and](#)
- other impacts determined by the Commission.

Category 2 Gaming Facilities:

- impacts that are projected or predicted but that are not occurring or have not occurred by February 1, [20182019](#);**
- 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);
- the cost of the preparation of a grant application; and

- requests related to utility outages, such as the mitigation of business interruptions.
- [Police Training Costs; and](#)
- [other impacts determined by the Commission](#)

**These limitations do not apply to transportation planning grants, non-transportation planning grants, workforce development pilot program grants, tribal gaming technical assistance grants, and grants for police training costs.

Please note that the Commission may determine to expand the eligible uses of funds for the 2019 program or other future programs when impacts are more clearly identifiable. The Commission will also consult with mitigation advisory committees established in M.G.L. c. 23K in determining such uses.

~~Guidance onto Ensure Funding is Used for Non-Governmental Entities~~Public Purposes

~~As noted, communities and other parties may apply for funds~~Related to mitigate the impact to non-governmental entities. However, [Gaming Facility Impacts](#)

The Commission strongly encourages applicants to ensure that the impacts are directly related to the gaming facility. ~~For example, an applicant could limit a request for assistance for impacts to all businesses within 1000 feet and that the public purpose 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. such mitigation is readily apparent.~~ The Commission will not fund any applications for assistance for non-governmental entities ~~unless the applicant governmental entity or the licensee or both provide funding to match, in the case of host communities, or significantly match the assistance required from the 2018 Community Mitigation Fund. Any such application for assistance to non-governmental entities by a host community must demonstrate that the host community, the licensee, or a combination of the host community and licensee will match the assistance required from the 2018 Community Mitigation Fund.~~

~~Communities may ask the Commission to waive this match requirement or dollar for dollar match requirement in the case of host communities. Any community seeking a waiver should include a statement in its application specifying the reason for its waiver request in accordance with the waiver guidance included in these Guidelines.~~ Please note that as stated by the Commonwealth's Comptroller's Office:

"The Anti-Aid Amendment of the Massachusetts Constitution prohibits 'public money or property' from aiding non-public institutions.... Article 46 has been interpreted to allow the

expenditure of public funds to non-public recipients solely for the provision of a ‘public purposes’ [sic] and not for the direct benefit or maintenance of the non-public entity.”

Any ~~community governmental entity~~ seeking funding for mitigation ~~involving non-public entities should provide detail on how it is required to ensure that any~~ planned use of ~~funding~~ is in conformity with ~~this provision~~ ~~the provisions~~ of the Massachusetts Constitution and with ~~all applicable laws and regulations, including but not limited to,~~ Municipal Finance Law ~~and public procurement requirements.~~

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). After the deduction of purposes approved in 2015, 2016, ~~and~~ 2017, ~~and 2018~~ the fund has approximately \$~~105.2~~ million available ~~after accounting for potential future awards of previously authorized grants.~~¹

~~No further contributions will be made to~~ ~~This is the first year~~ the Community Mitigation Fund ~~until either MGM Springfield or Wynn Boston Harbor become operational and generate revenues.~~² ~~MGM Springfield is currently projected to be operational by early September 2018. Wynn Boston Harbor is currently projected to be operational in June 2019. Once operational, M.G.L. c. 23K, § 59 specifies that will be receiving 6.5% of the revenues from the tax on gross gaming revenues from the Region B Category 1 (full casino) licensees shall be deposited in the Community Mitigation Fund.~~ ~~licensee, MGM Springfield. MGM Springfield is now operational and will generate new funds into the CMF. Encore Boston Harbor is not scheduled to open until mid-2019. The Commission is conservatively anticipating that an additional \$1.5M will be placed in the CMF from MGM Springfield revenues by December 31, 2018.~~

Once ~~both~~ the MGM Springfield and ~~Wynn Encore~~ Boston Harbor facilities are operational, ~~and their marketing plans are optimized~~ approximately \$18 million generated by these two facilities ~~will~~ ~~may~~ be annually deposited into the Community Mitigation Fund using a conservative estimate provided by the Commission’s financial consultants.

Amount Remaining

\$5.2M

¹ These Guidelines do not describe revenue estimates from the potential Tribal facility in Taunton or the participation of a Region C facility, as no Region C license or Tribal facility has yet been fully authorized. Further, after the initial deposit, no further contributions from the Slots licensee will be made to the fund. As of the date of these Guidelines, the total may or may not be reduced based on a pending decision on a City of Springfield application that was placed on hold in 2018.

² These guidelines do not describe revenue estimates from the potential Tribal facility in Taunton or the participation of a Region C facility, as no Region C license or Tribal facility has yet been fully authorized. Further, after the initial deposit, no further contributions from the Slots licensee will be made to the fund.

New CMF funding for Region B - MGM Springfield - Western Massachusetts **Estimate of \$1.5 (the Commission plans to use the actual amount of new funds placed in the CMF by December 31, 2018 capped @ \$1.5M)**

Total Amount Available for 2019 **\$6.7 Million**

~~In future guidelines,~~

Allocation by Region

The Commission intends to ~~develop a method to~~ allocate 2019 CMF funding based on need in the regions that reflects the proportion of funds paid into the Community Mitigation Fund from the taxes generated by the MGM Springfield or ~~Wynn~~Encore Boston Harbor facilities ~~once they are operational. Any such method would need to take.~~ This allocation takes into account mitigation needs outside Region A and Region B, and includes a method to utilize unspent allocations.

For the 2019 year, the Commission plans to allocate the \$5.2 million remaining CMF funds equally between the two regions, Region A and Region B, after accounting for grants that will be made for Category 2 impacts. Thus, by way of example, if the Commission awards \$200,000 for Category 2 impacts in 2019, \$5 million would be available to be split equally between Region A and Region B (i.e. \$2.5million for each region). Please note that these Guidelines establish a maximum target of \$500K for Category 2 impacts. Therefore, for another example, at the Category 2 maximum, approximately \$4.7 million would be available to be split between Region A and B (\$5.2 million - \$500K Category 2 impacts = \$4.7 million (\$2.35 million for Region A and \$2.35 million for Region B)).

In addition to the funds remaining in the account, as noted, it is expected that MGM Springfield will generate an additional \$1.5 million by December 31, 2018. It is the Commission's intention to allocate these MGM Springfield generated funds to Region B. It is the Commission's further intention that any unused funds allocated to each Region will be set aside for that Region for a period of three years. After the three-year period, the funds shall be allocated back into a combined general fund for all regions and for Category 2 impacts.

Joint Applications

The Commission continues to support regional approaches to mitigation needs and recognizes that some mitigation requires the commitment of more than one community. The ~~2018~~2019 Guidelines for the Community Mitigation Fund allow multiple communities to submit a joint application. In the event that any of the applicant communities has not expended its One-Time 2015/2016 Reserve ("reserve" or "reserves"), the application must detail how the reserves will be allocated between the applicant communities to meet any reserve expenditure requirement. For example, transportation planning grants require that reserves be used prior to the receipt of new planning funds. In the event of a joint application for a \$200,000 planning grant, the joint application shall specify how the applicant communities will allocate/use a total of \$100,000 in reserves between the communities. The application must specify which

community will be the fiscal agent for the grant funds. All communities will be held responsible for compliance with the terms contained in the grant.

In order to further regional cooperation the applications for transportation planning grants and non-transportation planning grants that involve more than one community for the same planning projects may request grant assistance that exceeds the limits specified in these guidelines (\$200,000 for transportation planning grants and \$50,000 for non-transportation planning grants). The additional funding may be requested only for the costs of a joint project being proposed by more than one community, not similar projects. Eligible communities may request additional funding for joint projects based on the below table.

	Base Funding	Regional Planning Incentive Award	Total Allowable Request
Non-Transportation Planning Projects Involving Two (2) Communities	\$50,000 for each community	\$5,000	$\$50,000 \times 2 \text{ communities}$ $\underline{\$100,000 + \$5,000 =}$ $\underline{\$105,000}$
Non-Transportation Program Involving Three (3) or More	\$50,000 for each community	\$10,000	$\$50,000 \times *$ 3 communities $\underline{\$150,000 + \$10,000 =}$ $\underline{\$160,000}$
Transportation Planning Projects Two (2) Communities	\$200,000 for each community	\$25,000	$\$200,000 \times 2 \text{ communities}$ $\underline{\$400,000 + \$25,000 =}$ $\underline{\$425,000}$
Transportation Planning Projects Three (3) or more	\$200,000 for each community	\$50,000	$\$200,000 \times *$ 3 communities $\underline{\$600,000 + \$50,000}$ $\underline{\$650,000}$

*Although the base amount for such grants would increase with applications involving four or more communities (e.g. \$200,000 Transportation Planning Grant per community X 4 communities = \$800,000) the amount of the Regional Planning Incentive Award will not exceed \$50,000 (e.g. 4 community transportation planning grants would not exceed \$850,000 = 4 x \$200,000 base award plus \$50,000 Regional Planning Incentive Award).

Please note that communities can apply for a portion of the planning grants for single community applications while allocating a portion for joint projects. For example, a community could apply for one \$100,000 base Transportation Planning Grant leaving \$100,000 for a joint application involving another community. In this example the community could be eligible for \$100,000 for the single community project, \$100,000 for a joint project, and a \$25,000 Regional Planning Incentive Award amount shared with a second community.

Applications seeking a Regional Planning Incentive Award amount shall allocate at least fifty percent (50%) of the base funding level towards a joint project. For example, at least \$100,000 of a \$200,000 Transportation Planning Grant seeking an additional Regional Planning Incentive Award amount shall be for the joint project with another community. No community is eligible for more than one Transportation Regional Planning Incentive Award. No community is eligible for more than one Non-Transportation Regional Planning Incentive Award.

Limitations

Because the Community Mitigation Fund needs to be available until all the facilities are operational, the Commission anticipates authorizing no more than \$6.7 million in awards out of the 20182019 Community Mitigation Fund, including potential future awards of previously authorized grants. No application for a Specific Impact Grant shall exceed \$500,000, unless a waiver has been granted by the Commission. No community is eligible for more than one Specific Impact Grant, unless a waiver has been granted by the Commission. However, communities may apply for multiple purposes in one application.

Of that amount, for 20182019, no more than \$500,000 may be expended for operational impacts related to the Category 2 gaming facility, unless otherwise determined by the Commission.

One-Time 2015/2016 Reserves

In 2015 and 2016, 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 a host community, designated surrounding community, a community which entered into a nearby community agreement with a licensee, a community that petitioned to be a surrounding community to a gaming licensee, or a community that is geographically adjacent to a host community:

Region A: Boston, Cambridge, Chelsea, Everett, Lynn, Malden, Medford, Melrose, Revere, Saugus, Somerville

Region B: Agawam, Chicopee, East Longmeadow, Hampden, Holyoke, Longmeadow, Ludlow, Northampton, Springfield, West Springfield, Wilbraham

Category 2 – Slots: Attleboro, Foxboro, Mansfield, North Attleboro, Plainridge, Wrentham

In many cases, communities may not be in a position to access their 2015-~~or~~/2016 Reserves by the February 1, 20182019 deadline. Therefore, the Commission has extended such reserves for the 20182019 Community Mitigation Fund Program. Communities may continue to access whatever portion of the original \$100,000 that remains unexpended. **The above communities do not need to submit any new application to keep their reserves. These reserves have automatically been extended by action of the Commission.**

The criteria for the use of the reserve remain the same. This reserve can be used to cover impacts that may arise in [20182019](#) 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 a community apply for mitigation of a specific impact even though it has not fully utilized its One-Time 2015/2016 Reserve?

Yes. However, if a Specific Impact Grant application is successful, a portion of the One-Time 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.

Specific Impact Grants - What Specific Impacts Can Be Funded?

The [20182019](#) 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, [20182019](#) application date and police training costs [in Region A](#) that occur prior to the opening of both Category 1 facilities. Although the definition in the Commission's regulations (for the purpose of determining which communities are surrounding communities) references predicted ~~projected~~ impacts, the [20182019](#) program is limited to only those impacts that are being experienced or were experienced by the time of the February 1, [20182019](#) application date and police training costs [in Region A](#) that occur prior to the opening of both Category 1 facilities.

The Commission has determined that the funding of unanticipated impacts will be a priority under the annual 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.³ The Community Mitigation Fund is not intended to fund the mitigation of specific impacts already being funded in a Host or Surrounding Community Agreement.

No application for the mitigation of a specific impact shall exceed \$500,000. However, communities and governmental entities may ask the Commission to waive this funding cap. Any community and governmental entity seeking a waiver should include a statement in its application specifying the reason for its waiver request, in accordance with the waiver guidance included in these Guidelines. [The Commission recognizes that applications for police](#)

³ 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.

~~training costs may exceed \$500,000 and may take this into consideration in evaluating any waiver requests.~~

Allowable impacts for funding are as follows:

Category 1 Gaming Facility: (Region A): In recognition that no Category 1 gaming facility will be operational by February 1, ~~2018~~2019 in Region A, the Commission has determined that the ~~2018~~2019 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 Grant, 2018 Non-Transportation Planning Grant, 2018 Transportation Planning Grant, Transit Project(s) of Regional Significance or the 2018 Workforce Development Pilot Program Grant, or police training costs. No application for police training costs shall include costs for personnel while such personnel are serving in a gaming enforcement unit. No application for police training costs shall include costs for overtime incurred to backfill a position due to a transfer of personnel to a gaming enforcement unit.

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 and Region B Category 1 Gaming Facility: In recognition that the Category 2 gaming facility in Plainville opened during calendar year 2015 and the MGM Springfield Category 1 facility opened during calendar year 2018, the Commission will make available funding to mitigate operational related impacts that are being experienced or were experienced from that facility by the February 1, ~~2018~~2019 date. The Commission will make available up to \$500,000 in total for applications for the mitigation of operational impacts relating to the Plainridge facility.

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

"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 runoff, 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."

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

The Commission notes that it plans to fund grants only for operational impacts that can be determined to result directly from the facility, that can be demonstrated to be likely longstanding and non-temporary without any such mitigation, and whose impacts can be demonstrated or documented with significant evidence.

Hampden County Sheriff's Department – Specific Impact Grant

In 2016 the Commission awarded the Hampden County Sheriff's Department ("HCS D") funds to offset increased rent for the Western Massachusetts Correctional Alcohol Center ("WMCAC"). In providing assistance, the Commission stated that the amount of assistance shall not exceed \$2,000,000 in total for five years or \$400,000 per fiscal year. A provision in the grant required HCS D to reapply each year. ~~As the HCS D missed the deadline due to administrative changes for 2017, HCS D may apply for fiscal year 2018 and 2019 lease assistance during this 2018 Community Mitigation Fund application period.~~ Each grant application may not exceed \$400,000 per year. Any such lease assistance shall be included in the Region B allocation of funds.

~~2018~~2019 Non-Transportation Planning Grant

The Commission will make available funding for certain planning activities for all communities that previously qualified to receive funding from the One-Time 2015/2016 Reserve Fund, and have already allocated and received Commission approval of the use of its reserve. No application for this ~~2018~~2019 Non-Transportation Planning Grant shall exceed Fifty Thousand Dollars (\$50,000). Applications involving transportation planning or design are not eligible for the ~~2018~~2019 Non-Transportation Planning Grant. Communities requesting transportation planning should instead apply for Transportation Planning Grant funds.

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. The planning project must be clearly related to addressing 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. Each community applying for a ~~2018~~2019 Non-Transportation Planning Grant will also need to provide detail on what it will contribute to the project such as in-kind services or planning funds. Planning projects may include programs created by communities to provide technical assistance and promotion for groups of area businesses.

Communities that utilize this ~~2018~~2019 Non-Transportation Planning Grant are not prohibited from applying for funding for any specific mitigation request.

Transportation Planning Grants

The Commission will make available funding for certain transportation planning activities for all communities eligible to receive funding from the Community Mitigation Fund in Regions A & B and for the Category 2 facility, 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, each community that is geographically adjacent to a host community.

The total funding available for Transportation Planning Grants will likely not exceed \$1,000,000. No application for a Transportation Planning Grant shall exceed \$200,000.

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

Eligible transportation 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 Transportation Planning Grant include, but not necessarily limited to:

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

The transportation 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 transportation planning effort prior to funding being awarded.

Communities that requested and received the One-Time 2015/2016 Reserve Grant 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.

In addition to the specific impact grant factors further defined in section “[How Will the Commission Decide on Applications?](#)”, the Commission will also consider whether the applicant demonstrates the potential for such transportation project that is the subject of a CMF application to compete for state or federal transportation funds.

Applicants may, but are not required, to include a description of how the project meets the evaluation standards for the Fiscal Year ~~2018~~[2019](#) TIP criteria for the Boston MPO Region or

the Pioneer Valley Planning Commission's transportation evaluation criteria, or other regional transportation project evaluation standard, whichever may be most applicable.

Transit Project(s) of Regional Significance - [PLACEHOLDER FOR DISCUSSION]

Although the Commission intends to continue authorizing grants for transportation planning and design through its transportation planning grants, the Commission does not intend to expand these grants to include the cost of the construction of transportation projects in the 2019 CMF. Instead, the Commission intends to consider such expansion once more funding is placed into the fund from the taxes on the gaming revenue for Region A and Region B licensees once they both are operational. However, in 2019, the Commission will consider funding no more than one project that offers significant transit benefits in each Category 1 region and one project related to the Category 2 facility. Applicants should demonstrate how the funds will be used to expand regional transit connections. The Commission intends that any CMF assistance provided will only be for a percentage of the costs of any such project and that significant other federal, state, local, private or other funding will be available to pay for the costs of any such project.

Such project may anticipate contributions from the CMF in future rounds. However, applicants should understand that any future year awards shall be at the discretion of the Commission in future years. Given the likely complexity of any such transit project(s) applications, applicants may consult with Commission staff before and during the CMF review on such projects. The Commission anticipates authorizing no more than \$ X in grants for Transit Project(s) of Regional Significance. Applicants may include a request to use funding from previously awarded CMF Reserves in any description of significant other federal, state, local, or private contributions. Similarly, applicants may include contributions from gaming licensees and private contributions.

Limitations/Specific Requirements on Planning Applications

The Commission will fund no application for more than two years for any municipal employee. The CMF will not pay the full cost of any municipal employee. The municipality would need to provide the remaining amount of any employee cost and certify that all such expenses are casino related. For non-personnel costs, 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.

Pursuant to the Guidelines, the Commission will evaluate requests for planning funds (including the use of One-Time 2015-2016 Reserve, Non-Transportation Planning Grant, and Transportation Planning Grant Funds and Transit Project(s) of Regional Significance) 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. Applicants should provide detail regarding consultations with nearby communities to determine the potential for cooperative regional efforts regarding planning activities.

Tribal Gaming Technical Assistance Grant

The Commission may make available no more than \$200,000 in technical assistance funding to assist in the determination of potential impacts that may be experienced by communities in geographic proximity to the potential Tribal Gaming facility in Taunton. Said technical assistance funding may be made through Southeastern Regional Planning and Economic Development District (“SRPEDD”), the regional planning agency that services such communities or a comparable regional entity. Such funding will only be made available, after approval of any application by SRPEDD or a comparable regional entity, if it is determined by the Commission that construction of such gaming facility will likely commence prior to or during Fiscal Year [20192020](#). Any such application by SRPEDD or a comparable regional entity must demonstrate that any studies of impacts will address the technical assistance needs of the region which may include but not be limited to the communities that are geographically adjacent to Taunton. Such funding shall not be used to study impacts on or provide technical assistance to Taunton, as funding has been provided in the Intergovernmental Agreement By and Between the Mashpee Wampanoag Tribe and the City of Taunton. Any such program of technical assistance may be provided by SRPEDD itself or through a contract with SRPEDD.

Workforce Development Pilot Program Grant

For fiscal year [20192020](#), the Commission will make available funding for certain career pathways workforce development pilot programs in Regions A and B for service to residents of communities of such Regions, including each Category 1 host community and each designated surrounding community, each community which entered into a nearby community agreement with a licensee, any community that petitioned to be a surrounding community to a gaming licensee, and each community that is geographically adjacent to a host community.

The total funding available for grants will likely not exceed \$600,000. No application for a grant in each Region shall exceed \$300,000 unless otherwise determined by the Commission. One grant will be considered for each Region. Each governmental entity applying for workforce development funds will also need to provide detail on what it will contribute to the workforce development project such as in-kind services or workforce development funds.

Eligible career pathways workforce development proposals must include a regional consortium approach to improve the skills, knowledge, and credential attainment of each Region A and Region B residents interested in a casino career, focusing on increasing industry-recognized and academic credentials needed to work in the most in-demand occupations related to the expanded gaming industry or a focus on occupations that could be in high demand from the casino, potentially negatively impacting the regional business community. This could include a focus on hospitality, culinary, cash handling, or customer service, etc.

Goals include:

- To help low-skilled adults earn occupational credentials, obtain well-paying jobs, and sustain rewarding careers in sectors related to hospitality and casino careers.
- To get students with low basic skills into for-credit career and technical education courses to improve their educational and employment outcomes.
- To deliver education and career training programs that can be completed in two years or less and prepare program participants for employment in high-wage, high-skill occupations related to the casino.
- To align and accelerate ABE, GED, and developmental programs and provide nontraditional students the supports they need to complete postsecondary credentials of value in the regional labor market.
- To mitigate a strain in existing resources and a potential impact to the regional labor market.

Eligible activities include: a program in Region A or Region B that structures intentional connections among adult basic education, occupational training, and post-secondary education programs designed to meet the needs of both adult learners and employers, post-secondary vocational programs, registered apprenticeships, courses leading to college credits or industry-recognized certificates, Adult Basic Education (“ABE”) and vocationally based English for Speakers of Other Languages (“ESOL”) training programs, Contextualized Learning, Integrated Education & Training, and Industry-recognized Credentials.

- **A consortium application is required.** However, governmental entities eligible to receive funds would include but not be limited to: host communities, communities which were each either a designated surrounding community, a community which entered into a nearby community agreement with a licensee, a community that is geographically adjacent to the host community of a gaming licensee, a community that petitioned to be a surrounding community to a gaming licensee state agencies, state agencies, and Regional Employment Boards. The Commission shall evaluate the use of host community agreement funds in evaluating funding requests for workforce development pilot program grant funds. Applicants should consider leveraging other funding resources.

What Should Be Included in the Applications?

- ★ Applicants are required to complete the [20182019](#) Specific Impact Grant Application, the [20182019](#) Transportation Planning Grant Application, the [20182019](#) Workforce Development Pilot Program Grant Application or the [20182019](#) Non-Transportation Planning Grant Application, [20182019 Transit Project\(s\) of Regional Significance, 2019](#) Reserve Planning Application/Tribal Gaming Technical Assistance Application, and may also submit additional supporting materials of a reasonable length.
- ★ Applicants will need to describe how the specific mitigation, planning, or workforce development pilot program request will address any claimed impacts and provide justification of any funds requested. Unlike existing surrounding community agreements which were based on anticipated impacts, any Specific Impact Grant will be based on impacts that have occurred or are occurring, as described 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. [Commission Staff may consider information from the report issued by the Lower Mystic Regional Workforce Group in its evaluation of transportation planning grants.](#)

The Commission will evaluate any funding requests in the context of any host or surrounding community agreements. Factors used by the Commission to evaluate grant applications may include but not be limited to:

- A demonstration that the impact is being caused by the proposed gaming facility;
- The significance of the impact to be remedied;
- The potential for the proposed mitigation measure to address the impact;
- The feasibility and reasonableness of the proposed mitigation measure;
- A demonstration that any program to assist non-governmental entities is for a demonstrated public purpose and not for the benefit or maintenance of a private party;

- The significance of any matching funds for workforce development pilot program activities or planning efforts, including but not limited to the ability to compete for state or federal workforce, transportation or other funds;
- Any demonstration of regional benefits from a mitigation award;
- A demonstration that other funds from host or surrounding community agreements are not available to fund the proposed mitigation measure;
- A demonstration that such mitigation measure is not already required to be completed by the licensee pursuant to any regulatory requirements or pursuant to any agreements between such licensee and applicant; and
- The inclusion of a detailed scope, budget, and timetable for each mitigation request.

[Additionally, the Workforce Development Pilot Programs evaluation](#)

[Supplemental Guidelines Used To Evaluate Workforce Development Applications](#)

- ❖ [Does it develop a pilot program that will address any claimed impacts?](#)
- ❖ [A program in Region A or Region B that structures intentional connections among adult basic education, occupational training, and post-secondary education programs](#)
- ❖ [Does it accomplish the goal of assisting low-skilled adults to obtain education and career training to enable them to join the regional labor market?](#)
- ❖ [Does the application address the anticipated goals of the program \(see page 15 of the Guidelines\)?](#)
- ❖ [Industry-recognized and academic credentials needed to work in the most in-demand occupations related to the expanded gaming industry or a focus on occupations that could be in high demand from the casino, potentially negatively impacting the regional business community](#)
- ❖ [Governmental entity applying for workforce development funds will also need to provide detail on what it will contribute to the workforce development project such as in-kind services or workforce development funds](#)
- ❖ [Does the application include a regional consortium approach?](#)
- ❖ [Does it contain eligible activities that structure adult basic education, occupational training and post second education for adult learners?](#)

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 M.G.L. c. 23K.

The Commission reserves the ability to determine a funding limit below what is detailed in these Guidelines, as ~~additional~~ only Region B contributions to the Community Mitigation Fund ~~will not be~~ currently being made until ~~Category 1 gaming facilities are the Region A facility is~~ operational. The Commission also reserves the ability to determine a funding limit above what is detailed in these Guidelines. The Commission notes that it plans to target its funding decisions based on the regional allocations described earlier. However, the Commission reserves the right to make determinations that do not strictly adhere or adhere to such targets. In the event the Commission awards are not in such adherence, the Commission may make appropriate adjustments in future guidelines to bring regional allocations into more congruity with such targets.

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.

- **There is limited funding available. The Commission therefore reserves the right to determine which requests to fund based on its assessment of a broad range of factors including the extent of public benefit each grant is likely to produce.**

When Will the Commission Make Decisions?

The Commission anticipates making funding decisions on any requests for grant assistance before July ~~2018~~2019, after a comprehensive review and any additional information requests.

Is There a Deadline for the Use of the One-Time 2015/2016 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 Specific Impact Grant Application or the Planning Project Grant Application in its entirety. 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. The Commission will fund no application for more than two years for any municipal employee. The CMF will not pay the full cost of any municipal employee. The municipality would need to provide the remaining amount of any employee cost and certify that all such expenses are casino related. 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, ~~2018~~2019 application date. Commission approvals of the use of the One-Time 2015/2016 Reserve will also be on a rolling basis corresponding to the rolling determinations of use by communities.

Waivers and Variances

(a) General. The Commission may in its discretion waive or grant a variance from any provision or requirement contained in these Guidelines, not specifically required by law, where the Commission finds that:

1. Granting the waiver or variance is consistent with the purposes of M.G.L. c. 23K;
2. Granting the waiver or variance will not interfere with the ability of the Commission to fulfill its duties;
3. Granting the waiver or variance will not adversely affect the public interest; and
4. Not granting the waiver or variance would cause a substantial hardship to the community, governmental entity, or person requesting the waiver or variance.

(b) Filings. All requests for waivers or variances shall be in writing, shall set forth the specific provision of the Guidelines to which a waiver or variance is sought, and shall state the basis for the proposed waiver or variance.

(c) Determination. The Commission may grant a waiver or variance, deny a waiver or variance, or grant a waiver or variance subject to such terms, conditions and limitations as the commission may determine.

Who Should Be Contacted for Any Questions?

As the ~~2018~~2019 Community Mitigation Fund program is just in the ~~fourth~~fifth 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 Ziemba, can be reached at (617) 979-8423 or via e-mail at john.s.ziemba@state.ma.us. The Commission's address is 101 Federal Street, 12th Floor, Boston, MA 02110.

Where Should the ~~Applications~~Application Be Sent?

Applications **must be sent to** www.commbuys.com. An application received by COMMBUYS by February 1, ~~2018~~2019 will meet the application deadline. Applicants that are not part of the COMMBUYS system should contact Mary Thurlow of the Commission's Ombudsman's Office well in advance of the February 1, ~~2018~~2019 deadline to make arrangements for submission of the application by the deadline. Mary Thurlow can be contacted at (617) 979-8420 or at mary.thurlow@state.ma.us.

If you have any questions or concerns contact the COMMBUYS Help Desk at COMMBUYS@state.ma.us or during normal business hours (8am - 5pm ET Monday - Friday) at 1-888-627-8283 or 617-720-3197.



CONFLICT OF INTEREST TRAINING FOR SPECIAL STATE EMPLOYEES

MASSACHUSETTS GAMING COMMISSION



SPECIAL STATE EMPLOYEES

Advisory committees created pursuant to G.L. c. 23K, § 68 are “state agencies” and their members “state employees” for purposes of the conflict of interest law. A municipal employee or gaming licensee representative appointed to serve on one of these committees will not be compensated for such service, and, therefore, will be considered a “**special state employee**” under the law.

Advisory committee members are required to complete the **State Conflict-of-Interest Law** online training every two years. This must be done in addition to the Municipal online training, if any.

Advisory committee members must return a copy of their **Certificate of Completion** to Mary Thurlow (MGC) at: mary.thurlow@state.ma.us.

<http://www.mass.gov/ethics/conflict-of-interest-law-online-training-programs.html>

SECTION 6: CONFLICTS OF INTEREST

1. FINANCIAL

- You may not participate in any “particular matter” that may affect your financial interest, or that of an immediate family member, or a business organization that you are affiliated with.



2. APPEARANCE

- You may not act in a manner such that a reasonable person might conclude that you might act with bias in your job.
- You should recuse yourself and abstain from participating in any proceeding in which your impartiality may reasonably be questioned, including instances where you have a personal bias or prejudice concerning a party or personal knowledge of disputed facts.
- You should disclose the nature of your disqualifying interest to your appointing authority.

GIFTS & UNWARRANTED PRIVILEGES

- **Gifts**

You may not accept gifts and gratuities of substantial value (i.e.- \$50 or more) given for or because of official acts performed or to be performed, or given because of official position. A number of smaller gifts together worth \$50 or more may also be a violation.



- **Unwarranted Privileges**

You shall not use or attempt to use your official position to secure for yourself or others unwarranted privileges or exemptions which are not available to members of the general public.

SECTION 4: DIVIDED LOYALTIES

Chapter 268A, Section 4

(a) No state employee shall otherwise than as provided by law for the proper discharge of official duties, directly or indirectly receive or request compensation from anyone other than the commonwealth or a state agency, in relation to any **particular matter** in which the commonwealth or a state agency is a party or has a **direct and substantial interest**.

(c) No state employee shall, otherwise than in the proper discharge of his official duties, act [] as **agent or attorney** for anyone in connection with any **particular matter** in which the commonwealth or a state agency is a party or has a **direct and substantial interest**.

SECTION 4: DIVIDED LOYALTIES

Accordingly, a municipal employee that serves on a local community mitigation advisory committee (LCMAC) or subcommittee:

- **Paid municipal employees:** may not do any paid work for the municipality relating to matters before the LCMAC.
- **Unpaid municipal employees:** *may* do *unpaid* work for a municipality relating to matters before the LCMAC.
- **Paid or unpaid municipal employees:**
 - may not act as an agent or attorney for the municipality or communicate on behalf of the municipality with the LCMAC or other states agencies with regard to matters before the LCMAC.
 - May not act as an agent or attorney for the LCMAC (1) in relation to a particular matter in which the municipality is a party or has a direct and substantial interest, or (2) for prosecuting a claim against the municipality.

**Note that there are certain exceptions when you are representing your own interests or assisting a family member or others as guardian, executor, administrator, etc.*



EXAMPLES

- An LCMAC member may *not* work as a paid municipal employee to prepare a *Community Mitigation Fund Application* requesting funds nor work on municipal activities funded by an award from the Community Mitigation Fund. *G.L. c. 268A, §4(a)*
- An LCMAC member *may* work as an *unpaid* municipal employee to prepare a Community Mitigation Fund Application or on activities funded by an award, but may *not* sign the application and may *not* communicate (i.e.- serve as an agent) on behalf of the municipality with the LCMAC or other state agencies about this work. *G.L. c. 268A, §4(a) and (c)*
- An LCMAC member may *not* offer legal advice to a municipality in relation to an Application or award, whether paid or unpaid by a municipality. *G.L. c. 268A, §4(c)*

CONCLUSION



The aim of this presentation is to train your antenna to detect when you may be faced with an issue under the conflict of interest law.

In instances where an LCMAC member's municipal duties relate to Community Mitigation Fund money, the LCMAC member should seek advice from municipal counsel and/or the State Ethics Commission about their obligations.

QUESTIONS

- **Municipal Counsel**
- **State Ethics Commission**
www.mass.gov/ethics
(617) 371-9500
- **Massachusetts Gaming Commission Legal Department**



Catherine Blue, General Counsel
catherine.blue@state.ma.us
617-979-8434

Todd Grossman, Deputy General Counsel
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Commonwealth of Massachusetts **STATE ETHICS COMMISSION**

One Ashburton Place - Room 619
Boston, Massachusetts 02108

Hon. Barbara A. Dorch-Okara (ret.)
Chair

Karen L. Nober
Executive Director

May 2, 2016

Stephen P. Crosby, Chairman
Massachusetts Gaming Commission
101 Federal Street, 12th floor
Boston, MA 02110

Dear Chairman Crosby:

I am writing to follow up on the meeting between our offices on March 16, 2016, in which we discussed the restrictions of the conflict of interest law on certain types of appointees to the various advisory committees created by G.L. c. 23K, § 68, and your concerns as to whether those restrictions would, as a practical matter, create impediments to the full participation of those appointees as committee members.

Specifically, you raised concerns regarding the application of the conflict of interest law to municipal employees who may be appointed to serve on the Gaming Policy Advisory Committee (GPAC) or its subcommittees, including, in particular, the Local Community Mitigation Advisory Committees (LCMAC), the Subcommittee on Community Mitigation or the Subcommittee on Public Safety.

As you know, the State Ethics Commission considers the various advisory committees created pursuant to G.L. c. 23K, § 68 to be "state agencies" and their members "state employees" for purposes of the conflict of interest law. Any municipal employees or gaming licensee representatives appointed to serve on these committees would not be compensated for such service, and, therefore, would be "special state employees" as a result of their committee membership, i.e., the conflict law would apply less restrictively to them than it would to "state employees" in certain respects.

It is our understanding that with respect to municipal employees serving as committee members, your main concern is that such municipal employees would be at risk of violating Section 4 of the conflict law if their municipal employee duties included participating in gaming-related matters. Section 4 prohibits a special state employee from receiving compensation from, or acting as agent or attorney for, someone other than the state (including a municipality), in connection with a particular matter, if he participated as a special state employee in the matter or if he has, or in the past year has had, official responsibility for the matter as a special state

employee. You note that any municipal employee who potentially would be appointed to a gaming advisory committee most likely would have gaming-related duties in their municipal roles due to the fact that municipalities have a very limited number of employees with this expertise, and those individuals would be the obvious choice of the municipalities to serve on the gaming advisory committees. Although the gaming statute does not explicitly require the appointment of municipal employees to any of these committees, you expressed your belief that the Legislature intended or expected that municipal employees would be appointed to serve on these committees because those individuals are uniquely qualified to advise the Gaming Commission on the potential effects of gaming policies on the municipalities that employ them and would provide the most valuable input.

With that in mind, we discussed whether a legislative solution would be appropriate to address this issue. Assuming the Legislature agrees that it was (or is) their intent that municipal employees be able to serve and fully participate as members of the various gaming advisory committees, the Ethics Commission would not oppose legislation that would allow municipal employees to be paid by their municipalities for work relating to gaming and gaming mitigation matters while those employees also served as members of any of the gaming advisory committees. To the extent that this is consistent with the legislative intent, we think this is a viable solution because even though the municipal employees would be able to work on gaming issues in their municipal positions and represent the interests of entities other than the state, they would still be representing public interests, i.e., the interests of their municipalities.

As we discussed, we think the best way to accomplish the above would be to amend the Gaming Commission's enabling act by adding the following language to section 68 of G.L. c. 23K:

A municipal employee serving as a member of an advisory committee or subcommittee created by this section shall not violate section four of chapter two hundred sixty-eight A by expressing the views of his employing municipality or regional planning agency during committee or subcommittee meetings or by receiving his usual compensation as a municipal employee or by performing the usual duties of his municipal employment, including acting as agent or attorney for the municipality or regional planning agency, in relation to particular matters in which he participated or which are, or in the prior year have been, a subject of his official responsibility as a member of the advisory committee or subcommittee or which are pending before the advisory committee or subcommittee.

Thank you for bringing these issues to our attention. If we can provide additional assistance, or if you would like to discuss this further, please let me know.

Sincerely,



Karen L. Nober
Executive Director



Commonwealth of Massachusetts STATE ETHICS COMMISSION

One Ashburton Place - Room 619
Boston, Massachusetts 02108

Hon. Barbara A. Dortch-Okara (ret.)
Chair

CONFIDENTIAL

Karen L. Nober
Executive Director

September 2, 2015

John S. Ziemba, Ombudsman
Massachusetts Gaming Commission
101 Federal Street, 23rd Floor
Boston, Massachusetts 02110

Dear Mr. Ziemba:

You are the Ombudsman for the Massachusetts Gaming Commission ("MGC"). You have asked various questions about whether municipal employees would be restricted by requirements of the conflict of interest law if they serve as members of Local Community Mitigation Advisory Committees ("LCMAC's") established by M.G.L. c. 23K.

Community mitigation advisory committees. Chapter 23K establishes a Community Mitigation Fund to be administered by the MGC. G.L. c. 23K, § 61. Money from the funds may be spent

to assist the host community and surrounding communities in offsetting costs related to the construction and operation of a gaming establishment 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.

G.L. c. 23K, § 61(b).

Chapter 23K also establishes a number of advisory committees to address the impact of gaming. A Gaming Policy Advisory Committee must meet at least once annually for the purpose of discussing matters of gaming policy. Its recommendations "shall be advisory and shall not be binding on the commission." G.L. c. 23K, § 68(a).

The Gaming Policy Advisory Committee is required to have a subcommittee on community mitigation. The work of the subcommittee is described as followed:

The subcommittee shall develop recommendations to be considered by the commission to address issues of community mitigation as a result of the development of gaming establishments in the commonwealth including, but not

limited to, how funds may be expended from the Community Mitigation Fund, the impact of gaming establishments on the host community and surrounding communities including, but not limited to, the impact on local resources as a result of new housing construction and potential changes to affordable housing laws, increased education costs and curriculum changes due to population changes in the region, development and maintenance of infrastructure related to increased population and utilization in the region and public safety impacts resulting from the facility and ways to address that impact.... The subcommittee shall review annually the expenditure of funds from the Community Mitigation Fund and make recommendations to the commission relative to appropriate and necessary use of community mitigation funds.”

G.L. c. 23K, §68(b). The subcommittee also may advise the MGC about promulgating regulations. *Id.*

Each of the three regions in which a casino is located may establish an LCMAC. G.L. c. 23K, § 68(e). By statute, an LCMAC

shall include not fewer than 6 members, 1 of whom shall be appointed by each of the host and surrounding communities, 1 of whom shall be appointed by each regional planning agency to which at least 1 of the host or surrounding communities belongs and 4 of whom shall be appointed by the commission, of whom at least 1 shall represent a chamber of commerce in the region, 1 shall represent a regional economic development organization in the region and 2 shall represent human service providers in the region.

Id. One member of the LCMAC in each region is elected to serve on the subcommittee on community mitigation. G.L. c. 23K, § 68(b).

Chapter 23K provides that the subcommittee on community mitigation shall receive input from LCMAC's. G.L. c. 23K, § 68(b). The statute also provides for direct input to the MGC.

Each local community mitigation advisory committee may provide information and develop recommendations for the subcommittee on community mitigation on any issues related to the gaming establishment located in its region including, but not limited to: (1) issues of community mitigation; (ii) ways in which funds may be expended from the Community Mitigation Fund; and (iii) the impact of the gaming establishments on the host and surrounding communities. Additionally, each local community mitigation advisory committee may present information to the commission consistent with the rules of the commission on any issued related to the gaming establishment located in its region.

G.L. c. 23K, § 68(e).

You explain that communities apply for funding from the Community Mitigation Fund by February each year. You tell us that LCMAC members would provide advice on the types of activities that could be funded by Community Mitigation Fund Applications from their own communities or those of their neighbors, but would not provide specific advice to the MGC or the subcommittee on community mitigation on pending Community Mitigation Fund Applications.

You raise the concern that, as part of his municipal duties, a LCMAC member who is also a municipal employee may be needed to develop a Community Mitigation Funding Application for his own community or to implement any awards made to his community upon a successful Application.

Status of LCMAC's and their members. An initial question is whether LCMAC's are state agencies and their members are state employees for purposes of the conflict of interest law. The State Ethics Commission analyzes four factors to determine whether an advisory board is a public agency:

- i. The impetus for creation of the committee (e.g., by statute, rule, regulation or otherwise);
- ii. The degree of formality associated with the committee and procedures;
- iii. Whether committee members will perform functions or tasks ordinarily expected of public employees, or will be expected to represent outside private viewpoints; and
- iv. The formality of the committee's work product, if any.

With regard to the first factor, the LCMAC's were created by statute. Although the statute states that a region "may" establish an LCMAC, suggesting that having such a committee is discretionary, LCMAC's appear to be permanent rather than temporary committees.

In addition, the functions of the LCMAC's are established by the statute. The statute mandates that the MGC administer the Community Mitigation Fund and that the Gaming Policy Advisory Committee, subcommittee on community mitigation and LCMAC address the impact of gaming on the host community and surrounding communities and advise the MGC about use of the Community Mitigation Fund. The LCMAC assists the other two advisory committees and the MGC in carrying out a mandated function.

As to the degree of formality associated with the committee and its procedures, the statute sets a minimum number of members of an LCMAC – "not fewer than 6 members" – with no indication of criteria for adding members beyond the first six. There is no requirement that a public employee be one of the members. Inclusion of representatives from a chamber of commerce, a regional economic development corporation and human service providers indicates intent to include outside viewpoints.

The statute does not require the LCMAC's to hold any number of meetings or to conduct meetings in any particular way. For example, there is no requirement to keep minutes or file a periodic report of its activities.

Also, the statute does not require LCMAC's to produce any specified work product. While it uses "shall" in requiring the subcommittee on community mitigation to make recommendations to the Gaming Policy Advisory Committee and annually review the expenditure of funds from the Community Mitigation Fund, the statute only states that the LCMAC's "may provide information and develop recommendations" for the subcommittee and "may present information to the commission consistent with the rules of the commission on any issues related to the gaming establishment located in its region." There is no requirement that the LCMAC's make formal recommendations, and even the recommendations of the Gaming Policy Commission are not binding on the MGC.

On balance, I conclude that the LCMAC's are state agencies, and that the members of the LCMAC's, who receive no compensation for their service, are special state employees. *See* G.L. c. 268A, §§ 1(p), (q), (o). The LCMAC's are a part of a comprehensive statutory plan to address impacts from gaming on Massachusetts communities, involving three levels of advisory input. While the statute does not mandate particular action or work product by the LCMAC's, it gives them authority to take action as needed to contribute to the MGC's process of addressing and funding community mitigation.

Consequence for municipal employees. No member of the LCMAC is required to serve by reason of holding a municipal position. For example, the regional planning agency must appoint an LCMAC member, but the statute does not require the member to be a board member or employee of the regional planning agency. It is possible, however, that individuals who are selected to be on the LCMAC may also be municipal employees.

A municipal employee who serves on the LCMAC will have obligations under the conflict of interest law both as a consequence of being a municipal employee and as a consequence of being a special state employee. As explained below, because of dual obligations of loyalty to the state and to a City or Town, a municipal employee who has responsibility for his municipality with regard to mitigation of the impact of gaming either will not be able to serve on an LCMAC or will be restricted in providing service as an LCMAC member. Viewed from the other direction, a municipal employee who serves on the LCMAC will be restricted in what he may do in his municipal position with regard to matters regarding mitigation of the impact of gaming on the community.

Section 4. Every LCMAC member must comply with the restrictions in § 4 that apply to special state employees. For a municipal employee who serves as a LCMAC member, § 4 will set restrictions on what he may do in his municipal position. He may not receive compensation from, or act as agent or attorney for, a City or Town in connection with a particular matter if he has participated as an LCMAC member in the matter or if he has official responsibility for the matter as an LCMAC member or has had such official responsibility in the prior year. An LCMAC member has official responsibility for any particular matter that comes before the

LCMAC. If he serves as an LCMAC member for more than 60 days in any 365-day period, then these restrictions also will apply with regard to any particular matter pending before the LCMAC.

The restriction in § 4 prohibits a special state employee from acting as agent or attorney for someone other than the state, whether for pay or no pay. Acting as agent means communicating, whether in person or in writing, on behalf of someone else, and includes signing documents which are submitted to the LCMAC or other state agencies.

In summary, as a general rule,

- 1) A compensated municipal employee who sits on an LCMAC may not do any work for pay for a municipality relating to LCMAC matters.
- 2) An uncompensated municipal employee who sits on an LCMAC may do work for no pay for a municipality relating to LCMAC matters. For example, an uncompensated member of a municipal board who sits on the LCMAC may do work in his municipal capacity relating to LCMAC matters.
- 3) Whether compensated or not compensated as a municipal employee, a municipal employee who sits on an LCMAC may not act as attorney for the municipality and may not communicate on behalf of the municipality with the LCMAC or other state agencies in connection with LCMAC matters.

A point worth noting is that a municipal employee whose municipal responsibilities do not relate to the impact of gaming on the community would face few issues under § 4 if he serves as a member of an LCMAC. Such a municipal employee would be unlikely to have to do work for the municipality or communicate on behalf of the municipality with the LCMAC or other state agencies with regard to matters that come before the LCMAC.

Section 17. A municipal employee who sits on the LCMAC also must comply with § 17. Consequently, he will be limited in what he may do for the LCMAC in relation to matters regarding the City or Town which he serves. He may not act as agent or attorney for the LCMAC in relation to a particular matter in which the City or Town is a party or has a direct and substantial interest. He also may not act as agent or attorney for the LCMAC for prosecuting a claim against the City or Town. He may discuss such matters with his fellow LCMAC members, but he may not communicate on behalf of the LCMAC with the City or Town about these matters.

Municipal employees who meet one of three statutory criteria may be designated as special municipal employees by the City Council or aldermen in a City or by the Selectmen in a Town. See G.L. c. 268A, § 1(n). If a member of the LCMAC is a special municipal employee, then a narrower prohibition in § 17 will apply. The LCMAC member may not act as agent or attorney for the LCMAC in relation to a particular matter if he participated in the matter as a special municipal employee at any time, or if he has official responsibility for the matter or has

had such responsibility in the prior year. If he serves as a municipal employee for more than 60 days in a 365-day period, then the restrictions apply with regard to any matter pending before the municipal agency which he serves. Essentially, the LCMAC member could not communicate on behalf of the LCMAC in relation to some or all matters before the municipal agency which he serves, but could do so with regard to matters before other municipal agencies and boards in the City or Town which he serves.

Sections 6 and 19. LCMAC members who are also municipal employees also must comply with § 6 and § 19. Under § 6, a state employee may not participate in a particular matter if he, an immediate family member or a business partner has a financial interest in the matter. If he is an officer, director, trustee, partner or employee of a business organization, he may not participate if the business organization has a financial interest in the matter. If he is negotiating or has an arrangement for future employment with a person or organization, he may not participate if the person or organization has a financial interest in the matter. Section 19 includes similar prohibitions for municipal employees.

An LCMAC member who is also a municipal employee must be alert about complying with § 6 as an LCMAC member and with § 19 as a municipal employee. Under § 6, for example, he may not participate as an LCMAC member in a discussion or vote about a recommendation about how to spend Community Mitigation Fund money if he has a financial interest as a municipal employee in doing work funded by the money. He also may not participate as a municipal employee in a particular matter regarding seeking or using Community Mitigation Fund money if any of the financial interests listed in § 19 are a relevant concern.

Sections 6 and § 19 include disclosure procedures which must or may be used to seek authorization from an appointing authority when financial interests may prevent a state or municipal employee from participating in a particular matter. An LCMAC member with such concerns should seek advice from the Ethics Commission about satisfying disclosure requirements.

Your questions. You asked the following specific questions about the obligations of an LCMAC member who also is a municipal employee.

Question: Would an LCMAC member be prohibited from work on a Community Mitigation Fund Application or Award in their capacity as a municipal employee because of their service on the LCMAC?

You have explained that the LCMAC's are not expected to actually review Applications or make awards. However, the LCMAC provides advice and information to the subcommittee on community mitigation and the MGC about the need for mitigation in the region and makes recommendations about ways Community Mitigation Fund money should be spent. Its input may influence decisions by the MGC about establishing criteria for Applications or reviewing Applications and making awards.

In this context, the general idea behind § 4 is that an individual with obligations to both the state and a municipality should not be on both the state side of the table and the municipal side of the table with regard to a particular matter. Under § 4, an LCMAC member who advises the fund-awarding agency about how Community Mitigation Funds should be spent should not work for compensation as a municipal employee to prepare a Community Mitigation Fund Application seeking the funds or work for pay on municipal activities funded by the funds. He also may not act as attorney in relation to an Application or award, whether paid or unpaid. An uncompensated municipal employee who sits on the LCMAC may do work in his municipal capacity on a Community Mitigation Fund Application or on activities funded by an award from the Community Mitigation Fund, however, but may not sign the Application and may not communicate on behalf of the municipality with the LCMAC or other state agencies about this work.

Question: Would a disclosure of the LCMAC member's municipal responsibilities on Community Mitigation Fund applications to the MGC and the subcommittee on community mitigation allow the member to provide advice to the MCG and the subcommittee on community mitigation?

It is not possible to resolve an issue under § 4 or § 17 by filing a disclosure.

Question: If there is a prohibition against doing gaming related mitigation work for a municipality as described, does that prohibition apply to all loosely affiliated activities no matter how extensive? For example, could the prohibition prevent a local financial officer that is a LCMAC member from inquiring into how Community Mitigation Funds revenues are being used by consultants?

I understand your question to be the following: Where a member of the LCMAC who is also a municipal employee is prohibited by § 4 from doing work for the municipality regarding gaming-related mitigation, may he, in the course of other unrelated municipal work, address issues that relate to the mitigation efforts? For example, could a Town financial officer who checks on the use of money by all Town consultants check on consultants' use of Community Mitigation Fund money?

As to whether such activity would violate § 4, the answer will depend on a number of factors: for example, whether the LCMAC member has participated in or had official responsibility for the matter regarding use of the money as an LCMAC member, whether he is compensated for his municipal work, whether he is a special municipal employee, and whether the purpose of checking the use of the money relates to requirements of the state's award of the monies. In instances where an LCMAC member's municipal duties have to do with Community Mitigation Fund money, the LCMAC member should seek advice from the Ethics Commission about his obligations.

Question: Would LCMAC members be so prohibited if they never provide advice to the MGC but instead provide advice to the subcommittee on community mitigation, which would then provide advice to the MGC?

Obligations under § 4 and § 17 have to do with particular matters before the LCMAC or a municipal agency, respectively. For a municipal employee who sits on an LCMAC, the subject matter of the advice that the LCMAC gives, rather than the recipient of the advice, is what matters when determining whether § 4 will apply. The LCMAC makes recommendations about how the MGC should spend Community Mitigation Funds. Whether it gives its recommendations directly to the MGC or only to the subcommittee, which then takes them into account in making recommendations to the MGC, the particular matter before the LCMAC remains the same.

Question: Does the exemption under 930 CMR 6.23 (Exemption Permitting Persons Serving as Members of Public Boards Pursuant to a legal Requirement That the Board Have Members with a Specified Affiliation to Participate Fully in Determinations of General Policy) have any applicability to this situation? If not, could a similar exemption be explored to help LCMAC members?

A regulation, 930 CMR 6.23, provides an exemption from § 4 and § 17 and from § 6 and § 19 for individuals who serve as members of public boards pursuant to a legal requirement that the board have members with a specified affiliation. The exemption is relevant to the LCMAC members appointed because they are representatives of a chamber of commerce, a regional economic development organization or human service providers in the region.

The statute that establishes LCMAC's does not require anyone to be a member of an LCMAC because he is a municipal employee. A member of the LCMAC who also happens to be a municipal employee is not serving on the LCMAC by reason of a legal requirement that he have an affiliation with a City or Town. Consequently, such members may not take advantage of the exemption in 930 CMR 6.23 to avoid any restrictions in § 4 or § 17 or under § 6 or § 19 that usually apply.

There is no other exemption that similarly operates to relieve public board members of their usual obligations under § 4 or § 17 or under § 6 or § 19.

Question: In addition to these matters involving LCMAC members that are employees of municipalities, the MGC has been asked to seek advice on a question involving a community's designee that is not a municipal employee. That member asked if the Conflict of Interest Law would prevent that member from helping his municipality challenge decisions made by the MGC, such as license decisions, while also serving on the LCMAC.

At the Ethics Commission, we give advice to the person who needs the advice in order to comply with the conflict of interest law. We do not give advice to one person about a second person's conduct without the second person's permission. It is not clear from your question whether the individual gave permission to the MGC to ask for advice from the Ethics Commission about his situation or whether the MGC is asking for advice on its own initiative.

John S. Ziemba
September 1, 2015
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In addition, as noted above, details matter a lot when giving advice about the conflict of interest law. For example, it would be helpful in this instance to know in what way the individual expects to help his municipality challenge MGC decisions because, pursuant to G.L. c. 268A, § 1(g), service to a municipal agency causes an individual to be a municipal employee for purposes of the conflict of interest law.

Generally speaking, however, because LCMAC members are special state employees, § 4 will not restrict a LCMAC member from being paid by, or acting as agent or attorney for, a municipality in relation to particular matters that do not come before the LCMAC. Your question suggests that the individual would not be called upon to act as agent for the LCMAC with regard to the municipality's challenge of MGC decisions, so § 17 also should not be an issue.

Confidentiality. Both this e-mail and your request for advice are confidential by statute. This means that you are free to disclose this advice to anyone you wish, but that the State Ethics Commission may not disclose your request or any other identifying information unless you consent, or unless you misrepresent the contents of this e-mail.

I hope this advice has been helpful. Please contact us again if you have any further questions about your obligations under the conflict of interest law.

Very truly yours,



Amy Bressler Nee
Staff Counsel

HOUSE No. 10

So much of the recommendations of the Massachusetts Gaming Commission (House, No. 8) as relates to enabling municipal and regional planning agency employees to fully participate in gaming policy advisory committees. Economic Development and Emerging Technologies.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act to enable municipal and regional planning agency employees to fully participate in gaming policy advisory committees.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 68 of chapter 23K of the General Laws, as appearing in the 2014
2 Official Edition, is hereby amended by inserting at the end the following paragraph:

3 (f) A municipal employee serving as a member of an advisory committee or
4 subcommittee created by this section shall not violate section 4 of Chapter 268A by expressing
5 the views of his employing municipality or regional planning agency during committee or
6 subcommittee meetings or by receiving his usual compensation as a municipal employee or by
7 performing the usual duties of his municipal employment, including acting as an agent or
8 attorney for the municipality or regional planning agency, in relation to particular matters in
9 which he participated or which are, or in the prior year have been a subject of his official
10 responsibility as a member of the advisory committee or subcommittee or which are pending
11 before the advisory committee or subcommittee.