



Massachusetts Gaming Commission Meeting Minutes

Date/Time: February 28, 2022, 11:30 a.m.
Place: Massachusetts Gaming Commission
 VIA CONFERENCE CALL NUMBER: 1-646-741-5292
 PARTICIPANT CODE: 112 958 2767

The Commission conducted this public meeting remotely utilizing collaboration technology. Use of this technology was intended to ensure an adequate, alternative means of public access to the Commission’s deliberations for any interested member of the public.

Commissioners Present:

- Chair Cathy Judd-Stein
- Commissioner Gayle Cameron
- Commissioner Bradford Hill
- Commissioner Eileen O’Brien

1. Call to Order (0:03)

Chair-Stein called the meeting to order and provided a brief background to the meeting attendees as to why Commission had called a dual public meeting and public hearing about the development project occurring on the East Side of Broadway, near the Encore Boston Harbor (EBH). Chair Judd-Stein provided a brief background and overview of the hearing before introducing Chief of the Community Affairs Division, Joe Delaney to begin the public comment portion of the meeting.

2. Public Input

Chief Delaney opened the meeting for the participants who requested the opportunity to provide public comment to the Commission. As this was also a public meeting, Commissioners were also permitted to ask questions of the speakers. Mr. Delaney reminded participants to first state their names and to limit their statements to under 5 minutes each. Mr. Delaney then introduced speakers who had signed up to provide statements or submitted written comments in advance of the meeting. Mr. Delaney framed the issue before the Commission as being whether the proposed development is part of the ‘gaming establishment’ boundary set for Encore Boston Harbor. He further reminded the Commission that the proposed scope of the project is as follows:

The proposed project is a multi-use development, which includes the construction of an approximately 20,000-gross-square-foot, two-story restaurant/retail building with an outdoor dining terrace, up to a 999-seat Events Center and associated pre-function space, an approximately 2,310-space parking garage, as well as a pedestrian bridge to cross Broadway (Route 99).

The following individuals offered [public comment](#) (5:08):

a. Troy Siebels, President of the Hanover Theatre, and the Massachusetts Performing Arts Coalition

Mr. Siebels clarified that he had submitted written comments but added that he felt the spirit of the rules and relevant statute were being ignored by licensee, Wynn. While Mr. Siebels acknowledged that the entertainment venue within the revised plan had the seating capacity of 999 seats, which is within the allowable number, he pointed towards the law as providing a method for entities to negotiate and communicate. Mr. Siebels suggested that the Commission can mandate not only the letter, but also the spirit of which the law is intended.

Commissioner O'Brien asked Mr. Siebels if there were other portions of the statute that would allow for the ILEV signatories and the Licensee to be able to uphold the tenets of the ILEV agreement. Mr. Siebels shared that a more open dialogue and communication would be beneficial for the parties, and that there has not been a practice of communication. Commissioner Judd-Stein asked Mr. Siebels if he had been contacted by the licensee. Mr. Siebels stated that he heard from them on Thursday and had a meeting to speak with Counsel for EBH soon. Commissioner O'Brien asked about the usage of the term "Predatory Presenter" and if it was a term of art. Mr. Siebels replied that it was an industry term for a casino or other large organization that discouraged the existence or presence of other live entertainment organization. Commissioner O'Brien thanked him for his explanation.

b. Dan Rabinovitz, Attorney for the City of Medford and Bill Blumenreich Presents

Mr. Rabinovitz stated that he submitted written testimony to the Commission. He explained that East Broadway, LLC is a wholly owned subsidiary of Wynn MA, LLC and if the current matter was brought to court, the likelihood would be very high that a court would find the requisite level of control that was necessary to pierce the corporate veil. Mr. Rabinovitz then moved on to the second issue presented in his written testimony: his allegation that EBH has had concerts in their ballroom in violation of the law. He explained that the law precluded the casino from including an entertainment venue that was more than 1000 seats and stated that EBH is planning a fight night in its ballroom later in March 2022. Mr. Rabinovitz clarified that EBH has the authority to do what they want in their own establishment via entertainment but feels that they are violating the law when they do so in a manner that involves live performances between 1000 - 3500 seats which is directly in competition with other mid-level and mid-size performance venues in the area. He is hoping that the Commission to give a stern warning to the licensee.

Chair Judd-Stein thanked Mr. Rabinovitz for his comments, and asked Commissioners if they had questions. Commissioner Hill also thanked Mr. Rabinovitz and stated that two different discussions were taking place: whether Commission has the authority to regulate the project, and whether the venue is appropriate. He then stated that it would be important to remember the distinction as the Commission moves forward in its deliberations.

c. Kenneth Krause representing the Friends of the Chevalier Auditorium

Mr. Krause informed the Commission that he submitted written comments. He stated that his letter included his assessment of the Commission's four-part analysis used to determine whether a structure is part of a gaming establishment. He also shared that on a conference call 4 days after the licensee's quarterly report at a public meeting of the Commission, representatives from Wynn Resorts, Limited shared sentiments about the project that were very different than what was presented during the Licensee's presentation at the February 10th public meeting. Mr. Krause also spoke briefly about the importance of the ILEVs for the Commonwealth and the benefits they provide. He explained that the venues would be at risk of going out of business if the playing ground would be allowed to remain uneven. Mr. Krause clarified to the Commission that he was not against competition and explained that the existing venues in the region are "friendly rivals." He closed by asking that the Commission ensure the letter of the law is followed as are the ILEV agreements.

Chair Judd-Stein inquired about the Chevalier Theatre and Chevalier Auditorium's seating capabilities. Mr. Krause explained that they were the same entities and provided a brief history of the theatre and auditorium and their nomenclature. Chair Judd-Stein inquired if the theatre seats 1850 seats, and Krause confirmed.

Commissioner Hill inquired whether Mr. Krause could provide examples of the so called "predatory practices" he had mentioned in his initial comments. Mr. Krause shared an instance where a performer was initially going to perform at a local theatre and then ultimately went to perform at the gaming establishment. Mr. Krause explained that it is difficult for venues to compete with casinos who can offer more lucrative deals, hotel stays or benefits, whereas local theatres have more limited revenue streams. Mr. Rabinovitz added a comment to discuss predatory practices and the ILEV agreement and what it codified. Mr. Rabinovitz stated that the law disallows the practice of having a theatre with more than 1000 and less than 3500 seats. Commissioner O'Brien asked Mr. Rabinovitz what his position was on the temporary seating inside or outside the EBH building and whether those would run afoul of statutory restrictions. Mr. Rabinowitz stated that seats outside would not run afoul of the restrictions, but that any "seats" - whether movable or permanent - inside the venue would violate the proscriptions in the statute if they fell within the specified range.

Chair Judd-Stein also inquired if Mr. Rabinovitz saw a distinction between a third-party agency doing the booking or hosting the event at EBH instead of the licensee holding and hosting the event solely. Mr. Rabinovitz stated he did not see a distinction.

Chair Judd-Stein asked Mr. Krause if he had any additional statements, and Mr. Krause went on to discuss the competition and the differences in resources available to performers. In discussing

outdoor venues, Mr. Krause stated that the Commission has included outdoor areas in gaming boundaries before and listed prior gaming determinations by the Commission as well as outdoor spaces at EBH that are part of the existing gaming establishment. Mr. Krause closed and thanked the Commissioners.

d. Breanna Lungo-Koehn, Mayor, City of Medford

Mayor Lungo-Koehn thanked the Commissioners for their time and stated that the attorney for the City of Medford had also provided written comment on behalf of the city. Mayor Lungo-Koehn shared that it was her belief that these two LLCs, Wynn MA LLC, and East Broadway LLC are “one and the same,” and shared her concerns regarding the pedestrian bridge attaching the two. Mayor Lungo-Koehn stated that it felt like the licensee was attempting to be “cute” in their presentation on February 10th, by having only 999 seats. Mayor Lungo-Koehn stated that she wished to echo the sentiments raised previously in wanting to protect the smaller existing theatres; including the theatre in Hanover, as well as the Chevalier Theatre, owned and operated by the City of Medford. She asked that the Commissioners consider the implications of allowing the expansion and thanked the Commission for its time.

Chair Judd-Stein shared a reminder about the Commission’s Community Mitigation Fund, which is available to surrounding communities including Medford and to the Chevalier Theatre, as well as monies provided by surrounding host-community agreements. Mr. Krause then offered additional information to the Commission that City of Medford entered a SCA, separate from the ILEV agreement, to provide \$100,000 per year to Chevalier Theatre, the city also gets a \$125,000 Medford Community Fund grant that can be used at the discretion of the City of Medford. Mr. Krause shared that the Community Fund was once utilized to repair the floors of the gymnasium in the Chevalier auditorium. Mr. Krause explained that because the theatre retained a professional management and booking company, the bulk of the funds received go towards paying the company for their services.

e. J. Casey Soward, Executive Director, Cabot Theatre, Beverly MA

Mr. Soward submitted written testimony but offered an oral statement. He stated that his concerns were like what was shared previously by other participants. Mr. Soward stated that his specific concern was the Cabot Theatre is an economic and cultural landmark in the City of Beverly with an economic impact of 10 to 12 million dollars. Mr. Soward shared that the Cabot is the smallest theater the cohort, at 850 seats, and that a venue of 999 seats or less would be very detrimental to their ability to generate revenue and attract entertainment.

Having finished with prepared comments from speakers, Mr. Delaney then opened the discussion and solicited public comments from any other interested speakers on the call.

f. Ms. Lee Ferrington, Licensed Clinical Social Worker, Chelsea MA.

Ms. Ferrington shared that she was concerned about the expansion of EBH. Ms. Ferrington claimed that she has seen result of increased addiction, as a social worker. Ms. Ferrington also raised concerns about the rise in crime and the mitigation payments received by surrounding

communities that support her contention. Ms. Ferrington shared that she did not support the expansion of the EBH and supported the comments made by previous speakers. She went on to express that the density of the neighborhood would not support the development, and that expansion would harm the existing arts and cultural establishments in the region.

Chair Judd-Stein thanked Ms. Ferrington for her comments and services as a social worker. She also informed Ms. Ferrington about Problem Gambling Month put on by the Division of Research and Responsible Gaming, and that more information would be shared throughout the month of March.

g. Representative Paul J. Donato, 35th Middlesex District in the Massachusetts House of Representatives.

Representative Donato stated that he viewed that the separate acts brought into the Ballroom at EBH were distinct from the existing matter before the Commission about expansion. Representative Donato continued that he hoped that the Commission would also take the ballroom matter under advisement for a later time. Mr. Donato then raised the issue that the currently submitted design of the Pedestrian Bridge enters the casino floor. Representative Donato stated that the project “was very evident that this is a part of the casino just in a different way.” Mr. Donato thanked the Commissioners for the opportunity to provide comments.

Chair Judd-Stein asked if there were other speakers who wished to provide comments. Ms. Howard stated that there were no speakers at this time. Chair Judd-Stein welcomed participants on the call and those speaking to comment and go off mute if they would like to provide comments or email Ms. Howard at MGCcomments@massgaming.gov.

h. Ms. Georgia Green, a Clinical Social worker from Chelsea, MA.

Ms. Green shared that she has 32 years’ experience working in the community and had concerns about compulsive gambling and its impacts on underserved communities, particularly Chelsea and others near EBH. She acknowledged that she recognized that this is not why parties had gathered today. Ms. Green echoed the sentiments of those who spoke previously in the meeting and stated that it could be in the best interests of EBH to be a “good neighbor” and benefit the communities in an ongoing manner. Ms. Green suggested that the licensee should consider building a park instead and plant trees to improve the quality of the environment.

Chair Judd-Stein inquired if there was a planned green space with public access within the Broadway project proposal. Chief Delaney stated that there would be plantings, greenery, and landscaping on the perimeters of the project, but no green space.

Hearing no additional speakers, Commissioners and participants went off video, but informed the viewers that the hearing would remain open for another half hour until 1:00PM for additional comments from members of the public.

After receiving no additional public comments, Chair Judd-Stein acknowledged and thanked the public for the multiple comments received in advance of the meeting. Chair Judd-Stein reminded the public that this was a public hearing, and a public meeting so that Commissioners could also ask questions. She shared that there would be an upcoming public meeting on this issue on March 10, and that they would receive a memo on the question presented regarding the live event on March 17 at the EBH Ballroom. Chair Judd-Stein expressed that the memo would provide additional guidance to the Commissioners moving forward.

3. Other Business - Reserved for matters the Chair did not reasonably anticipate at the time of posting.

Hearing no other business before the Commission, Commissioner O'Brien moved to adjourn. Commissioner Cameron Seconded.

Roll Call Vote:

Commissioner Cameron	<i>Aye.</i>
Commissioner Hill	<i>Aye.</i>
Commissioner O'Brien	<i>Aye.</i>
Chair Cathy Judd-Stein	<i>Aye.</i>

Motion Passed Unanimously.

List of Documents and Other Items Used

1. Massachusetts Gaming Commission, Notice of Public Meeting & Hearing – dated February 16, 2022
2. Agenda Setting Meeting Minutes – October 13, 2022

TO: Chair Judd-Stein, Commissioners O'Brien, Hill, Skinner

FROM: Mark Vander Linden, Director of Research and Responsible Gaming; Marie-Claire Flores-Pajot, Research Manager

CC: Karen Wells, Executive Director,

DATE: May 6, 2022

RE: Proposed FY2023 Gaming Research Agenda with GPAC feedback

Background:

The Expanded Gaming Act enshrines the role of research in understanding the social and economic effects and mitigating the negative consequences of casino gambling in Massachusetts. To this end, with the advice of the Gaming Policy Advisory Committee (GPAC), the Commission is charged with carrying out an annual research agenda to comprehensively assess the impacts of casino gambling in Massachusetts. The GPAC met on April 4, 2022 to discuss the below FY2023 Gaming Research Agenda. The GPAC suggestions are incorporated in the below gaming agenda and are further described at the end of this memo.

Specifically, [M.G.L. Chapter 23K §71](#) directs the research agenda to examine the social and economic effects of expanded gambling and to obtain scientific information relative to the neuroscience, psychology, sociology, epidemiology, and etiology of gambling.

To fulfill this statutory mandate, the Commission adopted a strategic research plan that outlines research in seven key focus areas, including:

Economic Impact Research

The Social and Economic Impacts of Gambling in Massachusetts (SEIGMA) study, conducted by a team from the UMass Donahue Institute, analyzes the fiscal and economic effects of expanded gaming across the Commonwealth. The economic research is intended to provide 1) neutral information of decision-making, 2) early warning signs of changes connected with casino gambling, and 3) help reducing gambling-related harm. To explore more about the economic impact research including completed reports: <https://massgaming.com/about/research-agenda-search/?cat=economic-impact>

Social Impact Research

The Social and Economic Impacts of Gambling in Massachusetts (SEIGMA) study, conducted by a team from UMass Amherst, analyzes the social and health effects of expanded gaming across

the Commonwealth. To explore more about the social impact research, including completed reports: <https://massgaming.com/about/research-agenda-search/?cat=social-impact-research>

Community-Engaged Research

The objective of community-engaged research is to understand and address the impact of casino gambling in Massachusetts communities. The specific research topic or question is developed by the community through a community-driven process. To explore more about the community-engaged research, including completed reports:

<https://massgaming.com/about/research-agenda-search/?cat=community-engaged-research>

Public Safety Research

Public safety research examines Massachusetts casino impacts on public safety, including crime, calls-for-service, collision, and driving under the influence data. This element of the Commission's research agenda has produced a baseline for each casino host and surrounding communities. Annual follow-up studies measure change in activity and highlight possible connections to the casino. To explore more about the public safety research, including completed reports: <https://massgaming.com/about/research-agenda-search/?cat=public-safety>

Responsible Gaming Program Evaluation

The Commission is committed to offering effective, evidence-based responsible gaming programs and initiatives. Currently, these initiatives include statewide Voluntary Self Exclusion, PlayMyWay Play Management System, and the GameSense program. Ongoing and independent evaluation informs the overall responsible gaming strategy and future direction of these programs. To explore more about the evaluation research, including completed reports:

<https://massgaming.com/about/research-agenda-search/?cat=responsible-gaming-program-evaluations>

Massachusetts Gaming Impact Cohort

The Massachusetts Gambling Impact Cohort (MAGIC), the first major longitudinal cohort study of gambling behavior in the United States, identifies demographic groups particularly at risk of experiencing gambling-related harm and provides information on how gambling and problem gambling develop, progress and remit, and will identify demographic groups particularly at risk of experiencing gambling-related harm. To explore more about the Massachusetts Gaming Impact Cohort, including completed reports: <https://massgaming.com/about/research-agenda-search/?cat=massachusetts-gambling-impact-cohort>

Data Sharing

To improve transparency and build upon the existing research body of research, the Commission has a robust research library and data sharing portal. The Massachusetts Open Data Exchange (MODE) invites researchers of all disciplines to use available gaming-related data to advance the empirical evidence and knowledge base about casinos' social and economic effects on

individuals and communities. To explore more about the Massachusetts Open Data Exchange: <https://massgaming.com/about/research-agenda/>

Proposed FY23 Gaming Research Agenda

The proposed FY23 Gaming Research Agenda is \$1,438,000. This is roughly half the adopted FY22 budget of \$2,940,000. The major difference is that in FY22 the SEIGMA research team fielded the Follow-up General Population Survey and had a sub-contract with the National Opinion Research Center (NORC) at the University of Chicago to complete this work. The survey phase is near complete and attention in FY23 will turn to analysis and reporting lead by Drs. Rachel Volberg and Robert Williams. A final report is expected in March 2023.

Below, the proposed FY23 research agenda is shared with you in the following table and includes 1) general description of each project, 2) specific deliverables/activities, 3) a reference to the section of M.G.L. c. 23K, and significance.

Proposed FY2023 Gaming Research Agenda	
Social and Economic Research	
The Expanded Gaming Act (M.G.L. c. 23K § 71) required the MGC to engage research to understand the social and economic effects of casino gambling in Massachusetts. Since 2013 the MGC has contracted the University of Massachusetts Amherst, School of Public Health and Health Sciences to carry out this part of the research agenda.	
Task/deliverable	Statutory and Practical Significance
Follow-up General Population Study (FGPS)	Relates to: M.G.L. c. 23K, § 71 (1) and §71 (2)(iii)
	This report on the results of the Follow-up General Population Survey(n=8,000) will provide information about gambling behavior, gambling attitudes, and problem gambling prevalence in MA in 2021-2022. The report will also examine changes in gambling behavior, attitudes, and problem gambling prevalence since 2013-2014.
Task/deliverable	Statutory and Practical Significance
Follow-up Online Panel Technical Report	Relates to: M.G.L. c. 23K, § 71 (1) and §71 (2)(iii)
	This report will describe the methods used to calibrate the results of the FGPS and the Follow-up Online Panel Survey (FOPS) allows the results of future online panel surveys to be generalized to the MA population.
Task/deliverable	Statutory and Practical Significance
Administer new FOPS	Relates to: M.G.L. c. 23K, § 71 (1) and §71 (2)(iii)

questions to ~200 FGPS respondents	NORC will re-contact a small number of randomly selected FGPS participants and ask them to complete a brief additional questionnaire. This information will improve calibration of the FGPS and FOPS with the purpose of moving to online panel surveys in the future to monitor gambling behavior, gambling attitudes, and problem gambling.
Task/deliverable	Statutory and Practical Significance
Encore Boston Harbor Patron & License Plate Survey Report	Relates to: M.G.L. c. 23K, § 71 (2) This report will focus on the results of the Encore Boston Harbor Patron & License Plate Survey carried out in April 2022. Information about patron origin, expenditures, and behavior is important in understanding the social and economic impacts of casino gambling in MA.
Task/deliverable	Statutory and Practical Significance
Encore Boston Harbor – First 3.5 years of Operation Economic Impacts Report	Relates to: M.G.L. c. 23K, § 71 (2)(vii) This report will focus on the impacts of the operations of Encore Boston Harbor during its first 3.5 years of operations on the regional and state-wide economy.
Task/deliverable	Statutory and Practical Significance
Gambling Advertising study	Relates to: M.G.L. c. 23K, § 71 (2)(iv) This study will use an online panel to investigate the correlation between gambling advertising, gambling behavior and increased gambling-related harms among Massachusetts residents.
Task/deliverable	Statutory and Practical Significance
Casino Jobs and Employment – Impacts Report	Relates to: M.G.L. c. 23K, § 71 (2) This study will analyze employment characteristics and conditions at the three Massachusetts casinos to assess the extent to which Massachusetts casino jobs are benefitting the workers in the casino workforce.
Community comparisons methodology updates and analysis	Relates to: M.G.L. c. 23K, § 71(2)(iii)(v)(vii) The Economic Team will update work conducted in 2014 to select communities in the Northeast matched to the MA casino host communities for purposes of counterfactual analysis of the economic impacts of casinos in MA.
Public Safety Research	
The MGC is examining changes in crime, calls for service, and collisions following the opening of casinos in Massachusetts. The intention is to demonstrate what changes in crime, disorder, and other public safety harms can be attributed directly or indirectly to the introduction of a casino and what strategies local communities need to implement to mitigate the harm.	
Task/deliverable	<ul style="list-style-type: none"> • Provides ongoing monitoring system of crime, calls for service, and traffic. • Allows for early detection and
Assess the influence of gambling on public safety for Springfield and eight surrounding communities. Produce a	

year-4 report. Provide crime analyst technical assistance as needed.	response to casino related problems that may arise. • Provides an opportunity for greater collaboration with local police chiefs and crime analysts.
Task/deliverable	
Assess the influence of gambling on public safety for Everett and seven surrounding communities . Produce a year-3 report. Provide crime analyst technical assistance as needed.	
Community-Engaged Research	
Task/deliverable	Statutory and Practical Significance
Support an estimated two new community driven research projects	Relates to: M.G.L. c. 23K, § 71 (3)(ii)
	The objective of community-engaged research is to more deeply understand and address the impact of casino gambling in Massachusetts's communities. The specific research topic or question is developed by the community through a community-participatory process.
Data Sharing	
Task/deliverable	Practical significance
Maintain existing datasets in the MODE repository and add additional datasets as they become available, including player card data as required.	Relates to: M.G.L. c. 23K, § 71 (2); Chapter 194, Section 97
	The purpose of MODE is to provide access to data generated by research projects funded and overseen by the MGC. Datasets from existing and ongoing research projects and player card data are publicly available with certain parameters.
Responsible Gaming Evaluation	
The MGC is committed to offering effective, evidence-based responsible gaming programs and initiatives. MGC responsible gaming initiatives include; statewide Voluntary Self-Exclusion, the PlayMyWay play management system and the GameSense program. Ongoing and independent evaluation informs the overall responsible gaming strategy and future direction of these programs.	
Task/deliverable	Practical significance
Evaluation of PlayMyWay at MGM Springfield	This study will examine the effectiveness at achieving program goals; 1) Sustain recreational gambling by establishing feasible parameters, and 2) Eliminate the regret arising from loss of control NOTE: This study will be funded entirely by the International Center for Responsible Gaming
Evaluation of the GameSense program at Plainridge Park Casino, MGM Springfield and	Continuation of a study that launched in April 2022. The study will measure the effectiveness of the GameSense Program at meeting the goals stated in the GameSense Logic Model; 1) Create a responsible gaming enabled casino workforce, 2) Promote positive play, 3) Reduce

Encore Boston Harbor.	gambling related harm
Research Review	
To ensure the highest quality research, the MGC has assembled a research review committee. This committee is charged with providing the MGC and research teams with advice and feedback on gaming research design, methods, and analysis. Where additional expertise is needed, the MGC seeks advice from experts with specific subject matter expertise to review reports and advise on research matters.	
Knowledge Translation and Exchange	
To ensure findings from the MGC research program are accessed and used by key stakeholders, engage an organization with expertise in this area to help develop a strategic plan, provide on-going training, consultation, and support to build in-house capacity to improve current KTE strategies, practices, and skill sets.	

GPAC Feedback

As required by [M.G.L. Chapter 23K §71](#) the Gaming Policy Advisory Committee (GPAC) met on April 4, 2022 to discuss and advise on the proposed FY2023 Gaming Research Agenda. Following a presentation of a proposed agenda, it was suggested the MGC add a study to better understand the casino workforce. This would include measures such as salaries/payroll and benefits, to assess the quality of jobs degree to which casino employment has benefitted host casino workers. A member of GPAC emphasized the importance of such study, and if research funds were strained for FY23, in order to accommodate the workforce study, they suggested the MGC consider removing the gambling advertising study and follow the current recommendations included in [the draft advertising white paper](#) rather than further research the area.

We discussed the GPAC recommendation with the SEIGMA team on April 13, 2022. The SEIGMA team creatively suggested that we adjust the “Community comparisons methodology updates and analysis” study, to accommodate the workforce a study and keep the advertising paper, all within the proposed budget.

Based on the discussions mentioned above, the proposed FY23 agenda, incorporates a workforce study suggested by GPAC, and maintains the gambling advertising study.

GAMESENSE QUARTERLY PRESENTATION

MAY 12, 2022

RAY FLUETTE, EDGARDO ROMERO,
PHIL SHERWOOD, KEN AVERILL,
JODIE NEALLEY & ODESSA
DWARIKA

GameSense

TODAY'S TOPICS:

- Numbers Highlights
- Champion Awards
- Augmented Reality
- Parimutuel Collaboration
- Preparing for Sports Betting
- Designated Agent Training, TRS & VSE Follow Up
- Outreach with Community Justice Centers
- NCPG Conference



GSA Josh leading a new hire orientation at EBH

EBH NUMBERS

Type of Interaction:	FY	July	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	March	April	May	June
Simple Interaction:	FY21	4583	9498	8804	7335	4466	3124	4876	6907	10794	6501	7682	6445
	FY22	9658	8018	8342	7174	7659	6819	8124	7097	8279			
Demonstration:	FY21	51	175	2675	385	217	543	213	679	4952	486	504	442
	FY22	992	851	2789	655	706	958	465	913	6766			
Exchange:	FY21	325	492	452	333	341	265	266	383	614	393	340	276
	FY22	618	396	452	265	177	266	215	229	245			
Casino Related:	FY21	1567	4341	3452	2967	1799	1186	1665	2588	3188	2363	2674	2605
	FY22	3909	3524	3103	3481	4023	3886	4714	3664	4144			
VSEs:	FY21	8*	20*	18*	12*	8	9	10*	13*	22*	15*	20*	16*
	FY22	8	22	20	18	19	23	19	20	34			
	VSE Overnight:	1	3	3	2	7	3	0	5	3			
	Remote:	3	4	9	5	6	8	2	9	7			
	Initiated by LiveChat:							2	3	6			
Reinstatements:	FY21	0	0	1	7	1	4	6	8	5	2	3	3
	FY22	3	9	6	6	5	3	4	3	10			
	Reinstatement Overnight:	0	2	1	1	1	0	1	0	1			

MGM NUMBERS

Type of Interaction:	FY	July	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	March	April	May	June
Simple Interaction:	FY21	1496	2876	2729	2573	1767	3509	3320	3380	4479	3330	4007	4485
	FY22	3660	4747	6446	4262	4129	3475	3716	4113	5065			
Demonstration:	FY21	3	172	852	258	125	687	908	739	1405	657	924	1061
	FY22	1250	1222	2841	1015	773	820	947	1331	3056			
Exchange:	FY21	114	493	224	113	864	255	204	165	424	259	281	296
	FY22	403	443	494	554	432	519	307	464	1036			
Casino Related:	FY21	1565	1398	1778	753	511	1739	1049	1027	1314	914	1236	1358
	FY22	1411	1734	1968	1316	1133	1136	1093	1540	1438			
VSEs:	FY21	2	11	12	9	3	1	6	8	7	10	8	7
	FY22	5	7	8	3	6	5	14	9	17			
Remote:								2	1	2			
Intitiated by Live Chat:								2	0	0			
Reinstatements:	FY21	4	3	5	6	3	0	4	4	3	4	0	2
	FY22	2	4	3	3	7	2	4	5	3			
Play My Way:	FY22	NA	NA	NA	NA	NA	NA	NA	NA	257*			

PPC NUMBERS

Type of Interaction:	FY	July	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	March	April	May	June
Simple Interaction:	FY21	1509	3334	4184	2681	2354	2282	2734	2170	3276	2347	2551	3344
	FY22	3632	3983	4442	3784	3996	4096	3523	3277	3282			
Demonstration:	FY21	2	113	805	176	125	209	193	156	415	231	238	205
	FY22	302	263	1628	285	368	361	337	317	1161			
Exchange:	FY21	91	429	267	134	207	134	291	177	295	236	310	333
	FY22	359	427	387	281	311	294	227	254	204			
Casino Related:	FY21	331	685	683	548	375	340	437	394	565	419	420	472
	FY22	570	527	576	464	623	511	406	557	498			
VSEs:	FY21	2	4	2	7	6	6	4	5	5	4	6	5
	FY22	3	6	5	2	6	8	3	10	11			
	Remote							0	2	0			
	Initiated by LiveChat							0	1	0			
Reinstatements:	FY21	8	6	4	5	1	1	4	3	1	6	0	1
	FY22	0	7	3	2	2	3	5	9	5			
Play My Way:	FY21	349	347	245	215	164	140	111	90	140	120	263	325
	FY 22	125	127	120	104	84	62	105	40	36			

CASINO STAFF EXCELLENCE AWARDS

EBH

- Norma Forrester, Security
- Dayanna Salgado, Office Service
- Rakibur Rahman, Security

MGM

- Jeremy Votolato, Slot Operations
- KayCarolyn Lagarde, Training and Development
- Matt Regan, Security

PPC

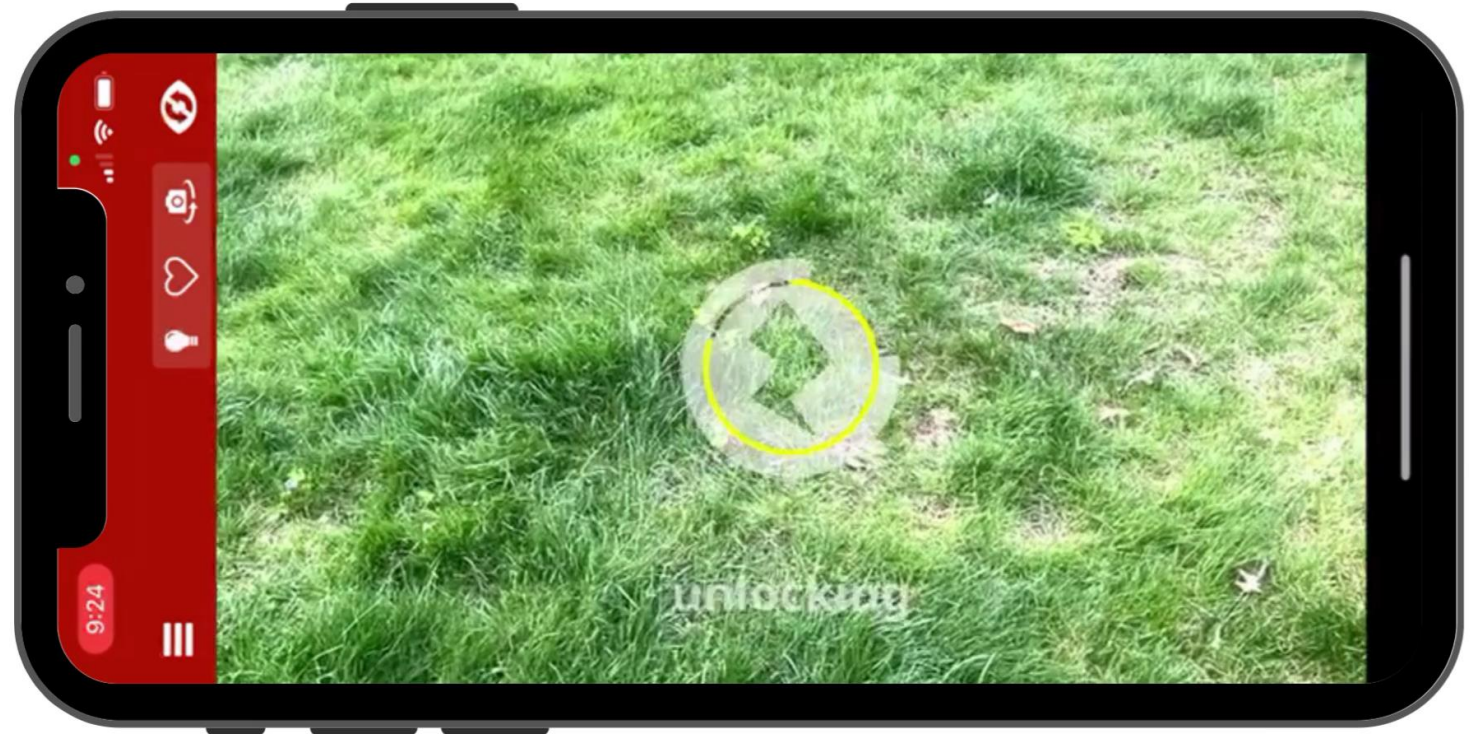
- Luigi Prekulaj, Security
- Jennifer Perry, HR
- Grant Lineham, Security



GSA Ellen showing appreciation to MGM Security Officer Matt Regan

AUGMENTED REALITY

- Innovative
- Enhances gambling literacy
- Reaches a younger demographic
- Teaches house edge
- Incorporates 3 casino games
- Naturally captures interest
- Demo (next slide)



COLLABORATION WITH THE PARIMUTUELS

- Trainings at Suffolk Downs and Raynham Park
- Print and digital signage in development
- Future tabling opportunities
- Possible sports betting locations



Senior GSA Ken co-leading a presentation at Suffolk Downs

PREPARING FOR SPORTS BETTING

- MACGH Staff Training
- Leading NCPG Conference Workshop (July)



Proposition Bet

- ▶ A proposition bet is a wager made regarding the occurrence or non-occurrence during a game, that does not directly affect the games final out come
- ▶ The coin toss before the SB, how many yards a QB throws for, who scores first are a few examples.
- ▶ A.K.A prop bet, novelty, or side bet

GameSense



VSE DESIGNATED AGENT TRAININGS, TRS AND VSE FOLLOW UP

4 VSE DESIGNATED AGENT TRAININGS:

Staff Leads	Date	# Attendees
Linh and Jodie	1/24/22	1
Amy and Jodie (Training Institute)	1/25/22	20
Amy and Jodie	2/16/22	2
Linh and Jodie	3/24/22	22
Total Attendees:		44

TRS DATA:

New people began TRS:	10
People completed TRS:	11
Total Participants in TRS:	21
Total Attempted contacts:	57

PHONE or EMAIL FOLLOW UP:

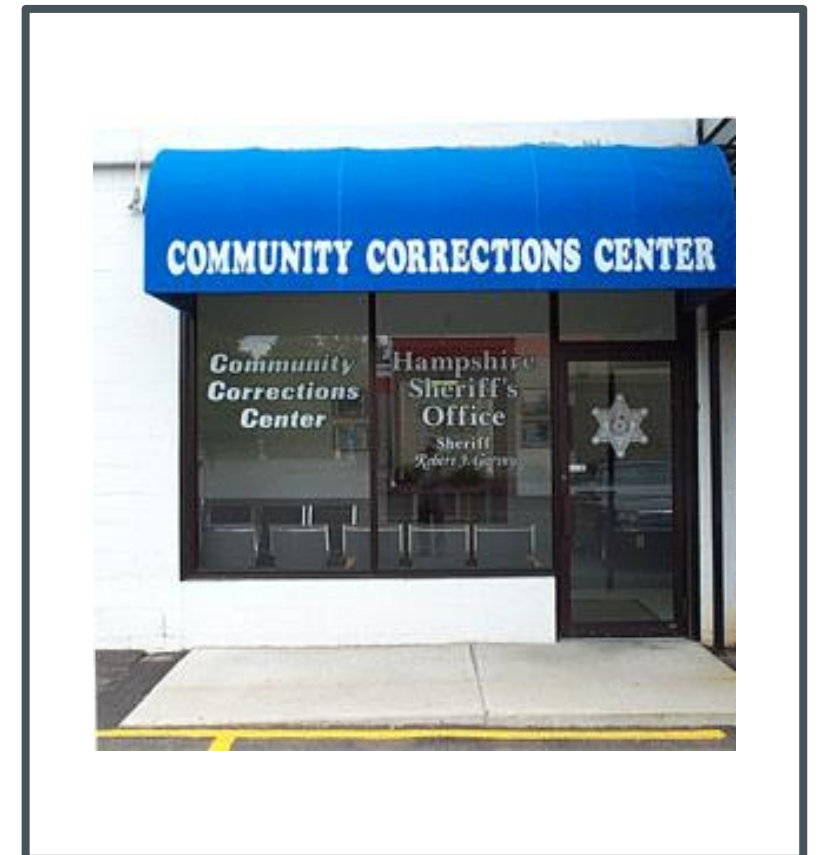
VSE Follow Ups:	17
Non-VSE Follow Ups (Gamesense or other non VSE referral):	5
Total Follow Ups:	22
Total Attempted contacts:	56

QUOTES FROM PARTICIPANTS:

- “I love having self-excluded; one of the best decisions I have made.” – *Hai*
- “Thankful for the option of self-exclusion; I’m grateful for GameSense.” – *Stephen*
- “I was told I had to go to PPC in person and pick up win loss statement from GS; I did not want to go to casino so I called and got Ronnie; she got my win loss and mailed it to me and I am very thankful.” – *Patrick*

OUTREACH WITH COMMUNITY JUSTICE SUPPORT CENTERS

- Research indicates that folks in Corrections experience high levels of gambling harm
- Part of GambleSafe Initiative
- 146 staff members across 17 Centers received a 90-min. training
- Technical Assistance meeting conducted with program leadership
- 34 Center staff were trained as designated agents
- Supplemental educational materials are being developed
- Discussion underway for possible FY23 activities





National Conference on Gambling Addiction & Responsible Gambling 2022

Better Together: Advocacy, Awareness & Assistance

June 8-9 ★ Digital Symposium

July 20-23 ★ Main Conference & Workshops

MACGH HOSTING

- MACGH leading workshops, volunteering & helping to coordinate everything ☺
- First in-person NCPG conference in 3 years!
- Economic benefit (hotels and restaurants, Tea Party Museum, Boston Red Sox)
- Hope you can join us!

QUESTIONS?

And a very special thank you to Commissioner Cameron for all her support.

Best Wishes in Your Retirement!





TO: Chair Cathy Judd-Stein, Commissioners, Bradford Hill, Eileen O'Brien, and Nakisha Skinner

FROM: 2022 Community Mitigation Fund Review Team

CC: Karen Wells, Executive Director, Todd Grossman, General Counsel

DATE: May 6, 2022

RE: 2022 Community Mitigation Fund Transportation Planning Grant Applications

This memorandum provides an analysis of the Transportation Planning Grant applications for funding from the 2022 Community Mitigation Fund ("2022 CMF"). Copies of the applications can be found at <https://massgaming.com/about/community-mitigation-fund/>.

The Community Mitigation Fund Review Team ("Review Team") has evaluated the applications to ensure that they comply with the 2022 Guidelines. As part of this review process, copies of the applications were sent to the licensees and MassDOT for their review and comment. Conference calls and remote meetings were held between the applicants and the Review Team. Requests for supplemental information were submitted to the applicants so they could provide further clarification on their application. Numerous meetings were held by the Review Team to ensure a thorough review of every application.

Recommendations of the Review Team

To ensure a consistent and efficient system to analyze the applications, the Review Team utilized the review criteria specified in the 2022 Guidelines. This summary will mention some significant factors for these applications. Among the criteria are:

- 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 potential for the proposal to maximize the economic impact of the gaming facility
- The feasibility and reasonableness of the proposed mitigation measure.

The chart below summarizes the recommendations of the Review Team with respect to the Transportation Planning Grant Applications

Recommended Transportation Planning Grant Awards.

Guidelines: Transportation Planning (\$200,000 per application plus any regional planning incentive)	Applications Received	Recommendation of Review Team
Boston - Sullivan/Rutherford	\$200,000	\$200,000
Chelsea – Spruce Street	\$167,600	\$167,600
Everett/Boston Lower Mystic	\$450,000	\$450,000
Malden – Traffic Signal Inventory	\$115,000	\$57,500
Malden – MBTA Station Study	\$49,400	0
Medford Wellington Rail Trail	\$70,000	\$70,000
Total:	\$1,052,000.00	\$945,100

BOSTON – Sullivan Square/Rutherford Avenue

Summary: The City of Boston is requesting \$200,000 for a portion of the design cost of improvements to Sullivan Square and Rutherford Avenue.

Analysis: The Review Team recommends awarding the full amount of \$200,000 to the City of Boston for the design of Sullivan Square and Rutherford Avenue.

The Commission has provided grant funds for this project in the amount of \$1.05 million from 2017-2021. During the last grant round, it was expected that there would be no additional requests for funding. However, during the 25% design review, MassDOT requested that the City of Boston change the design to incorporate dedicated center bus rapid transit lanes and stations through Sullivan Square and along the Rutherford Avenue corridor. This results in a significant design change, which is the subject of this request.

The Review Team agrees that the design for the Sullivan Square/Rutherford Avenue improvements is clearly related to impacts of the gaming facility as approximately 70% of the project-generated traffic passes through Sullivan Square. Boston’s long-term designs for the area have been significant considerations in the Commission’s ongoing review of the Encore Boston Harbor project and the license conditions. These conditions include a requirement for Encore Boston Harbor to contribute \$25 million to this project.

As originally proposed, the total design cost for the project was approximately \$11 million. The increase in design fee for the center bus lane and station design is currently being negotiated, but will certainly be substantial. With an additional grant of \$200,000, the total contribution from the Commission would be \$1.25 million or about 11.4% of the original \$11 million budget. In the end, these funds will leverage over \$150 million in federal and state funds associated with the full reconstruction of Sullivan Square and Rutherford Avenue.

The Review Team agrees that this level of investment is appropriate given the amount of casino traffic travelling through this area and ultimately the federal and state construction dollars that this project will leverage, and therefore recommends this project for funding.

Licensee Response: “Encore Boston Harbor supports the City of Boston’s plans to enhance the flow and ease the impact of traffic at Sullivan Square and Rutherford Avenue in Charlestown.”

MassDOT Response: “MassDOT recommends approval of the City of Boston’s request for \$200,000 to contribute to the design costs for the Sullivan Square/Rutherford Avenue reconstruction project. Our approval is consistent with state and City efforts to support economic development, manage congestion, support multimodal travel, and improve safety for travel in this area.”

CHELSEA – Spruce Street

Summary: The City of Chelsea is requesting \$167,600 to undertake a comprehensive study and devise a conceptual design of multi-modal infrastructure enhancements on Spruce Street between Everett Avenue and Williams Street to mitigate casino induced operational and safety issues.

Analysis: The Review Team recommends full funding of this grant in the amount of \$167,600.

The Beacham Street/Williams Street corridor provides an alternative route to the Encore casino from points north and east of Chelsea, which has been the subject of earlier CMF grants. Spruce Street provides a connection between Route 1 and Beacham/Williams Street. Chelsea conducted traffic studies before and after the casino opening which documented increases in traffic on Beacham and Williams Streets that were significantly larger than those anticipated in the Environmental Impact Reports. While traffic counts were not conducted on Spruce Street itself, it can be safely inferred that some of that increase in traffic will be using Spruce Street because of its direct connection to Route 1. Chelsea also documented an increase in the number of accidents on Spruce Street after the casino opened. The Review Team agrees that Chelsea has demonstrated a sufficient connection to traffic related impacts from the casino.

Chelsea plans to hire a consultant to perform a comprehensive transportation corridor study to identify ways to mitigate the increase in vehicular traffic as well as addressing safety issues associated with the corridor. The study will look at a full range of issues including multi-modal safety and access.

The Review Team agrees that the approach presented in the application would provide the necessary level of planning to allow Chelsea to move forward in making improvements to this corridor to mitigate the issues identified and therefore recommends this project for funding.

Licensee Response: “Encore Boston Harbor supports the City of Chelsea’s initiative to undertake a comprehensive study and devise a conceptual design of infrastructure enhancements on Spruce Street. We continue to encourage regional collaboration to ensure that the resources available in the Community Mitigation Fund are put towards impactful initiatives that will benefit the region for decades to come.”

MassDOT Response: “MassDOT supports the City of Chelsea’s application for \$167,600 for a Transit Planning Initiative to study improvements and alternative designs for Spruce Street between Williams

Street and Everett Avenue. This request represents the total budget of the project in order to retain a planning firm to propose a comprehensive improvement plan for Spruce Street, with the final product including baseline and traffic analyses, utility assessment, preliminary environmental and subsurface data review, preliminary mapping, and 10% design plans. MGC funds will be matched in-kind through municipal coordination with the selected consulting firm to provide deliverables, which will be reported quarterly to the MGC.”

EVERETT/BOSTON – Lower Mystic Transportation Management Association

Summary: The cities of Everett and Boston are requesting a grant in the amount of \$450,000 to complete the formation of the Lower Mystic Transportation Management Association (TMA). These funds would support the basic operational needs of the TMA during its first 3 years.

Analysis: The Review Team recommends full funding of the grant in the amount of \$450,000.

As part of its MassDOT Section 61 findings, Encore Boston Harbor was required to become a member of a TMA to help in reducing the amount of traffic associated with the development. At the time of Encore’s opening, there was no TMA that was designed to cover the Everett area. Encore joined a Boston based TMA to satisfy the requirement, but it was not the most effective way to carry out that mandate. The City of Everett and the City of Boston have established the Lower Mystic Transportation Management Agency to cover Everett, the Charlestown neighborhood of Boston, Chelsea, Malden, and Medford. Encore has joined this TMA as well as several other local area businesses. Absent the Encore development, the need for a local TMA would be significantly reduced and developing the critical mass necessary to create an Everett/Charlestown-centric TMA would be less likely. The Review Team agrees that the presence of Encore as a major traffic generator helps create the need for a local TMA and therefore constitutes an impact of the casino.

Everett and Boston propose to use these funds over a three-year period to close the gap between funding generated by members of the TMA and the overall financial needs of the TMA itself. It is expected that the TMA will be fully self-sufficient within the three years identified in the application. Some of the activities proposed with these funds include a commuter survey tool to better understand travel patterns in the region, a marketing campaign to provide education and promotion of the tools that are available as part of the TMA and development of a working plan for consolidated private shuttle services to fill gaps in the existing transportation network.

The Review Team agrees that providing this sort of seed money to help the TMA quickly establish itself is appropriate and will help mitigate traffic related impacts from Encore as well as any subsequent development in the area.

Licensee Response: “Encore Boston Harbor supports the Cities of Boston and Everett’s join efforts to complete the formation of the Lower Mystic Transportation Management Association.”

MassDOT Response: “MassDOT supports the joint request by the Cities of Boston and Everett for \$450,000 (noting that the scope budget attached to the application totals \$448,000) in order to inaugurate and support the first three years of operations for a Lower Mystic Transportation Management Association (TMA). This grant request represents the total project cost for the first three years of operations of the proposed TMA, including administrative, management, and operating costs,

and will be matched in-kind by City staff from both municipalities working to support the TMA and to evaluate new permitting materials submitted in compliance with TMA requirements.

This proposal results in part from the Lower Mystic Regional Working Group convened by the MAPC and regional communities and supported by a grant of \$250,000 in Community Mitigation Funds. The study concluded that a regional TMA would be important to transit-orientated local development.”

MALDEN - Traffic Signal Inventory

Summary: The City of Malden is requesting \$115,000 to conduct a city-wide traffic signal inventory to catalogue and evaluate the City’s traffic signal systems in order to optimize traffic operations, determine appropriate near-term and long-range improvement strategies, and develop a capital plan for implementation.

Analysis: The Review Team recommends awarding \$57,500 to the City of Malden for traffic signal inventory and analysis primarily on the major north-south routes into Everett and connecting east-west routes.

The City of Malden serves as a transportation hub for the Encore facility with patron and employee shuttles running to and from the Malden Center MBTA Station. The original traffic studies done as part of the Encore Environmental Impact Report (EIR) determined that local traffic from the Encore facility would travel north through Everett into Malden at several locations. This report estimated that about 2% of the Encore related traffic would travel north on Main Street, about 1% of the traffic would travel on Ferry Street and about 1% on Route 99 (Broadway). The Review Team agreed that these factors constitute an impact of the casino on the Malden roadway network.

Based on the first post-opening traffic study conducted by Encore in January 2020, the peak day at the property generates a total of about 24,000 vehicles per day (12,000 in and 12,000 out). Using the trip generation percentages established in the EIR, this would result in about 480 vehicles per day on the Main Street corridor, about 240 vehicles per day on the Ferry Street corridor and about 240 vehicles per day on the Route 99 corridor. Any other use of Malden roads coming from/going to the casino site would likely be much lower than these main routes. By any measure, this is a modest impact on the local roadway network.

The City of Malden is requesting grant funds to conduct an evaluation of every City owned traffic signal installation, which according to the application totals 70 locations. This study would create a physical inventory of existing traffic signals, develop an evaluation and recommendation report and perform some field adjustments of signal equipment.

The Review Team was not convinced that mitigation funds should be used to study every signalized intersection in Malden given the modest impact on local roads. The Review Team did agree that the main north/south routes identified in the EIR and some east/west routes that connect these routes could warrant some additional study and evaluation. Rather than trying to micromanage this application, the Review Team recommends providing 50% of the requested funding and requiring the applicant to submit a revised scope of work that outlines which routes and traffic signals will be evaluated as part of the study.

Licensee Response: “Encore Boston Harbor supports the City of Malden’s efforts to conduct a city-wide traffic signal study to evaluate its traffic signal systems in order to optimize operations and determine both near-term and long-term improvements.”

MassDOT Response: “MassDOT supports the request by the City of Malden for \$115,000 to fully fund an inventory and analysis of signalized intersections within the community. The City will support this effort with an in-kind contribution of staff time and has identified municipal Chapter 90 funding and MassDOT grant funds for potential use in implementation of improvements which result from this planning process.”

MALDEN – Transit Oriented Development Study

Summary: The City of Malden is requesting \$50,000 to conduct a Transit-Oriented Development (TOD) Opportunities Study and explore conceptual alternatives for the development of land adjacent to the Malden Center MBTA Station.

Analysis: The Review Team was not able to identify a clear nexus between an impact of the Encore facility and the proposed remedy, and therefore does not recommend this project for funding.

The grant application identifies two impacts associated with Encore. The first is the increased use of Malden Center as a “transportation hub” for Encore’s visitors, workers and vendors, which is contributing to congestion on its roadways. The second impact described in the application is that workers and visitors to Encore are not utilizing the local amenities in Malden, but rather just using Malden as a pass-through to the casino.

While each of these in and of themselves could be considered an impact of the casino, the Review Team did not believe that a compelling case was made for either one.

In the first case, Malden Center was specifically identified in the Surrounding Community Agreement as a “transportation hub” specifically for the use of Encore patrons and employees. Certain improvements to the Malden Center MBTA Station were required to be made by Encore to accommodate both employee and patron shuttles as part of the environmental review of the project. As part of the Surrounding Community Agreement, Malden receives an annual \$325,000 transportation hub payment to mitigate any impacts.

In the second case, the Commission did determine that impacts on local businesses could be considered under the Community Planning Grant category, but Malden is applying under the Transportation Planning category, which by its very nature deals only with transportation related issues.

Even if the Review Team had concurred with the Malden’s assessment of casino related impacts, there is significant question whether the proposed remedy would address those impacts. As identified in the scope of work attached to the application, the purpose of the TOD study is to explore conceptual alternatives for the land adjacent to the Malden Center Station, including a mix of uses, densities and parking configurations. The TOD alternatives will include a summary of each development program such as retail, commercial, housing and parking. The notion of TOD is that significant development can be created around mass transit stations while minimizing additional burdens on other modes of transportation. While this type of planning is certainly appropriate for any community with mass transit availability, it is unclear how this study would mitigate increased

traffic associated with the casino. The Review Team felt that the proposed project was really a local economic development planning effort and as such, should be considered a general municipal expense and not a project eligible for mitigation funds.

For these reasons, the Review Team was unable to recommend this project.

Licensee Response: “Encore Boston Harbor supports the City of Malden’s efforts to mitigate traffic congestion... We continue to encourage regional collaboration to ensure that the resources available in the Community Mitigation Fund are put towards impactful initiatives that will benefit the region for decades to come.”

MassDOT Response: “MassDOT supports the City of Malden’s request for \$49,400 to fully fund a transportation-oriented design study for the immediate area of the MBTA station at the intersection of Commercial Street and Pleasant Street...Improvements to the infrastructure and services available at the Malden MBTA station and surrounding area have the potential to improve transit access, public safety and equity in line with MassDOT strategic initiatives.”

MEDFORD – Wellington Rail Trail Study

Summary: The City of Medford is requesting \$70,000 in funds to study the feasibility of utilizing an inactive freight rail right-of-way to construct a multi-use trail that would improve connectivity in the Wellington/Glenwood neighborhood.

Analysis: The Review Team recommends full funding of this grant in the amount of \$70,000. The Review Team further recommends that the grant be split into two phases with phase one consisting of \$25,000 to evaluate ownership and easement rights to the railroad and phase two consisting of \$45,000 to develop conceptual designs and cost estimates. The Review Team recommends that phase two not be allowed to proceed until the city demonstrates that there is a reasonable likelihood that the railroad owner will allow the conversion of the railroad into a multi-use trail.

The construction of this proposed multi-use trail would provide a protected path between the Wellington/Glenwood neighborhood and more established bike routes along River’s Edge Drive and the bike paths currently in the planning or construction phase in Mystic View Park and the Gateway Center. While it is difficult to quantify the exact level of use of this type of trail, development of this trail would allow Encore patrons and employees residing primarily to the west of the site relatively unimpeded bicycle/pedestrian access to the site. In addition, it will improve bicycle/pedestrian access to the Wellington MBTA Station, where patrons and employees can avail themselves of the shuttles to Encore. Further, it has the potential to reduce vehicular trips to Wellington/Encore by providing a safer option for walking/bicycling. The Review Team agrees that any improvements to the bike network in the area has the potential to remove a substantial number of vehicles from area roads.

The grant application states that the rail line where the trail is proposed is believed to be inactive. Determining railroad ownership and easement rights often proves to be quite challenging requiring legal review, title searches, etc. The city has requested that a portion of these funds be used for that effort. When that is complete there is certainly the possibility that the railroad may not be available for redevelopment. The Review Team wants to ensure that funds are being spent appropriately and recommends a two-phase approach with the first phase being the evaluation of ownership and

easement rights. Once that effort is complete, the city will need to demonstrate that the project has a reasonable likelihood of proceeding before the funds would be released for the second phase. If the Commission accepts this approach, the expectation is that a grant and contract will be written for \$25,000, with a later amendment to \$70,000 should the city satisfy this requirement.

This type of project is consistent with other projects that the Commission has funded in the area and the Review Team recommends approval.

Licensee Response: “Encore Boston Harbor supports the City of Medford’s efforts to improve transportation for its residents and business owners. If the Massachusetts Gaming Commission determines that this request is aligned with the established fund guidelines, Encore Boston Harbor is happy to endorse the same.”

MassDOT Response: “MassDOT supports the request by the City of Medford for \$70,000 to fully fund a feasibility study analyzing the potential conversion of a railroad right-of-way to create a separated multi-use trail...The rail trail, if determined to be feasible, would support multimodal transit in line with MassDOT planning initiatives and climate change policy. The City’s proposal notes that it would serve to connect extant bike infrastructure in the area and complete a connection between the Encore Casino, neighborhood residences, and the Wellington MBTA station.”



TO: Chair Cathy Judd-Stein, Commissioners Bradford Hill, Eileen O'Brien,
and Nakisha Skinner

FROM: 2022 Community Mitigation Fund Review Team

CC: Karen Wells, Executive Director, Todd Grossman, General Counsel

DATE: May 6, 2022

RE: 2022 Community Mitigation Fund Transportation Construction Grant
Applications

This memorandum provides an analysis of the Transportation Construction Grant applications for funding from the 2022 Community Mitigation Fund (“2022 CMF”). Copies of the applications can be found at <https://massgaming.com/about/community-mitigation-fund/>.

The Community Mitigation Fund Review Team (“Review Team”) reviewed the applications to ensure that they follow the 2022 Guidelines. As part of this review process, copies of the applications were sent to the licensees and MassDOT for their review and comment. Conference calls and remote meetings were held between the applicants and the Review Team. Requests for supplemental information were submitted to the applicants so they could provide further clarification on their application. Numerous meetings were held by the Review Team to ensure a thorough review of every application.

Several Transportation Construction Grant applications involve projects that are currently being designed and cost estimates of the projects are preliminary in nature. The 2022 Guidelines require that projects have an executed construction contract by June 30, 2023. The intent of this requirement is to give communities certainty that projects will receive funding, provided the projects proceed to construction in a timely fashion. Therefore, assigning an exact dollar figure to projects at this time can be difficult. For the purposes of the Transportation Construction Grants, the Review Team recommends that the Commission assign both a maximum value for the project as well as a maximum percentage of the construction cost that should be funded. For example, if the total estimated construction cost for a project is \$4.5 million, the Commission would authorize an award of up to \$1.5 million or no more than 33% of the construction cost, whichever is less. Should construction bids come in below estimate, this would prevent the Commission from paying more than 33% of the total project cost. In these cases, the grants would be awarded after the project is bid and final construction costs are known.

A couple of these projects carry a contingency for design costs. This CMF category does not allow for design costs. As such, the Review Team recommends that any motion include language that only allows for construction costs to be paid out of this grant.

The below chart shows the overall recommendations of the Review Team as compared to the overall anticipated spending targets in the 2022 Guidelines.

Recommended Awards Summary:

Guidelines:	Applications Received	Recommendation of Review Team
Agawam – Intersection Construction	\$833,300	\$833,300
Everett – Mystic Riverwalk Boardwalk	\$1,335,000	\$1,335,000
Medford - Haines Square	\$136,000	\$0
Medford – Bluebikes	\$192,500	\$192,500
Springfield – Resurfacing Columbus & Hall of Fame Ave.	\$766,700	\$766,700
Springfield - Court Square	\$1,500,000	\$1,500,000
West Springfield - Elm Street	\$1,266,600	\$1,100,000
Total:	\$6,030,100	\$5,727,500

Basis of Recommendations of the Review Team

To effectuate a consistent and efficient system to analyze the applications, the Review Team utilized the review criteria specified in the 2022 Guidelines. This summary will mention some significant factors for these applications. The Review Team also compiled charts demonstrating how each of the criteria is reflected in the applications. Among the criteria are:

- 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 potential for the proposal to maximize the economic impact of the gaming facility; and
- The feasibility and reasonableness of the proposed mitigation measure.

AGAWAM – Intersection Reconstruction

Summary: The Town of Agawam is requesting \$833,300 for the reconstruction of the Suffield Street, Cooper Street, and Rowley Street intersection. The project is currently under design and includes a study of alternatives including the feasibility of a roundabout. This project includes: the realignment of the roads at the intersection, upgraded signals including emergency pre-emption, bicyclist accommodations, and new sidewalks and curb cuts in accordance with the American Disabilities Act and the Town’s Complete Street Policy.

Analysis: The Review Team recommends authorizing a maximum grant of \$833,300 to the Town of Agawam for the reconstruction of the Suffield Street, Cooper Street, and Rowley Street intersection. The Review Team further recommends that the exact value of the grant be established after final bid prices are determined and in no case exceed 1/3 of the construction related costs.

In 2021, the Commission awarded a reserve grant in the amount of \$100,000 to study alternatives for this intersection. As highlighted in that application, Suffield Street is a major north/south corridor through Agawam connecting Route 147 in the north (Memorial Avenue) to Route 57 and then to the Connecticut to the south. The Environmental Impact Report for MGM Springfield estimated that 3% of the casino related traffic would use Route 147 and 6% of the traffic would use Route 57. While the traffic study for the MGM casino did not specifically include the Suffield/Cooper/Rowley Street intersection, the Review Team agrees that a portion of the casino related traffic using Route 147 and Route 57 will also use Suffield Street which constitutes a nexus to the casino.

The goal of the project is to reduce traffic congestion, provide better emergency response times, and address bicyclist and pedestrian safety. The Review Team agrees that these improvements will address the identified impact.

The total estimated project cost is \$2,500,000 with 1/3 of the funds being provided by the CMF and the remainder being funded with Chapter 90 funds or local capital improvement requests. This project is in its early stage of design and therefore the final project costs have not been determined. For this reason, the Review Team recommends that the Commission authorize a grant award of no more than \$833,300 with Community Mitigation Funds providing a maximum of 1/3 of the total construction cost.

Licensee Response: “MGM Springfield supports the grant applications. Ensuring that the mitigation funds remain in Western Massachusetts and are used to enhance the area is important to MGM Springfield.”

MassDOT Response: “MassDOT supports the Town of Agawam’s application for \$833,300 to redesign and reconstruct the intersection between Suffield (Rt. 75), Cooper, and Rowley Streets. The total project cost is estimated to be \$2,500,000, with \$1,700,000 (two-thirds) of project costs to be borne by the Town in the form of FY 2023 Chapter 90 funds and the municipal budget...If selected as a recipient of grant funds, the Town of Agawam should coordinate with MassDOT District Two as appropriate in the development of proposed transit improvements.”

EVERETT – Mystic Riverwalk

Summary: The City of Everett requests \$1,335,000 to complete a missing section of the Mystic Riverwalk between Mystic View Park and Route 16/Woods Memorial Bridge. This proposed section of trail would utilize a boardwalk to cross wetlands between the park and the bridge.

Analysis: The Review Team recommends authorizing a maximum grant of \$1,335,000 to the City of Everett for the construction of the Mystic Riverwalk. The Review Team further recommends that the exact value of the grant be established after final bid prices are determined and in no case exceed 1/3 of the construction related costs.

In 2021, Everett was awarded a Transportation Planning Grant for the design of this section of the Mystic Riverwalk. As was articulated last year, closing this gap in the trail network will allow a much safer and more desirable route to/from the casino to the Wellington MBTA station and the existing bike networks along the Mystic and Malden Rivers to the west. While it is difficult to quantify the exact level of use of this type of trail, completion of this final section should improve access to the Encore site by providing a protected route to the Encore facility and has the potential to reduce vehicular trips to Wellington/Encore by providing a safer option for walking/bicycling. With casino related traffic being the largest driver of required mitigation, improving routes for alternative modes of transportation is fully consistent with the requirements places on Encore, and ultimately should result in a reduction in automobile use in the area.

The total estimated project cost is \$4,035,000 with 1/3 of the project costs coming from the CMF and the remainder being funded through the City of Everett Capital Improvement Plan. This project is currently under design and therefore final project costs have not been determined. For this reason, the Review Team recommends that the Commission authorize a grant award of no more than \$1,335,000 with Community Mitigation Funds providing a maximum of 1/3 of the total construction cost.

Licensee Response: “Encore Boston Harbor supports the City of Everett’s efforts to fund a portion of the construction costs associated with building the boardwalk and establishing the trail connection between Mystic View Park and the Woods Memorial Bridge.”

MassDOT Response: “MassDOT supports the request by the City of Everett for \$1,335,000 to fund the construction of a multi-use walkway/boardwalk connecting Mystic View Road to the pedestrian infrastructure along Revere Beach Parkway (Route 16). These grant funds will be \$2,700,000 in municipal capital improvement funds from FY2022 and 2023 in order to complete construction, and the Applicant states they will seek other funding with MassDOT and DCR as needed to support the project.”

MEDFORD - Haines Square

Summary: The City of Medford requests \$136,000 for safety improvements in Haines Square to improve safety for all modes, especially pedestrians and bicyclists by calming traffic speeds and adding ADA/AAB curb ramps, detectable warning surfaces, new sidewalk, curb extensions with reduced curb radii, crosswalks, bicycle signage, and bicycle-safe drain grates.

Analysis: After reviewing the initial application and supplemental information provided by the city the Review Team was unable to identify a clear nexus to an impact of the Encore facility and therefore does not recommend this project for funding.

Haines Square is located approximately 3.7 miles to the northwest of Encore Boston Harbor and consists of the intersection of Salem Street (Route 60), Spring Street and Lambert Street. It is about 650 feet southwest of the intersection of Route 60 and Route 28. This project is currently being designed and has received a \$400,000 Complete Streets grant from MassDOT. This request would provide the remaining funds to complete this project, which is about 25% of the total project cost.

The application has identified increased traffic volumes associated with the casino as a contributing factor in creating safety hazards for pedestrians and bicyclists at the Haines Square intersection. The application references the Environmental Impact Report (EIR) for Encore that shows a level of service (LOS) of F for the northbound approach of Salem Street at Route 28 under the 2023 build condition as evidence of that impact.

Since there have been no traffic counts in this area that document increased traffic volumes associated with the casino, the only data available to us is the original EIR. As stated in the application, the EIR predicted a LOS during the Friday afternoon peak hour of F for northbound Salem Street in the build condition. However, the EIR also predicted a LOS of F for the no-build condition. The EIR did predict a small increase in the time of delay at the intersection from 97.8 seconds in the no-build condition to 102.5 seconds in the build condition, or 4.7 seconds of additional delay. Under both the build and no-build scenarios, the length of the queue on that leg of the intersection exceeds the capabilities of the traffic model. As indicated in the application, the queue at Route 60/Route 28 currently backs up into Haines Square. Essentially, the traffic backups into Haines Square appear to be an existing condition. Given this information, the Review Team did not find any compelling evidence that casino related traffic is exacerbating in any meaningful way the traffic issues associated with Haines Square.

Even if the Review Team agreed that casino related traffic caused an impact on Haines Square, it is unclear how the proposed improvements would mitigate that impact. The improvements are primarily to improve the channelization and lane definition of the side streets and shorten crosswalk lengths and improve sidewalks for pedestrians. While these improvements will help improve safety in the area, this does not appear to address the increased level of traffic at the Salem Street/Route 28 intersection.

The Review Team certainly commends Medford for pursuing Complete Streets improvements to better accommodate all modes of travel and improve safety, however, the lack of a nexus an impact of the casino results in this recommendation.

Licensee Response: “Encore Boston Harbor supports the City of Medford’s efforts to complete street safety improvements in the area of Haines Square.”

MassDOT Response: “MassDOT supports the request by the City of Medford for \$136,000 to fund 25% of proposed infrastructure improvements in the Haines Square area to improve public safety. The remaining \$400,000 required to complete proposed safety improvements was granted by MassDOT Complete Streets in March 2021.”

MEDFORD - Bluebikes

Summary: The City of Medford requests \$192,500 to add four stations to Medford's new bike share system, connecting the Wellington MBTA station, Mystic River path system, and neighborhoods to the west to the initial six stations in Medford Square and South Medford.

Analysis: The Review Team recommends authorizing an award of \$192,500 to the City of Medford for four Bluebikes installations. The Review Team further recommends that a waiver be granted for the full cost of these installations.

Medford is proposing a network of Bluebikes locations throughout the southern part of the city. The four locations proposed as part of this application are the first phase of the network. Of these four, one will be at the Wellington MBTA station, where both employee and patron shuttles are available to the Encore facility.

As with bike path type projects, it is difficult to estimate the exact usage of these types of facilities to access the casino. The provision of a Bluebikes station at Wellington will certainly be an incentive for people to use this system to access casino shuttles or the Orange Line. There are also two existing Bluebikes stations at the casino, which would also allow people to access the casino directly by bicycle. With casino related traffic being the largest driver of required mitigation and transportation demand efforts, improving the availability of alternative modes of transportation is fully consistent with the requirements places on Encore, and ultimately should result in a reduction in automobile use in the area.

Medford has requested a waiver from the 1/3 maximum contribution of the CMF. The reason for this waiver is that the city is looking to expand the Bluebikes network to 13 stations, which if counted would reduce the CMF contribution to less than 1/3 of the cost. At the time of the application, Medford did not have any firm commitments from other entities for these additional nine stations. Since that time, Medford has received a 2022 Community Connections Grant for three stations and has applied for a 2023 Community Connections Grant for an additional three stations. It also has some tentative private sponsors lined up for up to five more stations. If all of these come to fruition, the total network would be 15 stations inclusive of the MGC funded stations. Given the relatively modest cost of the four installations and the work that Medford has done to expand the network, the Review Team agrees that the waiver request is appropriate.

This project is consistent with grants issued previously to Everett and Cambridge for expansion of the Bluebikes network and the Review Team agrees that this project is appropriate for funding.

Licensee Response: “Encore Boston Harbor supports the City of Medford’s efforts to provide as many viable transportation alternatives as possible, specifically around the Wellington MBTA Station, Mystic River path system and nearby neighborhoods.”

MassDOT Response: “MassDOT supports, with some concerns regarding safety, the City of Medford’s request for \$192,500 representing the total cost of four additional Bluebikes stations to supplement the existing Bluebikes network in the area. The city proposes to install new stations at Mystic Valley Reservation, on the intersection of Hall Street and Riverside Avenue, at Torbert McDonald Park, and at the Wellington MBTA station.”

SPRINGFIELD – Resurfacing East Columbus & Hall of Fame Avenues

Summary. The City of Springfield requests \$766,700 for the revitalization of East Columbus and Hall of Fame Avenues. Major elements will include roadway resurfacing, sidewalk and median improvements, bicycle accommodations, guardrails, and safety upgrades in the heart of downtown in a very close proximity to MGM casino.

Analysis: The Review Team recommends authorizing a maximum grant of \$766,700 to the City of Springfield for the resurfacing of East Columbus and Hall of Fame Avenues. The Review Team further recommends that the exact value of the grant be established after final bid prices are determined and in no case exceed 1/3 of the construction related costs.

East Columbus Avenue and Hall of Fame Avenue are the primary routes to/from the MGM casino. It is estimated that over 70% of the traffic will use one or both routes to access the casino. MGM is in the midst of conducting a traffic study of the area, which will better define the exact distribution of traffic. However, given the proximity of I-91 to East Columbus and Hall of Fame Avenues, and the primary entrance to the parking garage located just off East Columbus Avenue, this percentage seems appropriate. The only access to the casino parking garage without using one of these two streets is by entering from State Street, which is typically done only by traffic utilizing local streets east of the casino. The city has also observed that casino related traffic is using both East Columbus and Hall of Fame Avenues for longer distances than the traffic studies predicted. That is, patrons and employees are either exiting the highways earlier or accessing the highway later than would be expected. This is due to some rather short distances that are required for lane changes and merges for casino traffic. The Review Team agrees that the vast majority of casino related traffic uses these roads and also agrees that the alignment of highways and lanes results in more extensive use of these roads than would be expected.

Both road segments are in poor condition with pavement condition indices (PCI) of 52 and 48 (out of 100). The proposed improvements will increase the PCIs to 100. The proposed work will also include complete streets improvements to enhance pedestrian and bicycle accommodations. The total estimated cost of the project is \$2,300,000 with 1/3 of the costs coming from the CMF and the remaining costs being funded through the city’s Chapter 90 funds.

Springfield provided a detailed breakdown of the estimated project cost, which provides a higher degree of confidence in the overall price of the construction, however, this project has not yet been bid. For this reason, the Review Team recommends that the Commission authorize a grant award of no more than \$766,700 with Community Mitigation Funds providing a maximum of 1/3 of the total construction cost.

Licensee Response: “MGM Springfield supports the grant applications. Ensuring that the mitigation funds remain in Western Massachusetts and are used to enhance the area is important to MGM Springfield.”

MassDOT Response: “MassDOT supports the City of Springfield’s request for \$766,700 to carry out resurfacing and Complete Streets improvements on East Columbus Avenue (between Bruno and Gridiron Streets) and Hall of Fame Boulevard (Boland Way to South End bridge). The total project cost is estimated to be \$2,300,000, with the remaining \$1,533,300 budgeted from FY 2023 and FY 2024 Chapter 90 funds available to the City.

MassDOT believes that the proposed resurfacing and improvement possesses potential to substantially improve safety, access, and equity in the immediate vicinity of the casino. MassDOT notes that the proposal specifically references Complete Streets standards in its project name and proposes improvements in Section 2C including “better sidewalks, bicycle lanes, ADA improvements, comprehensive signage, etc.”

SPRINGFIELD – Court Square

Summary: The City of Springfield requests \$1,500,000 to construct roadway, hardscape, landscape, streetscape and infrastructure improvements to address access, connectivity and public realm in the Court Square area.

Analysis: The Review Team recommends authorizing a maximum of \$1,500,000 for roadway and infrastructure improvements in the vicinity of Court Square. The Review Team further recommends that the exact value of the grant be established after final bid prices are determined and in no case exceed 1/3 of the construction related costs.

The development of MGM Springfield was expected to be a catalyst for additional development in the area. However, according to the application, “the MGM Springfield ‘economic engine’ meant to stimulate much needed catalytic development outside the Casino area has in fact inadvertently stymied it through market inflation, area speculation, hyper real estate market expectations, inactivity, disinvestment and growing blight.” The application states that the casino area stagnation is evidenced by “the absence of any significant investment, property transactions, market corrections, new businesses /tenancies openings, and ongoing building decline/disinvestment.” The Review Team agrees that attempting to address this impact is appropriate.

In 2021, the Commission awarded a grant to Springfield for the further development of the “Implementation Blueprint, An Economic Development Strategy for the Renaissance of a Great American Downtown: Springfield MA.” This grant is funding the design and engineering of Phase One public realm improvements in the Court Square area to help physically and programmatically link downtown anchors back to MGM. The proposed Phase One improvements focus on the area around 13-31 Elm Street residential renovation project, which is part of MGM’s commitment to provide housing in the casino area.

Key components of this proposal include:

- Re-opening Elm Street and Court Square Area restoring important access to 13-31 Elm Street, the Old First Church and Court Square Park
- Street parking to support retail/restaurants planned for 13-31 Elm
- Sidewalk/plaza improvements
- Alley improvements to reconnect to MGM at State Street

- Street crossing at State Street, Court Street and Main Street to encourage safe pedestrian access and better connect area anchors
- Utility upgrades to supply new development needs
- Signage/wayfinding unifying Court Square and the broader district

This project provides clear connections to the MGM property and will improve the overall access and utility of 13-31 Elm Street as it is redeveloped into housing and commercial space.

The estimated cost of this project is \$5,000,000 with MGC funds providing approximately 30% of the total cost and Springfield providing the remainder of the funds from a variety of local sources that could include the Community Development Fund, Capital Improvement Plan Funds, or HUD Section 108 funds. This project is currently under design and therefore final project costs have not been determined. For this reason, the Review Team recommends that the Commission authorize a grant award of no more than \$1,500,000 with Community Mitigation Funds providing a maximum of 1/3 of the total construction cost.

Licensee Response: “MGM Springfield supports the grant applications. Ensuring that the mitigation funds remain in Western Massachusetts and are used to enhance the area is important to MGM Springfield.”

MassDOT Response: “MassDOT supports the City of Springfield’s request for \$1,500,000 to complete proposed streetscape improvements on Main Street, State Street, and Court Street surrounding Court Square as well as to re-open abutting Court Square Ave and Elm Street to vehicle traffic and parking. The total project cost is approximately \$5,000,000. The City has secured a total of \$5,000,000 in loan guarantee assistance from HUD’s Section 108 program and has identified the proposed Court Street Area improvements as the highest priority in the City’s FY2022-2026 Capital Improvement Plan, with a total estimated project cost of \$4,000,000. In sum, the City has secured funding opportunities in excess of projected needs and may re-assign HUD loan funding if needed.”

WEST SPRINGFIELD – Elm Street

Summary: The Town of West Springfield requests \$1,100,000 for complete streets transportation improvements of Elm Street (Rte. 20) from Park Street/Park Avenue to Garden Street.

Analysis: The Review Team recommends authorizing a maximum grant of \$1,100,000 to the Town of West Springfield for complete streets transportation improvements to Elm Street. The Review Team further recommends that the exact value of the grant be established after final bid prices are determined and in no case exceed 1/3 of the construction related costs.

In 2017, the Commission awarded a grant to West Springfield to develop design plans for a portion of Elm Street (Route 20). The Commission agreed that there was a casino related impact on this corridor as the Environmental Impact Report for MGM estimated that about 5% of the casino traffic would be using Route 20 to and from points west of the facility. That project was designed to improve the flow of traffic while incorporating Complete Streets elements to promote the use of alternative modes of transportation while also improving safety for pedestrians and bicyclists. Based on this analysis, the Review Team agrees that there is a traffic related impact on Elm Street.

The proposed project includes construction of a roundabout to improve traffic flow, the extension of a the recently constructed multi-use path on Park Street/Park Avenue and sidewalk improvements to better accommodate bicycle and pedestrian uses in the area.

The application for this project identified a total project cost of \$3,800,000 with a CMF contribution of \$1,266,600 (1/3 of the project cost). In reviewing this application, there were several contingencies and cost escalation factors included due to the early nature of the design. The Review Team asked for updated numbers which reduced the project cost to \$3,300,000. Therefore, in accordance with the 2022 CMF Guidelines, the maximum amount the Commission may grant is \$1,100,000. This project is currently under design and therefore final project costs have not been determined. For this reason, the Review Team recommends that the Commission authorize a grant award of no more than \$1,100,000 with Community Mitigation Funds providing a maximum of 1/3 of the total construction cost.

Licensee Response: “MGM Springfield supports the grant applications. Ensuring that the mitigation funds remain in Western Massachusetts and are used to enhance the area is important to MGM Springfield.”

MassDOT Response: “MassDOT supports the Town of West Springfield’s request for \$1,266,600 to carry out Complete Streets improvements on Elm Street between Park Avenue and Garden Street, including a rotary redesign of the Elm Street/Westfield Street (Rt. 20) intersection. This proposal results from a design process funded by a 2018 planning grant issued to West Springfield by the MGC which identified the Elm Street / Rt. 20 corridor as an area impacted by traffic resulting from the MGM casino in neighboring Springfield. The requested amount represents a third of the total cost of the proposed roadway improvements, with \$2,533,400 allocated from municipal capital improvement budgets in FY 2022 and FY 2023 and \$400,000 projected to be received from a FY2022 Complete Streets grant from MassDOT.”

HIGH CARD FLUSH

1. Definitions

The following words and terms, when used in the Rules of the Game of High Card Flush, shall have the following meanings unless the context clearly indicates otherwise:

“*Ante* or “*Ante wager*” - means the predetermined wager that a player is required to make prior to any cards being dealt in order to participate in a round of play.

“*Cover card*” - means a yellow or green plastic card used during the cut process and then to conceal the bottom card of the deck.

“*Flush Bonus wager*” - means the optional amount, if offered by the gaming licensee, wagered by a player and placed on the appropriate designation on the table layout prior to any cards being dealt, which makes the player eligible for a posted payout, even if the player opts to fold.

“*Fold*” - means the withdrawal of a player from a round of play by electing not to make a raise wager. If a player folds, the player loses their ante wager.

“*Progressive payout wager*” - means the optional amount, if offered by the gaming licensee, wagered by a player and placed on the appropriate designation on the table layout prior to any cards being dealt, which makes the player eligible for a posted payout.

“*Push*” - means a tie.

“*Dealer’s qualifying hand*” - means a hand of the dealer consisting of, at a minimum, a three card flush, with at least a 9 as the high card. For example, if a dealer has a two, three and nine of diamonds, and four other cards that are an assortment of clubs, hearts or spades, the dealer has a dealer’s qualifying hand.

“*Raise wager*” - means the wager, if a player does not otherwise fold, that a player is required to make after viewing his or her hand, which:

- (1) Has a minimum value of the amount of the ante wager;
- (2) Has a maximum value dependent upon the cards in the player’s hand as follows:
 - (i) If the player’s hand consists of a two, three, or four card flush, the raise wager must equal the ante wager.
 - (ii) If the player’s hand consists of a five card flush, the maximum raise wager shall be no more than double the ante wager.
 - (iii) If the player’s hand consists of a six or seven card flush, the maximum raise wager shall be no more than triple the ante wager.

“*Round of play*” or “*round*” - means one complete cycle of play during which all players at the table have been dealt a hand, have folded or wagered, and have had their wagers paid or collected in accordance with this subchapter.

“*Straight Flush Bonus wager*” - means the optional amount, if offered by the gaming licensee,

wagered by a player and placed on the appropriate designation on the table layout prior to any cards being dealt, which makes the player eligible for a posted payout, even if the player opts to fold.

“*Stub*” - means the remaining portion of the deck after all cards in the round of play have been dealt.

“*Suit*” - means one of the four categories of cards, that is, club, diamond, heart or spade.

2. Cards; number of decks

- (a) Except as provided in (b) and (c) below, High Card Flush shall be played with one deck of cards with backs of the same color and design and one cover card to be used in accordance with the procedures set forth in Section 4. The cover card shall be opaque and in a solid color readily distinguishable from the color of the backs and edges of the playing cards. The deck of cards shall meet the requirements of 205 CMR 146.48.
- (b) If an automated card shuffling device is used, a gaming licensee shall be permitted to use a second deck of cards to play the game, provided that:
 - (1) Each deck of cards complies with the requirements of (a) above;
 - (2) The backs of the cards in the two decks are of different color;
 - (3) One deck is being shuffled by the automated card shuffling device while the other deck is being dealt or used to play the game;
 - (4) Both decks are continuously alternated in and out of play, with each deck being used for every other round of play; and
 - (5) The cards from only one deck shall be placed in the discard rack at any given time.

3. Opening of the table for gaming

- (a) After receiving a deck of cards at the table in accordance with 205 CMR 146.48, the dealer shall comply with the rules of the Commission applicable to the receipt, inspection, initial shuffling and inspection of cards as set forth in 205 CMR 146.48 and (b) through (d) below.
- (b) Following the inspection of the cards by the dealer and the verification by the floorperson assigned to the table, the cards shall be spread out face up on the table for visual inspection by the first player to arrive at the table. The cards shall be spread out according to suit and in sequence.
- (c) After the first player has been afforded an opportunity to visually inspect the cards, the cards shall be turned face down on the table, mixed thoroughly by a "washing" or "chemmy shuffle" of the cards and stacked. Once the cards have been stacked, they shall be shuffled in accordance with Section 4.
- (d) If a gaming licensee uses an automated card shuffling device to play the game and two decks of cards are received at the table pursuant to 205 CMR 146.48 and Section 2, each deck of cards shall be separately sorted, inspected, verified, spread, inspected, mixed, stacked and shuffled, in accordance with the provisions of (a) through (c) above, immediately prior to the

commencement of play.

4. Shuffle and cut of the cards

- (a) Immediately prior to the commencement of play, unless the cards were pre-shuffled pursuant to 205 CMR 146.48, and after each round of play has been completed, the dealer shall shuffle the cards, either manually or by use of an automated card shuffling device, so that the cards are randomly intermixed. Upon completion of the shuffle, the dealer or device shall place the deck of cards in a single stack; provided, however, that nothing herein shall be deemed to prohibit the use of an automated card shuffling device which, upon completion of the shuffling of the cards, inserts the stack of cards directly into a dealing shoe.
- (b) After the cards have been shuffled and stacked, the dealer shall:
 - (1) If the cards were shuffled using an automated card shuffling device, deal or deliver the cards in accordance with the procedures set forth in Sections 7-9; or
 - (2) If the cards were shuffled manually or were pre-shuffled pursuant to 205 CMR 146.50, cut the cards in accordance with the procedures set forth in (c) below.
- (c) If a cut of the cards is required, the dealer shall:
 - (1) Cut the deck, using one hand, by:
 - (i) Placing the cover card on the table in front of the deck of cards;
 - (ii) Taking a stack of at least 10 cards from the top of the deck and placing them on top of the cover card;
 - (iii) Placing the cards remaining in the deck on top of the stack of cards that were cut and placed on the cover card pursuant to (c)(1)(ii) above; and
 - (iv) Removing the cover card and placing it in the discard rack; and
 - (2) Deal the cards in accordance with the procedures set forth in Sections 7-9.
- (d) Notwithstanding (c) above, after the cards have been cut and before any cards have been dealt, a casino supervisor may require the cards to be recut if he or she determines that the cut was performed improperly or in any way that might affect the integrity or fairness of the game.
- (e) Whenever there is no gaming activity at a High Card Flush table which is open for gaming, the cards shall be spread out on the table either face up or face down. If the cards are spread face down, they shall be turned face up once a player arrives at the table. After the first player is afforded an opportunity to visually inspect the cards, the procedures outlined in Section 3(c) shall be completed.

5. High Card Flush hand rankings

- (a) The rank of the cards used in High Card Flush, in order of highest to lowest rank, shall be: ace, king, queen, jack, ten, nine, eight, seven, six, five, four, three, and two. Notwithstanding the foregoing, an ace may be used to complete a "straight flush" with a two and three, and in addition to a two and three, in regard to a larger "straight flush," a four, five, six, and/or seven. An ace may not be used, however, with any other sequence of cards to form a "straight flush" (for example, king, ace, and two).

- (b) If the dealer has a dealer's qualifying hand, each player's hand is evaluated against the dealer's hand based on the following criteria:
- (1) Number of cards in the largest flush in a player's hand. For example, a hand with a maximum four card flush beats any hand with a maximum three card flush, but loses to any hand with a maximum five card flush.
 - (2) Card rankings in a player's hand for the flush pursuant to Section 5(a).
- (c) If the gaming licensee offers one of the optional wagers set forth in Section 6, the following hands may be recognized as elected by the gaming licensee:
- (1) "7 Card Straight Flush" is a hand consisting of seven cards of the same suit in consecutive ranking.
 - (2) "7 Card Straight Flush, Suit Specific" is a hand consisting of seven cards of the same suit in consecutive ranking, in a particular suit that is predetermined by the gaming licensee. For example, if diamonds was selected by the gaming licensee, KQJT987 in diamonds would qualify, but KQJT987 in clubs, spades, or hearts would not.
 - (3) "6 Card Straight Flush" is a hand consisting of six cards of the same suit in consecutive ranking.
 - (4) "5 Card Straight Flush" is a hand consisting of five cards of the same suit in consecutive ranking.
 - (5) "4 Card Straight Flush" is a hand consisting of four cards of the same suit in consecutive ranking. "3 Card Straight Flush" is a hand consisting of three cards of the same suit in consecutive ranking.
 - (6) "7 Card Flush" is a hand consisting of seven cards of the same suit, regardless of rank.
 - (7) "6 Card Flush" is a hand consisting of six cards of the same suit, regardless of rank.
 - (8) "5 Card Flush" is a hand consisting of five cards of the same suit, regardless of rank.
 - (9) "4 Card Flush" is a hand consisting of four cards of the same suit, regardless of rank.

6. Wagers

- (a) The following wagers may be placed in the game of High Card Flush:
- (1) A player may compete in High Card Flush by, before the cards are dealt, placing an ante wager in an amount within the posted minimum and maximum wagers;
 - (2) The gaming licensee may, at its option, offer each player to make a Flush Bonus wager on whether the player will be dealt a hand type in accordance with the pay table selected by the gaming licensee pursuant to Section 11(c). A player may compete for the Flush Bonus wager by, before the cards are dealt, placing a Flush Bonus wager in an amount within the posted minimum and maximum wagers; this wager does not have to be the same amount as the ante wager;
 - (3) The gaming licensee may, at its option, offer each player to make a Straight Flush Bonus wager on whether the player will be dealt a hand type in accordance with the pay table selected by the gaming licensee pursuant to Section 11(d). A player may compete for the Straight Flush Bonus wager by, before the cards are dealt, placing a Straight Flush Bonus wager in an amount within the posted minimum and maximum wagers; This wager does not have to be the same amount as the ante wager;
 - (4) The gaming licensee may, at its option, offer each player to make a Progressive payout wager on whether the player will be dealt a hand type in accordance with the pay table

selected by the gaming licensee pursuant to Section 11(e). A player may compete for the Progressive payout wager by, before the cards are dealt, placing a Progressive payout wager, in the amount of \$1.00, in the designated area on the table layout;

- (5) After the cards are dealt, if the player does not otherwise fold, the player is required to make a raise wager to continue the round of play. This wager has:
- (i) A minimum value of the amount of the ante wager.
 - (ii) A maximum value dependent upon the cards in the player's hand as follows:
 - a. If the player's hand consists of a two, three, or four card flush, the raise wager must equal the ante wager.
 - b. If the player's hand consists of a five card flush, the maximum raise wager shall be no more than double the ante wager.
 - c. If the player's hand consists of a six or seven card flush, the maximum raise wager shall be no more than triple the ante wager.
- (b) All wagers at High Card Flush shall be made by placing gaming chips or plaques and, if applicable, a match play coupon on the appropriate betting areas of the table layout. A verbal wager accompanied by cash shall not be accepted.
- (c) Only players who are seated at a High Card Flush table may wager at the game. Once a player has placed a wager and received cards, that player must remain seated until the completion of the round of play.
- (d) All ante wagers and any optional wagers authorized by this section shall be placed prior to the dealer announcing "No more bets" in accordance with the dealing procedures in Sections 7-9. No wager shall be made, increased, or withdrawn after the dealer has announced "No more bets." All play wagers shall be placed in accordance with Section 10.
- (e) A gaming licensee may, in its discretion, permit a player to place wagers at two or three betting positions during a round of play provided that all of the betting positions are adjacent to each other.

7. Procedures for dealing the cards from a manual dealing shoe

- (a) If a gaming licensee chooses to have the cards dealt from a manual dealing shoe, the dealing shoe shall meet the requirements of 205 CMR 146.51. Once the procedures required by Section 4 have been completed, the stacked deck of cards shall be placed in the dealing shoe either by the dealer or by an automated card shuffling device.
- (b) The dealer shall announce "No more bets" prior to dealing any cards. Each card shall be removed from the dealing shoe with the hand of the dealer that is closest to the dealing shoe and placed on the appropriate area of the table layout with the opposite hand.
- (c) The dealer shall, starting with the player farthest to his or her left and continuing around the table in a clockwise manner, deal seven consecutive cards face down to each player who has placed an ante wager in accordance with Section 6.
- (d) After seven cards have been dealt to each player, the dealer shall deal himself or herself seven

consecutive cards face down.

- (e) After seven cards have been dealt to each player and the dealer in accordance with this section, the dealer shall remove the stub from the manual dealing shoe and, except as provided in (f) below, place the stub in the discard rack without exposing the cards.
- (f) The dealer shall be required to count the stub at least once every five rounds of play in order to determine that the correct number of cards is still present in the deck. The dealer shall determine the number of cards in the stub by counting the cards face down on the table layout.
 - (1) If the count of the stub indicates that 52 cards are in the deck, the dealer shall place the stub in the discard rack without exposing the cards.
 - (2) If the count of the stub indicates that the number of cards in the deck is incorrect, the dealer shall determine if the cards were misdealt. If the cards have been misdealt (a player or the dealer has more or less than seven cards) but 52 cards remain in the deck, all hands shall be void pursuant to Section 13. If the cards have not been misdealt, all hands shall be considered void and the entire deck of cards shall be removed from the table pursuant to 205 CMR 146.49.
- (g) Notwithstanding the provisions of (f) above, the counting of the stub shall not be required if an automated card shuffling device is used that counts the number of cards in the deck after the completion of each shuffle and indicates whether 52 cards are still present. If the automated card shuffling device reveals that an incorrect number of cards are present, the deck shall be removed from the table in accordance with the provisions of 205 CMR 146.49.

8. Procedures for dealing the cards from the hand

- (a) Notwithstanding any other provisions of 205 CMR 146, a gaming licensee may, in its discretion, permit a dealer to deal the cards used to play High Card Flush from his or her hand.
- (b) If a gaming licensee chooses to have the cards dealt from the dealer's hand, the following requirements shall be observed:
 - (1) The gaming licensee shall use an automated shuffling device to shuffle the cards.
 - (2) Once the procedures required by Section 4 have been completed, the dealer shall place the stacked deck of cards in either hand.
 - (i) Once the dealer has chosen the hand in which he or she will hold the cards, the dealer shall use that hand whenever holding the cards during that round of play.
 - (ii) The cards held by the dealer shall at all times be kept in front of the dealer and over the table inventory container.
 - (3) The dealer shall then announce "No more bets" prior to dealing any cards. The dealer shall deal each card by holding the deck of cards in the chosen hand and using the other hand to remove the top card of the deck and place it face down on the appropriate area of the table layout.
- (c) The dealer shall, starting with the player farthest to his or her left and continuing around the table in a clockwise manner, deal seven consecutive cards face down to each player who has

placed an ante wager in accordance with Section 6.

- (d) After seven cards have been dealt to each player, the dealer shall deal himself or herself seven consecutive cards face down.
- (e) After seven cards have been dealt to each player and the dealer in accordance with this section, the dealer shall, except as provided in (f) below, place the stub in the discard rack without exposing the cards.
- (f) The dealer shall be required to count the stub at least once every five rounds of play in order to determine that the correct number of cards is still present in the deck. The dealer shall count the stub in accordance with the provisions of Section 7(f) and (g).

9. Procedures for dealing the cards from an automated dealing shoe

- (a) Notwithstanding any other provision of 205 CMR 146, a gaming licensee may, in its discretion, choose to have the cards used to play High Card Flush dealt from an automated dealing shoe which dispenses cards in stacks of seven cards, provided that the shoe, its location and the procedures for its use are in accordance with the gaming licensee's internal control procedures.
- (b) If a gaming licensee chooses to have the cards dealt from an automated dealing shoe, the following requirements shall be observed:
 - (1) Once the procedures required by Section 4 have been completed, the cards shall be placed in the automated dealing shoe; and
 - (2) The dealer shall then announce "No more bets" prior to the shoe dispensing any stacks of cards.
- (c) The dealer shall deliver the first stack of seven cards dispensed by the automated dealing shoe face down to the player farthest to his or her left who has placed an ante wager in accordance with Section 6. As the remaining stacks are dispensed to the dealer by the automated dealing shoe, the dealer shall, moving clockwise around the table, deliver a stack face down to each of the other players who has placed an ante wager in accordance with Section 6.
- (d) After seven cards have been dealt to each player, the dealer shall dispense another stack of seven cards from the automated dealing shoe, and place the seven cards in the designated location on the table layout for the dealer's hand.
- (e) After seven cards have been dealt to each player and the dealer in accordance with this section, the dealer shall remove the stub from the automated dealing shoe and, except as provided in (f) below, place the cards in the discard rack without exposing the cards.
- (f) The dealer shall be required to count the stub at least once every five rounds of play in order to determine that the correct number of cards is still present in the deck. The dealer shall count the stub in accordance with the provisions of Section 7(f) and (g).

10. Procedures for completion of each round of play; collection of payment and wagers

- (a) After the dealing procedures required by Sections 7-9 have been completed, each player shall examine his or her seven cards. Each player who wagers at High Card Flush shall be responsible for his or her own hand and no person other than the dealer and the player to whom the cards were dealt may touch the cards of that player. Each player shall be required to keep the seven cards in full view of the dealer at all times. No player may exchange or communicate information regarding his or her hand prior to the dealer revealing his or her hand; any violation shall result in a forfeiture of all wagers on that round by such player.
- (b) After examination of his or her seven cards, but before the dealer exposes his or her hand, each player who has placed an ante wager shall either place a raise wager in accordance with Section 6(a)(6) in the designated area on the table layout, or fold and forfeit the ante wager. The dealer shall offer this option to each player, starting with the player farthest to the left of the dealer and moving clockwise around the table in order. If a player folds, the player's ante wager shall be collected by the dealer and placed in the table inventory container. A folded hand shall then be immediately collected by the dealer and placed in the discard rack, except as otherwise provided by Section 10(c). If the player makes an ante and a raise wager, the player will place the cards they are using to play against the dealer under or adjacent to the raise wager. Additionally, the player will discard all other cards face down to the players right and adjacent to the ante and raise betting areas. Once all players who are not folding have placed their raise wager and discarded the cards that won't be used in evaluating the hand, the dealer will collect all the discards and place them in discard rack. The player will be eligible for an even money payout in accordance with Section 11(b).
- (c) If a player makes an ante wager and also an optional wager pursuant to Section 6 before any cards are dealt and the player chooses to fold after viewing his or her seven cards, the player will forfeit his or her ante wager in accordance with Section 10(b), but declare any winning Flush Bonus, Straight Flush Bonus or Progressive wagers by turning face-up the cards that trigger this winning wager, and place them on top of the remainder of cards which are now considered discards and are placed face down. The dealer will then confirm any winning Bonus wagers including the Flush Bonus, Straight Flush Bonus and Progressive wager if applicable. Upon confirmation by the dealer that the folded cards contain a winning Bonus wager, the dealer will pay each Bonus wager according to the posted or printed payable and push both the winnings and original wager back to the player. In the case of a winning Progressive wager, the payout is placed adjacent to the Progressive wager betting area and then pushed back to the player.
- (d) After each player has either placed a raise wager or folded, and the dealer has collected all forfeited wagers and placed the associated cards in the discard rack, the dealer shall reveal his or her hand.
- (e) After the dealer's hand is revealed, the dealer shall, starting with the player farthest to his or her right and moving counter clockwise around the table in order, turn over each player's cards and resolve each hand in accordance with the procedures below.
- (1) The dealer first shall determine whether he or she has a dealer's qualifying hand.

- (i) If the dealer does not have a dealer's qualifying hand, all players remaining in the game will have their ante wagers paid at even money, and will push on their raise wagers, in accordance with Section 11(b).
- (ii) If the dealer has a dealer's qualifying hand, the dealer's hand shall be evaluated against each player's hand in accordance with Section 5(b). The dealer shall then pay out the ante and raise wagers in accordance with the following:
 - a. If the player's hand beats the dealer's hand, the ante and raise wagers win and the dealer shall pay the ante and raise wagers at even money in accordance with Section 11(b).
 - b. If the dealer's hand beats the player's hand, the ante and raise wagers lose.
 - c. If the dealer's and player's hands tie, the ante and raise wagers push.
- (2) If the player made a Flush Bonus wager, Straight Flush Bonus wager, and/or Progressive payout wager, the dealer shall evaluate the player's hand in accordance with the following:
 - (i) If the player made a Flush Bonus wager, the dealer shall determine if the player has a qualifying hand, and pay the posted payout, in accordance with the pay table selected by the gaming licensee pursuant to Section 11(c).
 - (ii) If the player made a Straight Flush Bonus wager, the dealer shall determine if the player has a qualifying hand, and pay the posted payout, in accordance with the pay table selected by the gaming licensee pursuant to Section 11(d) and (e).
 - (iii) If the player made a Progressive payout wager as authorized pursuant to Section 6, the dealer shall determine if the player has a qualifying hand consisting of, at a minimum, a Three Card Straight Flush, and pay the posted payout, in accordance with the pay table selected by the gaming licensee pursuant to Section 11(f). If the player's hand is eligible for a progressive payout in accordance with Section 11(f), the dealer shall also follow the procedures outlined in Section 10(g).
- (3) If a player has a qualifying hand, or if the dealer does not have a dealer's qualifying hand, the player's hand shall be left on the table layout, face up, until the player's wager is paid, at which time the player's cards shall immediately be collected by the dealer and placed in the discard rack. If the player does not have a qualifying hand, the player's wager shall immediately be collected by the dealer and placed in the table inventory container and the player's cards shall immediately be collected by the dealer and placed in the discard rack. If the dealer's and player's hands are a push, the ante and/or raise wager shall be left on the table layout, and the player's cards shall immediately be collected by the dealer and placed in the discard rack.
- (f) Once each player's hand has been resolved and all wagers have been paid, the dealer shall collect the seven cards constituting the dealer's hand, and place them in the discard rack.

11. Payout odds

- (a) The payout odds for winning wagers at High Card Flush printed on any table layout or in any brochure or other publication distributed by a gaming licensee shall be stated through the use of the word "to" or "win," and no odds shall be stated through the use of the word "for," unless specifically stated otherwise within Section 11.

(b) If the dealer does not have a qualifying hand, all players remaining in the game will have their ante wagers paid at even money and will push on their raise wagers. If the dealer has a qualifying hand, and a player’s hand beats the dealer’s hand, the player’s ante and raise wagers are paid at even money.

(c) If the gaming licensee offers the Flush Bonus wager, a gaming licensee shall pay off each qualifying Flush Bonus wager at the game of High Card Flush in accordance with one of the following pay tables pre-selected by the gaming licensee (the payout odds below are stated as “to 1”):

Hand	A	B	C	D	E	F	G	H	I	J	K	L	M	N
7 card flush	300	100	200	300	200	500	400	1000	150	150	400	300	500	500
6 card flush	100	20	20	75	60	50	60	50	20	25	100	80	80	100
5 card flush	10	10	10	5	12	12	12	10	10	10	10	11	11	10
4 card flush	1	2	2	2	1	1	1	1	2	2	1	1	1	1

Commented [TC1]: This paytable will be added

Hand	A	B	C	D	E	F	G	H	I	J	K	L	M	N
7 card flush	300	100	200	300	200	500	400	1000	150	150	400	300	500	500
6 card flush	100	20	20	75	60	50	60	50	20	25	100	80	80	100
5 card flush	10	10	10	5	12	12	12	10	10	10	10	11	11	10
4 card flush	1	1	2	2	2	1	1	1	1	2	2	1	1	1

Commented [TC2]: This paytable will be deleted

(d) If the gaming licensee offers the Straight Flush Bonus wager, a gaming licensee shall pay off each qualifying Straight Flush Bonus wager at the game of High Card Flush in accordance with one of the following pay tables pre-selected by the gaming licensee (the payout odds below are stated as “to 1”):

Hand	A	B	C	D	E	F	G
7 card straight flush	8000	500	500	1000	500	1000	Bonus
6 card straight flush	1000	200	200	500	200	500	Bonus
5 card straight flush	100	100	100	100	100	100	Bonus
4 card straight flush	60	50	75	75	60	60	Bonus
3 card straight flush	7	9	7	7	8	8	Bonus

(e) If the gaming licensee offers the Progressive payout wager, a gaming licensee shall pay off each qualifying Progressive payout wager at the game of High Card Flush in accordance with one of the following pay tables pre-selected by the gaming licensee.

Hand	A	B	C	D
7 card straight flush	100% of main meter	100% of main meter	100% of main meter	100% of main meter
6 card straight flush	10% of main meter	10% of main meter	10% of main meter	10% of main meter
5 card straight flush	\$250	\$750	\$300	\$800
4 card straight flush	\$50	\$60	\$50	\$50
3 card straight flush	\$3	N/A	\$3	N/A

(f) If a gaming licensee offers the Progressive payout wager pursuant to Section 12, the progressive display meter shall be initially set to \$10,000, and all percentage payouts, as stated in Section 11(e), must be deducted from the meter. A fixed percentage of each progressive payout wager shall be added to the main meter, and a fixed percentage of each progressive payout wager shall be added to a secondary meter, in accordance with the following contribution rates for the pay tables pre-selected by the gaming licensee as stated in Section 11(e):

Contribution Rate:

	A	B	C	D
Main Meter	24%	23%	21%	25%
Secondary Meter	2%	2%	5%	5%

When a 100% payout hits, the main meter shall be reset to the amount of the secondary meter, and the secondary meter shall be reset to zero.

- (g) If a gaming licensee offers the Flush Bonus wager, and/or the Straight Flush Bonus wager, all “Bonus” amounts shall be set at the discretion of the gaming licensee. The gaming licensee may set a maximum aggregate amount payable per round, or per hand.
- (h) For each Bonus wager individually, only the highest qualifying hand is eligible for a payout. For example, if a player’s seven card hand consists of more than one straight flush, only the highest ranking straight flush will be paid.

12. Progressive Payout wager

- (a) If a High Card Flush table is properly equipped to offer an optional Progressive payout wager pursuant to 205 CMR 146.24 (related to poker table characteristics), the gaming licensee may offer an optional Progressive payout wager. The Progressive payout wager shall be \$1.00.
- (b) If the gaming licensee offers a Progressive payout wager, the dealer shall do the following prior to dealing any cards:
 - (1) Following the announcement of “No more bets,” use the table game Progressive payout wager system to prevent the placement of any additional Progressive payout wagers, or

- otherwise start the progressive game on the system;
- (2) Collect any Progressive payout wagers from the table;
 - (3) Verify that numbers of chips wagered equals the number of Progressive payout wagers accepted by the table game Progressive payout wager system, and verify that the progressive electronic sensor is illuminated for each Progressive payout wager; and
 - (4) Place the gaming chips into the table inventory container.
- (c) A player making a Progressive payout wager before any cards are dealt, who then folds after viewing his or her seven cards, will not be eligible for a Progressive payout. A player will only remain eligible for a Progressive payout if he or she makes a raise wager. After the dealer's hand is revealed, the dealer will follow the procedure outlined in Section 10(e)(2)(iv) to determine if the player has a qualifying hand.
- (d) If the player's hand does not qualify for a Progressive payout, or any other payout pursuant Section 10(e), the player's cards shall immediately be collected by the dealer and placed in the discard rack.
- (e) If the player's hand qualifies for a Progressive payout, the qualifying hand shall be left on the table layout, face up, until the Progressive payout wager is paid, at which time the player's cards shall immediately be collected by the dealer and placed in the discard rack; or in regard to Progressive payouts which are not being paid from the table inventory container pursuant to Section 10(f), until the necessary documentation has been completed. Thereafter, the player's cards shall immediately be collected by the dealer and placed in the discard rack. A qualifying Progressive payout wager shall be paid in accordance with Section 11(g).
- (f) If a player's hand is entitled to a Progressive payout in accordance with Section 11(e), the Progressive payout shall not be paid from the table inventory container, and the progressive display meter linked to the table game Progressive payout wager system shall be adjusted to reflect the Progressive payout, pursuant to Section 11(e). If more than one player hits a Progressive payout during the same round and at the same table, the dealer will first pay the player farthest on his or her right and then move counter-clockwise to the other players, although this procedure may be replaced by the gaming licensee's internal procedures. The dealer shall indicate on the table game Progressive payout wager system the player entitled to the percentage Progressive payout, and the player's particular qualifying progressive hand. The dealer shall then verify the percentage Progressive payout and obtain necessary documentation of the payout and the gaming licensee. Thereafter, the player's cards shall immediately be collected by the dealer and placed in the discard rack, and the table game Progressive payout wager system shall be reset for the next round of play.

13. Irregularities

- (a) A card that is found face up in the shoe or the deck while the cards are being dealt shall not be used in the game and shall be placed in the discard rack. If more than one card is found face up in the shoe or the deck during the dealing of the cards, all hands shall be void and the cards shall be reshuffled.
- (b) A card drawn in error without its face being exposed shall be used as though it was the next

card from the shoe or the deck.

- (c) If any player is dealt an incorrect number of cards, all hands shall be void and the cards shall be reshuffled.
- (d) If one or more of the dealer's cards are inadvertently exposed prior to the dealer revealing his or her hand as prescribed in Section 10(e), all hands shall be void and the cards shall be reshuffled.
- (e) If an automated card shuffling device is being used and the device jams, stops shuffling during a shuffle, or fails to complete a shuffle cycle, the cards shall be reshuffled in accordance with the gaming licensee's internal control procedures.
- (f) If an automated dealing shoe is being used and the device jams, stops dealing cards, or fails to deal all cards during a round of play, the round of play shall be void and the cards shall be removed from the device and reshuffled with any cards already dealt, in accordance with the gaming licensee's internal control procedures.
- (g) Any automated card shuffling device or automated dealing shoe shall be removed from a gaming table before any other method of shuffling or dealing may be utilized at that table

Public Records

1. Introduction

As a public instrumentality, the Massachusetts Gaming Commission (MGC) is subject to the Massachusetts Public Records Act, M.G.L. Chapter 66, which governs the retention, disposition, and archiving of public records. Commissioners, Directors and Staff are advised to confer with the MGC's General Counsel Legal Department about which records are public records, how long you may be required to retain those records, the method by which they should be disposed of, and archiving requirements. The Public Records Act also contains provisions which could require the Commission to disclose to the public certain sensitive information made, received, or maintained by the MGC, its contractors and consultants from time to time. In addition, the MGC may be compelled by legal process to disclose information in its possession, including Sensitive Information about the MGC itself or about its applicants, ~~or recipients, licensees or registrants,~~ or other third parties. Care must be taken to comply with all such legal requirements; however, it should be remembered that, in the absence of a specific legal requirement to disclose ~~(as determined by the General Counsel),~~ all MGC employees, consultants, contractors, and licensees are expected to take appropriate measures to safeguard Sensitive Information from improper disclosure and use at all times. If material is a public record within the meaning of the Public Records Act, it is subject to inspection by the public and cannot be destroyed or returned to those who delivered it to the MGC, other than as specifically permitted under the Public Records Act. If material is deemed not to be a public record, it is subject to some protection from disclosure under the law. **MGC Commissioners, Directors, and Staff should presume that all materials are public records.**

2. What Are Public Records?

For purposes of the Public Records Act, public records include all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by any employee of the MGC. File notes and memoranda created by MGC employees or outside contractors and licensees could be deemed to be public records, and the use of the Commission's Information Technology Resources can create public records which are subject to the retention requirements of and potential disclosure under the Act.

3. Exemptions under the Public Records Act

Public records do not include certain materials or data which fall within one of the specifically enumerated exemptions set forth in the Public Records Act or in other statutes, including MGC's enabling act, M.G.L. c. 23K, ~~nor do they include materials protected by the attorney-client privilege. One such exemption is for certain internal personnel records.~~

4. Public Records Request Policy

In accordance with G.L. c.66, §10 the MGC is required to respond to all requests for access to public records as soon as practicable and within ten business days of receipt of the request. In order to ensure that all requests are processed in a uniform manner in accordance with the law, the following policy shall apply to all Commissioners and employees.

1. Any Commissioner or employee who receives any request for any documentary type information, including any request to inspect or review a record in person, shall ~~refer the request to the Legal~~

~~Department~~ direct the requestor to submit their request via mgcpublicrecords@massgaming.gov or the public records request portal at massgaming.com even if ~~he/she is~~ they are unsure as to whether the information being requested qualifies as a public record. Any such Commissioner or employee will also forward any email request received to mgcpublicrecords@massgaming.gov.

2. Requests are not required to be in writing; oral requests can be accepted. However, in an effort to ensure the accuracy of the Commission’s response, requestors should be encouraged to submit their request in writing to mgcpublicrecords@massgaming.gov or via the public records request portal at massgaming.com and identify the specific information they seek. Requests may be submitted via letter, email, or any other medium, and may be submitted in person.

3. Requestors are not required to disclose the reasons for which they seek a public record. Further, requestors are not required to prove their identity prior to obtaining copies of public records.

4. If an individual merely seeks to inspect or review a public record ~~he/she~~ they should be referred to the Legal Department.

54. If received through a medium other than email, the Commissioner or employee who receives a request shall promptly mark it received on (date) reflecting the date the request was received by the Commission.

65. If the requestor is a member of the media, the Legal Department shall promptly forward the request to the Director of Communications, and the Legal Department, the Director of Communications, and any other relevant parties shall coordinate a response.

7. Upon receipt by the Legal Department, the request shall be logged-in such that the name and address of the requestor, the name of the requestor’s firm or company (if any), the date the request was received by the Commission, and the nature of the request are identified.

~~8. The Legal Department shall then set an Outlook task to respond with a compliance reminder for 10 business days after the request was received.~~

Commented [TC1]: This is very specific and more appropriately placed in the legal department procedure

8. If the request is received by a Commissioner or employee who is in possession of the public records that have been requested, they shall consult with the Legal Department and begin to gather the materials to be provided to the Legal Department.

9. All Commissioners and employees shall cooperate with the Legal Department in the gathering of public records.

10. Commissioners and employees shall not withhold any responsive information or documents from the Legal Department. In the event that a Commissioner or employee believes that certain information or documents being requested are exempt from disclosure under the Public Records Law, ~~he/she~~ they shall provide the material to the Legal Department along with an advisory as to ~~his/hers~~ their opinion.

~~11. Recommendations to the appropriate keeper of the records as to whether any documentation of item is a public record or exempt from disclosure under the Public Records Law shall be made by the Legal Department. The keeper of the records shall then make a determination as provided in 205 CMR 103.04(2).~~

Commented [TC2]: 103.04(2) does not exist.
This seems duplicative of section 10

11. Where the requested records are not easily identifiable, ~~the Legal Department shall work with the IT Department, or a contracted third-party vendor, to run an electronic search of the agency's data storage system to locate responsive records.~~

Commented [TC3]: For discussion

12. Within 10 business days of the Commission's receipt of the request for public records, the Legal Department shall either fully respond to the request; send the requestor a good faith estimate for the costs of complying; or send written correspondence acknowledging receipt of the request, ~~advising that more time is needed to produce a response, and seeking agreement on a timeframe within which the Legal Department will produce responsive records. and advising that a full response is being prepared.~~ A full response shall be provided no later than 15 business days from the date of receipt of the request unless the requestor agrees to a later date ~~or the Supervisor of Records grants an extension of time within which to respond.~~

13. The Commission will make efforts to accommodate requests without assessing a fee. However, it may assess a fee within the limits of the Public Records Law if the request is so voluminous that it will take 100 or more hours to complete.

14. All responses to public record requests, including the request itself, shall be scanned and indexed in the data storage system. ~~such that the name and address of the requestor, the name of the requestor's firm or company (if any), the date the request was received by the Commission, and the date of the response are identified.~~

Commented [TC4]: Repetitive of section 7. All info is logged and a folder is created for each request with the name of the requestor and the date received.

15. In the event that documents or other items are being withheld under an exemption to the Public Records Law, the documents or other items shall be marked withheld and scanned into the data storage system ~~in a like manner to that in paragraph 14.~~

16. For information about the Public Records Law, Commissioners and employees are encouraged to review A Guide to the Massachusetts Public Records Law published by the Secretary of the Commonwealth.

~~17.~~

Procedural Considerations and Mandatory Use of Policy and Procedures for the Submission of Sensitive Information

MGC staff may from time to time be exposed to types of information that may contain sensitive information that a submitting party often seeks to protect from public disclosure. While it is understandable that the owner of such information may wish to restrict its disclosure, MGC is a public agency pursuant to the Massachusetts Public Records Act, and the submission of such information to MGC is, generally speaking, subject to public disclosure (without notice and without restriction) upon MGC's receipt of it. In response to the inherent tension between MGC's obligation to honor public records requests in a timely and comprehensive manner, and a submitting party's desire to restrict access to its Sensitive Information, MGC has implemented an Information Security Policy regarding how to properly handle all confidential information.

In addition, all communications seeking inspection or other disclosure of materials under the Public Records Act must be referred promptly to the ~~General Counsel~~ Legal Department. Similarly, all subpoenas and other legal process documents requesting or seeking to compel disclosure of materials made or received by MGC, its consultants, or contractors must be delivered or promptly forwarded to the ~~General Counsel~~ Legal Department upon receipt.

Approved By ~~Rick Day, Executive Director~~

Date ~~2/26/2015~~

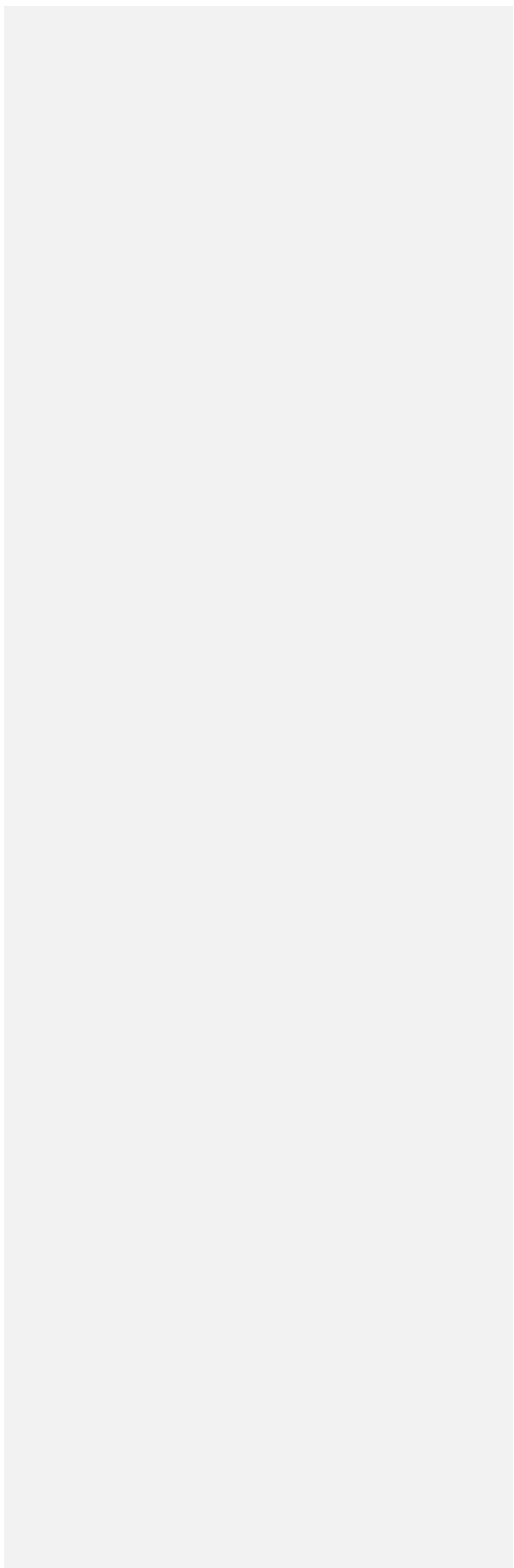
References to other policies/laws/regulations M.G.L. c 23K sec 3 (o); MA Conflict of Interest Law, M.G.L. c. 268 A and B

Created 04/08/2014

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PUBLIC RECORDS REQUEST PROCEDURE

In accordance with G.L. c.66, §10, the Massachusetts Gaming Commission (“Commission”) is required to respond to all requests for access to public records as soon as practicable and within ten business days of receipt of the request. A “public record” means all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by any Commissioner or employee of the Commission.

To ensure that all requests are processed in a uniform manner in accordance with the law, the following procedures shall apply:

Receipt of Requests

1. Any Commissioner or employee who receives any request for any documentary type information shall direct the requestor to submit their request via mgcpublicrecords@massgaming.gov or the public records request portal at massgaming.com even if they are unsure as to whether the information being requested qualifies as a public record. Any such Commissioner or employee shall also forward any email request received to mgcpublicrecords@massgaming.gov.
2. Requests are not required to be in writing; oral requests can be accepted. However, in an effort to ensure the accuracy of the Commission’s response, requestors should be encouraged to submit their request in writing to mgcpublicrecords@massgaming.gov or via the public records request portal at massgaming.com and identify the specific information they seek. Requests may be submitted via letter, email, or any other medium, and may be submitted in person.
3. A Commissioner or employee who receives a hard-copy request shall promptly mark it “received on (date)” reflecting the date the request was received by the Commission. The Commissioner or employee who receives a verbal request shall make a written record of such request and mark it “received on (date)” reflecting the date the request was received by the Commission.
4. Requestors are not required to disclose the reasons for which they seek a public record. Further, requestors are not required to prove their identity prior to obtaining copies of public records. However, they must provide a method by which the records may be provided to them, whether it be an email address or mailing address. In the alternative, a requestor may wish to pick up the records in person.

5. If the requestor is a member of the media, the legal department will promptly forward the request to the Director of Communications and will work with the Director of Communications and any other relevant parties to coordinate a response.
6. Upon receipt by the legal department, the request shall be logged by the legal department in a format that contains, at a minimum, the name and address of the requestor, the name of the requestor's firm or company (if any), the date the request was received by the Commission, and the general subject matter of the request. The legal department shall also create a folder within its Public Records SharePoint file for each new request.
7. Within five business days of receipt of the request, the legal department shall respond to the requestor notifying them that their request was received and is being processed.
8. The legal department shall set a reminder to respond further within 10 business days after the request was received.
9. Upon receipt of the request by the legal department, the legal department shall reach out to appropriate staff to obtain the requested documents and to confirm the existence or nonexistence of any responsive personal notes or hard copies. Where the records are not easily identifiable, the legal department shall work with the IT Department, or a contracted third-party vendor, to run an electronic search of the Commission's email system and/or SharePoint using an eDiscovery platform to locate responsive records. All Commissioners and employees shall cooperate with the legal department in the gathering of public records. No Commissioner or employee is required to create documents or provide answers to questions in response to a public records request. Rather, the Commission is only required to provide copies of existing documents in its possession.
10. Commissioners and employees shall not withhold any responsive information or documents from the legal department. In the event that a Commissioner or employee believes that certain information or documents being requested are overly sensitive or otherwise exempt from disclosure under the Public Records Law, they shall provide the material to the legal department and inform the legal department of such concerns.

Response to Requests

1. Within 10 business days of the Commission's receipt of the request for public records, the legal department shall either respond to the request in full by providing responsive records OR provide a written response that includes the following information, where applicable:

- a. Confirms receipt of the request;
- b. Identifies any public records or categories of public records sought that are not within the possession, custody, or control of the MGC;
- c. Identifies the agency or municipality that may be in possession, custody or control of the public record sought, if known;
- d. Identifies any records, categories of records or portions of records that the MGC intends to withhold, and provides the specific reasons for such withholding, including the specific exemption or exemptions upon which the withholding is based;
- e. Identifies any public records, categories of records, or portions of records that the MGC intends to produce, and provides a detailed statement describing why the magnitude or difficulty of the request unduly burdens the other responsibilities of MGC and therefore requires additional time to produce the public records sought;
- f. Identifies a reasonable timeframe in which the MGC will produce the public records sought provided that the timeframe shall not exceed 15 business days following the initial receipt of the request OR propose a response date beyond that timeframe (which may include proposing a rolling production);

(1) **Petition for Extension of Time:** If the response cannot be provided within 15 business days following receipt of the request AND the requestor does not agree to a response date beyond that timeframe, the MGC may petition for an extension of time within which to respond. A petition must be submitted within 20 business days of receipt of the request OR within ten business days after receipt of a determination by the Supervisor that the requested record constitutes a public record. A copy of the petition must be provided to the requestor.

- g. Suggests a reasonable modification of the scope of the request or offers to assist the requestor to modify the scope of the request if doing so would enable the MGC to produce records sought more efficiently and affordably;
- (1) For large and comprehensive requests requiring searches of the MGC's email system and/or SharePoint, the legal department may propose specific search terms and criteria and receive agreement to those terms and criteria before executing a search;

- (2) For large and comprehensive requests seeking emails, the legal department may propose liming the request to emails only for the initial production and allowing the requestor to follow-up with requests for specific attachments;
 - h. Includes an itemized, good faith estimate of any fees that may be charged to produce the records. For requests that require 100 or more hours of time to complete, the legal department will consult with the Executive Director regarding assessing a fee; and
 - i. Includes a statement informing the requestor of the right of appeal to the supervisor of records under subsection (a) of section 10A and the right to seek judicial review of an unfavorable decision by commencing a civil action in the superior court under subsection (c) of section 10A.
- 2. Where the response will include records prepared or held by the IEB, the legal department shall notify the Director of the IEB such that the IEB has an opportunity to review the records before they are produced.
- 3. Where the response will include production of emails sent by any Commissioner, the legal department shall notify the respective Commissioners and give them an opportunity to review the records before they are produced.
- 4. **Denial of Request:** A denial must detail the specific basis for withholding the requested materials and must include a citation to one of the statutory or common law exemptions upon which the records custodian relies, and must explain with specificity why the exemption applies. It must also advise the requestor of the right to seek redress through the administrative process provided by the Supervisor of Records as well as the judicial remedy available in superior court.
 - a. **Exemptions Applicable to Withholding or Redacting Documents¹**
 - i. **Statutory (Exemption (a)):** Applies to records that are specifically or by necessary implication exempted from disclosure by statute.
 - ii. **Internal Personnel Rules and Practices Exemption (Exemption (b)):** Applies to internal personnel rules and practices of the MGC, provided that such records shall be withheld only to the extent that proper performance of necessary government functions requires such

¹ Exemptions that would not apply to the MGC have been omitted.

withholding.

- iii. **Privacy (Exemption (c)):** Applies to personnel and medical files or information and other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy.
- iv. **Deliberative Process (Exemption (d)):** Applies to inter-agency or intra-agency memoranda or letters relating to policy positions being developed by the agency, but shall not apply to reasonably completed factual studies or reports on which the development of such policy positions has been or may be based.
- v. **Personal Notes (Exemption (e)):** Applies to notebooks and other materials prepared by an employee of the MGC which are personal to them and not maintained as part of the files of the agency.
- vi. **Investigatory (Exemption (f)):** Applies to investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials, the disclosure of which would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest.
- vii. **Trade Secrets (Exemption (g)):** Applies to trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy and upon a promise of confidentiality, but shall not include information submitted as required by law or as a condition of receiving a governmental contract or other benefit.
- viii. **Competitive Bidding (Exemption (h)):** Applies to proposals and bids to enter into any contract or agreement until the time for the opening of bids in the case of proposals or bids to be opened publicly, and until the time for receipt of bids or proposals has expired in all other cases; as well as inter-agency or intra-agency communications made in connection with an evaluation process for reviewing bids or proposals prior to a decision to enter into negotiations with or to award a contract to a particular person.
- ix. **Blueprints and Schematics (Exemption (n)):** Applies to records, including but not limited to blueprints, plans, policies, procedures, and schematic drawings which relate to internal layout and structural elements,

security measures, emergency preparedness, threat or vulnerability assessments, or any other records relating to the security or safety of persons or buildings, structures, facilities, utilities, transportation, cyber security, or other infrastructure located within the Commonwealth, the disclosure of which in the reasonable judgment of the records custodian is likely to jeopardize public safety or cyber security.

- x. **Commonwealth Employee Contact Information (Exemption (o)):** Applies to the home addresses, personal email address, and home telephone number of an employee of the judicial branch, an unelected employee of the general court, an agency, executive office, department, board, commission, bureau, division, or authority of the Commonwealth, or of a political subdivision thereof or of any authority established by the general court to serve a public purpose, in the custody of a government agency which maintains records identifying persons as falling within those categories.
 - xi. **Family Members of Commonwealth Employees' Contact Information (Exemption (p)):** Applies to the name, home address, personal email address, and home telephone number of a family member of a Commonwealth employee contained in a record in the custody of a government agency which maintains records identifying persons as falling within the categories listed in exemption (o).
- b. **Attorney-Client Privilege Docs:** Confidential communications between governmental entities and their legal counsel undertaken for the purpose of obtaining legal advice or assistance are protected under the ordinary rules of the attorney-client privilege.² Where a record is withheld based on a claim of the attorney-client privilege, the MGC shall provide a detailed description of the record, including the names of the author and recipients, and in general terms, the subject matter of the withheld information.
- c. **Non-Disclosure Agreements (NDAs):** The Commission has entered into NDAs with its licensees to protect material or information that the licensee considers a trade secret or believes would be detrimental to the licensee if it were made public. Upon receipt of a request, the legal department shall review any relevant NDA to determine if the requested information falls within its scope. If it determines that such information does, the legal department shall notify the respective licensee of the request and shall withhold the document/information,

² Suffolk Construction Co. v. Division of Capital Asset Management, 449 Mass. 444 (2007).

citing the Statutory Exemption to the Public Records Law along with the relevant section of the NDA.

5. **Storage of Responses:** All responses to public record requests, including the request itself, shall be scanned and indexed in SharePoint. In the event that documents or other items are being withheld under an exemption to the Public Records Law, the documents or other items shall be marked “withheld” and scanned into SharePoint.

Fees

1. Fees may only be charged if the MGC responded to the requestor within ten business days, as discussed above.
2. The MGC may not charge for the first four hours of search, segregation, redaction, or reproduction time and may not charge more than \$25 per hour.
3. The MGC will make efforts to accommodate requests without assessing a fee. However, it may assess a fee within the limits of the Public Records Law if the request is so voluminous that it will take 100 or more hours to complete.
4. The MGC may delay provision of records until fees are paid.
5. **For segregation³ and redaction time**, the MGC may not charge a fee unless it is “required by law” or is approved by the Secretary of State through a petition.
 - a. Segregation and redaction under the attorney-client privilege has been found to be “required by law,” as well as any information found in statutes that explicitly indicate that certain records or information are not public information (*e.g.*, CORI).
 - b. **Petition to Assess Fees:** Any fee petition must be made within ten business days of receipt of the request and does not affect the MGC’s obligation to respond to the request within ten business days of receipt. The Supervisor may approve a petition to assess a fee for time spent segregating or redacting if the Supervisor determines that: (a) the request is for a commercial purpose, or (b) the fee represents an actual good faith representation by the agency to comply with the request; the fee is necessary such that the request could not have been prudently completed without the redaction or segregation; and the amount of the fee is reasonable and not designed to limit, deter, or prevent access to requested public

³ Segregation time means the time used to review records to determine what portions are subject to redaction or withholding under G. L. c. 4, § 7(26) or other legally applicable privileges.

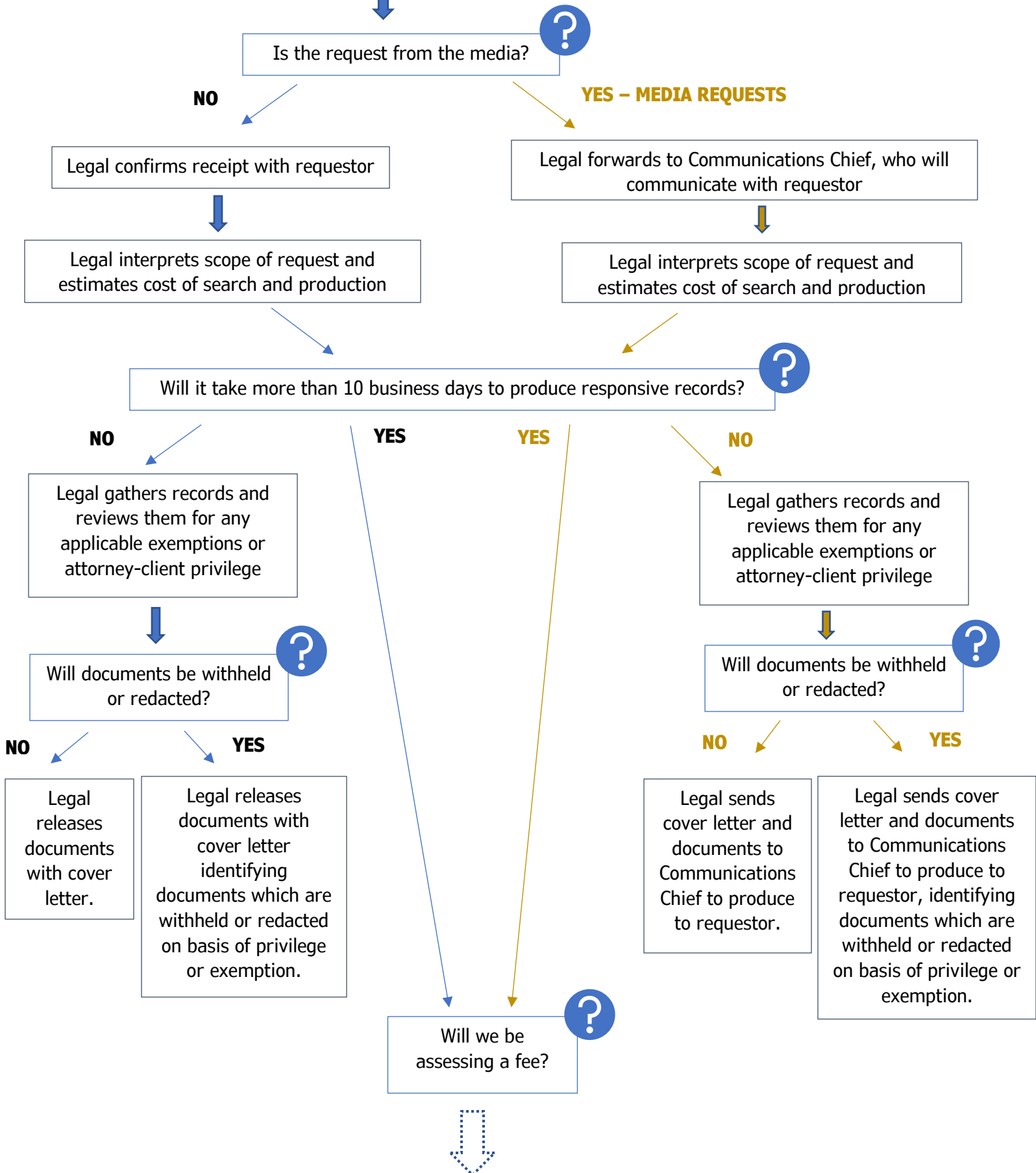
records. The MGC must respond to the requestor within five business days of receiving a determination from the Supervisor of Records on such petition.

6. **Fees for Copies:** The MGC may charge \$0.05 for single and double-sided black and white paper copies or printouts. When the request is for materials that are not susceptible to ordinary means of reproduction, the actual cost of reproduction may be assessed.

* For information about the Public Records Law, Commissioners and employees are encouraged to review [A Guide to the Massachusetts Public Records Law](#) published by the Secretary of the Commonwealth.

DRAFT

Public Records Request Received



Where appropriate, legal reaches out to requestor to see if the scope can be narrowed and a final scope is agreed upon in writing

Will we be assessing a fee?
(Will the search and segregation time take 100 or more hours?)



MEDIA REQUESTS

NO

YES

NO

YES

Legal sends 10-business day letter proposing production date/timeline and receives confirmation from requestor.

Legal sends 10-business day letter to requestor including all requirements in G.L. c. 66, §10(b), (including identifying fee, proposing production date/timeline, and suggesting narrowed scope where appropriate).

Legal drafts 10-business day letter proposing production date/timeline and sends to Communications Director to produce to requestor. Communications Director may also reach out to requestor via phone or email to discuss proposed production timeline.

Legal drafts 10-business day letter to requestor including all requirements in G.L. c. 66, §10(b), (including identifying fee, proposing production date/timeline, and suggesting narrowed scope where appropriate). Communications Director may also reach out to requestor via phone or email to discuss fee or potentially narrowing the scope of the request.

If requestor does not agree to proposed production date/timeframe and records cannot be produced within 15 business days of receipt of request, legal department submits a petition for extension of time to the Supervisor's office within 20 business days of receipt of request.

If requestor does not agree to proposed production date/timeframe and records cannot be produced within 15 business days of receipt of request, legal department submits a petition for extension of time to the Supervisor's office within 20 business days of receipt of request.

Legal gathers records and reviews them for any applicable exemptions or attorney-client privilege

Upon receipt of payment, legal gathers records and reviews them for any applicable exemptions or attorney-client privilege

Legal gathers records and reviews them for any applicable exemptions or attorney-client privilege

Upon receipt of payment, legal gathers records and reviews them for any applicable exemptions or attorney-client privilege

Legal releases documents with cover letter.
If any documents are withheld or redacted on basis of privilege or exemption, identify privilege or exemption in cover letter.
If requestor has agreed to a rolling production, legal repeats this step as necessary.

Legal sends cover letter and documents to Communications Director to produce to requestor. If any documents are withheld or redacted on basis of privilege or exemption, identify privilege or exemption in cover letter. If requestor has agreed to a rolling production, legal repeats this step as necessary.

MEMORANDUM

FROM: Massachusetts Gaming Commission
RE: Development East of Broadway in Everett, MA
DATE: April XX, 2022

Background

Wynn MA, LLC, the Region A gaming licensee which owns and operates the gaming establishment, Encore Boston Harbor, notified the Commission of a proposed new development on Lower Broadway, (hereinafter, “the project”). According to the information provided by the licensee, the project will consist of approximately 20,000 square-feet of restaurant space; a live entertainment venue with associated pre-function space of less than 1000 seats; a 2,200-space parking garage; and a 400-foot elevated pedestrian bridge across Broadway, which will connect the project to the existing gaming establishment. Potential future additions to the proposed project include two hotels, north of the project site. Accordingly, the issue presented to the Massachusetts Gaming Commission (hereinafter, “Commission”) is whether the project should be considered part of the Encore Boston Harbor’s existing gaming establishment and thus, subject to Commission regulatory oversight. On February 28, 2022, the Commission held a public hearing, at which it solicited comments from interested members of the public. It then considered this matter at its March 10, 2022, public meeting. After review and discussion, the Commission concluded that, with the inclusion of certain conditions as part of the gaming license as outlined below, the proposed project will not be considered part of the existing gaming establishment.

Overview

In accordance with G. L. c. 23K, § 1(10), “the power and authority granted to the commission shall be construed as broadly as necessary for the implementation, administration, and enforcement of [G. L. c. 23K].” Additionally, G. L. c. 23K, § 4, states “the commission shall have all powers necessary or convenient to carry out and effectuate its purposes.” Accordingly, the Commission is afforded broad discretion in deciding matters directly within its purview. In this case, that took the form of a determination as to the proper boundaries of a “gaming establishment” in accordance with the statutory definition¹ to ensure proper regulatory oversight of gaming related matters under chapter 23K.

¹ G. L. c. 23K, § 2 defines “gaming establishment” as “the premises approved under a gaming license which includes a gaming area and any other nongaming structure related to the gaming area, and may include, but shall not be limited to, hotels, restaurants or other amenities.”

The Commission outlined a 4-part analysis, rooted in chapter 23K, to examine whether a particular structure, or area would be considered part of a gaming establishment. The analysis requires a determination as to whether each component of the project: (1) is a non-gaming structure; (2) is related to the gaming area; (3) is under common ownership and control of the gaming licensee; and (4) if of the character that the Commission has a regulatory interest in including it as part of the gaming establishment. The Commission noted in prior determinations that part 4 of the analysis is only conducted if the first 3 elements are satisfied. This analysis was established as part of the Commission's 2014 decision that determined the boundaries of the 2 applicants for the Region A, category 1 gaming license.² Since its inception, this analysis has been applied by the Commission not only in determining the boundaries of the three existing gaming establishments, but also in later amendments to the boundaries at MGM Springfield and Plainridge Park Casino, in 2018 and 2021, respectively.³

It is also significant that courts have twice examined the 4-part analysis, as well as the discretion of the Commission to make determinations relative to the composition of a gaming establishment. Specifically, it was recently recognized that that the application of the analysis in determining the boundary of the proposed gaming establishments in 2014 "has a certain, practical logic and must be afforded extreme deference by this court."⁴

In applying the 4-part analysis to the current project, the Commission has determined that no portion of the project will be considered a part of the existing gaming establishment. The licensee, Wynn MA, LLC, and its parent corporation, Wynn Resorts, Limited, shall however, be subject to certain conditions, set forth here in 'Exhibit A,' to ensure that the regulatory concerns raised by the Commission during the public discussions of the project are adequately addressed throughout the project's construction and eventual operation. The Commission's analysis is as follows:

I. Non-Gaming Structure

The first element of the analysis requires an evaluation as to whether the components of the project are non-gaming structures. Determination of this factor rests largely upon the definition of 'gaming establishment' which includes the "gaming area and any other nongaming structure related to the gaming area." While the term "non-gaming structure" is not itself defined, the statute does offer some guidance as to its intended meaning. Within the same definition, examples of non-gaming structures were listed to include hotels, restaurants, or other amenities.

Consequently, the Commission used this definition to infer that a component needed to be a structure of some sort, to be included in the boundary of a gaming establishment. In 2014, the Commission found that the gaming area, hotel, meeting and convention spaces, ball room, retail

² Mass. Gaming Comm'n, *Decision Regarding the Determination of the Gaming Establishment for Mohegan Sun MA, LLC, and Wynn MA LLC*. May 15, 2014.

³ *Memorandum from [MGC] Staff Recommending Approval of MGM Springfield*. April 23, 2018. *See also*, *Petition to Amend the Premises of the Gaming Establishment for Plainridge Park Casino*, submitted by licensee, 2021.

⁴ *City of Revere, et al. v. Massachusetts Gaming Comm'n, et al.*, Suffolk Superior Court Civ. A. NO. 1484CV03253-BLS1 at 20. (February 16, 2022)

areas, restaurants/food and beverage lounge areas, night club, back of house, underground parking areas, physical plant/facilities, maintenance, and related public spaces were within the boundary of the proposed gaming establishments proposed by the two category 1 applicants.⁵ By contrast, the Commission found that municipal or internal roadways, surface parking lots, and entry ways to the casino were not “structures in traditional sense” and they were ultimately not included in the gaming establishment boundaries of either applicant.⁶

In evaluating the current project, the Commission considered each component of the project individually. In contrast with the submissions of the category 1 applicants, Wynn, and Mohegan in 2014, all buildings in the proposed project: parking garage, restaurant, and live entertainment venue are actual structures and thus satisfy the first element of the test. The elevated footbridge connecting the two properties, as currently designed, would similarly meet this definition, as it is a structure in the traditional sense. In conclusion, the project, as currently designed, satisfies part one of the analysis.

II. Relation to Gaming Area

The next factor requires the Commission to decide whether the project is related to the gaming area of the existing gaming establishment, Encore Boston Harbor. The statute, G. L. c. 23K, § 2, defines “gaming area” as “the portion of the premises of the gaming establishment in which gaming is conducted.” In 2014 the Commission determined that the “gaming area, hotel, meeting and convention spaces, ball room, retail areas, restaurants/food and beverage lounge areas, night club, back of house, underground parking areas, physical plant/facilities, maintenance, and related public spaces” were part of the gaming establishment as they were intended, at least in part, to “support the gaming area by making entire facility a more attractive destination.”⁷

Conversely, the racetrack at Suffolk Downs was found unrelated to the gaming area of the gaming establishment proposed by Mohegan Sun, in part due to a “lack of proximity between the entrance to the track from the entrance to the gaming area, no infrastructure connecting the structures, and lack of common ownership or control of track operations by applicant Mohegan”⁸

In the current matter, each of the components of the project were deemed by the Commission to be related to the gaming area of Encore Boston Harbor, as the development would make the entire facility a more attractive destination. Specifically, the 20,000 square-foot of restaurant and dining space; live entertainment venue of less than 1000 seats; 2,200-space parking garage; and elevated pedestrian bridge connecting the two properties, are each separately and as a whole likely to draw more visitors to the gaming establishment and enhance the overall destination. The proximity of the project to the existing gaming area, connection of the two facilities via

⁵ Mass. Gaming Comm’n, *Decision Regarding the Determination of the Gaming Establishment for Mohegan Sun MA, LLC, and Wynn MA LLC*. May 15, 2014 (page 9).

⁶ *Id.* (pages 8 and 9).

⁷ *Id.* (page 9).

⁸ *Id.* (page 8).

infrastructure, and the proposed amenities and support a conclusion that the project relates to the gaming area, satisfying the second factor of the 4-part analysis.

III. Common Ownership and Control of Gaming Applicant

At the heart of this third element is the question as to whether the Commission could practically and effectively assert its jurisdiction over a particular area of the project and require that all the Commission's familiar regulatory requirements be followed in that area. Common ownership and "operational control" or lack thereof, was previously considered by the Commission in 2014, as well as 2018.⁹ In both instances, the Commission emphasized the need to examine the control element "is implicit in the [chapter 23K]'s licensing and registration requirements."¹⁰

In its 2014 decision, the Commission delineated that applicant Mohegan Sun's lack of operational control of Suffolk Downs' racetrack supported a finding of a lack of requisite ownership under the third component of the 4-part analysis.¹¹ Similarly, the Commission found that there was no common ownership or control that would allow for regulatory oversight of the Boston Symphony Orchestra and TD Garden, with which Wynn MA, LLC executed cross marketing agreements.¹²

In the present matter, Wynn MA, LLC does not own, or control the proposed project. An entity named East Broadway, LLC owns the land, and another entity, Wynn Resorts Development, LLC would oversee the project's construction. The analysis does not end there though. Each of these entities are wholly owned subsidiaries of Wynn Resorts, Limited which is the parent company of the gaming licensee, and accordingly, a qualifier subject to the authority of the Commission, pursuant to G. L. c. 23K, § 14 and 205 CMR 115.

Moreover, there are ample examples in Massachusetts jurisprudence of courts or government entities looking beyond the corporate form to determine control when it becomes necessary to carry out a law's intended purpose. In *Berg v. Town of Lexington*, 68 Mass.App.Ct. 569, 574 (2007), the Court found that related parties' practice of placing ownership of adjoining lots in separate forms, known as "checkerboarding," had been utilized to avoid zoning provisions that require lots held in common ownership to be combined for determining area and frontage. In evaluating the context of checkerboarding, and land ownership, the Court weighed the amount of control over a parcel as dispositive, asking: "did the landowner have it 'within his power,' i.e., his legal control to use the adjoining land so as to avoid or reduce the nonconformity?" *Planning Bd. of Norwell v. Serena*, 27 Mass.App.Ct. 689, 691 (1989).

⁹ *Id.* (Page 7). See also, *Memorandum* page 2, citing the 2014 Decision, G. L. c. 23K, §§ 30 – 32, "The requirement for the licensee to own or control all land on which the gaming establishment is located, G. L. c. 23K, §15 (3), and the statues general structure which places control of the licensee at the hear of the Commission's regulatory authority."

¹⁰ *Decision Regarding the Determination of the Gaming Establishment for Mohegan Sun MA, LLC, and Wynn MA LLC*. May 15, 2014. (Page 7, "Analysis and Determinations")

¹¹ *Id.* (Page 5 and 8).

¹² *Id.* (Page 10.)

Applying this analysis to the present matter, the Commission finds that by virtue of the parent/subsidiary relationship the requisite ownership and control over the project exists such that the Commission could exert regulatory oversight. Specifically, Wynn Resorts, Limited, a qualifier subject to the Commission's oversight, ultimately controls the land that is owned by East Broadway, LLC, and that would be developed by Wynn Resorts Development, LLC. Accordingly, the requisite ownership and control over the project exist. For these reasons, the Commission finds that third element of the 4-part analysis is adequately satisfied.

IV. Regulatory Interest

The Commission has broad discretion in deciding whether it has a regulatory interest in exerting jurisdiction over the project pursuant to the objectives set forth in G. L. c. 23K. In its 2014 decision determining the gaming establishment boundaries for applicants Mohegan and Wynn, the Commission held that the fourth component of the 4-part analysis was only considered if the first three parts of the analysis were satisfied.¹³ The Commission recognized that it was important to include certain amenities as part of the gaming establishment, in part, because it held an interest in ensuring that the employees working in those areas were licensed or registered by the Commission, and the Commission have knowledge of the flow of money through those areas.¹⁴

In its discretion, the Commission has also previously concluded that it did not have an interest in including certain non-gaming structures within the gaming establishment boundary. For example, the boat dock at the Encore Boston Harbor property met the first three parts of the 4-part analysis, however, the Commission determined that it did not have a regulatory interest in the area, as the dock was subject to other government oversight and there was no additional benefit to including it within the boundary.¹⁵ A similar rationale was applied to the race track at Plainridge Park Casino, which was already subject to the Commission's jurisdiction under G. L. c. 128A. Both components were excluded from their respective gaming establishments.

In the present matter, the Commission concluded that while there are some concerns stemming from the development and operation of the project, that those issues can be adequately remedied by way of a license condition attached to the existing Wynn MA, LLC gaming license rather than modifying the existing gaming establishment boundary to include the new project. These conditions are set out with specificity in the attached '*Exhibit A.*' The conditions are designed to address the concerns raised at the Commission's March 10, 2022, public meeting, namely: the number of seats included in the live entertainment venue; compliance with Massachusetts Environmental Policy Act ("MEPA"); security issues associated with the project including coordination with local law enforcement; contemporaneous reporting guidelines to the Investigation and Enforcement Bureau ("IEB"); ensuring that future employees of the project, who will not be licensed or registered by the Commission, do not have access to the sensitive areas of the gaming establishment; and egress, ingress, and security issues

¹³ *Id.* (Page 7).

¹⁴ *Id.* (Page 8).

¹⁵ *Id.* (Page 9).

associated with the pedestrian bridge. Accordingly, with these conditions in place, the Commission concludes that it does not have a regulatory interest in including the components of the project as part of the existing gaming establishment.

Conclusion

For the foregoing reasons, the Commission concluded that no elements of project will be considered part of the existing gaming establishment, and subject to its regulation. Further, the gaming license awarded to Wynn MA, LLC is hereby amended to include the conditions set forth in the attached 'Exhibit A.'

EXHIBIT A

The conditions attached to the Category 1 gaming license awarded to Wynn MA, LLC as prescribed in the November 7, 2014, decision issued by the Commission are hereby amended to add the following conditions that relate to the proposed development east of Broadway in Everett, MA across from Encore Boston Harbor (hereinafter, “the project”). Wynn MA, LLC, and Wynn Resorts, Limited, as applicable, shall ensure that:

1. Any entertainment venue that is developed as part of the project for purposes of hosting live entertainment, in whole or in part, shall at all times contain less than 1000 or more than 3500 ticketed seats whether such seating is permanent, temporary, or a combination thereof. Further, in accordance with the plans presented to the Commission on February 10, 2022, no more than 999 ticketed patrons, whether paid or complimentary, may be permitted entry for any single live entertainment event. If live entertainment in the entertainment venue will be viewable from any restaurant or other amenity on the premises, any such seats or positions shall be counted towards the aforementioned figures. Nothing in this condition should be deemed to prohibit live entertainment events of more than 3,500 ticketed seats consistent with G. L. c. 23K, § 9 (a)11. For purposes of this provision, ‘live entertainment’ shall mean any one or more of the following activities performed in-person by one or more individuals: (1) musical act; (2) theatrical act; (3) comedy act; (4) play; (5) magic act; (6) disc jockey; or (7) similar activity consistent with the common understanding of ‘live entertainment’ as determined by the Commission, or its designee, if necessary.
2. Booking agreements and/or contracts executed for the provision of live entertainment at the live entertainment venue shall not include any provision establishing a radius restriction that would actually or effectively prevent the entertainer(s) from performing elsewhere within any specific geographic area within the Commonwealth of Massachusetts.
3. A Notice of Project Change, Request for Advisory Opinion or Environmental Notification Form shall be submitted, as appropriate, to the Massachusetts Environmental Policy Act Office (hereinafter, “MEPA”) of the Executive Office of Energy and Environmental Affairs. Promptly upon such filing, a copy of said documents as well as any MEPA decisions shall be submitted to the Commission. The Commission reserves the right to provide comments on any application submitted relative to the project.
4. A security plan for the parking garage proposed as part of the project shall be submitted to the Commission for approval at least 60 days prior to opening of such garage. The security plan shall include, at a minimum, regular patrolling of the garage by security personnel, and a provision that requires security personnel to conduct regular checks of parking areas for minors left in motor vehicles and immediately report any such finding to the City of Everett Police Department. Any such reports involving patrons of the gaming establishment shall contemporaneously be reported to the IEB. Upon approval,

Wynn MA, LLC, and Wynn Resorts, Limited, as applicable, shall implement and comply with the approved plan.

5. The licensee shall submit any proposed plan for further development or construction within the area included as part of the City of Everett's *Lower Broadway District Urban Renewal Plan*, as amended, by any entity owned or controlled by Wynn Resorts, Limited, or affiliated with Wynn MA, LLC, or upon any land owned by said entities, to the Commission for review prior to or contemporaneous with its filing with any other governmental agency.
6. Employees of the facilities on the project site shall not be afforded access to any restricted areas of the gaming establishment unless they follow the applicable visitor access protocols.
7. The licensee shall submit a plan relative to the proposed pedestrian bridge connecting the project site to the existing gaming establishment to the Commission for approval within 90 days of execution of this decision that includes, at a minimum, the following:
 - a) A depiction of a point of egress from the bridge in the vicinity where patrons would enter the gaming establishment to allow the public to depart the bridge without entering the gaming establishment. The licensee shall submit the final design plans for the bridge, which shall incorporate said point of egress, to the Commission promptly upon submission to the City of Everett building department; and
 - b) A security outline for the bridge which includes, but is not limited to:
 1. a description of any surveillance camera coverage;
 2. a schematic of the security checkpoint and the interior area of the existing gaming establishment at the point of entry;
 3. security department patrol procedures; and
 4. a plan identifying the coordination with the relevant law enforcement authorities to address security and incident response.

Upon approval, Wynn MA, LLC, and Wynn Resorts, Limited, as applicable, shall implement and comply with the approved plan.

DATE

The Honorable Ronald Mariano
Speaker of the House
(VIA EMAIL: ronald.mariano@mahouse.gov)

The Honorable Karen E. Spilka
President of the Senate
(VIA EMAIL: karen.spilka@masenate.gov)

Dear Speaker Mariano and Senate President Spilka,

As you are aware, in February Governor Baker signed a [new session law](#) extending certain COVID-19 safety measures related to [the Open Meeting Law](#). This included an extension of the remote meeting provisions included in the Governor's March 2020 executive order allowing government to continue its business while maintaining the safety of the public and staff. This extension is set to expire on July 15, 2022.

In keeping with the guidance, the Massachusetts Gaming Commission (MGC) has conducted all public meetings utilizing remote collaboration technology. While this innovation was forced by circumstance, it has produced many positive results, including increased public participation and efficiency. Our licensees, guest speakers, and interested community members have been able to participate in our public meetings without the need to commute to our offices in Boston. Being able to provide greater ease of access to our public process has been a welcome benefit of virtual connectivity and has had a positive impact on the work of the MGC.

Additionally, the use of remote collaboration technology has benefitted the Gaming Policy Advisory Committee as well as other statutory subcommittees. When these meetings were required to take place in person it was often difficult to achieve a quorum. Subcommittee members live across the Commonwealth and have jobs outside their roles on these important boards. Allowing remote collaboration technology has resulted in greater participation, ready access to outside experts, and allowed meetings to be held more frequently.

As many individuals come back to their office on a hybrid basis, the extension allowing for remote meetings has enabled us to address issues of public interest timely and nimbly. The MGC is committed to transparency, and we have been able to meet this goal through virtual public meetings while maintaining the safety of all our stakeholders. Our aim is to begin meeting in person again, welcoming those members of the public who can reasonably join us at our offices comfortably and safely. However, we realize that not everyone will be able to join us in person. As a statewide agency, we have benefitted from an increase in participation from residents across the Commonwealth who may not have been able to easily participate when our meetings were held in person at our offices.

Hybrid meetings, where those who cannot join in person are able to join virtually, benefit the entity hosting the meeting, promote participation, and maintain transparency and the purpose of the Open Meeting Law.

We respectfully request legislative consideration to modify the Massachusetts Open Meeting Law to utilize current day innovations. The MGC would also welcome consideration of a long-term extension allowing for remote public meetings.

Thank you for your consideration. We are available to answer any questions or detail our experience with virtual public meetings in any way that may be helpful.

Respectfully submitted,

MASSACHUSETTS GAMING COMMISSION

Cathy Judd-Stein, Chair

Bradford Hill, Commissioner

Eileen O'Brien, Commissioner

Nakisha Skinner, Commissioner