



GAMING POLICY ADVISORY COMMITTEE

Notice of Meeting and Agenda

Pursuant to the Massachusetts Open Meeting Law, G.L. c. 30A, §§ 18-25, notice is hereby given of a meeting of the Massachusetts Gaming Commission Gaming Policy and Advisory (GPAC) Committee.

The meeting will take place:

Monday, June 14, 2021 | 1:00 PM – 3:00 PM

Revised Meeting Details: Call-in: 1-973-854-6173, Meeting ID 112 513 3956

PLEASE NOTE: Given the unprecedented circumstances resulting from the global Coronavirus pandemic, Governor Charles Baker issued an order to provide limited relief from certain provisions of the Open Meeting Law to protect the health and safety of individuals interested in attending public meetings. In keeping with the guidance provided, the Commission will conduct a public meeting utilizing remote collaboration technology. If there is any technical problem with our remote connection, an alternative conference line will be noticed immediately on our website: MassGaming.com.

- 1) **Call to Order**
Meg Mainzer-Cohen, GPAC Chair
- 2) **Opening Comments**
Cathy Judd-Stein – Chair, MGC
- 3) **Approval of February 9, 2021 Minutes - VOTE**
Committee
- 4) **Status of the Casinos**
Loretta Lillios – Chief Enforcement Counsel/Deputy Director, MGC
- 5) **Tribal Litigation Update**
Caitlin Monahan – Associate General Counsel
- 6) **Member Update**
 - Senator Lesser – Status of Sports Wagering Legislation
 - Other Members
- 7) **Horse Racing Integrity and Safety Act**
Dr. Alexandra Lightbown – Director of Racing, MGC
- 8) **Play MyWay Presentation**
Mark Vander Linden – Director of Research and Responsible Gaming -MGC
- 9) **Other Business/ Next Meeting**

I certify that on this date, this Notice was reposted as "MassGaming GPAC Meeting" at www.massgaming.com on 6/14/2021 12:30pm and emailed to: regs@sec.state.ma.us, melissa.andrade@state.ma.us.

June 14, 2021

(date)

A handwritten signature in blue ink that reads "Meg Mainzer-Cohen".

Meg Mainzer-Cohen
Chair, Gaming Policy Advisory Committee



Massachusetts Gaming Commission

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Gaming Policy Advisory Committee Meeting Minutes

Date/Time: February 9, 2021 @ 2:00 p.m.
Place: Virtual via HD Meeting
Present: Meg Mainzer-Cohen, Chair
Cathy Judd-Stein
Helen Caulton Harris
Rep. Angelo L. D'Emilia
Sen. Fattman
Brian Lang
Sen. Lesser
Victor Ortiz
Paul Picknelly
Rep. Ann-Margaret Ferrante

2:12 p.m. Call to Order

Meg Mainzer-Cohen, Chair, called the meeting to order, explaining the Governor's Covid-19 provision for the use of technology in public meetings.

The Chair called attendance and determined a quorum of seven.

The Chair then opened with some brief comments regarding the agenda, especially the importance of the GPAC's approval of the Research Agenda. She also noted that there would be information on casino impacts due to the pandemic, and Community Mitigation Fund updates.

Ms. Judd-Stein, Chair of MGC's Commissions offered remarks. She encouraged the committee's advice and input. The Commission Chair also applauded how well the casinos reacted to the challenges of the pandemic and the resulting closures, as well as their cooperation and collaboration with the MGC. Ms. Judd-Stein stated, "The Commission has been consistently impressed with casino leadership in this state and the prioritization for safeguarding employees and citizens." She stated that resilience was an important part of consideration for licensing and that resiliency was seen in their reactions to the Covid-19 crisis. Ms. Judd-Stein also provided some personnel updates for the Commission.

An overview of the Community Mitigation Fund was provided, with Ms. Judd-Stein explaining that the fund existed to offset negative impacts in the casino communities. She stated that 37 grant applications were received for the previous year's round of funding, on 1/31/2020. MGC had transitioned to remote operations on 3/16/20, so the entire review and determination process was conducted online. Grant awards were made by 6/30/20, with 24 community grants totaling 6.7 million dollars.

Joe Delaney, Chief of the Commission's new division of Community Affairs, offered updates

regarding the current Community Mitigation Fund (CMF) cycle. Throughout the Fall of 2020, the CMF team worked on developing and revising the guidelines. A number of meetings were held with local community advisory committees and subcommittees for input, and the new guidelines were approved by the commission on 11/19/20. A new category was added this year, emergency mitigation. This category would allow a community to apply to the program outside of the regular cycle if something new should need to be addressed nimbly. The RFR for the 2021 cycle was posted ahead of the usual schedule. Informational workshops with prospective applicants were held for this first time, designed to improve outreach and communications. The sessions focused on explaining the overall program and provided best practices to better identify projects and improve applications. About 100 people attended and provided great feedback. Twenty-eight applications were received on February 1st for a request of 6.9 million dollars. The total requests were down from 2020, partially due to the pandemic but the process also found that applicants are challenged to connect the requests to the casino, and that is a requirement. The review and evaluations process is underway, and will take place remotely again this year.

Ms. Judd-Stein provided background on Ms. Mainzer-Cohen, stating that Governor Baker appointed her as Chair of the GPAC in December. Currently the Executive Director of the Back Bay Association since 2000, GPAC's new Chair has a long history of serving communities including the Downtown Crossing Association and Somerville Community Corporation. Ms. Judd-Stein turned the meeting over to Chair Mainzer-Cohen.

2:26 Approval of Minutes

The Chair noted that she had been advised that the Committee would not be able to approve the minutes from the meeting on 7/11/19 due to lack of quorum. There were no modifications or abstentions. Those minutes will be posted as a draft to the MGC website.

2:28 Research Agenda for 2020

Mark Vander Linden, Director of Research and Responsible Gaming provided background on where we are to date with research and reports. He explained how Ch23K, section 71 provides language prescribing the GPAC to advise on the development of a gaming research agenda. Vander Linden explained that what could be explored in relation to gambling had a wide net, and that there was a need for ongoing discussion regarding the research agenda. He spoke to the key principles of a responsible gaming framework and provided a slide which described some of the parties and individuals the MGC works with to perform the analysis (including MAGIC and SEIGMA). Vander Linden described that they had recently created the "Massachusetts Open Data Exchange" (MODE) so researchers throughout the state and other jurisdictions can utilize the data collected in Massachusetts to be used for research in understanding the impacts of gambling.

Vander Linden discussed some of the research findings, including the harm reduction strategies research results. He stated that the next MAGIC study release webinar would be March 31st and welcomed every GPAC member to attend.

Vander Linden explained that in previous years, a budget accompanied the proposed research. This year is different because of the pandemic and the closures, resulting in an uncertain amount of funds being deposited to the Public Health Trust Fund, so the outline is proposed without a budget. Vander Linden assured that as every other year, they will strive to maximize the funds that are available and scale each project as necessary.

The FY22 proposed research plan is consistent with previous categories of research and analysis. It includes:

Social and Economic Research- This encompasses information about changes in problem gaming, at-risk gambling and attitudes about gaming, and is statutorily required. It is time-sensitive in order to understand the true impacts and attribute any changes directly to the casinos as opposed to anything else that may have happened during that time. It also includes the Encore Boston Harbor license plate and patron survey, which assists with determining whether the legislation did keep locals gaming in MA, while driving competitiveness from outside states. Lottery data comes into play, as well.

Public Safety Research- An analysis had been done in each of the casino host and surrounding communities at regular intervals. The study tracks changes in public safety, crime, calls for service and collisions over time and compares to a baseline of five years prior to the opening of each facility.

Community-Engaged Research- Including the Asian Cares project.

Data Sharing- Section 97 requires MGC to collect player card data from our licensees. Hopeful that we could make an initial deposit of that data into the repository this year.

Responsible Gaming Evaluation- In FY22, MGC will have a partner from Carlton University to evaluate Play My Way, which will be implemented at MGM in September. Funding for the evaluation is provided by the International Center for Responsible Gaming. MGC would also like to evaluate the GameSense program, which was intended to be performed last year, but was derailed due to casino closures.

Vander Linden also stated that it's important for there to be peer review of each MGC research deliverable. This would be done via independent consultants to the Commission.

After his presentation, Vander Linden welcomed the feedback of the GPAC.

Chair Mainzer-Cohen stated that she found the research and agenda very interesting. Members of committee likely have some salient points or questions.

Paul Picknelly requested to review the executive summaries. Mr. Vander Linden said he could meet with committee members individually or schedule a separate meeting to review those in greater detail.

Brian Laing applauded the wealth of information. He noted he would like to see even more research on the economic side, including reports for EBH on the impact and employment such as analysis of wages by category, with a review including health care and benefit plans. Laing also stated that he wanted to see more comparison of the casinos to each other.

Vander Linden stated there is an ongoing casino monitoring operations report which is likely to come out next fiscal year with some similar intentions, but that he would carry forward the advice.

Ms. Mainzer-Cohen inquired about the status of the public safety studies. Mr. Vander Linden described a model which was built after PPC opened to collect and analyze the public safety data, engaging Christopher Bruce, a crime analyst and Commissioner Cameron who has law enforcement background. He explained the importance of engaging with public safety officials to not only get their buy-in but understand how they'd utilize the analysis. A meeting was held which released a draft report to MGM/host and surrounding committees. He stated that the model MGC is pursuing is challenging, but the data and insights are very good.

Mr. Picknelley asked if the GPAC would get a copy of those reports when they come out, and Mr. Vander Linden stated that he would ensure that this body receives the research as soon as its available.

With no further discussion, the Chair encouraged people to email regarding further questions and comments.

3:00 Pandemic Impacts on Casino Industry

Chair Mainzer-Cohen introduced Bruce Band, Deputy Director of IEB and Division Gaming Chief and Burke Cain, who provided an overview of what was done on the casino floor in the wake of the pandemic, coordinating the closure of a casino, and reopening safely for both patrons and employees.

Mr. Band stated it was extremely rare to close down a casino, and that it involved extensive detail: securing of chips, people who would need a way to redeem the chips they had at home, slot tickets (which traditionally only have a year to redeem, etc). They did change certain rules with casino closures unknown. Securing the building was a major challenge, given it was designed never to close, and some doors didn't even have locks. Gaming agents are usually on site 24/7, but no longer would be, so there was a need to evaluate how to have surveillance, even with casinos closed. Money would need to get to the banks in time for the closures and items such as alcohol, gaming equipment would need to be secured while closed. In total, there were about 2-3 days to work with licensees and staff to shut down the operations.

Mr. Band and Mr. Cain also discussed the process to reopen, which involved not only the MGC and the licensees, but reviewing plans with state police. Money would need to be brought back into the building, plans for adequate staffing and supplies were evaluated, and ensuring compliance with state covid measures. There was concern about the safety of dealers as well as the safety of patrons.

Jacqui Krum, of Encore Boston Harbor, provided an overview of the process from a licensee perspective. She stated that they engaged public health professionals to assist in the process, and representatives from Macao, who had experienced similar scenarios. All of Encore Boston

Harbor's employees and their benefits were paid for 75 days. Upon reopening there were issues to address that hadn't been necessary before- such as parking when returning to work, to avoid public transit and the patrons not being able to carry drinks around, as state mandates determined. There was training on mask etiquette, putting out over 173 signs to set up and arrange, announcements day and night reminding about social distancing and masks. They installed over 1,700 sheets of plexiglass between slot machines and gaming tables, in front of rewards card members and restaurants. The entrances require elevators so Encore had to figure out how to revise entrance and exit plans. They could also no longer utilize the employee cafeteria the same way. There was not just the casino floor, but the property had to implement state guidance for restaurants, retail, office space, hotels, etc.

Ms. Krum stated that one of the biggest challenges was determining how many employees would be able to come back, and what retraining would be needed. In the end, Krum states Encore had a successful reopening, with Cpvind-19 testing on site for every employee. They developed a protocol for symptoms and/or positive tests and started their own contact tracing. Currently, they're looking into vaccination availability for employees. Operating hours are now re-established, and the hotel was open on weekends.

3:22 Committee Member Updates

Committee members inquired whether the committee could be asked to give input for next year's Community Mitigation Fund guidelines. Mr. Delaney stated that the subcommittee on CMF usually is dedicated to that, but there have been challenges reaching quorum. Local committees and towns do provide their comments, though.

There was no other input from members.

Next Meeting

Chair Mainzer-Cohen stated they would look into having a second meeting in May/June and would look into availability, and ask for topics of interest.

3:22 Committee Member Updates

Having no further business, the meeting was adjourned by Chair Mainzer-Cohen.

/s/ Crystal Howard
Program Manager

Documents and Other Items Used

1. Notice of meeting and agenda PDF
2. List of Members DOC
3. GPAC Minutes from 11.12.19 Draft PDF
4. Cohen Appointment to GPAC Press Release PDF
5. Community Mitigation Fund Informational DOC
6. Community Mitigation Fund Awards Press Release PDF
7. GameSense Information PDF
8. Memo: Research and Responsible Gaming Framework and Agenda PDF
9. MA Gaming Research and Proposed FY22 Plan PPT



TRIBAL LITIGATION UPDATE

A SUMMARY OF THE CURRENT STATE OF AFFAIRS

TODD GROSSMAN - GENERAL COUNSEL

CAITLIN MONAHAN - ASSOCIATE GENERAL COUNSEL

JUNE 14, 2021

MGC OBLIGATIONS CONCERNING TRIBAL MATTERS

Chapter 23K, Section 67 provides in pertinent part:

“The commission shall continue to evaluate the status of Indian tribes in the commonwealth including, without limitation, gaining federal recognition or taking land into trust for tribal economic development.”

INDIAN REORGANIZATION ACT

- “The Indian Reorganization Act (IRA or Act) authorizes the Secretary of the Interior...to acquire land and hold it in trust ‘for the purpose of providing land for Indians.’” *Carcieri v. Salazar*, 555 U.S. 379, 381-82 (2009) (citing 25 U.S.C. § 465)
- “The Secretary’s authority under the IRA is cabined by whether a tribe meets the statute’s definition of ‘Indian,’ found in Section 19 of the [IRA] and codified at 25 U.S.C. § 5129” *Mashpee Wampanoag Tribe v. Zinke*, 2019 WL 2569919, *1 (D.D.C. July 21, 2019).



DEFINITION OF “INDIAN”

“The term 'Indian' as used in this Act shall include

[1] all persons of Indian descent who are members of any recognized Indian tribe **now under Federal jurisdiction**, and

[2] all persons who are descendants of **such members** who were, on June 1, 1934, residing within the present boundaries of any Indian reservation, and shall further include

[3] all other persons of one-half or more Indian blood.”

25 U.S.C. § 5129 (emphasis added)

CARCIERI v. SALAZAR, 555 U.S. 379 (2009)

- **Issue:** How to “interpret the statutory phrase ‘now under Federal jurisdiction’ in [the IRA’s first definition of ‘Indian’].” *Carcieri*, 555 U.S. at 382.
 - “The term 'Indian' as used in this Act shall include [1] all persons of Indian descent who are members of any recognized Indian tribe **now** under Federal jurisdiction, and [2] all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation, and shall further include [3] all other persons of one-half or more Indian blood.” 25 U.S.C. § 5129 (emphasis added).
- The Supreme Court held that “the term ‘now under Federal jurisdiction’ in § 479 unambiguously refers to those tribes that were under the federal jurisdiction of the United States when the IRA was enacted **in 1934**.” *Carcieri*, 555 U.S. at 394. (emphasis added).
- The majority did not explain how to interpret “under Federal jurisdiction.”

M-OPINION (MARCH 2014)

- In response to *Carcieri*, on March 12, 2014, the Solicitor of the DOI issued a memorandum (M-37029) to the Secretary entitled “The Meaning of ‘Under Federal Jurisdiction’ for Purposes of the Indian Reorganization Act” (known as the ‘M-Opinion’).
- The M-Opinion outlined how to interpret “the phrase ‘under Federal jurisdiction’ in the IRA for the purposes of determining whether an Indian tribe can demonstrate that it was under federal jurisdiction in 1934.” M-Opinion at 1.



M-OPINION, CONT.

- The M-Opinion sets out a two-part inquiry to determine whether a tribe was “under Federal jurisdiction”
 1. Whether there is a sufficient showing in the tribe’s history, at or before 1934, that it was under federal jurisdiction, *i.e.*, **whether the United States had**, in 1934 or at some point in the tribe’s history prior to 1934, **taken an action or series of actions** – through a course of dealings or other relevant acts for or on behalf of the tribe or in some instances tribal members – **that are sufficient to establish, or that generally reflect federal obligations, duties, responsibility for or authority over the tribe by the Federal Government.** M Opinion at 19.
 2. Whether the tribe’s jurisdictional status remained intact in 1934. *Id.*
- A signed M-Opinion binds the Department and its officials until modified by the Solicitor, Deputy Secretary, or Secretary or is otherwise overruled by the courts. *See Mashpee Wampanoag Tribe v. Bernhardt*, 466 F. Supp. 3d 199 (D.D.C. 2020).



THE MASHPEE WAMPANOAG TRIBE CASES

SECOND DEFINITION OF “INDIAN”

- 2015 BIA Record of Decision (2015 ROD)
- *Littlefield, et al. v. United States Dep’t of the Interior, et al.*, No. 16-10184-WGY (D. Mass)
- *Littlefield, et al. v. Mashpee Wampanoag Indian Tribe, et al.*, No. 16-2484 (1st Cir.)

FIRST DEFINITION OF “INDIAN”

- 2018 BIA Record of Decision (2018 ROD)
- *Mashpee Wampanoag Tribe v. Bernhardt, et al.*, No. 18-2242 (D.D.C.)
- *Mashpee Wampanoag Tribe v. Bernhardt, et al.*, No. 20-5237, 20-5238 (D.C. Cir.)

OVERVIEW OF MASHPEE WAMPANOAG CASES

- The *Littlefield* cases in D. Mass and the First Circuit have concluded
 - Statutory Interpretation: The use of "such" in the second definition of "Indian" includes the complete antecedent “members of any recognized Indian tribe now under Federal jurisdiction.”
 - 2015 ROD Flawed: Because the IRA unambiguously foreclosed the BIA’s interpretation of the second definition of Indian in the 2015 ROD, the Secretary lacked authority to take land into trust for the benefit of the Tribe.
- The *Mashpee Wampanoag Tribe v. Bernhardt* cases in D.D.C. and the D.C. Circuit have concluded
 - 2018 ROD Flawed: 2018 ROD was arbitrary, capricious, an abuse of discretion, and contrary to law because it “did not evaluate the evidence in accordance with the directives of the M-Opinion.”
 - Remand: ROD Remanded to DOI “for a thorough reconsideration and re-evaluation of the evidence before [it]...”

OVERVIEW, CONT.

- The RODs remain on remand
- Awaiting new record of decision from DOI regarding whether the Mashpee Wampanoag Tribe meets the first definition of “Indian’ under the IRA and, in turn, whether land may remain in trust for the Tribe
- A temporary stay prohibits the DOI from taking any steps to alter the *status quo ante* with respect to the land in Mashpee and Taunton that was taken into trust in November 2015
- Per the Indian Gaming Regulatory Act (25 USC § 2701, *et seq.*), the Tribe may not operate an Indian casino without land in trust

SEPT. 2015 BIA RECORD OF DECISION (2015 ROD)

- In September 2015, the Bureau of Indian Affairs announced the DOI's determination that: 1) it would acquire in trust the Mashpee and Taunton Sites, 2) it would proclaim these lands to be the Tribe's reservation, and 3) the Mashpee and Taunton Sites were eligible for gaming under the 'initial reservation exception' of the Indian Gaming Regulatory Act. 2015 ROD at ii.
- **Issues Addressed in 2015 ROD:**
 1. To what does the term "such" in the IRA's second definition of Indian apply?
 2. Does the Mashpee Wampanoag Tribe meet the definition of "Indian" under the second definition of the IRA?



2015 ROD, CONT.

- The BIA determined that “such” refers only to “members of any recognized tribe’ but not the phrase ‘now under Federal jurisdiction’ which modifies only the first definition of ‘Indian.’” 2015 ROD at 94.
 - “The term 'Indian' as used in this Act shall include [1] all persons of Indian descent who are **members of any recognized Indian tribe** now under Federal jurisdiction, and [2] all persons who are descendants of **such members** who were, on June 1, 1934, residing within the present boundaries of any Indian reservation, and shall further include [3] all other persons of one-half or more Indian blood.” 25 U.S.C. § 5129 (emphasis added).
- Using that interpretation, the BIA found that the Tribe met the second definition of Indian
- In rendering its decision, the DOI did not determine whether the Tribe was “under Federal jurisdiction” in 1934
- DOI took land into trust for the Tribe in November 2015

LITTLEFIELD v. U.S. DEP'T OF INTERIOR (D. MASS 2016)

- Citizen group appeal of 2015 ROD and land in trust status of Mashpee Wampanoag Tribe.
- **Issues:**
 1. To what does the term “such” in the IRA’s second definition of Indian apply?
 2. Does the Mashpee Wampanoag Tribe meet the second definition of “Indian” under the IRA?

LITTLEFIELD v. U.S. DEP'T OF INTERIOR, CONT.

- Judge Young issued his opinion on July 28, 2016. 199 F. Supp. 3d 391.
- Contrary to the BIA rationale, Judge Young interpreted the term “such members” to refer back to the full clause in the first definition: “all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction.” 199 F. Supp. 3d at 400.
- The BIA had not determined whether the Tribe was “under Federal jurisdiction” in the 2015 ROD. Dkt. 121. Therefore, based on the 2015 Decision, the Tribe did not qualify as “Indian” under the second definition of the IRA and the Secretary lacked the authority to acquire land in trust. 199 F. Supp. 3d at 400.
- The factual question of whether the Tribe was under federal jurisdiction in 1934 was not before Judge Young
- Remanded to DOI for further proceedings. *Id.*
- Judge Young clarified that on remand, the DOI could analyze the Tribe’s eligibility under the first definition of “Indian” or reassess eligibility under the second definition consistent with the Court’s ruling on the proper interpretation of that definition. Dkt. 121.



LITTLEFIELD v. MASHPEE WAMPANOAG INDIAN TRIBE (1ST CIR. 2020)

- Tribe’s appeal to U.S. Court of Appeals for the First Circuit of Judge Young’s decision regarding the 2015 ROD.
- On February 27, 2020, the First Circuit affirmed Judge Young’s decision (951 F.3d 30):
 - Statutory Interpretation: The use of "such" in the second definition of "Indian" included the complete antecedent “members of any recognized Indian tribe now under Federal jurisdiction.” (emphasis added).
 - 2015 ROD Flawed: “Because the IRA unambiguously forecloses the BIA’s interpretation of 25 U.S.C. § 5129, the Secretary lacked authority to take land into trust for the benefit of the Tribe.”
- On March 27, 2020, the Secretary of the Interior directed the BIA to “rescind” the 2015 ROD “whereby the BIA accepted land into trust on behalf of the Tribe,” and to “revoke the reservation proclamation.” Such action was stayed by D.D.C.

SEPTEMBER 2018 DOI RECORD OF DECISION (2018 ROD)

- In response to Judge Young’s remand order, the DOI issued the 2018 Decision on September 7, 2018.
- **Issues Addressed in 2018 ROD:**
 1. Was the Tribe “under Federal jurisdiction” as of 1934?
 2. Does the Mashpee Wampanoag Tribe meet the first definition of “Indian” under the IRA?

2018 ROD, CONT.

- Applying the M-Opinion, the DOI concluded that “the evidence does not show that the Tribe was under Federal jurisdiction in 1934 within the meaning of the IRA’s **first definition of ‘Indian.’**” 2018 ROD at 28 (emphasis added).
- The DOI also determined that the Tribe does not “qualify under the second definition, as that definition has been interpreted by the United States District Court for the District of Massachusetts.” *Id.*

MASHPEE WAMPANOAG TRIBE v. BERNHARDT (D.D.C. 2020)

- Tribe challenged the 2018 ROD in the U.S. District Court for the District of Columbia, instead of D. Mass.
- **Issues:**
 1. Was the Tribe “under Federal jurisdiction” as of 1934?
 2. Does the Mashpee Wampanoag Tribe meet the first definition of “Indian” under the IRA?

MASHPEE WAMPANOAG TRIBE v. BERNHARDT, CONT.

- On June 5, 2020, Judge Friedman found that the 2018 ROD was arbitrary, capricious, an abuse of discretion, and contrary to law because it “did not evaluate the evidence in accordance with the directives of the M-Opinion.” 466 F. Supp. 3d 199 at 217-218.
 - “The Secretary’s incorrect application of the M-Opinion – evaluating the evidence in isolation and failing to view the probative evidence ‘in concert’ – taints every category of evidence that the Secretary discussed in the 2018 ROD.” *Id.* at 218.
 - Analysis in the 2018 ROD was also inconsistent with the DOI’s prior decisions and judicial precedent.
- Remanded to DOI “for a thorough reconsideration and re-evaluation of the evidence before [it] consistent with this Opinion, the 2014 M-Opinion...and the Department’s prior decisions applying the M-Opinion’s two-part test.” *Id.* at 236.

MASHPEE WAMPANOAG TRIBE v. BERNHARDT, CONT.

- On the same day, Judge Friedman also issued a temporary stay prohibiting the DOI from taking any steps to alter the *status quo ante* with respect to the land in Mashpee and Taunton that was taken into trust in November 2015. 2020 WL 3034854 (D.D.C. June 5, 2020).
- The stay prohibits the DOI from 1) taking any steps to take the land out of trust, or 2) rescinding the proclamation that the Trust Land is the Tribe's reservation.
- The stay shall last until 14 days after the DOI issues a decision on remand that conforms with the 2014 M-Opinion.

MASHPEE WAMPANOAG TRIBE V. BERNHARDT (D.C. CIR.)

- On August 7, 2020, the DOI and a citizen group filed notices of appeal of Judge Friedman’s decision in the Court of Appeals for the D.C. Circuit. (D.C. Cir.)
- On February 19, 2021, the DOI and the citizen group moved to dismiss their appeals voluntarily; the appeals were dismissed
- Judge Friedman’s June 2020 Order stands
 - 2018 ROD Flawed: 2018 ROD was arbitrary, capricious, an abuse of discretion, and contrary to law because it “did not evaluate the evidence in accordance with the directives of the M-Opinion.”
 - Remand: ROD Remanded to DOI “for a thorough reconsideration and re-evaluation of the evidence before [it]...”

NEXT STEPS

- Now awaiting the DOI's decision on remand from Judge Friedman regarding whether the Tribe meets the first definition of "Indian" under the IRA and, in turn, whether the land in Mashpee and Taunton may remain in trust for the Tribe.
- Per the Indian Gaming Regulatory Act (25 USC § 2701, *et seq.*), the Tribe may not operate an Indian casino without land in trust
 - 25 USC § 2701(5) – "**Indian tribes have the exclusive right to regulate gaming activity on Indian lands** if the gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity."
 - 25 USC § 2703(4) – "**The term 'Indian lands' means**– (A) all lands within the limits of any Indian reservation; and (B) **any lands title to which is either held in trust by the United States for the benefit of any Indian tribe** or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power."



WAMPANOAG TRIBE OF GAY HEAD (AQUINNAH) CASE

- Case in D. Mass/First Circuit in which the parties have disagreed over 1) whether federal or state gaming law applies to a gaming facility built by the Wampanoag Tribe of Gay Head (Aquinnah) on Martha's Vineyard, and 2) whether the Tribe must comply with state and local permitting laws and regulations in the building of a gaming facility
- On remand from the First Circuit, Judge Saylor entered a final judgement providing that 1) any gaming facility constructed and operated by the Tribe on the lands at issue is not subject to state and local laws and regulations concerning gaming, and 2) that any such facility is otherwise subject to state and local regulation, including any applicable permitting requirements. 390 F. Supp. 3d 183 (D. Mass. 2019).
- The Tribe appealed the latter portion of the judgment concerning the permitting issue



WAMPANOAG TRIBE OF GAY HEAD (AQUINNAH) CASE, CONT.

- On February 25, 2021, a First Circuit panel affirmed Judge Saylor's judgment, ruling that the Tribe had waived its right to appeal the permitting issue. 989 F.3d 72.
- On April 5, 2021, the Tribe's motion for a panel rehearing or rehearing en banc was denied
- The Tribe may still petition the Supreme Court for a writ of certiorari
- The Tribe may move forward with building a Class II gaming facility in line with the aforementioned state and local laws and regulations
- Because the Tribe intends to build a Class II facility, as opposed to a Class III facility, it does not need a compact with the Commonwealth



FEDERAL LEGISLATION

- In January 2019, Representative Keating (along with 35 co-sponsors including the MA delegation) introduced a bill in the U.S. House of Representatives (H.R. 312)(a refile), titled the “Mashpee Wampanoag Tribe Reservation Reaffirmation Act.”
- The bill would:
 - ✓ Reaffirm the Tribe’s trust land;
 - ✓ Ratify and confirm the Secretary’s actions taking the land into trust; &
 - ✓ Preclude filing of further matters, and dismiss pending federal litigation concerning this matter.
- The bill was passed/agreed to in the House on May 15, 2019 (275-146). The bill was received in the U.S. Senate and placed on the Legislative Calendar on May 20, 2019.
- No further activity was reported in the 116th Congress
- The bill has not been reintroduced in the current 117th Congress.



APPENDIX



TIMELINE OF RELEVANT EVENTS

June 18, 1934: *Indian Reorganization Act* enacted.

February 15, 2007: Mashpee Wampanoag Tribe obtains federal recognition from BIA.

February 24, 2009: *Carcieri v. Salazar*, 555 U.S. 379 (2009) decided.

November 22, 2011: *An Act Establishing Expanded Gaming in the Commonwealth* (Chapter 194 of the Acts of 2011) enacted.

March 19, 2013: Compact between Commonwealth and Mashpee Wampanoag Tribe executed.

March 12, 2014: DOI issues formal guidance re: how to interpret the phrase “under federal jurisdiction” in the IRA’s first definition of “Indian” (“M-Opinion”).

September 18, 2015: DOI grants Tribe’s fee-to- trust

application based on second definition of “Indian.” (2015 ROD).

January 8, 2016: Land in Mashpee and Taunton was taken into trust by Sec. of Interior.

February 4, 2016: Local residents challenge grant of 2015 fee-to-trust decision in U.S. District Court for the District of Massachusetts (D. Mass.) (*Littlefield*).

April 28, 2016 - Region C decision denying application.

July 28, 2016: D. Mass. (Young, J.) held that DOI lacked authority under the IRA to acquire land in trust for the tribe (2015 DOI decision) under second definition of “Indian” “because they were not under federal jurisdiction in June 1934” and remanded to DOI. (*Littlefield*, 199 F. Supp. 3d 391).



TIMELINE OF RELEVANT EVENTS, CONT.

October 12, 2016: D. Mass. clarifies that its finding that the Tribe was not under federal jurisdiction in 1934 would not be binding on DOI on remand. (DOI could analyze eligibility under first definition or reassess under second definition). (No. 16-10184, Dkt. 121).

December 12, 2016: Parties appeal D. Mass. decision to U.S. Court of Appeals for the First Circuit (1st Cir.).

September 7, 2018: DOI issues remand decision that Tribe was not “under federal jurisdiction” as of 1934 and could not qualify as eligible beneficiaries under first or second definition of “Indian.” (2018 ROD).

September 27, 2018: Tribe files complaint in U.S. District Court for the District of D.C. (D.D.C.) challenging Sept. 2018 DOI decision. (*Bernhardt*).

May 15, 2019: *Mashpee Wampanoag Tribe Reservation Reaffirmation Act* passes in U.S. House of Representatives

February 27, 2020: 1st Cir. affirms D. Mass decision in *Littlefield*, finding that the IRA forecloses the BIA’s interpretation re: second definition of “Indian” and the Sec. of Interior lacked authority to take the land into trust. (951 F.3d 30).

March 9, 2020: DOI withdraws 2014 M-Opinion

March 10, 2020: DOI issues memorandum outlining new, four-step procedure for determining eligibility under the first definition of “Indian.”



TIMELINE OF RELEVANT EVENTS, CONT.

March 27, 2020: Letter from Sec. of Interior to BIA noting that *Littlefield* decision was final and directing BIA to rescind the 2015 ROD “whereby the BIA accepted land into trust on behalf of the Tribe,” and to “revoke the reservation proclamation.”

June 5, 2020: D.D.C. finds that the Sec. of Interior misapplied the M-Opinion in issuing the 2018 Decision and remands to DOI for “a thorough reconsideration and re-evaluation of the evidence.” (466 F. Supp. 3d 199).; and D.D.C. prohibits DOI from taking any steps to alter the *status quo ante* with respect to the land taken into trust. Temporary stay to last until fourteen days after DOI issues a decision on remand. (2020 WL 3034854).

August 7, 2020: DOI (and others) appeal D.D.C. decision in the Court of Appeals for the D.C. Circuit. (D.C. Cir.)

February 19, 2021: DOI (and others) move to dismiss D.C. Cir. Appeal voluntarily and appeal is dismissed.

April 27, 2021: DOI reinstates 2014 M-Opinion





PLAY MY WAY

GAMING POLICY ADVISORY COMMITTEE

JUNE 14, 2021



Voluntary Self-Exclusion

What is PlayMyWay?

PlayMyWay (PMW) is a first-of-its-kind budgeting tool designed to allow players the ability to monitor the amount of money they spend on electronic gaming machines.

- PMW was launched as a pilot at Plainridge Park Casino in 2016
- PMW is scheduled to launch at MGM in September 2021 and Encore Boston Harbor in September 2022.



What is Pre-Commitment?

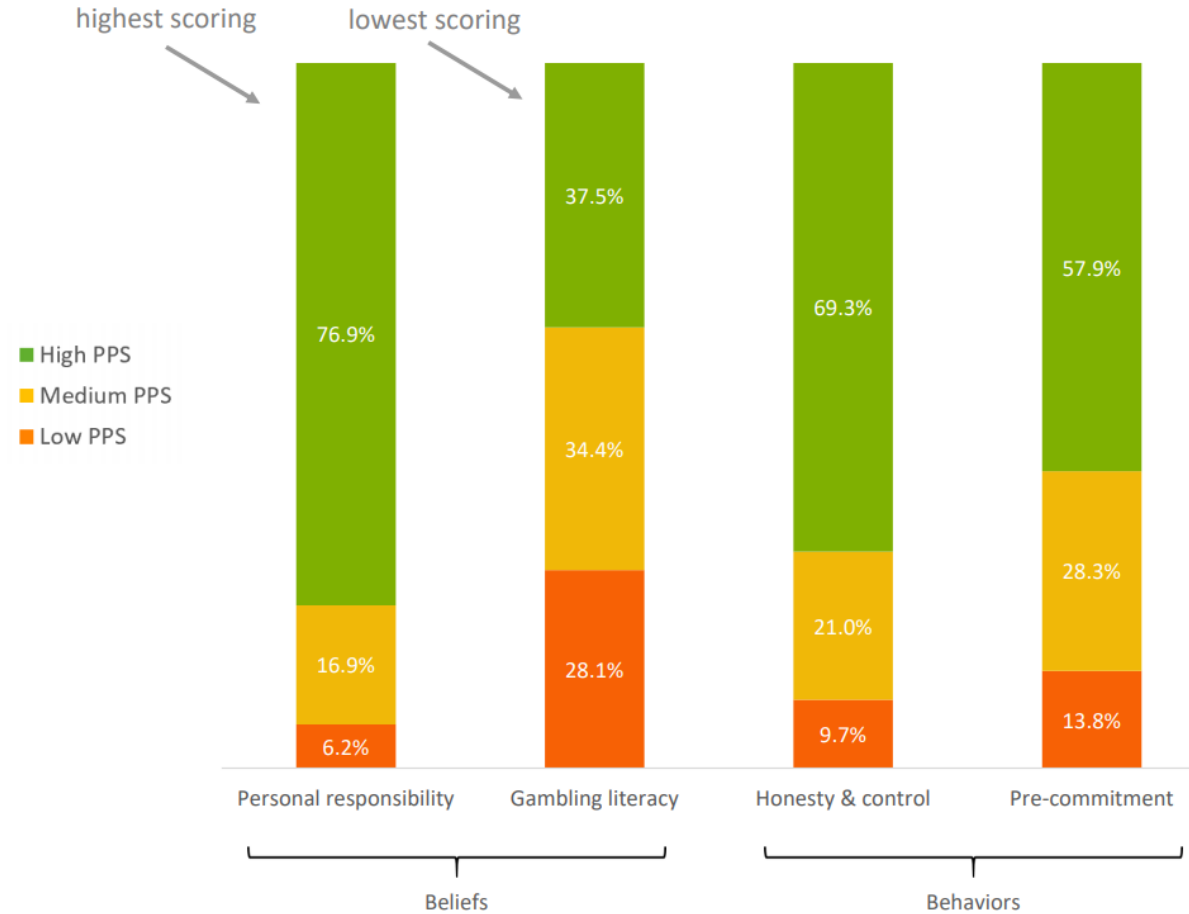
"A decision taken in the present in order to limit options in the future"

"A system that enables gamblers to set money and time limits expenditure prior to the commencement of a session of play."



Measuring Responsible Gambling In MA

PPS scores: all players



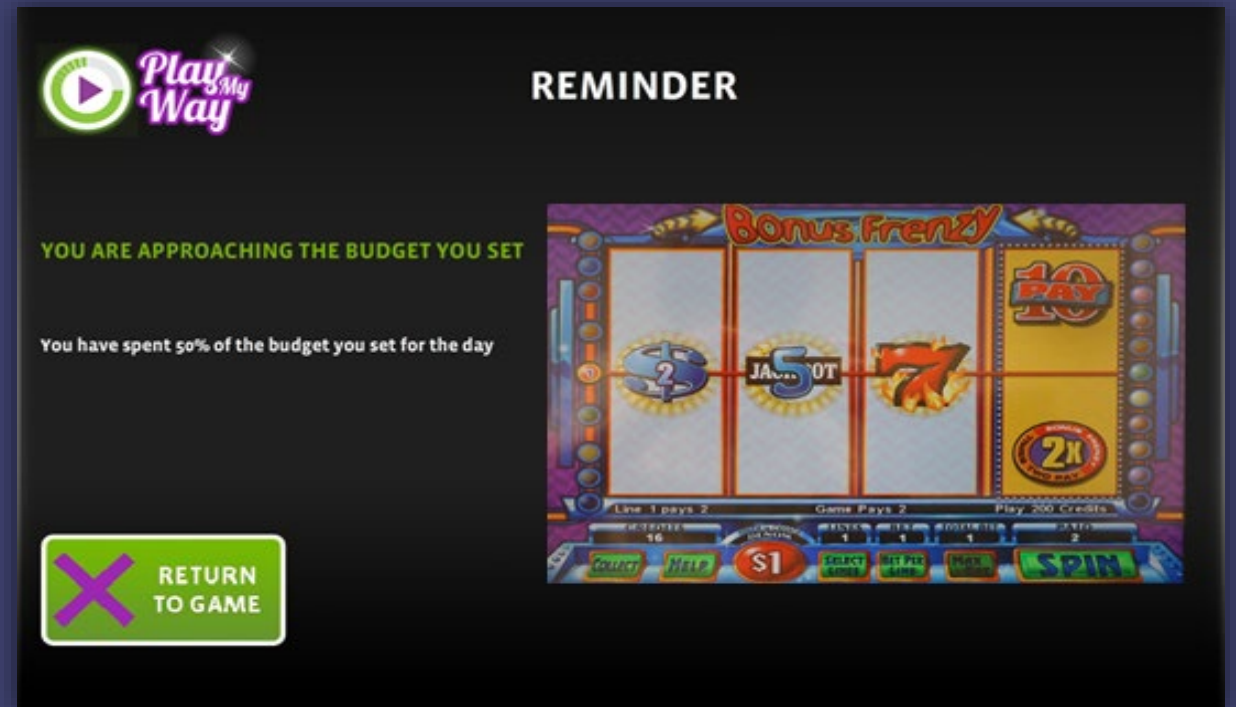
These results suggest that strategies to improve players' *gambling literacy* and *pre-commitment* should be considered for Massachusetts players

A 2013/14 population-based survey of gambling behavior in MA found that in the last 12 months...

- 8.8% of respondents said that when they gambled, they go back another day to try to win back money lost.
- 7.7% have made attempts to either cut down, control or stop gambling.
- 12.7% have felt guilty about the way they gamble or what happens when they gamble.

The PlayMyWay system

- Available to player reward cardholders
- Voluntary system
 - Daily, weekly, monthly loss budgets
 - Notifications: 50%, 75%, 100%, 125%...
 - Users can play beyond their budgets.
- At EGMs or GameSense kiosks players can:
 - Enroll, un-enroll, set budgets, change budgets, and check their spending
 - Changes take effect immediately





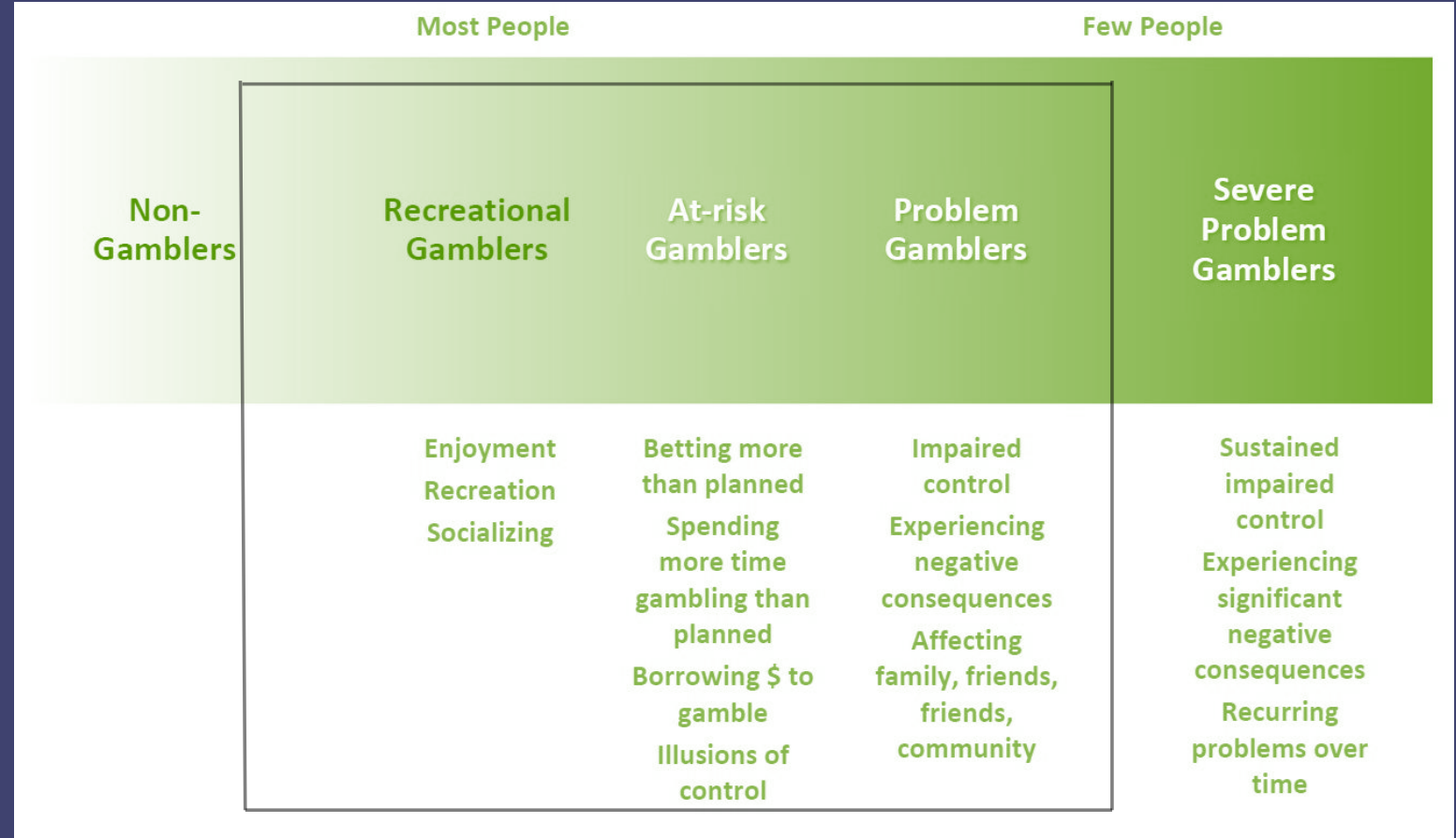
Program Goals



- 1) Sustain recreational gambling by establishing feasible parameters
- 2) Eliminate the regret arising from loss of control



Target Audience

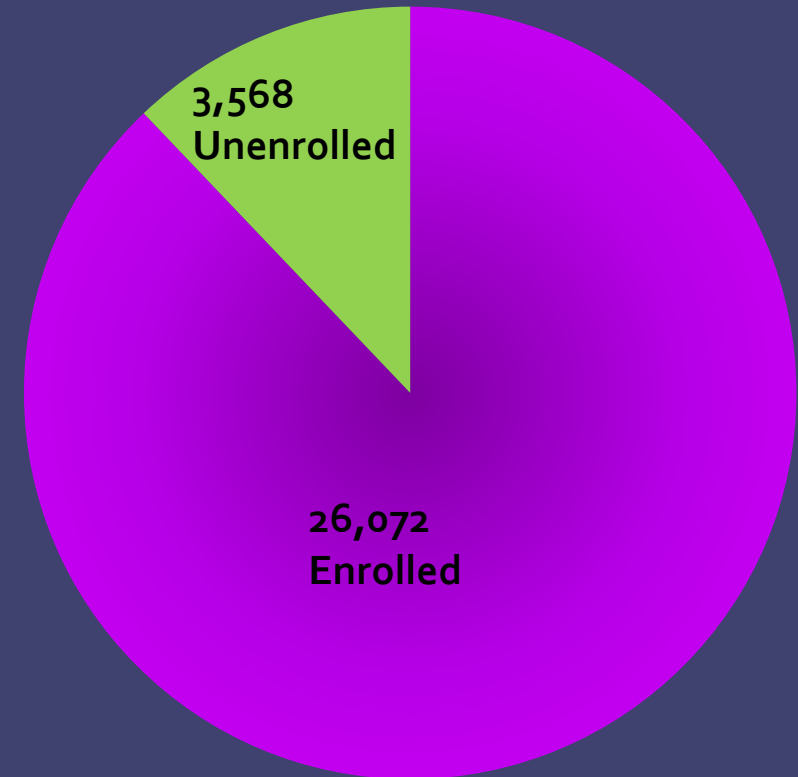




PlayMyWay Reach

- Roughly 29% of eligible players at the casino have ever enrolled in PlayMyWay.
- Unenrollment has consistently been between 10 and 15% of total enrollment

PMW Enrollments June 2016-October 2020





Where Do We Go From Here

- Development of PMW with IGT for launch at MGM Springfield (Sept 21) and Encore Boston Harbor (2022).
- Communication collaboration with MGM, MCGH.
- Enhancements to notifications.
- Launch evaluation wave 3 (ICRG/Carleton University).
- Upgrade PMW at Plainridge Park Casino.



Thank You!

Mark.vanderlinden@massgaming.gov

PlayMyWay and GameSense Evaluation:
<https://massgaming.com/about/research-agenda/>

More information about the MGC's responsible gaming programs:
<https://massgaming.com/about/commitment-responsible-gaming/>



21 | COMMUNITY MITIGATION FUND

2021 Community Mitigation Fund Summary

This memo summarizes the grant awards made pursuant to the 2021 Community Mitigation Fund (CMF). For 2021, the CMF Review Team modified the approach for completing the review and approval of grant applications by bringing recommendations to the Commission at four separate meetings. In doing this, it helped spread out the workload and allow for a more focused review on specific grant categories. This memo presents the grant awards in several ways to demonstrate how the funds are being expended statewide, by Region and by individual award.

2021 Target Spending Amounts

The CMF Guidelines established an overall 2021 spending target of \$12.5 million with \$6 million for Region A, \$6 million for Region B and \$500,000 for the Category 2 facility. \$200,000 has been set aside for the Tribal Gaming Technical assistance and \$200,000 for Emergency Mitigation Grants, which do not count against the \$12.5 million target. The Tribal Assistance Grant was funded under a previous grant round and the Emergency Mitigation Grant will be funded out of surplus funds should an application be received.

2021 Grant Applications Received

The Commission received 28 grant applications totaling approximately \$5.6 million. Both the number of grants and the dollar figures are down significantly from the 2020 requests. There could be a number of reasons for this reduction including Covid-19 impacts, spending down previous grants and potential difficulty with identifying the nexus to casino related costs.

2021 Grant Awards

The Commission awarded 25 grants totaling \$4,849,000. The breakdown of the grants awards by category is:

Grant Category	Number of Awards	Value of Awards
Specific Impact	11	\$1,553,000
Transportation Planning	4	\$800,000
Transportation Construction	4	\$1,374,000
Workforce Development	2	\$800,000
Community Planning	4	\$322,000
Total	25	\$4,849,000

2021 Community Mitigation Fund Awards

2 | Page

The following is a breakdown of the applications and awards by category and region.

	Targeted Spending	APPLICATIONS			AWARDS		
		Region A	Region B	Cat 2	Region A	Region B	Cat. 2
Specific Impact	No Target	\$401,973	\$1,202,445	\$378,471	\$257,000	\$1,119,500	\$176,500
Transportation Planning	\$1,000,000	\$800,000	\$347,600		\$600,000	\$200,000	
Transportation Construction	\$4,000,000	\$1,173,726	\$200,000		\$1,174,000	\$200,000	
Workforce Development	\$800,000	\$350,000	\$342,551		\$400,000	\$400,000	
Community Planning	No Target	\$347,500	\$75,000		\$247,000	\$75,000	
Tribal Gaming Technical Assistance	\$200,000						
Emergency Mitigation Grant	\$200,000						
Totals:		<u>\$3,073,199</u>	<u>\$2,167,596</u>	<u>\$378,471</u>	<u>\$2,678,000</u>	<u>\$1,994,500</u>	<u>\$176,500</u>

2021 Community Mitigation Fund Awards

3 | Page

The following are summaries of the various types of grants with brief project descriptions and the awards determined by the commission.

2021 SPECIFIC IMPACT GRANTS

The limit on specific impact grants is \$500,000 per community. Below are descriptions of the applications and awards for a Specific Impact Grant.

Region	Applicant	Description	Amount Requested	AWARD
A	Everett-Lighting	Installation of lighting controls and surveillance on Lower Broadway and surrounding areas.	\$30,000	\$30,000
A	Everett - Fire	Funding for EMT training and supplemental equipment purchases.	\$156,753	\$157,000
A	Everett - Police	Funding for additional late-night service calls and supplemental equipment purchases.	\$215,220	\$70,000
Cat. 2	Foxborough Police	Funding to pursue specialized training for personnel in a variety of areas and equipment to enhance capabilities.	\$283,130	\$81,000
B	Hampden DA	Continued funding for the purpose of mitigating the impact of the casino and casino related matters on the District Attorney's Office. This will continue to be for personnel to handle casino-related prosecutions.	\$75,000	\$75,000
B	Hampden Sheriff	Continued funding for lease assistance for the Western Massachusetts Recovery and Wellness Center which was relocated from the MGM Casino site to 155 Mill Street Springfield, MA.	\$400,000	\$400,000
Cat 2	Plainville	Purchase of a van to transport prisoners and traffic mitigation equipment; and acquire an informational data collection sign board and enclosed traffic trailer, to house and transport traffic mitigation equipment.	\$95,341	\$95,500
B	Springfield - Police	Purchase of equipment and installation of improved technology in support of on-going Metro Unit/MGM policing strategies.	\$105,500	\$22,500
B	Springfield - Fire	Funding to purchase defibrillators for the apparatus that responds to the Casino Area.	\$21,945	\$22,000
B	Springfield - Blueprint	Funding to advance the implementation of the strategic opportunities identified in the Springfield Blueprint.	\$400,000	\$400,000
B	West Springfield-EMS	Funding for additional Police and Fire/EMS personnel hired to increase staffing for the impact to municipal services resulting from the opening of the MGM Casino in Springfield, MA.	\$200,000	\$200,000
Total:			\$1,982,889	\$1,553,000

2021 TRANSPORTATION PLANNING GRANTS

The target spending for Transportation Planning Grants for 2021 was \$1,000,000. The maximum amount of an individual Transportation Planning Grant is \$200,000, with a Regional Incentive Award of up to \$50,000 for joint applications.

Region	Applicant	Description	Amount Requested	AWARD
A	Boston	Continued funding for the design of long-term improvements to Sullivan Square/Rutherford Avenue in Charlestown.	\$200,000	\$200,000
B	Chicopee	Funding for the design of streetscape improvements to Chicopee Center. These will include complete streets elements to better plan for multi-modal uses and provide MGM employees and patrons safer and more equitable access to the Casino.	\$200,000	\$200,000
A	Everett - Mystic Riverwalk	Funding to complete a missing section of the Mystic Riverwalk between Mystic View Park and the Route 16.	\$200,000	\$200,000
A	Lynn	This request is for engineering design services and preparation of contract bid documents for improvements at the Boston Street at Hamilton Street and Northern Strand Community Trail (NSCT) intersection.	\$200,000	-0-
A	Malden	Funding for transportation design services for the Broadway corridor from Everett to Melrose and to prepare bid ready documents for a portion of the corridor closer to Everett.	\$200,000	\$200,000
B	West Springfield	This request is for design alterations and connectivity expansion to the approved Elm Street project; a small expansion in the project area to accommodate connection to a school under construction and other designed bicycle infrastructure.	\$147,600	-0-
Total:			\$1,147,600	\$800,000

2021 TRANSPORTATION CONSTRUCTION GRANTS

The Commission established a target of \$4 million for transportation construction grants. The maximum individual award is expected to be no more than \$1 million. Applicants must demonstrate that any transportation construction project will begin construction no later than June 30, 2021.

Region	Applicant	Description	Amount Requested	AWARD
A	Boston-Lost Village	Funding for geometric changes to the intersection of Brighton and Cambridge Streets in Charlestown, to create safer crossings and better line of sight for turning vehicles, as well as a fiber connection from Sullivan Square to Parker St.	\$238,900	\$239,000
A	Everett-Northern Strand	Funding for the addition of lighting on the Northern Strand Community Trail.	\$134,826	\$135,000
A	Revere & Saugus	Funding for a joint grant for limited improvements to the Route 1 North right of way from the proposed exit-entrance ramps to the Overlook Ridge development to Route 99.	\$800,000	\$800,000
B	Springfield-Dwight Street	Funding for the revitalization of Dwight St and Hampden St including roadway resurfacing, sidewalk and median improvements, bicycle accommodations, guardrails, and safety upgrades.	\$200,000	\$200,000
Total:			\$1,373,726	\$1,374,000

2021 WORKFORCE DEVELOPMENT GRANTS

The funding target for the 2021 Workforce Development Grants was \$800,000. The Commission anticipated a base award of \$300,000 in each Region with the potential for an additional \$50,000 for regional cooperation or an additional \$100,000 award for significant regional needs. After the original review and approval of the applications by the Commission, requests were submitted for an additional \$50,000 in funding for each applicant in order to bring the level of funding up to the amount targeted in the 2021 CMF Guidelines.

Region	Applicant	Description	Amount Requested	AWARD
B	Holyoke CC	<i>Work Ready 2021</i> is an enhancement of the collaborative effort of HCC, STCC, and SPS to provide a continuum of adult education, career readiness, and occupational training to connect un- and underemployed residents to education, training, and employment opportunities to meet the workforce needs of MGM Springfield and the region.	\$342,551	\$400,000
A	Masshire	MBRGHC is a regional project aimed at addressing the workforce needs of the hospitality sector impacted by the Encore Boston Harbor gaming facility. A consortium of partners will provide career and employment services, ESOL, and digital literacy trainings targeted at hospitality industry workers who have been impacted by the COVID-19 induced economic downturn.	\$350,000	\$400,000
Total:			\$692,551	\$800,000

2021 COMMUNITY PLANNING GRANTS

The Commission made funding available for certain community planning activities. There was no specific target spending in the Guidelines, however, the maximum value of a Community Planning Grant is \$100,000 per community.

Region	Applicant	Description	Amount Requested	AWARD
A	Chelsea/ Revere	Funding to develop tailored curricula for Contextualized ESOL Programs & Adult Digital Literacy classes. Curricula will be geared towards industries at the casino’s nexus complemented by adult digital literacy programs for non-English speakers.	\$97,500	\$97,500
A	Lynn	Funding to initiate a marketing campaign designed to mitigate the adverse effects on Lynn, its businesses and the newly instituted cultural district as a result of the operation of Encore Boston Harbor.	\$100,000	\$100,000
A	Malden-Broadway Zoning	Funding to complete a zoning and land use review of the Broadway corridor to help remove barriers to development and allow it to attract specific industry clusters.	\$50,000	\$50,000
A	Malden Center for the Arts	This request is to fund a study to redevelop the old Malden District Court building into a community Arts Center. This study is designed to determine the program of the building and develop concept designs for the interior renovations.	\$100,000	-0-
B	Northampton	Continued funding for the northampton.live platform marketing program for FY2022.	\$75,000	\$75,000
		Total:	\$422,500	\$322,500