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VIA E-MAIL AND HAND DELIVERY
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Massachusetts Gaming Commission
101 Federal Street, 12th Floor
Boston, MA 02210

Re: Region C: Response of Mass Gaming & Entertainment to Request for Public Comments

Dear Commissioners:

We write on behalf of Mass Gaming & Entertainment ("MG&E") in response to the Commission's request for public comments regarding MG&E's request for reconsideration of its application for the award of a Category 1 gaming license in Region C. As we have previously explained to the Commission's Executive Director Ed Bedrosian and General Counsel Catherine Blue, we are concerned that the questions that the Commission is now asking appear designed to further delay the Region C re-opening process and to create unnecessary roadblocks with respect to reconsideration of MG&E's proposal. *See, e.g.*, our letter to Mr. Bedrosian and Ms. Blue, dated October 16, 2018, a copy of which is attached as Exhibit A. In this regard, we note that, when the state legislature debated and ultimately passed the Expanded Gaming Act in 2011, a significant factor for many legislators in their decision to vote in favor of the legislation was the fact that the southern border of Massachusetts was already exposed to two Connecticut casinos, which were taking substantial tax revenue out of the Commonwealth. Today, seven years later, matters have taken a turn for the worse. We have approved casinos in greater metropolitan Boston and Springfield and a slot parlor in Plainville, but nothing in southeastern Massachusetts. In the meanwhile, just months ago, a new Rhode Island casino opened in Tiverton, mere steps from the Fall River line. And Rhode Island is about to commence sports betting in its casinos, which will take even more tax dollars out of Massachusetts. Instead of providing protection for our southeastern border, these past seven years have seen erosion. We ask that you stem the tide, and take the long delay that has already plagued Region C into account in determining how and when to reopen the commercial application process in that Region.

We also ask that you take public sentiment into account. Over the course of the past eight weeks, we have spoken with several state legislators and other public officials, including Brockton Mayor Bill Carpenter, and we have been approached by a number of Brockton citizens, all of whom have voiced strong support for MG&E's effort to have its casino license application reconsidered. Based on our discussions, we understand that numerous Brockton citizens, including union representatives, small business owners, teachers, and many others have either signed petitions or sent letters or emails

directly to the Commission asking for the prompt reopening of the Region C process and reconsideration of MG&E's application. As far as we can tell, Brockton citizens and many Brockton elected and appointed officials have recognized the potential for MG&E's proposed resort casino to revitalize and rebrand their city, improve public safety, rebuild Brockton's schools, and provide thousands of well-paying permanent jobs to Brockton natives and others from southeastern Massachusetts. We hope the Commission will recognize this same potential, listen to the call of Brockton's citizens for prompt action, and reconsider MG&E's application without further delay.

We address each of your questions directly. As you will see, the answers make clear that there is no financial, equitable, or legal reason to further postpone the reconsideration of MG&E's Region C application:

1. **What is the status of the gaming market in the Northeast and Mid-Atlantic? What are the existing gaming options? What plans exist to increase the number of gaming options, both in states that currently allow casino gaming and states where casino gaming does not currently exist? What revenues have been collected by states that have gaming over the last five (5) years and what are their projected future revenues?**[1]

The Innovation Group notes that, as a general rule, gaming revenue across the Northeast and Mid-Atlantic states was strong in 2017, and has only gotten stronger in 2018 with the introduction of new casinos across both regions, and legal sports betting in New Jersey and Delaware. *See* 11/18 IG Report (Ex. C) at 1-8, 10-12. The following tables, which were prepared by the Innovation Group, depict, state-by-state, all existing gaming options, in the Northeast and Mid-Atlantic states:

[1] Our answers to significant components of Questions 1-4 & 11 were included in a report by the Innovation Group, dated September 2018, which we provided to General Counsel Catherine Blue and Executive Director Ed Bedrosian on September 16, 2018 ("9/18 IG Report"). A copy of the 9/18 IG Report is attached as Exhibit B to this letter for the Commission's convenience. After the Commission requested public comments regarding Region C, MG&E requested that the Innovation Group refresh its prior report, and very specifically and comprehensively address Questions 1-4 & 11. The new report, dated November 30, 2018, which the Innovation Group prepared, is attached as Exhibit C, and incorporated herein ("11/18 IG Report"). The answers in this letter to Questions 1-4 & 11 are summaries of the more complete answers provided in the 11/18 IG Report.

Northeast Casinos by State

	City	Machines	Tables	Positions
Connecticut				
Mohegan Sun	Montville	5,613	350	7,713
Foxwoods	Ledyard	4,145	428	6,713
Maine				
Hollywood Bangor	Bangor	921	16	1,017
Oxford Casino	Oxford	811	22	943
Massachusetts				
Plainridge	Plainville	1,250	0	1,500
MGM Springfield	Springfield	2,550	120	3,270
New York*				
Saratoga Springs	Saratoga Springs	1,782	0	1,782
Monticello Raceway	Monticello	1,110	0	1,110
Empire City at Yonkers	Yonkers	5,349	0	5,349
Jake's 58	Islandia	1,000	0	1,000
Rivers Casino & Resort	Schenectady	1,150	82	1,642
Resorts World Aqueduct	Jamaica	5,005	0	5,005
Resorts World Catskills	Monticello	2,153	125	2,903
Rhode Island				
Twin River Casino	Lincoln	4,220	80	4,700
Tiverton Casino Hotel	Tiverton	1,000	37	1,222
Regional Total		38,059	1,260	45,869

Sources: State Lotteries and Gaming Commissions; The Innovation Group.

* Per the Innovation Group, only casinos in the eastern part of New York are included in this chart because those in the western part of New York are not considered relevant to the Massachusetts/New England market.

Mid-Atlantic Casinos by State

	City	Machines	Tables	Positions
Delaware				
Delaware Park	Wilmington	2,250	39	2,484
Dover Downs Hotel and Casino	Dover	2,177	40	2,417
Harrington Raceway and Casino	Harrington	1,787	31	1,973
Maryland				
Hollywood Casino Perryville	Perryville	822	22	954
Horseshoe Casino	Baltimore	2,200	168	3,208
Live! Casino & Hotel	Hanover	3,997	198	5,185
MGM National Harbor	Oxon Hill	2,961	180	4,041
Ocean Downs	Berlin	888	0	888
Rocky Gap Casino Resort	Flintstone	665	17	767
New Jersey				
Bally's Atlantic City	Atlantic City	1,776	164	2,760
Borgata	Atlantic City	1,994	268	3,602
Caesars Atlantic City	Atlantic City	1,889	132	2,681
Golden Nugget Atlantic City	Atlantic City	1,454	99	2,048
Hard Rock Atlantic City	Atlantic City	2,063	152	2,975
Harrah's Resort Atlantic City	Atlantic City	2,109	133	2,907
Oceans Resort	Atlantic City	1,937	107	2,579
Resorts Casino Hotel	Atlantic City	1,475	68	1,883
Tropicana Atlantic City	Atlantic City	2,476	130	3,256
Pennsylvania*				
Harrah's Philadelphia	Chester	2,450	118	3,158
Hollywood Casino at Penn National Race Course	Grantville	2,170	75	2,620
Mohegan Sun Pocono	Wilkes-Barre	2,325	89	2,859
Mount Airy Casino Resort	Mt. Pocono	1,863	81	2,349
Parx Casino and Racing	Bensalem	3,331	190	4,471
Sands Casino Resort Bethlehem	Bethlehem	3,073	252	4,585
SugarHouse Casino	Philadelphia	1,809	141	2,655
Valley Forge Casino Resort	King of Prussia	600	50	900
West Virginia**				
Hollywood Casino at Charles Town Races	Ranson	2,284	90	2,824
Regional Total		54,825	3,034	73,029

Source: State Lotteries and Gaming Commissions; The Innovation Group. * Per the Innovation Group, this chart only includes casinos in the eastern part of Pennsylvania, as those in the west are not considered relevant to the Massachusetts/New England market.

** Per the Innovation Group, the only West Virginia casino deemed potentially relevant, and thus included in the chart, is Charles Town. The Innovation Group has not included the casino in Greenbrier because of its far southern location and lack of relevance to the gaming market in Massachusetts.

In addition to the above-listed casinos, there are at least six additional casinos that are currently planned or under development that could open within the next two years:

Proposed Northeast Casino Locations by State

Name	Location	Proposed Positions	Note
Connecticut			
-	East Windsor*	2,000 Slot Machines 60 Tables	Unprecedented joint venture between tribes operating Mohegan Sun and Foxwoods. Facing legal challenge; undetermined at this time if it will proceed.
Massachusetts			
Encore Boston Harbor	Everett*	4,250 Total Gaming Positions	Reported over $2 Billion property. License currently under review. Scheduled opening June 2019.
Pennsylvania			
Category 4 Casinos	-	300-750 Slot Machines up to 30 Table Games	Three casinos on the eastern side of the state: York, Shippensburg, and Morgantown.
New York			
-	Medford	1,000 VLT Machines	Previous Medford OTB site. OTB would consider building a casino in Medford with up to 1,000 machines if state allows Suffolk County to expand to 2,000 terminals.

Source: The Innovation Group.

* Of the casinos currently under consideration, only East Windsor and Everett are regarded as relevant to the Massachusetts market.

The following Innovation Group chart shows, state-by-state within the Northeast and Mid-Atlantic regions, tax revenue collected every year since 2013. The overall region has experienced annual tax revenue growth of 2.6% over the past five years, although Connecticut, Delaware, Rhode Island, and West Virginia have been impacted by new casinos in adjacent states.

New England and Mid-Atlantic State Tax Revenue

State	FY-2013/14	FY-2014/15	FY-2015/16	FY-2016/17	FY-2017/18	CAGR
Maine	$50.8	$51.7	$53.1	$54.0	$56.0	1.9%
Massachusetts	-	-	$61.5	$62.7	$67.6	3.2%
Rhode Island	$326.4	$333.5	$320.1	$318.3	$318.6	-0.5%
Connecticut	$279.9	$268.0	$265.9	$270.7	$272.2	-0.6%
New York	$871.7	$866.9	$906.0	$928.3	$993.2	2.6%
Pennsylvania	$879.4	$890.7	$915.0	$915.5	$926.0	1.0%
New Jersey	$208.1	$196.8	$201.0	$210.5	$211.5	0.3%
Delaware	$157.5	$155.0	$156.8	$153.6	$157.1	-0.1%
West Virginia*	$426.1	$371.6	$349.5	$335.5	$321.6	-6.8%
Maryland	$272.2	$310.0	$385.7	$441.4	$526.1	14.1%
Total	$3,472.1	$3,444.2	$3,614.6	$3,690.5	$3,849.9	2.6%

Source: State Lotteries and Gaming Commissions; The Innovation Group.
Note: Excludes horse industry payments. FY=July-June except NY April-March.
*WV tax revenues are estimates using reported effective tax rates for table games (35%) and VLTs (53.5%)

The following Innovation Group chart shows, state-by-state within the Northeast and Mid-Atlantic regions, gaming revenue since 2013 as well as high-level projected revenues for 2018 and for the next three years: With recent casino additions in Maryland, New York, New Jersey and Massachusetts, some of the states in the Northeast and Mid-Atlantic regions have felt a negative impact while others have grown. As shown below, the inclusion of the proposed Boston casino potentially bolsters the revenues in Massachusetts while reducing the revenues in surrounding states like Connecticut and Rhode Island. Overall, the total gaming market in these regions can be expected to continue growing with the inclusion of additional gaming properties. We are not yet near the point of saturation.

State by State Gaming Revenue ($MMs)

	CT	DE	MA	MD	ME	NJ	NY*	PA*	RI	WV**	Total
2013	$1,144.9	$432.1	-	$749.0	$126.3	$2,863.6	$1,567.5	$2,339.2	$558.1	$456.5	$9,780.5
2014	$1,067.5	$403.7	-	$931.1	$127.3	$2,619.3	$1,563.4	$2,313.1	$611.1	$391.9	$9,636.3
2015	$1,044.5	$404.6	-	$1,098.4	$129.8	$2,414.2	$1,609.8	$2,407.9	$615.8	$396.2	$9,725.0
2016	$1,053.5	$398.7	$155.0	$1,203.3	$133.1	$2,405.9	$1,644.5	$2,462.0	$619.1	$368.6	$10,075.2
2017	$1,075.0	$409.3	$164.8	$1,615.0	$136.7	$2,413.4	$1,738.4	$2,480.1	$624.9	$339.4	$10,657.5
CAGR	*-1.6%*	*-1.3%*	*6.3%*	*21.2%*	*2.0%*	*-4.2%*	*2.6%*	*1.5%*	*2.9%*	*-7.1%*	*2.2%*
2018	$1,010.5	$403.9	$280.1	$1,655.3	$138.1	$2,715.1	$1,764.5	$2,517.3	$649.8	$337.7	$11,134.7
2019	$909.4	$410.0	$896.4	$1,696.7	$135.3	$2,783.0	$1,790.9	$2,555.1	$617.4	$341.1	$11,794.3
2020	$864.0	$416.2	$1,075.7	$1,739.1	$138.0	$2,852.5	$1,817.8	$2,593.4	$586.5	$344.5	$12,083.3
2021	$881.2	$422.4	$1,280.1	$1,782.6	$140.8	$2,923.8	$1,845.1	$2,632.3	$595.3	$347.9	$12,525.2

Source: State Lotteries and Gaming Commissions; The Innovation Group.
*New York and Pennsylvania statistics only include the revenues from the Eastern part of the two states.
**West Virginia statistics only include the revenues from the Charlestown Races casino.

2. **What is the expected demand for gaming and the value of the overall gaming market in Massachusetts?**

As empirically illustrated by the track-record to date of the Plainville slots parlor, and the early success of MGM's casino in Springfield, there is high demand for gaming in Massachusetts. As shown in the following chart, the Innovation Group estimates that over the next five years gaming revenues in Massachusetts, exclusive of additional revenues that would be derived if sports betting is legalized within the state, would reach $1.31 billion by 2022 without a Region C casino. As the chart also indicates, if MG&E's proposed Brockton resort casino were to open in 2021 (which is when it would be expected to open if MG&E's application was reconsidered and approved in 2019), other Massachusetts casinos would experience a decline in total revenues, but the Massachusetts casinos in the aggregate would achieve a significant increase. It is estimated that during the first full year of operation of an MG&E casino in Brockton (2022), aggregate Massachusetts gaming revenue would increase by $270 MM.

Est. Total Gaming Revenue in MA. as of 2022

	Without Region C	With Region C
Plainridge	$122,616,795	$94,581,694
Springfield	$379,650,509	$372,380,374
Everett	$807,886,414	$711,695,058
Brockton		$403,843,949
Massachusetts Total	$1,310,153,718	$1,582,501,074

Source: The Innovation Group.

With the addition of MG&E's proposed Brockton casino, the Innovation Group estimates that Massachusetts tax revenues derived from gaming (again exclusive of additional tax revenues that would be derived from legalized sports betting) would be about $410MM by 2022, with an incremental increase in tax revenue of almost $64MM derived from the proposed MG&E casino in Brockton:

Est. MA. Gaming Tax Revenue as of 2022

	Without Region C	With Region C
Plainridge	$49,046,718	$37,832,678
Springfield	$94,912,627	$93,095,093
Everett	$201,971,603	$177,923,764
Brockton		$100,960,987
Total	$345,930,949	$409,812,523
Incremental		*$63,881,574**

Source: The Innovation Group.

* In addition to this incremental tax revenue benefit, the state would also receive an additional $1,260,000 in license fees in 2022 if the proposed Brockton casino opens in 2021.

3. **Should the Commission review the status of online gaming, sports betting and daily fantasy sports and their potential impact on casino gaming?**

In our view, the Commission need not review the status and potential impact of online gaming, sports betting, and/or DFS before making a decision to reconsider MG&E's casino application. From our vantage point, the only reason the Commission would want or need to review the status and potential impact of online gaming, sports betting and DFS would be to assess whether or not those forms of gaming could or would detrimentally affect the prospect for success of a brick and mortar casino in Region C. But MG&E has already made this assessment, and is prepared to spend more than $700 million based on its confidence that there will be *no* adverse impacts.

Moreover, existing empirical evidence suggests that, if anything, the rise of online gaming, sports betting, and DFS will drive traffic to casinos, introduce a younger demographic to casinos, and ultimately increase traditional casino revenues:

- ***Online Gaming***: In the Northeast, online gaming is currently legal in New Jersey, Pennsylvania, and Delaware, but only up and running in New Jersey and Delaware. As discussed in the attached 11/18 IG Report, it is not possible to definitively isolate the impact to date of online gaming in these two states, since the implementation of online gaming coincided with new casino development in neighboring Pennsylvania and Maryland. That said, industry analysts generally believe that online gaming has helped New Jersey become more competitive in the face of growing regional casino expansion, and that online gaming has already helped and will continue to help increase revenues in Delaware's casinos. As the following chart shows, the recent brick and mortar casino revenue trend in both Delaware and New Jersey is on the rise, which shows, at a minimum, that online gaming has not negatively impacted casino revenue growth in either state:

Brick and Mortar and Online Gaming Revenues in Delaware and New Jersey

	Delaware				New Jersey			
Year	Online	B&M Locations	Total State Revenue	% Growth	Online	B&M Locations	Total State Revenue	% Growth
2011		$547,872,433	$547,872,433			$3,298,860,680	$3,298,860,680	
2012		$520,548,891	$520,548,891	-4.99%		$3,051,874,667	$3,051,874,667	-7.5%
2013*	$251,397	$432,058,442	$432,309,839	-17.00%	$8,371,486	$2,863,568,572	$2,871,940,058	-6.2%
2014	$2,098,532	$403,695,364	$405,793,896	-6.56%	$123,096,896	$2,619,250,907	$2,742,347,803	-8.5%
2015	$1,798,931	$404,581,100	$406,380,031	0.22%	$149,029,795	$2,414,335,959	$2,563,365,754	-7.8%
2016	$2,906,886	$398,657,403	$401,564,289	-1.5%	$196,858,746	$2,405,323,367	$2,602,182,113	-0.4%
2017	$2,391,942	$409,264,911	$411,656,853	2.7%	$246,018,441	$2,413,221,069	$2,659,239,510	0.3%

Source: State Gaming Commissions, The Innovation Group.

*2013 marked the first year of legalized online gaming in Delaware and New Jersey.

- ***Sports Betting***: This past year, in the immediate wake of the Supreme Court's decision in *Murphy v. NCAA, et al.*, 138 S. Ct. 1461 (2018), New Jersey, Mississippi, and West Virginia implemented laws legalizing sports betting, and Delaware expanded an existing law that had previously allowed for very limited sports gambling. As illustrated in the table below, sports betting, which has only been in place for a portion of the year,[2] has increased overall casino

[2] Legal sports betting first went live in New Jersey and Mississippi in August 2018, and in West Virginia in September 2018. Expanded sports betting was introduced in Delaware in June 2018.

revenues in all four of these states. In Mississippi and New Jersey, casino revenues exclusive of sport betting have increased, with New Jersey experiencing the highest year-over-year gaming revenue growth of any state in the country,[3] and Mississippi experiencing the third highest rate of growth.[4] Experts generally agree that sports betting has helped to drive these numbers by attracting more individuals to the New Jersey and Mississippi casinos than would have gambled otherwise. In West Virginia, while casino revenues, exclusive of sports betting revenues, have declined slightly year-over-year, that decline is largely attributable to increased competition resulting from the opening of new casinos in New Jersey, Maryland, and Ohio, and likely would have been far greater but for the introduction of sports betting, given the positive effect it has had on other gaming revenue. *See* 11/18 IG Report at 12. As for Delaware, the slots' revenues for September 2018 was about the same as September 2017, though slightly down when one takes into account the manner in which Delaware calculates months (counting the last Sunday of the calendar month as the end of its "reporting" month) and the fact that, per Delaware's method of calculation, September 2017 had 28 days in contrast to September 2018 which had 35 days. It is premature to assess whether Delaware's total GGR, September v. September has changed, let alone if any such change is due to the introduction of sports betting, as Delaware has not yet reported its table revenues for September 2018.

September 2018 v. September 2017 GGR ($MMs) Change
In States that Introduced Sport Betting in 2018

State	Sept-17 GGR	Sept-18 GGR	Year-over-Year Change	SB Rev	Total GGR+ SB Rev	Year-over-Year Change
Delaware*			-0.06%	$3.2	n/a	
Mississippi	$168.2	$177.3	5.42%	$5.5	$182.8	8.70%
New Jersey	$215.2	$231.5	7.58%	$16.7	$248.2	15.36%
West Virginia	$59.4	$58.3	-1.83%	$1.8	$60.1	1.26%
Total USA**	$3,348.1	$3,386.5	1.15%	-	-	-
Total States without Sports	$2,905.4	$2,919.4	0.48%	-	-	-

Source: UNLV and State Gaming Commissions; The Innovation Group.
*Trend is for daily slot revenue; table revenue not yet reported for September 2018. Delaware reports months by last Sunday of the month—September 2017 was 28 days versus 35 days for 2018.
**Excluding Delaware.

[3] At least a portion of New Jersey's substantial growth is attributable to two new gaming properties having opened in Atlantic City in June 2018.

[4] Maryland experienced the second highest year-over-year gaming revenue growth in the country, due largely to recent expansions of large-scale gaming options, such as MGM National Harbor. Over the past year, no other state had a gaming revenue increase comparable to that of New Jersey and Mississippi.

At bottom, the limited sports betting data available to date suggests that sports betting is having an overall positive impact on slot and table revenues, while also contributing new wagering revenue to casinos and states. *See* 11/18 IG Report at 10-13.

- ***Daily Fantasy Sports***: Over the past three years, DFS has been legalized by statute in 16 states in which casino gambling also exists. These states are: Arkansas, Colorado, Delaware, Indiana, Kansas, Louisiana, Maine, Maryland, Massachusetts, Mississippi, Missouri, New Jersey, New York, Ohio, and Pennsylvania. Connecticut also approved DFS, subject to agreement with the tribes, which is in negotiation. The limited studies that have been done to date on the effects, if any, of DFS on casino gaming indicate that there is no apparent impact on casino revenue, and some potential to leverage DFS products to draw new patrons to casino gaming.

4. **Is there sufficient capacity to fill new casino jobs created by a Region C casino? What impact will that have on existing business to replace experienced employees who move to a casino job?**

There is more than ample capacity to fill the approximately 1,800 permanent new jobs that would be created by MG&E's proposed resort casino. The combination of the unemployed and underemployed populations in Region C constitute a total population of more than 56,000 from which it would be relatively easy to find the 1,800 employees needed to fill the new jobs that MG&E will create. *See* 11/18 IG Report at 17. In this regard, we note that the unemployment rate in Brockton is 3.8% (*see* Executive Office of Labor and Workforce Development) which is higher than the state average. We also note that, under the express terms of MG&E's host community agreement with Brockton (a copy of which is attached as Exhibit D), MG&E is obligated to provide first preference for jobs to Brockton residents, and second preference to residents of the surrounding communities in southeastern Massachusetts. *See* MG&E-Brockton Host Community Agreement (Ex. D) at 7.

As for the potential impact that the filling of MG&E casino jobs will have on existing businesses that have to replace experienced employees, there is no hard, historic data indicating a negative impact of casino jobs on other businesses. In fact, the empirical evidence to date in Massachusetts suggests that there has been, and would be, no such negative impact. *See, e.g.*, 6/26/18 IG Report at 58 (https://massgaming.com/wp-content/uploads/SEIGMApresentation6.26.18.pdf) which shows a greater increase in the number of businesses in Plainville from 2009-2016 (13%) than in its surrounding communities (10.6%) or in the control counties of Norfolk and Bristol (9%).

5. **Should the Commission revise its process for determining or updating the suitability of a prior applicant for a category 1 or category 2 gaming license who wishes to apply for a category 1 gaming license in Region C?**

There is no reason for the Commission to revise its process for updating its positive suitability determination regarding MG&E. The Commission's existing regulations provide the Commission with

broad discretion to update its assessment of MG&E's suitability. Indeed, the regulations impose an obligation on MG&E and its qualifiers to maintain their suitability. *See* 205 CMR 115.03(1) (a suitability "investigation may be conducted at any time after a qualifier is granted a positive determination of suitability to ensure that they continue to meet the suitability standards"; 205 CMR 115.01(4) ("Once issued a positive determination of suitability, the gaming licensee and all qualifiers shall have a continuing duty to maintain suitability . . . .").

MG&E and its qualifiers were an open book in 2015 when they were first deemed suitable. All have maintained their suitability, and welcome any update the Commission may deem appropriate.

As for updating and potentially changing prior negative determinations of suitability, the Commission's regulations provide no such mechanism. To the contrary, negative determinations of suitability are final and unreviewable as a matter of law. *See* 205 CMR 115.05(5) ("No Appeal from Commission's Determination of Suitability. Pursuant to M.L.G. c. 23K, § 17(g), the applicant or qualifier shall not be entitled to any further review."). Furthermore, in view of the care with which the Commission has always made negative suitability decisions, we see no reason why the law or the Commission's process in this regard should be revised.

6. **Should the Commission review and/or revise its RFA-2 application to determine if additional or different information should be requested from gaming license applicants in Region C?**

We see no reason why the RFA-2 application, which was already revised for Region C applicants in 2015, needs to be further revised. The current application is comprehensive and well designed to elicit all of the information necessary for the Commission to make informed decisions regarding the qualifications of applicants to develop and operate casinos in keeping with the mandates of the Expanded Gaming Act. In fact, any further revision to the application would risk creating inequities between the requirements that were imposed on applicants in Regions A and B versus those imposed on Region C applicants.

The revisions to the RFA-2 application which were promulgated in 2015 streamlined and removed ambiguity from the application that had been previously used for applicants in Region A and B without in any way changing the 55 substantive categories as to which all applicants in those regions had been required to supply detailed information. *See*, *e.g.*, M.G.L. c. 23K, § 9; 205 CMR 119.01. For instance, the current application's "Overview of Project" section includes four questions in contrast to the nine questions which were included in the prior application, but the information that is required is exactly the same as in the old application. There was no reason to change the overall requirements in 2015 and there is still no reason to change those requirements.

MG&E provided complete and candid answers to all of the questions on the 2015 RFA-2 application, and it would be happy to update those answers upon request. In addition, to the extent that the Commission has discovered anything over the course of the past three years, including during its recent and still ongoing investigation of Steve Wynn and Wynn Resorts, that in any way suggests there

have been deficiencies in the RFA-2 application, MG&E would be happy to supplement its prior application answers to address any additional questions or concerns the Commission might have.

7. **Should agreements, such as host community agreements, surrounding agreements, impacted live entertainment venue (ILEV) agreements, mitigation agreements, gaming school agreements and other relationships previously established for former applicants for a category 1 gaming license in Region C be deemed to be valid or should such agreements be reviewed again and/or re-negotiated?**

As phrased, the question suggests that the Commission has the authority to deem otherwise binding and enforceable contracts invalid. It does not. The existing host community agreement and other pertinent agreements that MG&E has with Brockton and other communities are valid and enforceable contracts. While the parties to those contracts could mutually agree to review or re-negotiate the terms of those agreements, the Commission does not have the authority or legal right to require any such review or re-negotiation.

The power to invalidate a contract must be granted expressly by the legislature. *See, e.g.*, *Regents of Univ. Sys. of Ga. v. Carroll*, 338 U.S. 586, 602 (1950) (holding that an agency's order could not "directly affect the validity of [a] contract because the agency's enabling act did not "give [such] authority to the Commission"); *see also Saccone v. State Ethics Comm'n*, 395 Mass. 326, 335 (1985) ("Because the commission was created by the Legislature, it has only the powers, duties and obligations expressly conferred upon it by statute or such as are reasonably necessary to carry out the purpose for which it was established."). The Massachusetts legislature has granted no such power to the Commission. There is nothing in the Expanded Gaming Act or any other Massachusetts statute that affords the Commission the power on its own (*i.e.*, without an express authorization provision in a third-party contract and/or absent a petition from a party to such a contract) to require gaming applicants to review and/or re-negotiate the terms of their host community or other pertinent third-party agreements, let alone to invalidate any such agreements.[5] If anything, the Commission, through the regulations it has promulgated, has recognized the limitations on its authority vis-à-vis third-party contracting, and has encouraged casino applicants to enter into open-ended, long-term agreements. *See, e.g.*, 205 CMR 125.01(3) (a surrounding community agreement "may be for *any term* necessary to satisfy the purposes for which the agreement is required by M.G.L. c. 23K") (emphasis added).

[5] Even if the Commission possessed the independent power to *sua sponte* invalidate contracts related to gaming license applications, exercising that power here to invalidate MG&E's existing agreements would violate the Contracts Clause of the federal Constitution. *See Campbell v. Boston Hous. Auth.*, 443 Mass. 574, 581 (2005) (the Clause "limits the power of the States to modify their own contracts as well as to regulate those between private parties").

All of MG&E's pertinent third-party agreements, including its host community agreement with the City of Brockton, are, by their terms, still valid. For example, the MG&E-Brockton host community agreement provides four conditions under which the Agreement may be terminated—none of which has occurred:

- "MGE provides written notice that it elects to abandon efforts to obtain a Category 1 gaming license to be located in Brockton."
- "The Commission has issued a Category 1 gaming license for Region C to another applicant and MGE has provided written notice that it has decided to discontinue pursuit of a Category 1 gaming license for the Project."
- "MGE provides written notice that it elects not to construct, or to permanently cease operations of, the Project."
- "The Category 1 gaming license previously issued to MGE for the Project is revoked, rescinded, or expires without having been renewed."

See MG&E-Brockton Host Community Agreement (Ex. D) at 13. MG&E is still pursuing a Category 1 gaming license and the Brockton Project. As a result, its host community agreement with Brockton remains in place, and may not be invalidated. Likewise, its other pertinent agreements remain enforceable.

8. **Should there be a new host community referendum vote in any host community where a prior vote was held?**

The short answer is NO. There should not be a new host community referendum vote in Brockton, which already approved casino gaming.

First, second votes on approved ballot questions are not permitted under the Expanded Gaming Act. While the Act allows for a second bite at the apple when a community ballot question regarding casino gaming is disapproved, it does not provide for a second vote in the event of approval. Where disapproval occurs, the statute explicitly contemplates a second vote. It specifically provides for a waiting period of at least 180 days before any such new vote may be taken, and mandates that before the new vote there must be a new "agreement between the applicant and host community signed after the previous election." M.G.L. c. 23K, § 15(13). In contrast, the statute does not provide for a second vote when a host community has approved a casino referendum. Rather, the statute asserts that, when a host community ballot question is approved, "the host community shall be taken to have voted in favor of the applicant's license," period. *Id*. By permitting a second referendum in the event of a negative vote but not a positive vote, the legislature implicitly excluded the option of a second referendum after an affirmative vote. *Cf. Skawski v. Greenfield Investors Property Dev. LLC*, 473 Mass. 580, 587-88 (2016) (under the statutory maxim of expressio unius est exclusio alterius, the legislature's grant of jurisdiction in one court necessarily excluded jurisdiction in every other court by

implication). Simply put, the statute does not authorize, and the Commission has no power to compel, a new referendum, where, as in Brockton, a first referendum has been successful.

Second, as a practical matter, any new referendum would take significant time and cause additional delay in the reconsideration process. As a result, the first mover advantage that the Twin River and Tiverton casinos in Rhode Island have already obtained in Region C market would be increased. And the current opportunity that exists for thousands of Massachusetts jobs, and tens of millions of dollars in tax revenue for Brockton and the Commonwealth, would be substantially reduced if not entirely eliminated.

Third, MG&E should not be compelled to incur the inevitable expense and further delay of a new referendum, where it did not in any way cause or contribute to the long delay that has already transpired between the original referendum and today.

Fourth, there appears to be far greater support for a resort casino in Brockton today than there was in 2015 when the initial casino referendum passed. The enthusiastic response we have received from legislators, local officials, and Brockton residents with whom we have spoken about the prospect of reconsideration of MG&E's proposal, and the support for the MG&E project that has apparently been voiced to the Commission through numerous recent letters and petition signatures, make clear that there is broad support for a resort casino in Brockton, and for the enhanced safety, improved schools, thousands of well-paying jobs, and tens of millions of dollars in annual tax benefits that will come with it. Based on what we have been told about the scores of letters and petition signatures that have been sent to the Commission during the comment period, we would hope that the Commission is able to see first-hand that MG&E's proposal now has, if anything, increased support from the people who will be most affected by the proposed resort casino development.

9. **Should the Commission consider any legislative changes to the Gaming Act?**

We strongly believe there is no need for the Commission to consider any legislative changes to the Expanded Gaming Act. While we agree with the view of the Commission's staff that a legislative change would be necessary if reconsideration of MGE's application were precluded by statute, we disagree with the suggestion that the Act includes any such preclusion. It does not. The Commission has the inherent power to reconsider its own decisions. *See, e.g.*, *Doe v. Sex Offender Registry Bd.*, 478 Mass. 454, 457 (2017) (affirming the "broad inherent authority" of an administrative agency to "reopen [a prior] proceeding and reconsider its decision at any time"). Nothing in the Act suggests otherwise.

The Act accords the Commission broad and expansive powers, without any restriction whatsoever on the reconsideration of decisions denying casino license applications. While the statute expressly states that an applicant "shall not be entitled to any further review if denied by the commission," M.G.L. c. 23K, § 17(g), that provision applies exclusively to judicial review, and not to review or reconsideration by the Commission itself. Lest there were any doubt, the Supreme Judicial Court made this clear in *City of Revere v. Mass. Gaming Comm'n*, 476 Mass. 591, 597 (2017), where it expressly held that the bar on

"further review" in § 17(g) is a bar on *judicial* review only, without any limitation on the Commission's "full discretion as to whether to issue a license," whether upon initial consideration or reconsideration.

The Commission's "full discretion" on licensing decisions, as well as the corresponding grant of "all powers necessary or convenient to carry out and effectuate [the Commission's] purposes," M.G.L. c. 23K, § 4(13), gives the Commission "considerable leeway in interpreting a statute it is charged with enforcing, unless a statute unambiguously bars the agency's approach." *Goldberg v. Bd. of Health of Granby*, 444 Mass. 627, 633 (2005); *see also Zachs v. Dep't of Pub. Utilities*, 406 Mass. 217, 227 (1989) ("In general, administrative agencies have broad discretion over procedural aspects of matters before them. The decision whether to reopen hearings is one such procedural matter on which we have accorded agencies a great deal of flexibility."). Here, in light of *City of Revere*'s interpretation of § 17(g)'s "further review" language—*i.e*., that it bars only *judicial* review—nothing in the Expanded Gaming Act prevents the Commission from exercising its discretion to reconsider a previously denied application. And no legislative fix is needed to clarify the Commission's authority to reconsider MG&E's Brockton proposal.

10. **Should there be changes to the Commission's regulations, for example, changes to regulations setting forth the license award process and the calculation of minimum capital investment required under chapter 23K in order to reopen Region C?**

If, as we have requested, the Commission reconsiders MG&E's prior application, there would be no need to change any of its current regulations. We would anticipate that any such reconsideration would require the submission of certain updated information, as well as modifications of MG&E's earlier proposal. But the current regulations provide the Commission ample means to obtain updated and supplemental information from applicants, including information regarding the applicants' ability to meet minimum capital requirements. *See, e.g.,* 205 CMR 118.04(1)(f) (during the RFA-2 review process, "the commission may, at such times and in such order as the commission deems appropriate, . . . [r]equire or permit the applicant to provide additional information and documents pursuant to 205 CMR 112.00."); 205 CMR 112.01(1) ("The commission . . . may request additional information and documents from an applicant . . . throughout the application review process. . . .").

In contrast to a decision to reconsider MG&E's application (which could be done without any change in the Commission's regulations), any decision to reopen the application process in Region C more broadly (*i.e*., reopen to other applicants) would either create undue delay and prejudice to Region C and MG&E, or run afoul of the Commission's current regulations, or both.

In their current form, the Commission's regulations do not permit RFA-1 applications to proceed simultaneously with RFA-2 applications. *See* 205 CMR 110.01(1) ("The application process for both a category 1 license and a category 2 license shall proceed in two phases."). An applicant may not submit an RFA-2 application without first receiving a positive determination of suitability through the RFA-1 application process. *See* 205 CMR 110.01(2) ("Only those applicants that are found by the commission to be qualified pursuant to a determination of suitability at the conclusion of RFA-1 . . . shall be permitted to proceed to the second phase, RFA-2."). The regulations do not allow for the possibility

of parallel tracks—*i.e.*, allowing applicants previously found to be "suitable" at the RFA-1 stage to submit RFA-2 applications, while allowing new applicants to start from scratch at the RFA-1 stage. Under current regulations, the Commission may only proceed one phase at a time.

Here, MG&E is the only prior applicant in Region C that cleared the RFA-1 hurdle and that would be in a position to proceed forthwith with a new RFA-2 application. Without a change in the regulations that would allow MG&E to proceed through the RFA-2 process while others are first proceeding through the RFA-1 process, the entire process will be unnecessarily delayed to the severe and ongoing prejudice of both Region C (which necessarily suffers from delay) and MG&E. As a matter of efficiency and simple fairness, any broad reopening of the Region C application process must allow MG&E to proceed with the RFA-2 application without first allowing others to play catch-up.

While other would-be applicants – to the extent any exist – could argue that a reopened process would give MG&E an unfair head-start, such purported "unfairness" would be of their own making. Indeed, there is a strong argument that those who failed to go through the RFA-1 process in Region C the first time around should not be permitted, as a matter of law, to participate in a reopened process. *See, e.g.*, *MCI Telecommc'ns Corp. v. United States,* 878 F.2d 362, 365 (Fed. Cir. 1989) ("[O]pportunity to qualify either as an actual or prospective bidder" ends "when the proposal period ends."). Likewise, there is a strong legal argument that those who surmounted the RFA-1 hurdle during the original Region C RFA process, but who dropped out during the RFA-2 process (*i.e.*, KG Urban and Crossroads) also should be precluded from participation in a reopened process. *See, e.g.*, *Federal Data Corp. v. United* States, 911 F.2d 699, 703-04, 705 (Fed. Cir. 1990) (finding bidder "abandoned any [legal interest] it had" in agency's reopened proceedings when it "knowingly took itself out of the bidding" and by that action "affirmatively relinquished any chance of receiving the [bid]"). *See also* our June 6, 2018 letter to the Commission (attached hereto as Ex. E) at 10-12.

At bottom, the only process for moving forward in Region C without undoing the Commission's current regulations, and without running afoul of the law and basic principles of equity, is the reconsideration process that we have proposed. That process also happens to be consistent with the interest of Region C in obtaining the benefits of a resort casino development (*e.g.*, thousands of permanent, well-paying jobs, and tens of millions of dollars in tax revenues) without further delay.

11. **What role should horse racing have in considering a category 1 region C gaming license application?**

We do not believe horse racing should play any role in the reconsideration of MG&E's application for a Category 1 gaming license in Region C. Based on the information set forth in the 11/18 IG Report at 19-20, the contributions that the Plainridge slots parlor has already made to the Race Horse Development Fund ("RHDF" or the "Fund") have left the Fund with a surplus. The MGM casino in Springfield, and the Encore casino in Everett, will only add to that surplus. To the extent that the horse racing industry in the Commonwealth is already unable to make use of existing casino contributions, it is unclear why the state's casinos should even continue to contribute to the Fund. Regardless, the Region C casino would have hardly any effect on the RHDF, as it is estimated (*see* 11/18 IG Report at

18) that the gain to the Fund from the proposed Brockton casino would be counteracted virtually dollar for dollar by the loss to the Fund from Brockton's impact on Plainridge.

RHDF Net Impact from Brockton Casino	
Loss from Plainridge	-$2,523,159
Gain from Brockton	$2,524,025

12. **Should the Commission review the status of the Mashpee Wampanoag Tribe's litigation regarding land in trust, and the status of proposed federal legislation on the issue?**

The short answer is NO. The Commission put Region C well behind Regions A and B when it waited years (2012-2015) to open Region C to a commercial RFA process out of deference to the initial efforts of the Mashpee Wampanoag Tribe (the "Mashpee" or the "Tribe") to obtain land in trust status. Then, after United States District Court Judge William Young found that the Mashpee's land in trust designation had been granted in violation of the operative statute, the Commission again waited years (2015-2018) to reopen the Region C RFA process to see how the Mashpee fared in an appeal to the First Circuit Court of Appeals and on remand to the Department of the Interior ("DOI" or the "Department").

Notably, the DOI under President Obama understood that the Mashpee faced an insurmountable hurdle in proving they were under federal jurisdiction in 1934 (*see, e.g.*, U.S. Dept. of the Interior, Record of Decision, Trust Acquisition for 151 Acres in the City of Taunton, Massachusetts, and 170 Acres in the Town of Mashpee, Massachusetts, for the Mashpee Wampanoag Tribe (Sept. 18, 2015) at 79-80), but granted the Tribe land in trust status anyway by reading the operative statute in a novel manner – specifically, in a manner that Judge Young dismissed as "not a close call." *Littlefield v. United States Dep't of Interior*, 199 F. Supp. 3d 391, 396 (D. Mass. 2016). Now, after remand, the DOI has concluded that there is no legal path forward for the Mashpee to obtain land in trust status. Still, the Commission suggests through its question that it is prepared to wait additional years while it "reviews" the status of the Mashpee's litigation challenge of the recent DOI opinion, and the status of the federal legislation that the Mashpee have proposed as part of a futile last-ditch effort to build a casino in Taunton.

The wait up until now has been too long. It has been inconsistent with the mandate of the Expanded Gaming Act to expand jobs and tax revenues in all three statutory designated regions within the Commonwealth, and in conflict with the expressed desires and needs of the people of Brockton and southeastern Massachusetts more generally. And, as the First Circuit has observed, the wait has implicated constitutional equal protection concerns. *See KG Urban Enters., LLC v. Patrick,* 693 F.3d 1, 25 (1st Cir.2012). Indeed, former Commissioner McHugh echoed the First Circuit's concerns in April 2013, when he noted that "the longer we wait [for the Mashpee] without some kind of a plan for allowing events to proceed to a predetermined point . . . the more the wait is simply undefined, the more it looks like it may be in violation of the equal protection clause." Transcript of April 18, 2013 Commission Hearing at

93-94. The wait as of 2012 and early 2013 was enough to raise equal protection concerns. But here we are over five and one-half years later.

Any further wait to "review" litigation and legislation status would only exacerbate each of these problems, at the expense of Brockton, southeast Massachusetts, and the Commonwealth as a whole. The waiting game is over. The time for the Commission to take action in Region C is now.

All this having been said, we can report that the Mashpee's efforts to obtain land in trust status are currently pending in three different arenas. Those arenas, and the status of the efforts in each as of today's date, November 30, 2018, are as follows:

- ***United States District Court for the District of Columbia***: On September 27, 2018, the Mashpee filed a Complaint, styled *Mashpee Wampanoag Tribe v. Ryan Zinke and the United States Department of the Interior*, Civ. Action No. 1:18-cv-02242, in federal district court in Washington, D.C., seeking review under the Administrative Procedure Act (APA) of Interior's September 7, 2018 decision. DOI's answer was due in early December, but government attorneys have requested an extension until January 9, 2019. After DOI files its answer, the administrative record will have to be assembled before the district court can resolve the case. The timeline for the district court to reach the merits of the Tribe's APA action will depend on how quickly the DOI assembles and certifies the administrative record. In other Indian law cases, DOI has taken many months (and in some cases more than a year) to assemble and certify the full record. Indeed, in the *Littlefield* litigation before Judge Young, the DOI took over five months to assemble what was then a very thin, simple record. Now the record that must be assembled is substantially larger. Once the record is produced, the district court will apply a highly deferential standard of review, a standard that credits DOI's expertise in weighing historical evidence and determining whether or not a tribe was under Federal jurisdiction in 1934. We anticipate that the Tribe's APA challenge will be turned aside as a matter of course as a permitted exercise of agency discretion. *See Upstate Citizens for Equal., Inc. v. Jewell*, 5:08-cv-0633 (LEK/DEP) (N.D.N.Y. Mar. 26, 2015) at 8-9, aff'd *Upstate Citizens for Equal., Inc. v. United States*, 841 F.3d 556, 574-577 (2d Cir. 2016). But it will inevitably require at least another year or two before that inevitable conclusion is reached.

- ***First Circuit Court of Appeals***: On December 12, 2016, the Mashpee filed a notice of appeal before the United States Court of Appeals for the First Circuit, *Littlefield et al. v. Mashpee Wampanoag Indian Tribe*, No. 16-2484, seeking review of Judge Young's district court decision. On April 27, 2017, the Federal Defendants, including the DOI and Bureau of Indian Affairs, voluntarily dismissed their related appeals of Judge Young's decision. The Tribe did not join in this dismissal. Nor has it pursued the appeal. Instead, for the past two years, the Tribe has asked for and received extensions to allow other proceedings in other venues to proceed. Currently pending before the First Circuit is another motion by the Tribe to further stay its appeal indefinitely, until after the APA action is decided both at the district court and circuit court levels. If granted, the Tribe's current motion would put the First Circuit appeal into hibernation for 2-4 years. The Littlefield plaintiffs have opposed the Tribe's most recent request to stay.

- ***United States Congress***: The Mashpee Wampanoag Tribe Reservation Reaffirmation Act (HR 5244) was introduced in a subcommittee of the House Natural Resources Committee (HNRC) by Massachusetts Representative William Keating on March 9, 2018. Today, over eight months later, the proposed bill has not yet been reported out of the subcommittee. The prospect of the bill ever getting out of the subcommittee is low, and the prospect that it would then get out of the HNRC and receive a favorable vote in both chambers of Congress, is at best remote. Indeed, even Representative Keating, the bill's chief proponent, is not optimistic about the bill's chance of success. *See* Shirley Leung, *In Taunton, A Gamble That Has Yet to Pay Off*, Boston Globe (Apr. 6, 2018), https://www.bostonglobe.com/business/2018/04/05/taunton-gamble-that-has-yet-pay-off/hGTMYcxB6AXCPx9NrLv6fM/story.html. The bill has come in for severe criticism because of the Tribe's $425 million debt to Genting Corporation, a fact that makes the proposed legislation look like a Genting bail-out bill. Further, the extraordinary amount of debt has raised red flags as it is unclear where the money has gone. Notwithstanding these issues, and the bill's tiny chance of success in Congress, if it were somehow approved and then signed into law by the President, it would immediately result in a court challenge based on the theory that the bill violates the Constitution's separation of powers provision. Congress cannot usurp a judicial function, which is exactly what HR 5244 would do by overturning the decision of Judge Young, as if Congress were sitting as a panel of the First Circuit Court of Appeals. As the Supreme Court stated in *Bank Markazi v. Peterson*, 136 S. Ct. 1310, 1323 & n.17 (2016), "Congress could not pass a law directing that, in the hypothetical pending case of *Smith v. Jones*, 'Smith wins.'" Furthermore, with Judge Young's decision final as to DOI, and DOI having concluded on remand that it has no authority to take land into trust for the Tribe, the judgment in the litigation is final, and Congress cannot re-open a final judgment through legislative fiat. At bottom, both practically and legally, the proposed federal legislation will not give the Tribe what it wants or needs to engage in tribal gaming. The legislative initiative is just the latest "Hail Mary" on top of the Tribe's previous "Hail Marys." It is designed to achieve delay, which once again is coming at the expense of Region C. And, as we wait, the constitutional equal protection concerns articulated by the First Circuit in 2012 and Judge McHugh in 2013 loom larger.

* * * * * * * * * * * * * * * * * *

We ask that the Commission expedite its consideration of all the comments it has received regarding Region C, and then reconsider MG&E's application to build a casino in Brockton as soon as possible. If you have questions or otherwise want to discuss any of our above-responses, please contact either or both of us directly. We would welcome the opportunity for a dialogue aimed at moving the Region C process forward.

Very truly yours,

David J. Apfel / RMB

David J. Apfel

Roberto M. Braceras

Exhibit A

GOODWIN

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October 16, 2018

BY HAND AND E-MAIL

Edward Bedrosian, Executive Director
Catherine Blue, General Counsel
Massachusetts Gaming Commission
101 Federal Street, 12th Floor
Boston, MA 02110

Re: Mass Gaming & Entertainment LLC and Region C

Dear Mr. Bedrosian and Ms. Blue:

We write on behalf of our client, Mass Gaming & Entertainment LLC ("MG&E"), in response to Ms. Blue's letter dated September 27, 2018, and the Massachusetts Gaming Commission's (the "Commission") discussion of both the letter and Region C at its public meeting that same day. As you might imagine, we were disappointed by the letter and the Commission's discussion, which collectively had the effect of delaying action in Region C indefinitely. MG&E, which had hoped to jump-start reconsideration of its 2016 Brockton application, remains committed to the process. The real losers, however, are the people of southeastern Massachusetts who will once again have to wait while casino-related tax dollars and jobs continue to flow to Rhode Island and Connecticut. To say the least, this is unfortunate.

Notwithstanding what we believe to be an unnecessary delay, we remain ready and eager to work with you and the Commission to expedite substantive discussions regarding the future of Region C. We hope this response to your September 27 letter serves as a productive step in that ongoing effort.

The September 27 letter makes three points. We respond to each in turn.

First, the letter questions whether the Commission has the authority to reconsider MG&E's application, and notes that, even if it has such authority, it would first have to develop a process for reconsideration before any actual reconsideration could move forward. We disagree. While applicants like MG&E whose license applications have been denied do not have an "*entitlement*" under G.L. c. 23k, sec. 17(g) to have their applications reconsidered, there is no prohibition on such reconsideration. The Commission is neither expressly authorized nor expressly prohibited from reconsidering an application. Instead, the statute leaves the Commission with "full discretion" to decide one way or the other, provided, of course, that its decision is not arbitrary or capricious, and does not invade a constitutional right. Here, there can be little question that the Commission has the authority to exercise its broad discretion to reconsider, and that doing so would not only be reasonable and constitutional, but would

be the right thing to do for southeastern Massachusetts. And, of course, once the question of authority to reconsider is answered affirmatively, the question of process would readily take care of itself, through suggestions from the staff and a dialogue among the staff, the applicant, and the Commission. We are ready to begin that dialogue immediately.

In our June 6 letter, we explained how, in the absence of an express prohibition on reconsideration, the Commission has the authority to reconsider MG&E's application. *See generally* MG&E's June 6, 2018 Request, at 7-8 (citing, for example, *Soe v. Sex Offender Registry Bd.*, 466 Mass 381, 396 (2013) for the well-settled proposition that administrative agencies, like the Commission, possess inherent authority to reconsider past decisions). Based on your September 27 letter, it would appear as if you were unable to find any contrary authority. If there is any such contrary authority, we would ask that you promptly bring it to our attention. Otherwise, we ask that you candidly note that the Commission has the authority to reconsider, and simply tell us, one way or the other, whether the Commission is prepared to do so. If there is a willingness to reconsider, we are ready to discuss what the process for such reconsideration ought to be.

Second, the September 27 letter suggests that, if the Commission rejects reconsideration, it would only be able to consider a new MG&E application as part of a new competitive application process in which others would be free to participate. Without commenting on the substantial authority we cited in our June 6 letter for the proposition that limiting a new application process exclusively to MG&E would be both legal and equitable, your letter appears to reject any future process that would not be fully open to other potential applicants. The process that your letter envisions would not only be the most inefficient option (again, at the expense of the people in Region C), but the most inequitable under the circumstances (where all other potential applicants already had ample opportunity to compete for the Region C commercial license). But we need not argue over whether there should be a new competitive process if no one other than MG&E intends to compete. Rather than debate whether or not a fully open competitive process is legally required or equitable, why not do the practical thing and simply find out if anyone other than MG&E is interested in potentially submitting a bid? As former Commission Chairman Crosby suggested this summer, why not put out a solicitation of interest to determine if anyone other than MG&E would apply for a commercial license in Region C in a new RFA process? If no one else is going to apply, we need not debate whether the process should be fully competitive. Let's find out. A solicitation of interest could be done quickly and inexpensively, and it would enable the Region C process to move forward. In contrast, the approach suggested in the September 27 letter is all but guaranteed to create undue and indefinite delay.

Third, your letter takes issue with our view that the Mashpee efforts to build a casino in Taunton caused the Commission to reject MG&E's application in April 2016. We continue to believe, as former Chairman Crosby stated at the time, that the then prospect of a Mashpee casino in Taunton was the "elephant in the room" that colored the decision to deny MG&E's application. *See* Transcript of Commission's 4/28/16 Public Meeting at 83. That said, we are well aware of the other concerns that the Commission had with MG&E's proposal. As we stated in our August 13 letter, MG&E is fully prepared to modify its application to address those and any other concerns the Commission may have. We believe the required modifications could (and would) readily be made in the context of either a reconsideration of MG&E's original Brockton proposal or the consideration of a new MG&E application.

During the Commission's brief public discussion of Region C on September 27, 2018, it: (i) approved Ms. Blue's then draft September 27 letter as an "appropriate" response to MG&E's request for reconsideration; (ii) expressed interest in obtaining a study of the current status of the gaming market in Region C, and in Massachusetts and the northeast more generally; and (iii) authorized the staff to solicit public comments on the issues raised in Ms. Blue and Law and Policy Group's July 26, 2018 memo re: "Framework for Consideration of Request to Open Region C" (the "Staff's July 26 Memo"). *See* Draft Transcript of Commission's 9/27/18 Public Meeting at 6-9.

i. With regard to the Commission's approval of the draft letter, we wish there had been a more robust discussion, and that we would have been permitted to speak, but we understand the Commission's process.

ii. During the Commission's discussion about obtaining market intelligence regarding Region C and the northeast region generally, it was clear that the Commissioners have not yet seen the Innovation Group's study, which we provided to you on September 16, 2018. As you know, that study provides the exact intelligence that the Commission appears to be seeking, and very specifically addresses issues 1-5 in the Staff's July 26 memo. The study also makes it clear that the Commonwealth is losing at least $65 million per year in tax revenue for every year of further delay in Region C, to say nothing of lost gaming license fees and the loss of thousands of permanent well-paying jobs. We understand that the Innovation Group's study will be provided to the Commissioners shortly, and we hope that it will help to expedite the Commission's consideration of whether a casino in Region C still makes good economic sense for the region and the Commonwealth. While we recognize that the Commission may have a desire to conduct its own independent study, we see no reason for the Commission to reinvent the wheel, or to turn down our offer (which remains open) to make the Innovation Group available to supplement its study at the request of the Commission or its staff.

iii. With respect to the Commission's request that the staff solicit public comment, as a general matter, the solicitation of public comment is a good thing. But the twelve listed items as to which the staff subsequently sought comment are not readily susceptible to helpful public comment. Questions 1-4 concern research studies of the sort prepared by the Innovation Group. And questions 5-11 concern legal and process issues that the Commission and its staff must tackle, but as to which the public at large is ill-equipped to provide guidance. Question 12, meanwhile, is an empirical question regarding the status of the Mashpee Tribe's litigation and legislative efforts—again, not an issue on which the public could provide meaningful, or any, guidance. We find it concerning that the Commission would solicit comments on these twelve items, without soliciting public comment on the one issue that is most directly relevant to MG&E's request for reconsideration and for the process of moving forward in Region C – namely, the issue of whether anyone other than MG&E would apply for a commercial gaming license in the Region if a new application process were initiated. Why not solicit answers to that question, as the answers may well moot other questions and concerns the Commission has regarding the process for making progress in Region C?

We also note that the Commission set no timetable and no deadlines for the completion of any of the Region C related follow-up tasks to which it directed the staff to attend. In our view, this betrayed a disheartening lack of urgency concerning Region C. While we recognize that the Commission has its hands full with the ongoing suitability investigation of Wynn/Encore in Region A, and the opening of MGM in Region B, we would hope that Region C will not, once again, get lost in the shuffle. We reiterate our readiness to work with you to move the process forward in Region C as quickly and fairly as possible.

Please let us know if you have any questions regarding the above, and if and when you want to speak further.

Very truly yours,

David J. Apfel

Roberto M. Braceras

cc: Neil G. Bluhm

ACTIVE/96989737.1

Exhibit B

Gaming Market Assessment: Brockton Fairgrounds Casino

Brockton, Massachusetts

Prepared for:

Rush Street Gaming, LLC

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Gaming Market Assessment, Brockton, MA

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EXECUTIVE SUMMARY

The Innovation Group was retained by Rush Street Gaming, LLC to complete a Gaming Market Analysis for the proposed casino in Brockton. Specifically, this analysis includes top-line gaming revenue projections for the first five years of operations. The casino is to be developed at the site of the Brockton Fairgrounds.

This Executive Summary covers the following five questions raised by the Massachusetts Gaming Commission:

1. A review of the gambling market in the Northeast and Mid-Atlantic, including the number of existing gambling options and plans to increase the number of gambling options, both in states that currently allow casino gambling and states where casino gambling does not yet exist. This review should include an analysis of the revenues collected by state governments over the last (5) years and an analysis of projected future revenues.

2. A review of the gaming market in Massachusetts in terms of expected demand for gaming and an estimate of the value of the overall gaming market in Massachusetts.

3. A review of the status of on-line gaming, sports betting and daily fantasy sports and the potential impact on casino gaming.

4. A review of the unemployment rate in Massachusetts, by region.

5. A review of the availability of person with the skills desired by casinos in order to determine whether the employment marketplace can fill a significant number of new casino jobs and whether a new casino will impact the ability of existing casinos to fill their jobs.

Question 1: Northeast and Mid-Atlantic Gaming Markets

The Competitive Environment section takes a detailed look at the gaming jurisdictions in New England and New York. In general, gaming revenue in calendar year 2017 was strong across the region. Revenue increased at all casinos in New England except the Hollywood Casino in Bangor, Maine. Both Connecticut casinos experienced slot revenue growth in 2017, after the lingering effects of the Great Recession and impacts from Rhode Island and Plainridge had caused multi-year declines. Twin River (TR) has experienced growth every year since 2010; although there is some apparent impact on TR's slot revenue from the opening of Plainridge the last week of June 2015, total gaming revenue continued to climb.

Plainridge also exhibited strong growth in 2017, of 6.3%. Further, its impacts on Rhode Island and Connecticut appear to have been minimal, suggesting that the large majority of Plainridge's first-year revenue came from market growth. Looking at Plainridge's impact on its two main

competitors, Twin River and Foxwoods, it is apparent that as much as 75% of Plainridge's revenue resulted from market growth.

Plainridge First Year Impacts

	Twin River	Foxwoods	Subtotal	Plainridge	Market Total
FY 2014	$470,766,020	$467,970,116	$938,736,136	$6,137,976*	$944,874,112
FY 2015	$443,747,069	$462,215,501	$905,962,570	$159,908,961	$1,065,871,531
Change	($27,018,951)	($5,754,615)	($32,773,566)	$153,770,984	$120,997,418

Source: State Lotteries and Gaming Commissions; The Innovation Group. *Note: one week's data. FY=July-June.

Looking at state tax revenue and including Mid-Atlantic states, we see that tax revenues overall have grown. Where states have declined, mostly that has resulted from the impact of new casinos in neighboring states. In the case of Rhode Island, it has partially resulted from the growth in table revenue, which is taxed at a substantially lower rate than slot machines. The overall region has experienced annual tax revenue growth of 3% over the past five years.

New England and Mid-Atlantic State Tax Revenue

State	FY-2013/14	FY-2014/15	FY-2015/16	FY-2016/17	FY-2017/18	CAGR
Maine	$50.8	$51.7	$53.1	$54.0	$56.0	1.9%
Massachusetts	-	-	$61.5	$62.7	$67.6	3.2%
Rhode Island	$326.4	$333.5	$320.1	$318.3	$318.6	-0.5%
Connecticut	$279.9	$268.0	$265.9	$270.7	$272.2	-0.6%
New York	$871.7	$866.9	$906.0	$928.3	$993.2	2.6%
Pennsylvania	$879.4	$890.7	$915.0	$915.5	$926.0	1.0%
New Jersey	$208.1	$196.8	$201.0	$210.5	$211.5	0.3%
Delaware	$157.5	$155.0	$156.8	$153.6	$157.1	-0.1%
Maryland	$272.2	$310.0	$385.7	$441.4	$526.1	14.1%
Total	**$3,046.1**	**$3,072.7**	**$3,265.1**	**$3,354.9**	**$3,528.1**	**3.0%**

Source: State Lotteries and Gaming Commissions; The Innovation Group. Note: Excludes horse industry payments. FY=July-June except NY April-March.

Question 2: Massachusetts Gaming Demand

The Gaming Market Analysis section takes a detailed look at the gaming market in Massachusetts and the forecast for Brockton and the other Massachusetts casinos. Also included is a detailed description of the methodology utilized in the gravity model calibration to current conditions and future forecasts.

The following table represents the impact on total gaming revenue the Brockton casino would have when introduced to the Massachusetts competitive casino set. While the existing casinos would

see a drop in total revenues, the overall total increases by over $270 million, showing potential for market growth.

Total Gaming Revenue Market Impact

	Without Brockton	With Brockton
Plainridge	$122,616,795	$94,581,694
Springfield	$379,650,509	$372,380,374
Everett	$807,886,414	$711,695,058
Brockton		$403,843,949
Massachusetts Total	**$1,310,153,718**	**$1,582,501,074**

Source: The Innovation Group

The following table shows the growth in gaming tax revenue to the state of Massachusetts with the addition of the Brockton Casino.

Total Gaming Tax Revenue Market Impact

	Without Brockton	With Brockton
Plainridge	$49,046,718	$37,832,678
Springfield	$94,912,627	$93,095,093
Everett	$201,971,603	$177,923,764
Brockton		$100,960,987
Total	**$345,930,949**	**$409,812,523**
Incremental		*$63,881,574*

Source: The Innovation Group

Additionally, Massachusetts would see an increase in slot license fee revenue due to Brockton. The following table details the incremental revenue to the state from slot license fees. Total incremental revenue to Massachusetts would be $65.1 million with the inclusion of the Brockton property.

Total Slot License Fee Market Impact

	Without Brockton	With Brockton
Plainridge	$750,000	$750,000
Springfield	$1,530,000	$1,530,000
Everett	$1,945,200	$1,945,200
Brockton		$1,260,000
Total	**$4,225,200**	**$5,485,200**
Incremental		*$1,260,000*

Source: The Innovation Group

Question 3: Online Gaming, Sports Betting, and DFS Impacts

The Sports Betting and Online Analysis section discusses the New England landscape for these issues. Connecticut and Rhode Island are in the process of making sports betting available to the public. Connecticut has passed enabling legislation but not a regulatory framework. Additionally, the issue of tribal gaming exclusivity could delay implementation. Rhode Island has passed legislation and sports betting is scheduled to be implemented by the Lottery in November 2018.

Massachusetts passed legislation related to sports betting, but only a *study bill* (S 2273), compelling the state to research the impact of sports betting in the commonwealth. The (Senate) Committee on Economic Development and Emerging Technologies is currently acting on this bill.

It is likely that all three states will have legalized sports betting available to the public in either a land-based or mobile format in the near future.

Sports betting can be seen as opportunity to bring in additional revenue to casinos. It is important to note that while there is potential for some substitution effect in total spend between sports bettors and other casino patrons, the demographics of the average sports bettor skews younger than slot players and even table gamers. Studies have found that the average sports bettor is between the ages of 18-34[1]. Additionally, these players tend to be familiar with casinos and have the potential to spend additional dollars once on the casino floor at a table or slot during a visit to a legal sports book.

In addition to new sports betting ventures, Massachusetts and the competitive markets have the opportunity to pass legislation regarding online gambling and DFS. Recently, the Massachusetts House of Representatives passed an amendment removing the sunset clause on the laws regulating DFS, making a move in the direction towards permanent legalization of the gaming format.

Rhode Island elected to hold off on allowing online betting; it is expected that the State will reconsider in the long run as Massachusetts and Connecticut consider legislation allowing online gaming. Using New Jersey as a precedent, online gaming is expected to cause minimal cannibalization of land-based casino revenues and foster potential international partnerships with existing online formats.

Question 4: Massachusetts Unemployment

The Economic and Demographic Analysis section details the employment and income trends in Massachusetts and the region. The following table shows the unemployment statistics of each of the three gaming regions defined for Massachusetts. Region C, which includes the subject property, saw the highest levels of unemployment (9.8%) during the recession. However, the region has made a strong recovery with unemployment now equal to that of Region B and slightly

[1] HUMPHREYS, BRAD R., PEREZ, LEVI, Who Bets on Sports? Characteristics of Sports Bettors and the Consequences of Expanding Sports Betting Opportunities. Estudios de Economía Aplicada, vol. 30, no. 2, 2012, pp. 579-597

below Region A. Region C also has the second highest labor force, including nearly 31,000 people still unemployed.

Regional Unemployment Statistics

Year	Civilian labor force	Employment	Unemployment	Unemployment rate (%)
Region A				
2009	2,346,396	2,165,368	181,028	7.7
2010	2,390,487	2,205,195	185,292	7.8
2011	2,388,063	2,228,518	159,545	6.7
2012	2,405,584	2,257,518	148,066	6.2
2013	2,428,922	2,278,217	150,705	6.2
2014	2,468,292	2,338,069	130,223	5.3
2015	2,488,537	2,378,669	109,868	4.4
2016	2,510,349	2,420,852	89,497	3.6
2017	2,544,821	2,458,120	86,701	3.4
Region B				
2009	426,331	390,982	35,349	8.3
2010	414,298	376,632	37,666	9.1
2011	410,677	377,150	33,527	8.2
2012	410,067	379,085	30,982	7.6
2013	410,362	378,791	31,571	7.7
2014	414,139	386,310	27,829	6.7
2015	414,579	391,153	23,426	5.7
2016	413,380	394,216	19,164	4.6
2017	416,702	398,287	18,415	4.4
Region C				
2009	697,661	632,658	65,003	9.3
2010	675,300	608,990	66,310	9.8
2011	670,574	612,091	58,483	8.7
2012	669,511	615,929	53,582	8.0
2013	673,548	619,788	53,760	8.0
2014	683,811	637,434	46,377	6.8
2015	685,122	646,050	39,072	5.7
2016	687,687	656,044	31,643	4.6
2017	695,649	665,073	30,576	4.4

Source: Bureau of Labor Statistics, The Innovation Group

Question 5: Casino Skilled Labor Supply

A survey of Plainridge employees conducted in 2017 demonstrates that casino employment is comprised mainly of workers already residing within commuting distance: a mixture of previously employed local residents looking for a better opportunity or the ability to work closer to home, along with previously unemployed local residents. The percentage of workers who moved to take the position with Plainridge was a small percentage of the staff. Furthermore, most casino workers had not had prior casino work experience.

Plainridge Casino Source of Workforce

	# of Responses	Percentage
Prior Employment status:		
Unemployed	162	15.5%
Employed Part-time	363	34.7%
Underemployed	*189*	*18.1%*
Employed Full-time	522	49.9%
Total	1,047	100.0%
Reason for taking the position		
Job closer to home	305	29.1%
Other results		
No prior casino experience	902	86.2%
Moved to take the position	75	7.2%

New Employee Survey at Plainridge Park Casino: Analysis of First Two Years of Data Collection
University of Massachusetts Donahue Institute, Economic and Public Policy Research Group, May 10, 2017

This suggests the need for training strategies as new casinos enter the regional market. The New Casino Market Training Strategies section at the end of this report discusses training strategies for new gaming markets, with emphasis on markets that may require specialized training to reach employment forecast targets. The strategies include:

- Work force research
- Early-stage job fairs
- Partnering with local universities and vocational schools
- Intensive "on-the-job" training

INTRODUCTION

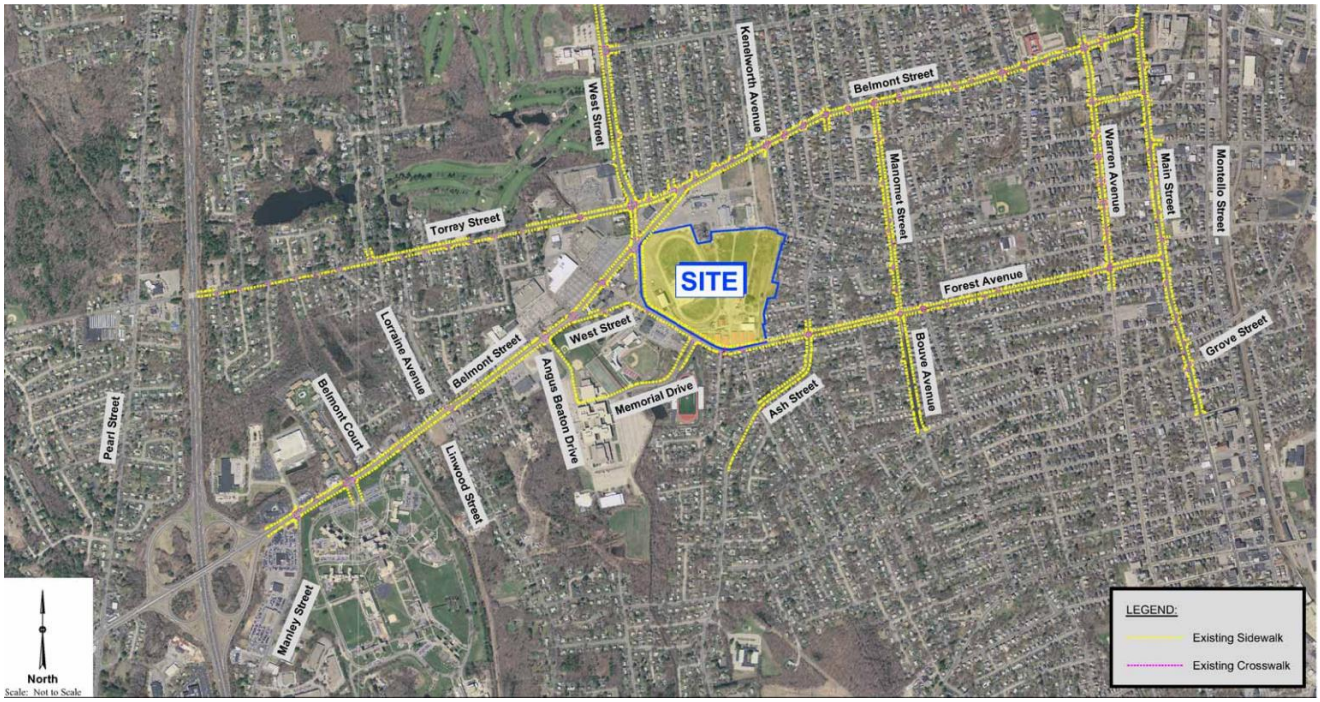
The Innovation Group was retained by Rush Street Gaming, LLC to complete a Gaming Market Analysis for the proposed casino in Brockton. Specifically, this analysis includes top-line gaming revenue projections for the first five years of operations. The casino is to be developed at the site of the Brockton Fairgrounds. The findings and conclusions in this report are based, in part, on the following major assumptions:

- The proposed property will be developed as a quality facility with 250 hotel rooms and complementary amenities;
- The Brockton casino shall feature 2,100 Class III slots, 100 house-banked games and a 24-table poker room;
- The level of competition in the local gaming market will remain static with no new developments anticipated to come online throughout the projection period unless otherwise noted in this report;
- An aggressive marketing program will be employed at the proposed casino targeting certain-appropriate gamers in the region;
- An experienced and professional management team will operate the gaming facility; and
- Economic conditions remain stable in line with current trends as discussed herein.

Site Analysis

The proposed casino is located in City of Brockton approximately 25 miles south of Boston in southeastern Massachusetts. The site is situated along Belmont Street, West Street, and Forest Avenue at the Brockton Fairgrounds on the outskirts of the city.

The development is 1.5 miles from Route 24, a six-lane expressway connecting to south Boston via I-93 in the north and the Cape Cod via I-495 in the south. The casino will be situated on a 45-acre property facing the intersection of Belmont and West Streets. There are other commercial developments adjacent to the property including shopping centers and a few stand-alone restaurants.



ECONOMIC AND DEMOGRAPHIC ANALYSIS

This section assesses specific economic and demographic characteristics within the Brockton that have the ability to affect future demand for gaming and hospitality. The analysis will evaluate the area's potential to draw new sources of leisure demand as well as continuing its support of existing facilities in the area.

Some of the factors we analyzed, including population, income, and employment trends, have implications for the participation rates and growth forecasts utilized in the gaming market analysis. Massachusetts and National statistics were used as benchmarks to provide context for local trends.

Population

For the purposes of the economic/demographic analysis, we assessed the population within a two-hour driving distance of the Brockton location in Massachusetts in four time bands: 0-30 minutes, 30-60 minutes, 60-90 minutes, and 90-120 minutes. Drive times were used as opposed to simple concentric rings because the site's adjacency to interstates will create market areas that extend beyond those of a regular ring pattern.

Total Population

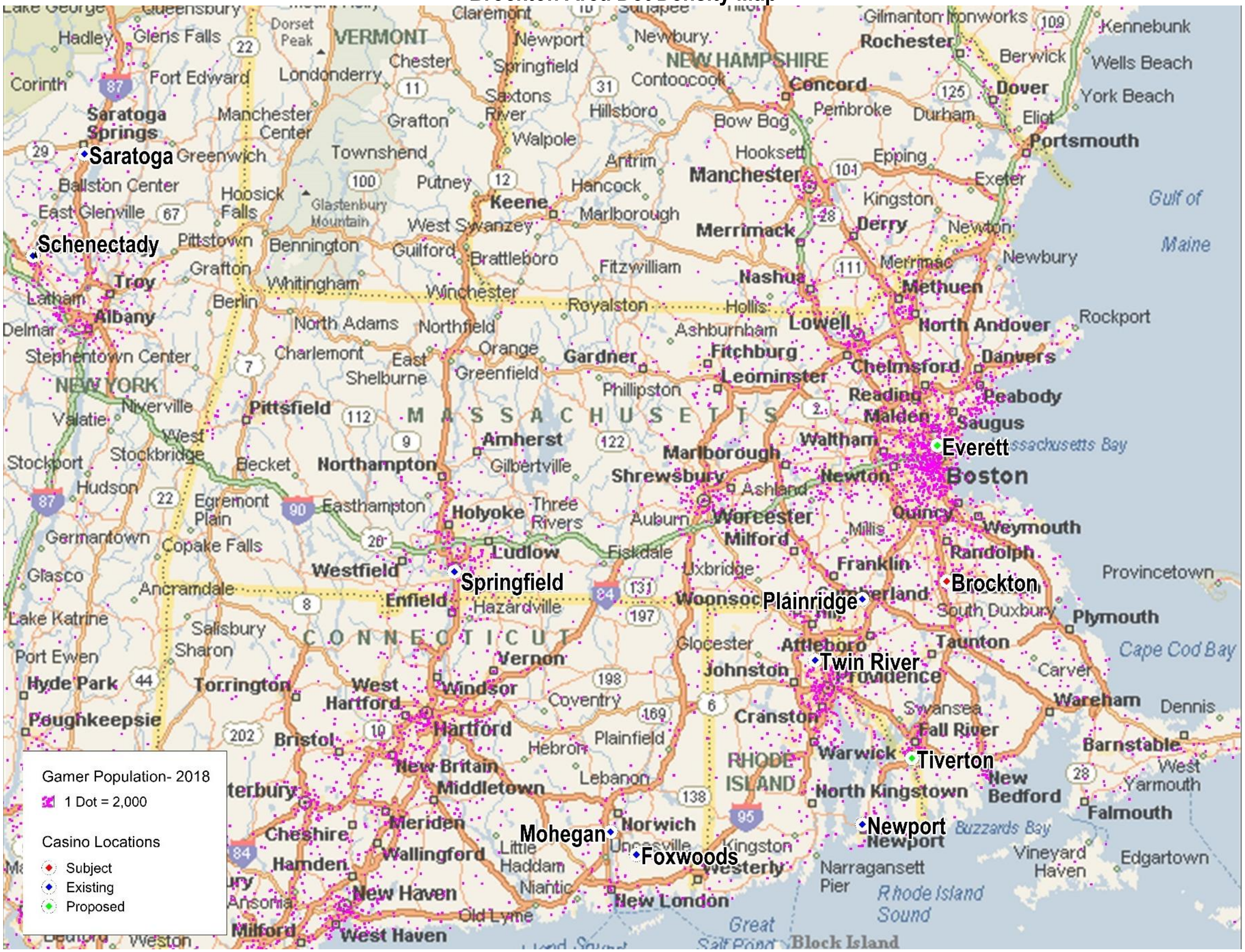
The 0-30 minute drive ring for Brockton is least populated of the four drive rings. The largest population base belongs to the 30-60-minute drive ring which includes the City of Boston. While the other drive rings have larger population bases, the 0-30-minute drive ring has the largest Compound Annual Growth rate (CAGR) over the next five years of the studied areas and is the only one expected to outpace the growth rate of Massachusetts. The national growth rate has been largely driven by Hispanic immigration, a trend Massachusetts was mostly immune to.

Total Population

Ring	2010	2018	2023	CAGR 2010-2018	CAGR 2018-2023
0-30 min	1,139,101	1,203,030	1,243,492	0.7%	0.7%
30-60 min	4,092,163	4,296,886	4,422,384	0.6%	0.6%
60-90 min	2,131,964	2,191,609	2,235,002	0.3%	0.4%
90-120 min	2,183,469	2,192,451	2,206,736	0.1%	0.1%
Area Total	**9,546,697**	**9,883,976**	**10,107,614**	**0.4%**	**0.4%**
Massachusetts	6,547,629	6,864,966	7,071,748	0.6%	0.6%
National	*308,745,538*	*326,533,070*	*337,947,861*	*0.7%*	*0.7%*

Source: IXPRESS/Nielsen Claritas; The Innovation Group

Brockton Area Dot Density Map



Gamer Population

People aged 21 and over account for 75.3% of the population within the 0-30-minute drive ring. This is slightly above the state average of 75.2% and the national average of estimated 73.2%. The County of Plymouth is more in the line with state and national figures at 73.6%. The adult population within two hours of the Brockton site is expected to increase by 0.7% from 2018-2023. On average, the study area's adult population will grow at a rate slightly below the national and statewide averages. Notably, the adult population in the innermost ring is the smallest in terms of total population, however it is expected to grow at the highest rate of the studied areas from 2018-2023.

Population Over 21 Yrs.

Ring	2018	% of Total Population	2023	% of Total Population	CAGR 2018-2023
0-30 min	905,875	75.3%	948,107	76.3%	0.9%
30-60 min	3,227,669	75.1%	3,350,788	75.8%	0.8%
60-90 min	1,659,045	75.7%	1,716,830	76.8%	0.7%
90-120 min	1,643,858	75.0%	1,679,019	76.1%	0.4%
Area Total	**7,436,447**	**75.2%**	**7,694,744**	**76.1%**	**0.7%**
Massachusetts	5,160,872	75.2%	5,374,411	76.0%	0.8%
National	*239,003,144*	*73.2%*	*249,303,590*	*73.8%*	*0.8%*

Source: IXPRESS/Nielsen Claritas, The Innovation Group

2018 Population by Race and Ethnicity

The racial composition of the population in the City of Brockton is fairly distinct from that of the national population. 68% of the population in the immediate drive ring around Brockton identifies as White Alone as compared to a national average of 70%, and over 16% of the population identifies as Black or African American compared to 12.8% in the nation. This drive ring also differs from the remaining three areas where as much as 87% of the total population identifies as White Alone in the instance of the 60-90- minute drive ring area. The State of Massachusetts is generally in line with the total Area Total demographics, where both rank below national averages for all races except Asian Alone. Although the 0-30-minute drive ring is diverse, those who identified as Native American and Alaska Native, Asian Alone and Hispanic or Latino all ranked lower than national averages.

2018 Population by Single Race Classification or Ethnicity

Ring	Total Pop	White Alone	Black or African American Alone	American Indian and Alaska Native Alone	Asian Alone	Native Hawaiian & Other Pacific Islander Alone	Some Other Race Alone	Two or More Races	Hispanic or Latino
0-30 min	1,203,030	68.1%	16.1%	0.3%	7.6%	0.0%	4.5%	3.4%	8.2%
30-60 min	4,296,886	75.2%	6.3%	0.4%	7.6%	0.0%	6.8%	3.6%	14.2%
60-90 min	2,191,609	86.8%	3.3%	0.3%	4.0%	0.0%	2.9%	2.6%	7.8%
90-120 min	2,192,451	78.1%	8.6%	0.4%	3.9%	0.1%	6.0%	2.9%	13.9%
Area Total	**9,883,976**	**77.5%**	**7.4%**	**0.4%**	**6.0%**	**0.0%**	**5.5%**	**3.2%**	**12.0%**
Massachusetts	6,864,966	76.5%	7.5%	0.3%	6.9%	0.0%	5.6%	3.2%	12.0%
National	326,533,070	70.0%	12.8%	1.0%	5.7%	0.2%	6.8%	3.4%	18.2%

Source: IXPRESS/Nielsen Claritas; The Innovation Group

Income

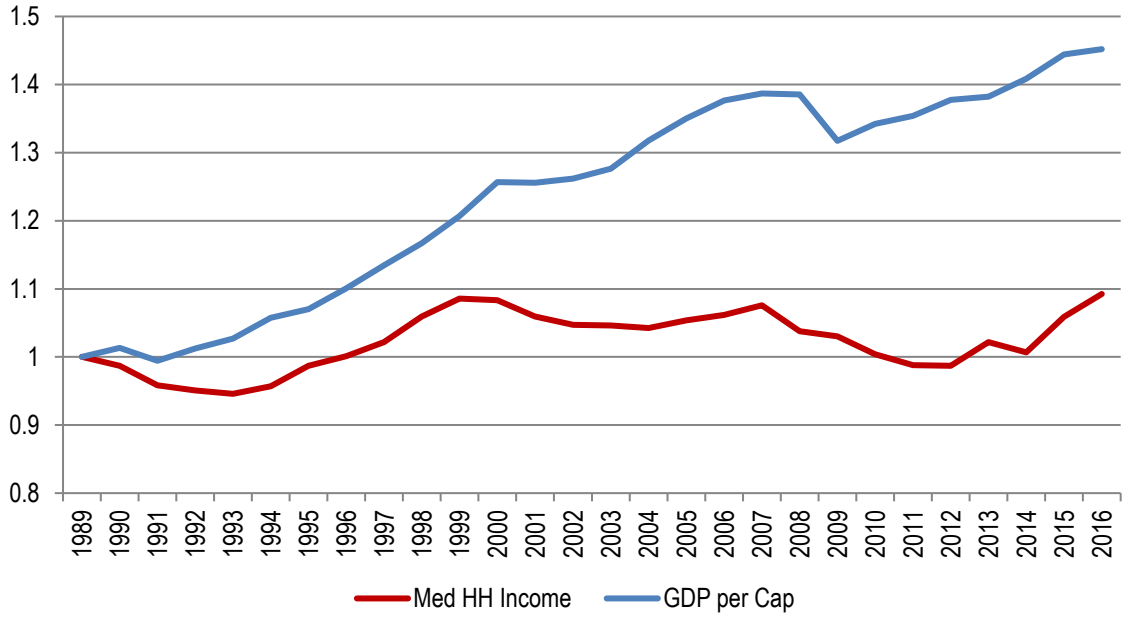
Income is an important indicator of a region's economic well-being and the discretionary spending power of its residents. The following section analyzes national, regional, and local trends in income and discusses their potential impact on Brockton's development options.

National and Regional Trends

During the past decade household income lagged far behind gains in productivity. The widening gap in the following chart illustrates that American households effectively have not been earning enough to purchase the goods and services they have been producing. Consumer expenditures on gaming and other leisure activities remained strong into 2007 largely on the basis of rising home values; however, gaming revenues started a steady and pronounced decline once the housing bubble burst and the financial sector collapsed. Although 2013 saw a slight uptick in real income (0.35%), the first since 2007, GDP grew by over 2%, thereby increasing the gap.

Real Growth in GDP and HH Income

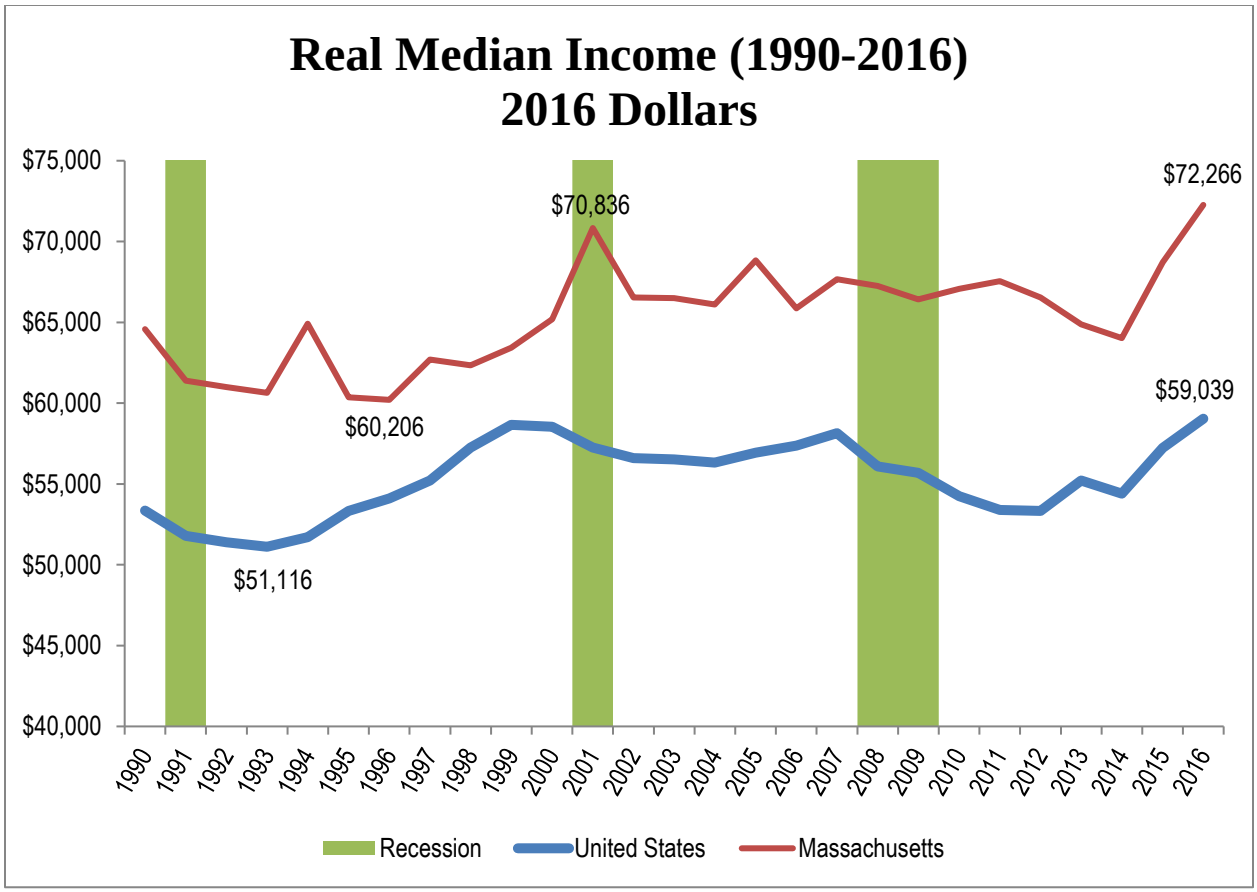
(Indexed to 1989)



Source: Bureau of Labor Statistics

Median household income declined for the better part of a decade, even before the recession hit in 2008, real median income was lower than it was ten years earlier, as incomes declined from 2000 through 2004 and then again from 2007 to 2012. However, starting in 2014 income has grown at a rate faster than GDP per Capita, a positive sign.

Massachusetts is one of the wealthier states in the U.S. The following graph shows that real median income in Massachusetts has exceeded that of the national average for the past 25 years.



Source: US Census Bureau, Current Population Survey, 1990-2016, Annual Social and Economic Supplements

Local Ring Income

Average Household Income

Average household income (A.H.I) in the Brockton region is generally aligned with Massachusetts averages and well above the nation as a whole. Of all the drive-time rings surrounding the subject property, the 90-120-minute ring had the lowest AHI as of 2018, although it was still well above the national average. The 0-30 and 30-60-minute drive rings had the highest AHI with incomes higher than the statewide averages. Additionally, these two drive rings have seen the largest growth from 2000-2018 and are expected to have the highest growth over the next 5 years. Every has an expected growth rate from 2018-2023 above the national averages.

Average Household Income

Ring	2000	2018	2023	CAGR 2000-2018	CAGR 2018-2023
0-30 min	$66,718	$111,279	$124,307	2.9%	2.2%
30-60 min	$67,531	$111,421	$123,912	2.8%	2.1%
60-90 min	$65,705	$105,823	$117,109	2.7%	2.0%
90-120 min	$58,401	$91,817	$101,641	2.5%	2.1%
Area Total	**$64,969**	**$105,813**	**$117,594**	**2.7%**	**2.1%**
Massachusetts	$66,671	$109,430	$121,656	2.8%	2.1%
National	$56,644	$86,278	$95,107	2.4%	2.0%

Source: IXPRESS/Nielsen Claritas, The Innovation Group

2018 Median Income by Race and Ethnicity

Race and/or ethnicity play a role in the gaming environment. Some, such as Asians, have a high propensity to gamble, while others may fall into the other end of the spectrum. The Census Bureau defines race as a person's self-identification with one or more social groups. An individual can report as White, Black or African American, Asian, American Indian and Alaska Native, Native Hawaiian and Other Pacific Islander, or some other race. Ethnicity is a population group whose members identify with each other on the basis of common nationality or shared cultural traditions. Meaning a person that is Hispanic or Latino can also identify as a race.

The following table shows median household income by race and ethnicity, as it compares to total median incomes in the area. Median income is typically lower than average income but is often a better indicator because it is less vulnerable to statistical outliers, such as extremely high incomes in a small number of households.

Nationally, Asian households have the highest median income at 39.2% higher than the national median income of $61,045. White households have incomes 6.8% higher than the national median income, while African American, American Indian, and Hispanic households have considerably lower household income than other groups.

Discrepancies exist in the median household incomes in the Brockton area for certain ethnicities compared to the national averages, but generally remain in line with Massachusetts trends. Black or African American households have incomes just 64% of the average vs. 67% nationally, while Asian households have incomes 18.4% higher than the average. White Alone households have incomes 7.8% higher than the area average, which is both above the national average but slightly below that of Massachusetts. Hispanic or Latino households have median incomes that are in line with the statewide average of 54.3% but are considerably lower than the national average of 78.7%.

2018 Median Household Income by Single Race Classification or Ethnicity (Indexed)

Ring	Total	White Alone	Black or African American Alone	American Indian and Alaska Native Alone	Asian Alone	Native Hawaiian and Other Pacific Islander Alone	Some Other Race Alone	Two or More Races	Hispanic or Latino	Not Hispanic or Latino
0-30 min	$82,283	111.5%	67.6%	54.3%	106.0%	100.7%	52.3%	80.0%	57.0%	103.4%
30-60 min	$77,099	109.2%	58.4%	50.1%	119.1%	76.0%	51.9%	72.7%	56.5%	107.5%
60-90 min	$78,525	103.5%	64.2%	59.1%	121.4%	88.3%	52.1%	68.9%	54.6%	103.6%
90-120 min	$68,783	107.2%	69.1%	59.8%	115.7%	89.8%	44.3%	78.9%	49.4%	106.3%
Area Total	**$75,715**	**107.8%**	**64.1%**	**54.4%**	**118.4%**	**83.9%**	**49.9%**	**74.8%**	**54.3%**	**106.2%**
Massachusetts	$77,248	108.1%	63.5%	54.8%	118.7%	88.0%	49.4%	75.1%	54.3%	106.3%
National	$61,045	106.8%	66.8%	70.2%	139.2%	97.8%	75.4%	91.5%	78.7%	103.7%

Source: IXPRESS/Nielsen Claritas, The Innovation Group

Employment

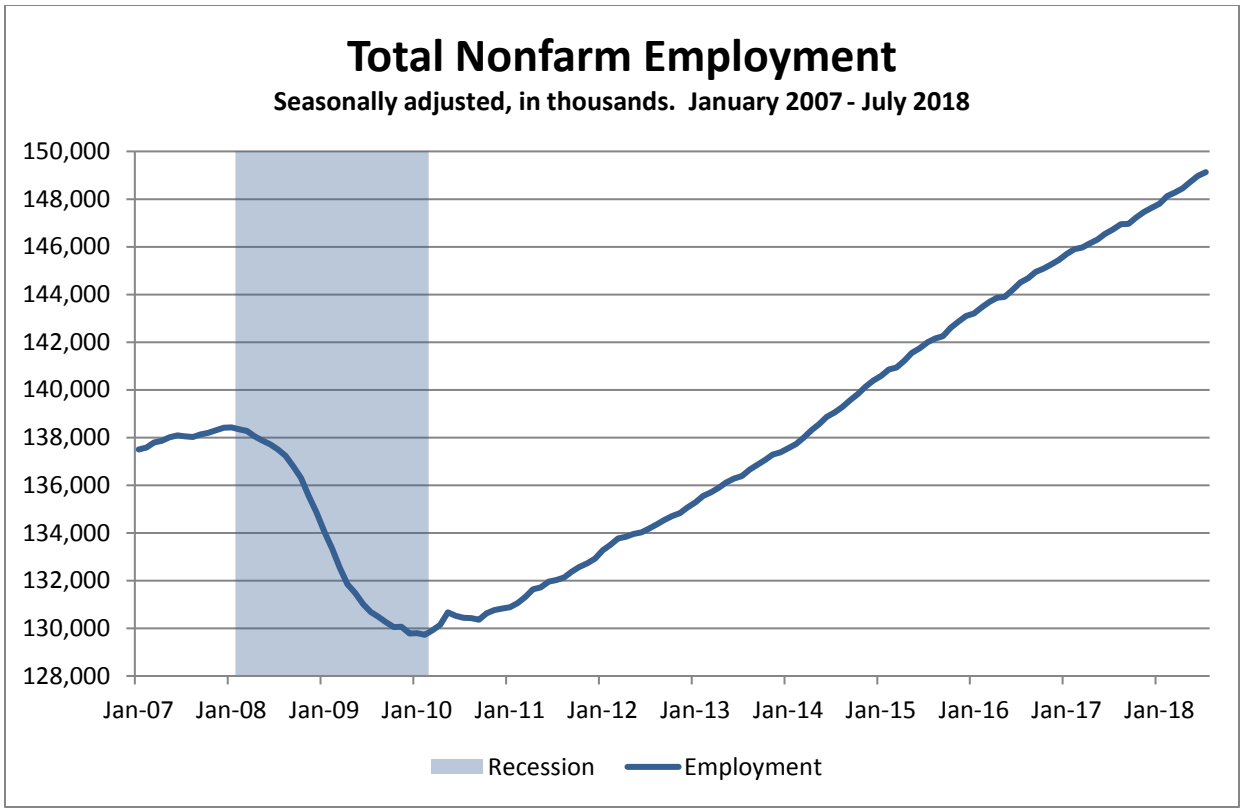
In a white paper assessment of the impact that the Great Recession has had on the gaming industry nationwide, the Innovation Group concluded that employment decline is the single greatest factor impacting gaming revenues. Therefore, it is critical to evaluate the employment and income trends in the regional market to assess the prospects for gaming spending in the market area.

National Trends

CES occasionally updates historical employment numbers. The following numbers are correct as of July 2018.

The unemployment rate is useful in comparing a state with the national average. However, a declining unemployment rate can result from workers dropping out of the labor force altogether, so it does not necessarily equal economic recovery. Employment is the better measure of recovery.

In terms of employment the Great Recession began at the national level in February 2008, with employment peaking in January 2008. Since then, the U.S. suffered 24 months of declining employment; during the five-month period of November 2008-March 2009 the average monthly decline was 604,000. Employment bottomed out in February 2010 at a low of 129.3 million. Since then it has steadily grown, and now stands at 149.1 million, above (7.7%) its pre-recession peak. However, the working age population has grown by 4% over the same period.

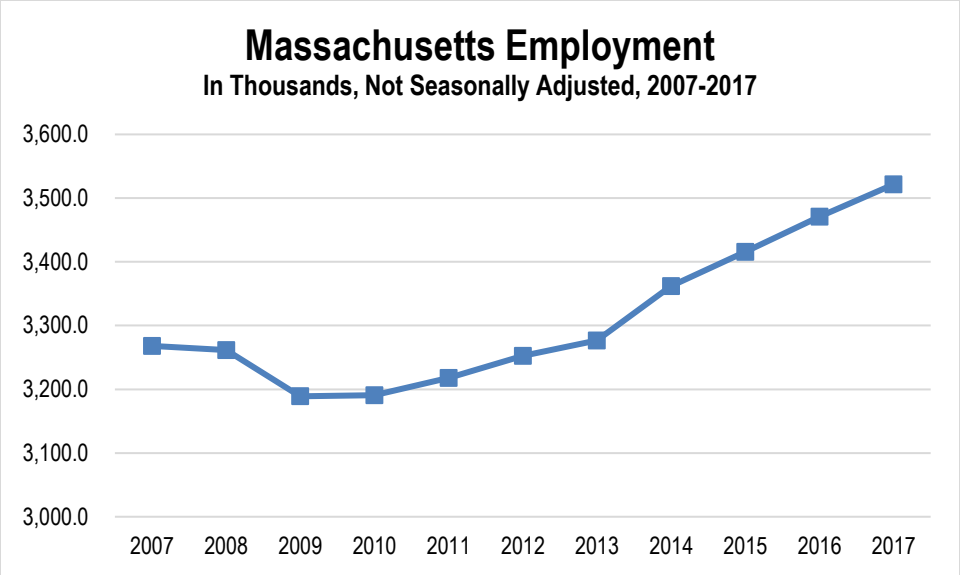


Source: Bureau of Labor Statistics, CES series; most recent month data is preliminary

Regional Labor Force

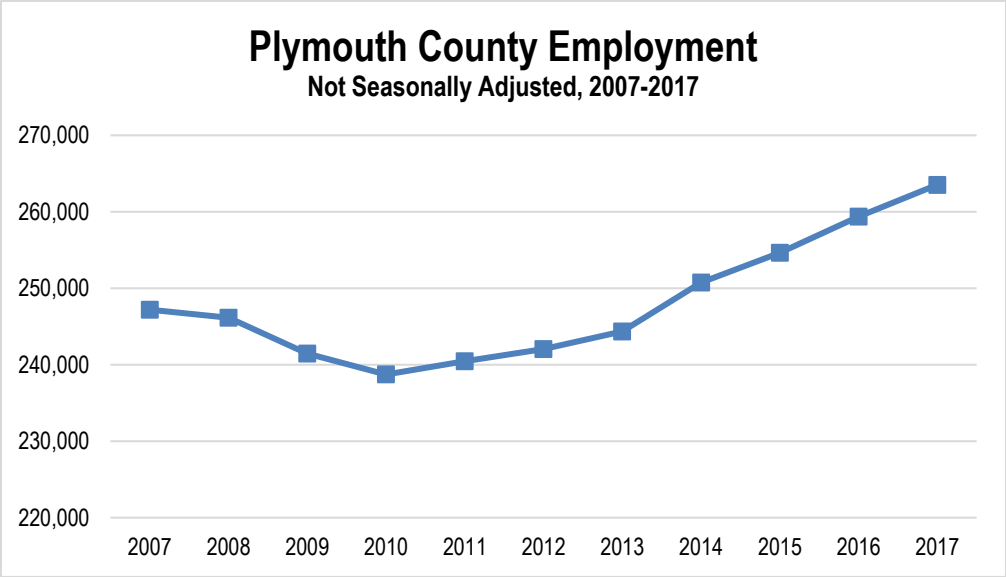
The Innovation Group analyzed employment in two significant regions: Massachusetts as a benchmark and Plymouth County.

The recession hit distinct geographic areas at different times, and recovery has not been consistent in terms of scope or timing. The Bureau of Labor and Statistics provided non-seasonally adjusted employment data for these areas, and therefore the information was analyzed on a yearly basis. In Massachusetts, the recession began in 2008, the same year it occurred on the national level. The chart below illustrates that Massachusetts began to recover in 2009, prior to the time the Nation began to recover in 2010. The recovery in Massachusetts began with a slow and steady climb from 2009 to 2013; however, the recovery has increased more dramatically from 2013 to the current year. July 2013 marked the first month that employment reached the pre-recession levels that existed in Massachusetts. 2017 employment figures were 6.4% higher than those of the pre-recession peak.



Source: Bureau of Labor Statistics, LAUS series

The recession in Plymouth County occurred around the same time as the Massachusetts statewide, but the recovery, as determined by employment, showed a slower rebound. The recession caused a decline in jobs from 2008 to 2010 in Plymouth County. However, once Plymouth County began to recover from the recession, the growth in employment mimicked the growth statewide with a steady increase until 2013 and a more dramatic increase from 2013-2017. As of 2017, employment figures in Plymouth County are 12.5% higher than those of the pre-recession peak.



Source: Bureau of Labor Statistics, LAUS series

Unemployment

The table below depicts historical unemployment statistics for Plymouth County and Massachusetts. The annual unemployment rate continually increased from 2009 through to 2010, peaking at 8.3% in Massachusetts and 8.9% in Plymouth County, but they have since recovered. Currently, both unemployment rates sit below 4% while labor force statistics continue to increase.

Average Annual Unemployment Statistics

Year	Civilian labor force	Employment	Unemployment	Unemployment rate (%)
Plymouth County				
2009	263,807	241,447	22,360	8.5
2010	262,176	238,720	23,456	8.9
2011	260,735	240,474	20,261	7.8
2012	260,295	242,063	18,232	7.0
2013	262,695	244,330	18,365	7.0
2014	266,779	250,756	16,023	6.0
2015	268,191	254,630	13,561	5.1
2016	270,417	259,364	11,053	4.1
2017	274,224	263,530	10,694	3.9
Massachusetts				
2009	3,470,382	3,189,010	281,372	8.1
2010	3,480,083	3,190,818	289,265	8.3
2011	3,469,308	3,217,754	251,554	7.3
2012	3,485,161	3,252,531	232,630	6.7
2013	3,512,827	3,276,792	236,035	6.7
2014	3,566,237	3,361,811	204,426	5.7
2015	3,588,241	3,415,874	172,367	4.8
2016	3,611,418	3,471,112	140,306	3.9
2017	3,657,173	3,521,482	135,691	3.7

Source: Bureau of Labor Statistics; The Innovation Group

Additionally, the Expanded Gaming Act of 2011 allowed the Massachusetts Gaming Commission to oversee up to three casinos across the state. The act divided the 14 counties into three regions. Region A includes the counties of Suffolk, Middlesex, Essex, Norfolk, and Worcester. Region B includes the counties of Hampshire, Hampden, Franklin, and Berkshire, and Region C includes Bristol, Plymouth, Nantucket, Dukes, and Barnstable counties. The following map shows the layout of the three regions.

Massachusetts Gaming Regions

Source: Massachusetts Gaming Commission

The following table includes the unemployment statistics of each region. Region C, which includes the subject property, saw the highest levels of unemployment (9.8%) during the recession. However, the region has made a strong recovery with unemployment now equal to that of Region B and slightly below Region A. Region C also has the second highest labor force.

Regional Unemployment Statistics

Year	Civilian labor force	Employment	Unemployment	Unemployment rate (%)
Region A				
2009	2,346,396	2,165,368	181,028	7.7
2010	2,390,487	2,205,195	185,292	7.8
2011	2,388,063	2,228,518	159,545	6.7
2012	2,405,584	2,257,518	148,066	6.2
2013	2,428,922	2,278,217	150,705	6.2
2014	2,468,292	2,338,069	130,223	5.3
2015	2,488,537	2,378,669	109,868	4.4
2016	2,510,349	2,420,852	89,497	3.6
2017	2,544,821	2,458,120	86,701	3.4
Region B				
2009	426,331	390,982	35,349	8.3
2010	414,298	376,632	37,666	9.1
2011	410,677	377,150	33,527	8.2
2012	410,067	379,085	30,982	7.6
2013	410,362	378,791	31,571	7.7
2014	414,139	386,310	27,829	6.7
2015	414,579	391,153	23,426	5.7
2016	413,380	394,216	19,164	4.6
2017	416,702	398,287	18,415	4.4
Region C				
2009	697,661	632,658	65,003	9.3
2010	675,300	608,990	66,310	9.8
2011	670,574	612,091	58,483	8.7
2012	669,511	615,929	53,582	8.0
2013	673,548	619,788	53,760	8.0
2014	683,811	637,434	46,377	6.8
2015	685,122	646,050	39,072	5.7
2016	687,687	656,044	31,643	4.6
2017	695,649	665,073	30,576	4.4

Source: Bureau of Labor Statistics, The Innovation Group

Major Employers

The following is list of largest employers in Brockton/Plymouth County. Largest employers include those in the private sectors such as WB Mason as well as government agencies, healthcare facilities and education facilities such as the City of Brockton, Signature Healthcare and Massasoit Community College.

Largest Employers - Brockton

Company	Industry
Barbour Corporation	Manufacturer
Baypointe Rehabilitation Center	Healthcare
Brockton Area Transit Authority	Transportation
Brockton Housing Authority	Housing
City of Brockton	Government
Columbia Gas of Massachusetts	Energy
Concord Foods	Food/Retail
Good Samaritan Medical Center	Healthcare
Massasoit Community College	Education
Montello Heel Manufacturing	Manufacturer
Old Colony YMCA	Recreation
Pharmerica	Pharmaceutical
Signature Healthcare	Healthcare
T.F. Kinneaely & Co., Inc.	Food/Retail
UPS	Postal Service
V.A. Medical Center	Healthcare
W.B. Mason Co., Inc.	Retail
Westgate Mall	Retail

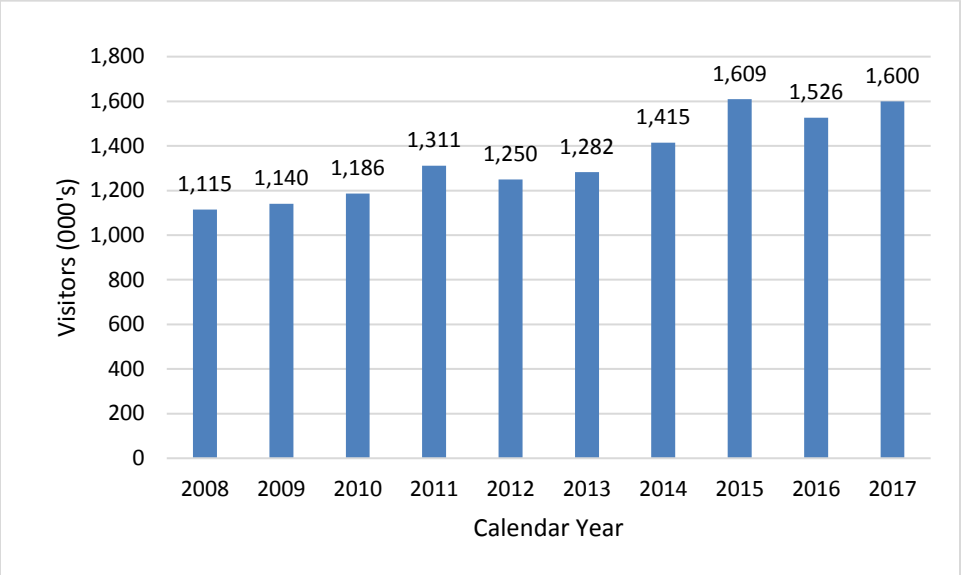
Source: Metro South Chamber of Commerce

Tourism

The City of Brockton is located in Plymouth County between two major tourist destinations in Massachusetts, Cape Cod and Boston. As a result, the casino is strategically located to capture existing tourism to the region.

Boston has seen overseas visitation increase by nearly 100% since 2005 and it is currently ranked one of the top ten international tourist destinations in North America. In 2017, the Boston region received around 20 million tourists, of which 1.6 million were international tourists.

Boston Overseas Visitation Trends 2008-2017



Source: Greater Boston Convention and Visitors Bureau

The following table highlights overseas visitation to Boston in 2017. While overseas visitors account for only 8% of overall visitation to the Boston area, they account for nearly 15% of tourism spending. Although a majority of international trips to the region tend to be for leisure purposes, Boston does benefit from a relatively balanced market mix between commercial, group, and leisure visitors.

China has become the largest source of international visitors to the Boston area, at over 250 thousand and accounted for 38% of overseas expenditures in 2017. Additionally, Chinese visitors spend over double the amount per stay of all international visitors at nearly $5,000.

2017 Overseas Visitation to Boston

	China	United Kingdom	Germany	Total Overseas
Visitors	251,000	205,000	110,000	1,600,000
Visitor Spend (MM's)	$1,249.7	$274.4	$121.5	$3,285.0
Average Spend Per Stay	$4,979	$1,339	$1,105	$2,053

Source: Greater Boston Convention and Visitors Bureau

Boston is renowned for its historical and cultural facilities as well as world-class educational institutions. The greater Boston area also has a thriving theater scene, several museums and art galleries, and four major league sports teams. The following table lists the top museum attractions in Boston for 2017, ranked by visitation. The top two destinations, Museum of Science and New England Aquarium, are both located in central Boston on the waterfront.

Top Ranked Museums by Attendance

Rank	Name	2017 Attendance
1	New England Aquarium	1,418,949
2	Museum of Science	1,381,490
3	Museum of Fine Arts, Boston	1,226,431
4	Zoo New England	584,073
5	Boston Children's Museum	578,632
6	Old North Church	547,385

Source: Greater Boston Convention and Visitors Bureau

The greater Boston area also receives a significant amount of domestic tourism, with roughly 63% originating from the New England region. The following table summarizes the economic impact of domestic tourism to the Greater Boston area and Plymouth County. Domestic tourism has a total tax receipt impact of $650 million between the two areas.

Impact of Domestic Tourism- 2017

	Greater Boston	Plymouth County
Expenditures (MM's)	$10,946.2	$604.9
Payroll (MM's)	$2,426.5	$127.1
Employment (000's)	65.9	4.0
State Tax Receipts (MM's)	$367.6	$31.2
Local Tax Receipts (MM's)	$222.5	$28.7

Source: Massachusetts Office of Travel and Tourism

Plymouth County is included in the Boston Metropolitan Statistical Area (MSA) and stretches south along the coast to Cape Cod. The county was established over 300 years ago and is home to some of the earliest settlements and historically significant properties in the United States.

Brockton is the county seat and also the most populated city in Plymouth County. Brockton's largest attractions are Campanelli Stadium and the Westgate Mall shopping center. The stadium opened in 2002 for the Brockton Rox baseball team with a capacity of 6,000, making it an ideal venue for other large scale events and concerts. The city also paid tribute to its most famous resident, undefeated heavyweight boxer Rocky Marciano, by erecting a 20ft statue of the fighter at Champion Park near Brockton High School and Campanelli Stadium.

Traffic

As previously noted, the proposed site is located 1.5 miles east from Exit 17 off Route 24, a six-lane expressway that connects to Interstates I-93 and I-495. The Massachusetts Department of Transportation listed the most current data for these routes as 2015. Route 24 is generally a north-south roadway that provides the greatest access to the site and will likely account for the majority of trips. As seen in the table below, the AADT (Average Annual Driving Traffic) on Route 24 has increased slightly from 102,744 in 2014 to 105,152 in 2015 and is still significantly higher than traffic on I-495 to the south. The AADT on I-93 in southern Boston grew by 7% in 2015 reaching 172,586 near the Route 24 interchange.

AADT Near Brockton

Street	2014	2015	Growth
Route 24 north of Belmont	102,744	105,152	2.3%
I-93 near MA-24 Interchange	172,586	174,090	0.9%
I-495 near MA-24 Interchange	69,877	74,703	6.9%

Source: Massachusetts Department of Transportation

COMPETITIVE ENVIRONMENT

Existing competition for the proposed casino in Brockton will come mainly from casinos in neighboring states, specifically Rhode Island and Connecticut. Twin River and Newport casinos are less than an hour from Brockton, and the Newport casino will be closed as of August 28th, 2018 and the license will transfer to Tiverton Casino Hotel which is slightly closer to Brockton. Additionally, Foxwoods and Mohegan are twice the distance but two of the largest casinos in the U.S. outside of Las Vegas, NV.

More distant competitors include casinos in New York and Maine.

In addition to the existing facilities, for the purposes of this analysis, two facilities in the Catskill/Hudson Valley region and two casinos in Massachusetts, as well as a proposed casino in East Windsor, Connecticut have also been included as competitors for the proposed casino in Brockton.

Gaming revenue described in this section is net of free play.

The following table presents all of the existing competitive casinos in the Brockton region:

Existing Competitive Casinos

Location	Name	Machines	Tables	Positions
Ledyard, CT	Foxwoods Casino	6,088	441	8,734
Montville, CT	Mohegan Sun Resort	5,613	350	7,713
Yonkers, NY	Empire City at Yonkers Raceway	5,349	0	5,349
Jamaica, NY	Resorts World Casino at Aqueduct	5,005	0	5,005
Lincoln, RI	Twin River Casino	4,220	80	4,700
Saratoga Springs, NY	Saratoga Gaming and Raceway	1,782	0	1,782
Schenectady, NY	Rivers Casino and Resort	1,150	82	1,642
Plainville, MA	Plainridge Park Casino	1,250	0	1,500*
Monticello, NY	Monticello Casino and Raceway	1,110	0	1,110
Newport, RI	Newport Grand Slots Casino	1,097	0	1,097
Bangor, ME	Hollywood Casino Hotel & Raceway Bangor	921	16	1,017
Oxford, ME	Oxford Casino	811	22	943
Total	**12**	**34,396**	**991**	**40,592**

Source: The Innovation Group, Various Gaming Boards and Commissions, CasinoCity.com; *Note: Plainridge has electronic tables that count as one machine but that bring its seat count to approximately 1,500 positions.

Existing

This section details the eleven existing competitors within Brockton's gaming market categorized by state.

Connecticut

Mohegan Sun Casino

The Mohegan Sun Casino and Entertainment complex opened in October 1996. The Mohegan Sun is located on a 185-acre site on the Tribe's reservation overlooking the Thames River with direct access from Interstate 395 and Connecticut Route 2A. Mohegan Sun is approximately 100 miles from Brockton, Massachusetts. In fiscal 2002, the property completed a major expansion of Mohegan Sun known as Project Sunburst, which included increased gaming, restaurant and retail space, an entertainment arena, an approximately 1,200-room luxury Sky Hotel Tower and approximately 100,000 square feet of convention space. In fiscal 2007 and 2008, the Sunrise Square and Casino of the Wind components of Project Horizon expansions were completed. The property now boasts 3.1 million square feet of gaming, food and beverage, and entertainment space.

Mohegan Sun's gaming revenues have been declining due to a combination of the effects from the national economic recession and the development of competitive facilities in Pennsylvania and the New York VLTs. The property currently offers 4,145 machines and 300 table games.

Mohegan Sun Casino Resort, Montville, CT Slot Performance Statistics

Year	Gaming Revenue	Change	Machines	Change	Win per Position	Change
2008	$728,024,927		7,734		$257	
2009	$684,424,106	-6.0%	7,641	-1.2%	$245	-4.6%
2010	$649,020,622	-5.2%	6,964	-8.9%	$255	4.0%
2011	$633,815,234	-2.3%	6,440	-7.5%	$270	5.6%
2012	$576,794,502	-9.0%	6,276	-2.5%	$252	-6.6%
2013	$530,572,312	-8.0%	5,921	-5.7%	$246	-2.5%
2014	$483,559,414	-8.9%	5,693	-3.9%	$233	-5.2%
2015	$465,010,320	-3.8%	4,695	-17.5%	$271	16.6%
2016	$456,156,085	-1.9%	4,466	-4.9%	$279	2.9%
2017	$468,048,004	2.6%	4,145	-7.2%	$309	10.8%

Source: Connecticut Gaming Board; The Innovation Group

Table revenue is not subject to revenue sharing and therefore is not reported through the Connecticut Gaming Board. However, the Mohegan Tribal Gaming Authority (MTGA) releases table game revenues in its reporting to the Securities and Exchange Commission. Altogether, gaming revenues at Mohegan Sun are approximately $910 million in 2016, with table revenue accounting for about 35% of win.

Mohegan Sun Total Gaming Revenues ($MMs)

	FY2016	FY2015	FY2014	FY2013	FY2012
Slot rev	$592.1	$582.5	$582.1	$618.7	$675.1
Table rev	$317.8	$297.2	$293.3	$310.0	$302.6
Total gaming rev	$909.9	$879.7	$875.4	$928.6	$977.7
# of slots	5,267	5,268	5,470	5,553	6,038
# of tables	325	325	330	327	353
Table rev ratio	34.9%	33.8%	33.5%	33.4%	31.0%

Fiscal years ending Sept. 30

Foxwoods Casino

The Foxwoods Casino is located near the town of Ledyard, Connecticut along the Thames River in New London County approximately 95 miles from Brockton, Massachusetts. Foxwoods was founded in 1986 as a bingo hall and was later converted to a casino in 1993. The property features over 4.7 million square feet of gaming, food and beverage and entertainment space and is one of the largest casino resorts in the world. Foxwoods latest expansion, the MGM Grand at Foxwoods was a $700 million addition in 2008.

Slot revenues continued to decline to $728 million in the year 2008 from a total of $783 million in the year 2007 despite the expansion; however, the expansion at the facility coincided with the national economic recession. Gaming revenues continued to decrease at the resort given the opening of competitive facilities and their amenities in Pennsylvania and the VLTS racinos in New York and the soft economy. However, 2017 saw its first year of growth in gaming revenue in over a decade. Foxwoods currently offers about 4,100 machines, and over 250 table games.

Foxwoods Casino, Ledyard, CT Slot Performance Statistics

Year	Gaming Revenue	Change	Machines	Change	Win per Position	Change
2008	$728,024,927		7,734		$257	
2009	$684,424,106	-6.0%	7,641	-1.2%	$245	-4.6%
2010	$649,020,622	-5.2%	6,964	-8.9%	$255	4.0%
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2015	$465,010,320	-3.8%	4,695	-17.5%	$271	16.6%
2016	$456,156,085	-1.9%	4,466	-4.9%	$279	2.9%
2017	$468,048,004	2.6%	4,145	-7.2%	$309	10.8%

Source: Connecticut Gaming Board; The Innovation Group

The following table shows fiscal years so slot revenue does not match the previous calendar-year tables above.

Foxwoods Total Gaming Revenues ($MMs)		
	FY2016	FY2015
Slot rev	$481.4	$483.1
Table rev	$245.1	$234.4
Total gaming rev	$726.5	$717.5
# of slots	5,807	5,808
# of tables	428	429
Table rev ratio	33.7%	32.7%

Fiscal years ending Sept. 30

Rhode Island

Twin River Casino

The Twin River Casino in Lincoln, Rhode Island is approximately 50 miles southwest of Brockton, located at the former Lincoln Greyhound Park off State Highway 146. The racetrack, just 10 minutes from downtown Providence, began offering video lottery terminals in 1992 and completed a $220 million expansion in 2007 under new ownership. In 2012 voters approved a state referendum to allow live table games at the Twin River Casino.

The facility includes a 190,000 square foot gaming floor, 9 food and beverage options and a 29,000 square foot event center frequently hosting national acts and live boxing/MMA fights. The facility has a 135-room on-site hotel. The casino at Twin River currently offers guest over 4,200 slots, 80 gaming tables with a separate poker room and a simulcast racebook betting room.

Twin River Property Statistics

Year	Slot Revenue	Machines	Table Revenue	Table Games	Total Revenue	Change	Win per Position
2008	$407,503,857	4,748			$407,503,857		$234.5
2009	$399,662,955	4,741			$399,662,955	-1.9%	$231.0
2010	$423,660,592	4,749			$423,660,592	6.0%	$244.4
2011	$462,793,306	4,748			$462,793,306	9.2%	$267.1
2012	$477,827,613	4,751			$477,827,613	3.2%	$274.8
2013	$470,391,984	4,592	$41,322,389	66	$511,714,373	7.1%	$281.1
2014	$466,015,784	4,537	$99,886,924	80	$565,902,708	10.6%	$309.0
2015	$456,830,932	4,408	$114,446,240	80	$571,277,172	0.9%	$320.2
2016	$438,054,054	4,258	$135,048,433	80	$573,102,487	0.3%	$330.5
2017	$434,829,065	4,212	$143,855,958	80	$578,685,023	1.0%	$337.9

Source: Rhode Island Lottery; The Innovation Group

Newport Grand Casino

Newport Grand Casino was located off the exit from the Claiborne Pell Newport Bridge on Aquidneck Island, approximately 50 miles south of Brockton. Formerly known as Newport Grand Slot parlor, Twin River Management Group finalized the purchase of this casino in July 2015 with intentions of relocating the gaming license to Tiverton, RI. Newport closed as of August 28th,

2018 and Tiverton opened on September 1st, 2018. Tiverton will be the closest competitor in terms of distance to Brockton.

The current facility has a 50,000 square foot gaming floor, two dining options and one lounge. The casino currently offers 1,097 slots and simulcast racebook betting for greyhound, horse and jai alai races across the country. Slot revenues at Newport Grand have declined over the last decade and while Twin River has expanded into table games, voters refused the state referendum to allow table games at this facility. However, the Tiverton Casino hotel will feature 32 table games and an 84-room hotel.

Newport Property Statistics

Year	Machines	Slot Revenue	Change	Win per Position
2008	1,244	$67,546,725		$148.4
2009	1,484	$61,505,924	-8.9%	$113.5
2010	1,182	$53,297,539	-13.3%	$123.6
2011	1,097	$50,071,495	-6.1%	$125.0
2012	1,093	$50,131,054	0.1%	$125.3
2013	1,093	$46,350,614	-7.5%	$116.2
2014	1,097	$45,179,615	-2.5%	$112.9
2015	1,097	$44,543,308	-1.4%	$111.3
2016	1,096	$46,006,384	3.3%	$114.7
2017	1,097	$46,166,038	0.3%	$115.3

Source: Rhode Island Lottery; The Innovation Group

Massachusetts

Plainridge Park Casino

Plainridge Park Casino, owned by Penn National Gaming, is the newest competitor in the market having opened in late June 2015 at the Plainridge harness-racing track on Route 1 about 20 miles west of Brockton. The racetrack became the first and only slot parlor and live harness racing venue in the state. The $225 million facility includes 8 food and beverage options, one live entertainment lounge bar and parking garage. The casino offers gamers over 1,250 slots, video table games and simulcast and live harness racebook betting. Plainridge generated revenue of $165 million in its first full year of operation.

Plainridge Property Statistics

Year	Machines	Slot Revenue	Change	Win per Position
2016	1,250	$155,041,918		$338.9
2017	1,250	$164,786,230	6.3%	$361.2

Source: Massachusetts Gaming Commission; The Innovation Group

New York

Saratoga Springs

Saratoga Gaming and Raceway is a ½-mile standardbred harness racing dirt track located in Saratoga Springs, New York, just across Nelson Avenue from Saratoga Race Course which hosts thoroughbred racing each August. Saratoga Raceway aka The Saratoga Equine Sports Center – otherwise known as the Saratoga Gaming and Raceway – was opened in 1941 as a facility for American harness racing and was the third racetrack in the State of New York to feature pari-mutuel wagering. The casino opened in January 2004 featuring approximately 1,300 video lottery terminals. The casino now features 1,700 video lottery terminals.

Saratoga Springs Historical Gaming Revenues

Year	Gaming Revenue	Change	Machines	Change	Win per Position	Change
2008	$134,373,560		1,770		$207	
2009	$136,038,290	1.2%	1,770	0.0%	$211	1.5%
2010	$139,721,687	2.7%	1,775	0.3%	$216	2.4%
2011	$150,420,830	7.7%	1,782	0.3%	$231	7.3%
2012	$159,751,975	6.2%	1,780	-0.1%	$245	6.0%
2013	$159,594,798	-0.1%	1,782	0.1%	$245	0.1%
2014	$158,765,338	-0.5%	1,782	0.0%	$244	-0.5%
2015	$160,919,293	1.4%	1,763	-1.0%	$250	2.4%
2016	$167,212,392	3.9%	1,718	-2.6%	$266	6.4%
2017	$137,438,160	-17.8%	1,707	-0.6%	$221	-17.1%

Source: New York Lottery, The Innovation Group

Monticello Raceway

The Monticello Gaming and Raceway originally opened in June 1958 featuring the "Mighty M" half mile track featuring standard bred horse races. The casino portion opened in June 2004 featuring 1,700 video lottery terminals, but it has since scaled back to 1,110. Gaming revenue has fluctuated up and down, but roughly stayed flat over the last decade at $58 million.

Monticello Raceway Historical Gaming Revenues

Year	Gaming Revenue	Change	Machines	Change	Win per Position	Change
2008	$58,109,181		1,587		$100	
2009	$53,751,367	-7.5%	1,401	-11.7%	$105	5.0%
2010	$57,394,484	6.8%	1,089	-22.3%	$144	37.3%
2011	$60,918,062	6.1%	1,110	1.9%	$150	4.2%
2012	$63,873,596	4.9%	1,110	0.0%	$157	4.6%
2013	$62,821,386	-1.6%	1,110	0.0%	$155	-1.4%
2014	$59,142,393	-5.9%	1,110	0.0%	$146	-5.9%
2015	$59,326,309	0.3%	1,110	0.0%	$146	0.3%
2016	$61,086,135	3.0%	1,110	0.0%	$150	2.7%
2017	$58,508,310	-4.2%	1,110	0.0%	$144	-4.0%

Source: New York Lottery, The Innovation Group

Empire City at Yonkers Raceway

Yonkers Raceway, founded in 1899 in Yonkers as the Empire City Race Track, is a one-half-mile standardbred harness racing dirt track. The casino opened in October 2006 after a $225 million renovation and featured only 1,870 video lottery terminals. The casino now features approximately 5,200 video lottery terminals.

Yonkers Raceway Historical Gaming Revenues

Year	Gaming Revenue	Change	Machines	Change	Win per Position	Change
2008	$486,459,681		5,339		$249	
2009	$540,495,929	11.1%	5,320	-0.4%	$278	11.8%
2010	$582,229,271	7.7%	5,309	-0.2%	$300	7.9%
2011	$624,432,033	7.2%	5,351	0.8%	$320	6.4%
2012	$544,698,569	-12.8%	4,987	-6.8%	$298	-6.7%
2013	$559,946,387	2.8%	5,327	6.8%	$288	-3.5%
2014	$537,491,608	-4.0%	5,344	0.3%	$276	-4.3%
2015	$558,287,537	3.9%	5,277	-1.3%	$290	5.2%
2016	$589,716,723	5.6%	5,232	-0.8%	$308	6.2%
2017	$599,218,590	1.6%	5,221	-0.2%	$314	2.1%

Source: New York Lottery; The Innovation Group

Resorts World Casino at Aqueduct Racetrack

The Aqueduct Racetrack is a horse racing facility in Jamaica, New York with three tracks that feature thoroughbred racing. The Resorts World casino opened in October of 2011, and features over 5,000 gaming machines, including electronic table games that are extremely popular with the Asian population in Queens and Brooklyn.

Aqueduct Historical Gaming Revenues

Year	Gaming Revenue	Change	Machines	Change	Win per Position	Change
2011*	$89,293,498		2,919		$471	
2012	$672,570,324		4,954	69.7%	$371	-21.2%
2013	$785,128,863	16.7%	5,004	1.0%	$430	15.9%
2014	$807,988,805	2.9%	5,003	0.0%	$442	2.9%
2015	$831,222,582	2.9%	5,060	1.1%	$450	1.7%
2016	$826,486,601	-0.6%	5,423	7.2%	$416	-7.5%
2017	$702,120,545	-15.0%	5,207	-4.0%	$369	-11.3%

Source: New York Lottery; *2011 has 65 Days, The Innovation Group

Rivers Casino & Resort

Rivers Casino & Resort is a $330 gaming and entertainment venue located in Schenectady, New York, which is roughly 200 miles west of Brockton. Rivers Casino opened in February of 2017. The venue opened its hotel in the second quarter of operations. The property offers roughly 1,150 slot machines and 80 table games. In its first complete Fiscal Year in operation, Rivers Casino reported approximately $140 million in GGR.

Rivers Historical Gaming Revenues

Year	Slot Revenue	Machines	Table Revenue	Table Games	Total Revenue	Change	Win per Position
2017	$82,016,111	1,150	$40,611,458	67	$122,627,569		$216
Last 12 Months	$97,537,310	1,150	$44,947,233	67	$142,484,543	n/a	$252

Source: New York Lottery; *2017 has 327 Days, The Innovation Group

Resorts World Catskills

Resorts World Catskills was the last of the four nontribal casinos licensed by the state of New York in 2014 to open. Gaming operations at this $900 million hotel casino located at the old Concord Hotel near Monticello started in February of 2018. The hotel has 332 rooms and the casino floor has over 2,150 slot machines and 150 table games including poker. In its first full month of operations, the casino generated $12.4 million in GGR.

Resorts World Historical Gaming Revenues

Year	Slot Revenue	Machines	Table Revenue	Table Games	Total Revenue	Change	Win per Position
2018*	$31,727,284	2,153	$23,814,682	125	$55,541,966	n/a	$233

Source: New York Lottery; *2018 has 82 Days of data, The Innovation Group

Maine

Hollywood Casino Hotel & Raceway Bangor

Hollywood Casino is located at the junction of Interstates I-95 and I-395 next to the Penobscot River in Bangor, central Maine. The facility is almost 5 hours or 275 miles north of Brockton, MA and is not considered a strong competitor. The casino first opened in 2005 at a temporary location before building the current facility at an existing racetrack in 2008. The casino is operated by Penn National Gaming, who expanded casino operations in 2012 to include the state's first table games. The facility currently includes a 152-room hotel, three dining options, one live entertainment lounge, banquet facilities, live-harness racetrack and 10,000 square foot gaming floor currently offering 784 slots and 16 poker and table games.

Hollywood Casino Bangor Property Statistics

Year	Slot Revenue	Machines	Table Revenue	Tables	Total Revenue	Change	Win per Position
2008	$50,515,382	740			$50,515,382		$187
2009	$59,224,270	1,000			$59,224,270	17.2%	$162
2010	$61,667,214	1,000			$61,667,214	4.1%	$169
2011	$59,453,078	1,000			$59,453,078	-3.6%	$163
2012	$56,212,925	936	$6,470,964	16	$62,683,888	5.4%	$166
2013	$47,269,709	909	$7,388,848	16	$54,658,557	-12.8%	$149
2014	$46,410,579	877	$8,026,814	16	$54,437,393	-0.4%	$153
2015	$44,274,063	763	$8,966,225	16	$53,240,288	-2.2%	$170
2016	$43,494,044	779	$9,133,204	17	$52,627,248	-1.2%	$163
2017	$41,698,800	773	$8,730,574	18	$50,429,374	-4.2%	$157

Source: Maine Gaming Board; The Innovation Group

Oxford Casino

The Oxford Casino opened in 2012 as Black Bear Four Season Resort & Casino but changed its name before being sold to Churchill Downs Inc. the following year. The facility is located 20 miles off Interstate I-95 just outside of Oxford in southwest Maine. The casino currently has three dining options and a 30,281 square foot gaming floor with over 850 slots, 28 table games and 12-seat video poker bar. A 107-room hotel as opened in November of 2017.

Oxford Casino Property Statistics

Year	Slot Revenue	Machines	Table Revenue	Tables	Total Revenue	Change	Win per Position
2012	$29,887,262	688	$6,652,279	16	$36,539,541		$218
2013	$58,353,948	811	$13,261,868	23	$71,615,816	96.0%	$207
2014	$58,368,047	858	$14,464,188	26	$72,832,235	1.7%	$197
2015	$62,091,956	855	$14,475,213	26	$76,567,169	5.1%	$208
2016	$64,856,476	857	$15,637,882	27	$80,494,358	5.1%	$218
2017	$68,722,796	852	$17,564,142	28	$86,286,938	7.2%	$234

Source: Maine Gaming Board; *2012 has 213 Days, The Innovation Group

Proposed

Massachusetts

In November 2011, Massachusetts gaming legislation approved three resort casinos. The bill establishes three different regions for casinos, including one that encompasses the four Western Massachusetts counties – Hampshire, Hampden, Franklin and Berkshire – known as region B. Suffolk, Middlesex, Essex, Norfolk and Worcester counties are in region A, and Bristol, Plymouth, Barnstable, Nantucket and Dukes counties are in region C. For the three resorts, the bill also calls for a minimum investment of $500 million, not including land costs, license fee, or off-site infrastructure mitigation. Massachusetts Gaming Commission awarded licenses to MGM Resorts International for Region B and Wynn Resorts for Region A.

Springfield

MGM opened its nearly $1 billion integrated resort in Springfield on August 24th, 2018. The property includes a 250-room hotel tower and 125,000 square feet of gaming space with 2,550 slot machines and 120 gaming tables. Additionally, it provides typical amenities found in such resort properties such as restaurants, spas, retail shops, and meeting space in addition to an 8,000-seat entertainment venue, TopGolf swing suite, and a bowling alley.

Everett

Wynn Resorts plans to develop a $2.5 billion casino at the former Monsanto Chemical Plant site on the Mystic River in Everett, a northern suburb of Boston. Development of the 33-acre waterfront property is to be complete in one phase starting with the environmental clean-up and transportation infrastructure improvements. The proposed resort, named Encore Boston Harbor, will focus on open-space amenities to reconnect the public to the waterfront through a harborwalk, park, pavillion and docking facilities for ferry operations to Boston. The project also includes 670 hotel accommodations, spa, retail, multiple food and beverage options, convention space and parking garage. The casino gaming floor is estimated to offer patrons over 3,000 slots and 150 table games and is expected to open in June 2019.

Connecticut

MMCT Venture LLC, the joint venture formed by the Mashantucket Pequot and Mohegan tribes, plans to develop a $300-$400 million venue with 100,000 square feet of gaming space in East

Windsor, Connecticut. The Native American tribes that own Foxwoods Resort Casino and Mohegan Sun say they plan a fall 2018 groundbreaking at their planned East Windsor casino, which would suggest an opening date in 2020. The expansion casino would be roughly a 20-minute drive south of MGM Springfield and its opening is aimed at keeping gambling dollars and preserving jobs tied to the gambling industry in Connecticut. This proposed casino would not have a material effect on the Eastern Massachusetts market.

Additionally, MGM Resorts International plans to continue fighting the expansion in court where MGM has argued that Connecticut wrongly denied them an opportunity to compete for the commercial gaming license. MMCT said the proposed casino would have roughly 2,000 slot machines and 60 table games.

SPORTS BETTING AND ONLINE ANALYSIS

In May, the Supreme Court of the United States ruled in favor of New Jersey in Murphy v. NCAA, overturning PASPA, the Professional and Amateur Sports Protection Act. PASPA was the legislation that effectively rendered sports betting illegal in most of the United States. This SCOTUS ruling puts the legislation and regulation of sports wagering in the hands of the states. In addition to Nevada, many states, such as New Jersey, Delaware, Pennsylvania, Mississippi, New York, and West Virginia, have already passed legislation legalizing sports wagering, and several other states have bills being considered in their legislatures.

Additionally, casinos in other states, like New Jersey, are in markets that allow with online gambling and Daily Fantasy Sports (DFS) options. This section gives a brief overview of the markets in the immediate area around Massachusetts.

Massachusetts

Massachusetts passed legislation related to sports betting, but only a *study bill* (S 2273), compelling the state to research the impact of sports betting in the commonwealth. The (Senate) Committee on Economic Development and Emerging Technologies is currently acting on this bill, which states that:

> *[Should PASPA be repealed…] there shall be a special commission to conduct a comprehensive study and offer proposed legislation relative to the regulation of online sports betting. The commission shall convene within 30 calendar days following any decision by the United States Supreme Court, and shall review all aspects of online sports betting including, but not limited to: economic development, consumer protection, taxation, legal and regulatory structures, burdens and benefits to the commonwealth and any other factors the commission deems relevant.*

And specifically that the commission:

> *shall submit recommendations for legislation with the clerks of the senate and the house of representatives not later than 120 calendar days following the decision by the United States Supreme Court.*

This gives the commission until 9/11/2018 to develop recommendations for legislation. And, we remark that this mandate specifically includes a directive to include recommendations around online sports wagering. With MGM Springfield and Encore Boston Harbor opening this year, we believe Massachusetts is very likely to legalize sports wagering online, or at minimum on offsite mobile devices, sometime in 2019.

Connecticut

Connecticut passed sports betting legislation in 2017. This bill authorizes sports betting in the state of Connecticut, subject to the development of a regulatory framework. In other words, sports betting is legal, but there is no mechanism by which either of the operators in the state – the Mashantucket Pequot Tribe (Foxwoods) or the Mohegan Tribe (Mohegan Sun) – can actually offer it. Further complicating matters are tribal compacts and exclusivity agreements. Since sports betting is a class III game, current compacts would need to be renegotiated in order for Foxwoods or Mohegan Sun to allow sports betting. The tribes also argue that their exclusivity agreements extend to sports wagering and that having legal

sports wagering in CT anywhere except at Foxwoods and Mohegan Sun would be in violation of their exclusivity agreement (and grounds to withhold hundreds of millions of dollars in exclusivity fees paid annually to the state). The legislature is adjourned until January 2019, so it appears very unlikely that Connecticut will develop regulations this year.

Rhode Island

Rhode Island is one of the six states that has legal sports betting but is also one of the three states in that group that is still in the preparation stages. The State of Rhode Island passed legislation that legalized sports betting in June 2018 and is expected to start operations in November of 2018. The legislation has put the Rhode Island Lottery in charge of overseeing sports betting within the state. Additionally, the bill imposes a revenue sharing system where the state of Rhode Island receives 51% of GGR, the operator receives 32% of GGR, and the casino receives the remaining 17% of GGR. This revenue sharing system, in effect, operates as a heavy tax on sports betting, and therefore produced only a sole bidder, IGT, for the sports betting technology vendor for Rhode Island. Recently, it was announced that William Hill would partner with IGT to operate as the risk management services for the sports betting operations.

Conclusion

Sports betting can be seen as opportunity to bring in additional revenue to existing casinos. While Connecticut and Rhode Island are in the process of making sports betting available to the public, it is the belief of The Innovation Group that all three states will have legalized sports betting available to the public in either a land-based or mobile format in the near future.

It is important to note that while there is potential for some substitution effect in total spend between sports bettors and other casino patrons, the demographics of the average sports bettor skews younger than slot players and even table gamers. Studies have found that the average sports bettor is between the ages of 18-34[2]. Additionally, these players tend to be familiar with casinos and have the potential to spend additional dollars once on the casino floor at a table or slot during a visit to a legal sports book.

In addition to new sports betting ventures, Massachusetts and the competitive markets have the opportunity to pass legislation regarding online gambling and DFS. Recently, the Massachusetts House of Representatives passed an amendment removing the sunset clause on the laws regulating DFS, making a move in the direction towards permanent legalization of the gaming format.

Rhode Island elected to hold off on allowing online betting; it is expected that the State will reconsider in the long run as Massachusetts and Connecticut consider legislation allowing these wagers. Using New Jersey as a precedent, online gaming is expected to cause minimal cannibalization of land-based casino revenues and foster potential international partnerships with existing online formats.

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[2] HUMPHREYS, BRAD R., PEREZ, LEVI, Who Bets on Sports? Characteristics of Sports Bettors and the Consequences of Expanding Sports Betting Opportunities. Estudios de Economía Aplicada, vol. 30, no. 2, 2012, pp. 579-597

Methodology

In developing this analysis, a gravity model was employed. Gravity models are commonly used in location studies for commercial developments, public facilities and residential developments. First formulated in 1929 and later refined in the 1940s, the gravity model is an analytical tool that defines the behavior of a population based on travel distance and the availability of goods or services at various locations. The general form of the equation is that attraction is directly related to a measure of availability such as square feet and inversely related to the square of the travel distance. Thus the gravity model quantifies the effect of distance on the behavior of a potential patron, and considers the impact of competing venues.

The basic formulation is that the interaction between two or more gaming venues is based on Newton's Law of Universal Gravitation: two bodies in the universe attract each other in proportion to the product of their "masses" – here, gaming positions – and inversely as the square distance between them. Thus, expected interaction between gaming venue i and market area j is shown as:

$$k \times \frac{N_i \times P_j}{d_{ij}^2}$$

where N_i = the number of gaming positions in gaming venue i, P_j = the population (21+) in market area j, d_{ij} = the distance between market area j and gaming venue i, and k = an attraction factor relating to the quality and amenities to be found at each gaming venue in comparison to the competing set of venues. When this formulation is applied to each gaming venue gaming trips generated from any given zip code are then distributed among all the competing venues.

The gravity model included the identification of 16 discrete market areas based on drive times and other geographic features and the competitive environment. Using our GIS software and CLARITAS database[3], the adult population (21 and over), latitude and longitude, and average household income is collected for each zip code.

Each of these market areas is assigned a unique set of propensity and frequency factors. Gamer visits are then generated from zip codes within each of the areas based on these factors. The gamer visits thus generated are then distributed among the competitors based upon the size of each

[3]The GIS software used was MapInfo. This software allows for custom data generally in a tabular format with a geographic identification code (census tract, zip code, latitude and longitude, or similar identifier) to be mapped or displayed and integrated with other geographic census based information such as location of specific population or roadways. MapInfo is one of the most widely used programs in the geographic information systems industry. Nielsen Claritas is a vendor of demographic information located in the United States. Nielsen Claritas provides census demographic and psychographic data on a variety of geographic levels of detail ranging from census block groups and counties to postal zip codes. Their information is updated every six months and includes a current year estimate and provides a five year forecast for the future. The Innovation Group has utilized this data for inputs to its models for the last six years and has purchased full access to their demographic database for the entire United States.

facility, its attractiveness and the relative distance from the zip code in question. The gravity model then calculates the probabilistic distribution of gamer visits from each market area to each of the gaming locations in the market.

Each travel distance/time is evaluated to determine the likely alternative gaming choices for residents of the region. The model is constructed to include only those alternative venues that are considered to be within a reasonable travel time. These include competing casinos that have the potential to attract patrons, or siphon off visits from the market. Travel distances and time have been developed through use of our GIS system.

The following section provides a description and definition of the various components of the model.

Gamer Visits

This measure is used to specify the number of patron trips to a gaming market, where an individual can make any number of separate visits in the course of a year. In order to estimate the gamer visits, market penetration rates, made up of the separate measures of propensity and frequency, are applied to the adult population in each zip code. A gamer visit can include more than one visit to a casino.

Propensity

Propensity measures the percentage of adults who will participate in casino gaming within the zip code. This varies based upon a number of factors, which includes the number of gaming venues, their type (i.e. landbased versus cruising riverboat versus dockside riverboat), games permitted, availability of other entertainment and leisure options, and most importantly distance from a gaming venue. Propensity in the inner market areas from 0-50 miles can vary between the high thirty per cent range in a single cruising riverboat market to the fifty percent range, or more, for multiple land-based casinos with a well-developed array of amenities.

Frequency

This measures the average number of visits that an adult will make annually to casinos in the subject market. Frequency is a function of annual gaming budget as indicated by income variations, the number of venues in the market, the type of gaming facility and most importantly distance from a gaming venue.

MPI (Market Potential Index)

Propensity also varies as a function of each market's average market potential index (MPI) score. MPI scores are generated by Simmons Survey, a respected consumer research firm that conducts a nationwide survey of consumer behavior, including propensity to gamble at a casino. This score is an indication of the degree of likelihood that a person will participate in gaming based upon their lifestyle type. The MPI score inflates or discounts the participation rate of each zip code. For example, if a market area has an overall participation rate of 4.0 (propensity of 40% times frequency of 10), an MPI score of 120 for a particular zip code would effectively inflate the participation rate of that zip code to 4.8 (4.0 times 120%). The overall MPI score for the market area is a weighted average of all the zip codes within the area.

Win per Visit

Win per visit varies not only by gaming jurisdiction, but also in some cases by individual facilities. Normatively, win per visit is a function of distance and income. Gamers traveling greater distances tend to spend more per visit, typically making fewer gamer visits on average.

Attraction Factors

Attraction factors measure the relative attraction of one gaming venue in relation to others in the market. Attraction factors are applied to the size of the gaming venue as measured by the number of positions it has in the market. Positions are defined as the number of gaming machines plus the number of seats at gaming tables. A normative attraction factor would be one. When this is applied to the number of positions in a gaming venue there is no change in the size of the gaming venue as calculated by the model and hence its attraction to potential patrons. A value of less than one adjusts the size of the gaming venue downwards and conversely a value greater than one indicates that the gaming venue has characteristics that make it more attractive. Attraction factors can be based on a number of components including branding, the level and effectiveness of marketing efforts, and the level of quality and amenities of a facility. Attraction factors are also adjusted to model the presence of natural and man-made boundaries which impact ease of access and convenience of travel in the market area.

The sensitivity of the model to changes in these factors is not in the nature of a direct multiplication. For example, a doubling of the attraction factor will not lead to a doubling of the gamer visits attracted to the site. It will however cause a doubling of the attractive power of the gaming venue, which is then translated via non-linear equations into an increase in the number of gamer visits attracted to the gaming venue. This is based upon the location, size and number of competing gaming venues and their relationship to the market area to which the equation is applied. The variation of these factors is based upon The Innovation Group's experience in developing and applying these models, and consideration of the existing visitation and revenues. The latter represents the calibration of the model and has been accomplished by adjusting attraction factors to force the model to recreate the existing revenues and patron counts. In this case attraction factors have been adjusted for each casino for each market area. This is based upon known visitation patterns.

Market Carve-out

The Brockton market has been carved into 16 distinct market areas, from which it could be expected that different participation rates may be expected depending on the level and location of competition that is present in the market currently and in the future. The following map and table show the market areas and their respective adult population (21 and over) and average household income.

Brockton Market Carve With Casino Competition

Market Carveout Area Demographics

	Adult (21+) Population			Average Annual Household Incomes		
	2018	2023	C.A.G.R. 2018-2023	2018	2023	C.A.G.R. 2018-2023
Brockton Primary	437,855	457,374	0.9%	$100,078	$111,306	2.1%
Plainridge	253,009	265,885	1.0%	$142,112	$159,587	2.3%
South Shore	154,351	163,022	1.1%	$136,879	$150,085	1.9%
Southern Mass	262,451	270,177	0.6%	$76,462	$85,829	2.3%
Cape Cod	176,839	179,565	0.3%	$94,521	$104,502	2.0%
Worcester	476,631	496,726	0.8%	$108,822	$120,034	2.0%
West of Boston	316,588	333,018	1.0%	$166,100	$183,514	2.0%
Boston South	638,642	671,171	1.0%	$110,263	$122,852	2.2%
Boston North	888,202	920,751	0.7%	$116,264	$130,318	2.3%
North Shore	681,586	715,698	1.0%	$111,721	$122,832	1.9%
Leominster	196,828	205,378	0.9%	$101,935	$112,665	2.0%
NW Mass	81,065	82,680	0.4%	$80,107	$89,429	2.2%
Springfield	493,646	509,212	0.6%	$81,681	$91,382	2.3%
Connecticut	1,571,305	1,587,550	0.2%	$101,857	$112,566	2.0%
Rhode Island	796,603	809,100	0.3%	$86,941	$95,939	2.0%
Tertiary North	817,785	843,341	0.6%	$106,359	$119,693	2.4%
Average/Total	**8,243,386**	**8,510,648**	**0.6%**	**$106,162**	**$118,110**	**2.2%**

Source: iXPRESS, Nielsen Claritas, Inc.; MapInfo: The Innovation Group; CAGR= Compound Annual Growth Rate

The 2-hour market area contains nearly 8.2 million adults (21 and over). Population growth, although estimated to be marginally lower than the national average, is projected to be 0.6%. At $106,162, household income is significantly higher than the national average, and has a projected annual growth of 2.2%.

Model Calibration

The following table shows the rates for propensity, frequency, MPI, and win per visit by market area that were used to re-create the actual conditions in the Base 2018 model. Win has been varied based on differences between market areas in average household income and travel time.

The following table shows gravity model gaming visits and revenues for the base calibration. These revenues reflect the total potential gaming revenue from the defined market area in 2018.

Gravity Model Calibration Base 2018

Market Segment	Gamer Pop.	Propensity	Frequency	MPI	Gaming Visits	WPV	GGR ($M)
Brockton Primary	437,855	33.1%	11.0	103	1,648,133	$78	$128.7
Plainridge	253,009	34.4%	12.6	101	1,099,301	$84	$92.4
South Shore	154,351	27.7%	9.4	98	393,452	$87	$34.1
Southern Mass	262,451	30.8%	10.3	101	836,105	$75	$62.6
Cape Cod	176,839	20.4%	7.1	93	238,112	$81	$19.4
Worcester	476,631	29.7%	10.0	100	1,417,784	$81	$114.8
West of Boston	316,588	23.7%	10.0	101	753,881	$93	$69.7
Boston South	638,642	25.3%	10.6	109	1,868,473	$82	$152.8
Boston North	888,202	23.0%	9.7	109	2,144,877	$84	$179.7
North Shore	681,586	19.0%	8.1	103	1,079,422	$84	$91.0
Leominster	196,828	23.5%	8.1	99	369,295	$82	$30.2
NW Mass	81,065	15.3%	5.4	94	63,354	$80	$5.1
Springfield	493,646	19.7%	6.8	100	665,787	$79	$52.7
Connecticut	1,571,305	33.0%	11.1	101	5,839,293	$78	$457.4
Rhode Island	796,603	35.8%	11.8	107	3,614,698	$75	$270.0
Tertiary North	817,785	17.3%	6.1	98	844,121	$84	$71.1
Total	**8,243,386**				**22,876,091**	**$80**	**$1,831.6**

Source: The Innovation Group

Local Market Future Baseline

The next step in the analysis was to create a baseline model for 2022 using projected population and income growth and looking at historical revenue trends. The following table therefore details the local market gaming revenue projected out to 2022 and segregated by market segment assuming *without* the subject property.

Gravity Model Forecast– 2022 Baseline

Market Segment	Gamer Pop.	Propensity	Frequency	MPI	Gaming Visits	WPV	GGR ($M)
Brockton Primary	453,392	33.1%	11.0	103	1,706,086	$81	$139.0
Plainridge	263,255	34.4%	12.6	101	1,143,524	$87	$100.0
South Shore	161,249	27.7%	9.4	98	410,976	$90	$37.0
Southern Mass	268,607	30.8%	10.3	101	855,578	$78	$66.9
Cape Cod	179,013	20.4%	7.1	93	241,056	$85	$20.4
Worcester	492,622	29.7%	10.0	100	1,464,908	$84	$123.6
West of Boston	329,656	23.7%	10.0	101	784,701	$96	$75.3
Boston South	664,518	25.3%	10.6	109	1,945,014	$85	$165.7
Boston North	914,136	23.0%	9.7	109	2,207,699	$87	$192.5
North Shore	708,730	19.0%	8.1	103	1,122,233	$88	$98.4
Leominster	203,631	23.5%	8.1	99	382,008	$85	$32.6
NW Mass	82,352	15.3%	5.4	94	64,354	$83	$5.4
Springfield	506,050	19.7%	6.8	100	682,372	$83	$56.3
Connecticut	1,584,261	33.0%	11.1	101	5,886,525	$82	$481.1
Rhode Island	806,563	35.8%	11.8	107	3,657,971	$78	$285.6
Tertiary North	838,140	17.3%	6.1	98	865,101	$88	$75.8
Total	**8,456,174**				**23,420,103**	**$84**	**$1,955.7**

Source: The Innovation Group

Base Forecast with New Properties

The next step for the 2022 model was to account for additions to the regional market. One slots-only facility was assumed in Plainville, MA, the Newport casino location would be transferred to become the Tiverton Casino Hotel with table games, and two additional Class III facilities were assumed for Massachusetts (Springfield and Everett). Propensity and frequency would be expected to increase in market areas affected by these developments.

Gravity Model Forecast with Additional Casinos- 2022

Market Segment	Gamer Pop.	Propensity	Frequency	MPI	Gaming Visits	WPV	GGR ($M)
Brockton Primary	453,392	33.1%	11.0	103	1,706,086	$81	$139.0
Plainridge	263,255	38.2%	12.6	101	1,270,582	$86	$109.8
South Shore	161,249	29.1%	9.8	98	452,134	$90	$40.5
Southern Mass	268,607	37.7%	12.4	101	1,260,951	$75	$95.2
Cape Cod	179,013	23.1%	7.9	93	304,406	$84	$25.6
Worcester	492,622	31.2%	10.5	100	1,615,061	$84	$135.3
West of Boston	329,656	33.7%	11.2	101	1,250,308	$93	$116.0
Boston South	664,518	33.4%	11.0	109	2,660,010	$83	$221.4
Boston North	914,136	34.3%	11.2	109	3,822,112	$84	$320.8
North Shore	708,730	28.1%	9.4	103	1,913,965	$86	$163.7
Leominster	203,631	26.4%	9.0	99	476,822	$84	$40.2
NW Mass	82,352	24.6%	8.3	94	157,790	$81	$12.8
Springfield	506,050	37.5%	12.4	100	2,357,173	$76	$180.1
Connecticut	1,584,261	35.7%	12.1	101	6,908,491	$80	$556.1
Rhode Island	806,563	35.8%	11.8	107	3,657,971	$78	$285.6
Tertiary North	838,140	19.8%	6.8	98	1,094,755	$87	$95.4
Total	**8,456,174**				**30,908,617**	**$82**	**$2,537.5**

Source: The Innovation Group

Base Forecast with Brockton

Finally, the subject property in Brockton, Massachusetts was added to the gravity model. The following table shows the market factors during the first full year of operations for the Brockton casino with the additional properties added to the market.

Gravity Model Forecast with Brockton- 2022

Market Segment	Gamer Pop.	Propensity	Frequency	MPI	Gaming Visits	WPV	GGR ($M)
Brockton Primary	453,392	38.2%	12.6	103	2,237,775	$79	$177.4
Plainridge	263,255	38.2%	12.6	101	1,270,582	$86	$109.8
South Shore	161,249	32.6%	10.9	98	563,139	$88	$49.6
Southern Mass	268,607	37.7%	12.4	101	1,260,951	$75	$95.2
Cape Cod	179,013	23.1%	7.9	93	304,406	$84	$25.6
Worcester	492,622	31.2%	10.5	100	1,615,061	$84	$135.3
West of Boston	329,656	33.7%	11.2	101	1,250,308	$93	$116.0
Boston South	664,518	35.4%	11.6	109	2,982,157	$82	$245.6
Boston North	914,136	34.7%	11.3	109	3,912,573	$84	$327.7
North Shore	708,730	28.3%	9.4	103	1,936,548	$85	$165.6
Leominster	203,631	26.4%	9.0	99	476,822	$84	$40.2
NW Mass	82,352	24.6%	8.3	94	157,790	$81	$12.8
Springfield	506,050	37.5%	12.4	100	2,357,173	$76	$180.1
Connecticut	1,584,261	35.7%	12.1	101	6,908,491	$80	$556.1
Rhode Island	806,563	35.8%	11.8	107	3,657,971	$78	$285.6
Tertiary North	838,140	19.8%	6.8	98	1,094,755	$87	$95.4
Total	**8,456,174**				**31,986,502**	**$82**	**$2,617.9**

Source: The Innovation Group

Overall, the market is projected to generate approximately 32 million visits. The following table shows gaming revenue for the Brockton scenario. We estimate that the facility will capture 14.3% of the local market or an estimated 4.6 million gamer visits and generate $376 million in gaming revenue in the first stabilized year of operation. It should be noted that the gravity model has been calibrated to revenue data from Connecticut, Rhode Island, Maine and New York that is net of free play. Therefore the projection below is for net gaming revenue. The table below details the subject property's local market gaming revenue by market segment.

Brockton Local Market Gaming Revenue Forecast - First Stabilized Year

Market Segment	Total Market Visits	Brockton Capture Rate	Brockton Gamer Visits	Brockton WPV	Brockton Gaming Revenue (MMs)
Brockton Primary	2,237,775	66.4%	1,485,205	$79.3	$117.7
Plainridge	1,270,582	22.5%	285,784	$86.4	$24.7
South Shore	563,139	43.8%	246,870	$88.1	$21.8
Southern Mass	1,260,951	17.4%	219,970	$75.5	$16.6
Cape Cod	304,406	32.9%	100,188	$84.0	$8.4
Worcester	1,615,061	11.2%	181,349	$83.8	$15.2
West of Boston	1,250,308	17.6%	219,879	$92.8	$20.4
Boston South	2,982,157	31.2%	930,221	$82.4	$76.6
Boston North	3,912,573	4.0%	157,765	$83.8	$13.2
North Shore	1,936,548	13.0%	252,205	$85.5	$21.6
Leominster	476,822	11.1%	52,804	$84.3	$4.5
NW Mass	157,790	4.0%	6,343	$80.9	$0.5
Springfield	2,357,173	1.4%	32,561	$76.4	$2.5
Connecticut	6,908,491	1.9%	128,589	$80.5	$10.4
Rhode Island	3,657,971	5.0%	181,716	$78.1	$14.2
Tertiary North	1,094,755	7.9%	86,016	$87.1	$7.5
Total:	**31,986,502**	**14.3%**	**4,567,465**	**$82.2**	**$375.7**

Source: The Innovation Group

In addition to the local market revenue generated through the gravity model, the subject property is anticipated to generate out-of-market revenue. This out-of-market gaming demand represents visits driven by reasons other than proximity of permanent residence, such as tourism, visiting friends and family, seasonal residence, variety of gaming experience, and pass-through traffic intercept. This typically ranges between 4% and 10% of a casino's revenue depending upon location, amenities and tourism market relative to the size of the local population. For this estimate we have assumed the completion of a 250-room hotel in conjunction with additional amenities at the Brockton casino. Combined, total gaming revenue in stabilized operations at the proposed Brockton Casino is projected to be **$404 million**.

Brockton Casino Gaming Revenue Summary
Stabilized Operations

	Gaming Revenue
Local Gravity Model Market	$375,668,790
Out-of-Market	$28,175,159
Total	**$403,843,949**

Source: The Innovation Group

Five Year Forecast

The following presents five year forecasted gaming revenue for the proposed property. As noted above, the revenue forecast is for stabilized operations in year two. Ramp-up of approximately 6% in year two and 2.5% in year three is projected to allow for marketing efforts to take effect and player database growth. Normative growth of 2.0% is estimated thereafter.

Brockton Five Year Revenue Forecast

	Year One	Year Two	Year Three	Year Four	Year Five
Gaming Revenue (MMs)	$381.1	$403.8	$413.8	$422.0	$430.5
Visitation (MMs)	4.62	4.86	4.91	4.94	4.96
Win per Visit	$82.57	$83.03	$84.22	$85.48	$86.76
Number of Units	2,844	2,844	2,844	2,844	2,844
Win/Unit/Day	$367	$389	$399	$407	$415

Source: The Innovation Group

Source of Revenue and Repatriation Analysis

This section assesses the repatriation of gaming spending by Massachusetts residents that would otherwise accrue to casinos in neighboring states as well as the capture of spending by out-of-state residents. This analysis is based on the gravity model analysis, which as discussed distributes gaming visits from each zip code in the market area to each casino in the model. By comparing the Baseline with the Brockton Forecast model, an assessment of repatriation can be generated. As noted, the Baseline model included the other two approved casinos in Regions A and B as well as Plainridge. In the Baseline gravity model, it is estimated that Massachusetts residents would contribute nearly $608 million dollars to gaming revenues at casinos in Connecticut, Rhode Island, New York, and Maine. Brockton is estimated to repatriate approximately $140 million of this, as shown in the following table.

Capture of MA Resident Spending by Out-of-State Casinos: Stabilized Year

Baseline	$608,290,189
With Brockton	$467,786,519
Brockton Repatriation (Gravity Model)	$140,503,670

Source: The Innovation Group

In addition to this repatriation, the Brockton Casino is estimated in the gravity model to capture approximately $27 million from residents of neighboring states on a net basis (minus impact on existing Massachusetts), as shown in the following table. It is also estimated that $28 million of out-of-market gaming revenues will represent a net gain to Massachusetts.

Brockton Casino Net Gain: Stabilized Year

	Gravity Model	Out-of-Market	Total
In-state Repatriation	$140,503,670		$140,503,670
Out-of-State Net	$26,732,527	$28,175,159	$54,907,686
Total Net Gain in Spending in MA	$167,236,197	$28,175,159	$195,411,356
% of Total Gaming Revenue			48.4%

Source: The Innovation Group

Repatriation is estimated to total nearly $141 million at the Brockton Casino, and net gain of out-of-state revenue $55 million. In total, the net gain to Massachusetts from the Brockton Casino is approximately $195 million in gaming revenue, or 48% of its total gaming revenue forecast. This represents revenue that otherwise would not accrue to Massachusetts; since it excludes spending by Massachusetts residents except for repatriated dollars, it would not be subject to any substitution effect in an economic impact analysis.

Incremental Impact Summary

The following table represents the impact on total gaming revenue the Brockton casino would have when introduced to the Massachusetts competitive casino set. While the existing casinos would see a drop in total revenues, the overall total increases by over $270 million, showing potential for market growth.

Total Gaming Revenue Market Impact

	Without Brockton	With Brockton
Plainridge	$122,616,795	$94,581,694
Springfield	$379,650,509	$372,380,374
Everett	$807,886,414	$711,695,058
Brockton		$403,843,949
Massachusetts Total	**$1,310,153,718**	**$1,582,501,074**

Source: The Innovation Group

The following table shows the growth in gaming tax revenue to the state of Massachusetts with the addition of the Brockton Casino.

Total Gaming Tax Revenue Market Impact

	Without Brockton	With Brockton
Plainridge	$49,046,718	$37,832,678
Springfield	$94,912,627	$93,095,093
Everett	$201,971,603	$177,923,764
Brockton		$100,960,987
Total	**$345,930,949**	**$409,812,523**
Incremental		*$63,881,574*

Source: The Innovation Group

Additionally, Massachusetts would see an increase in slot license fee revenue due to Brockton. The following table details the incremental revenue to the state from slot license fees. Total incremental revenue to Massachusetts would be $65.1 million with the inclusion of the Brockton property.

Total Slot License Fee Market Impact

	Without Brockton	With Brockton
Plainridge	$750,000	$750,000
Springfield	$1,530,000	$1,530,000
Everett	$1,945,200	$1,945,200
Brockton		$1,260,000
Total	**$4,225,200**	**$5,485,200**
Incremental		*$1,260,000*

Source: The Innovation Group

Total Employment Effects

The following section details the direct impacts with regards to employment the Brockton facility would have, as assessed through a multi-regional analysis utilizing IMPLAN software. The multi-regional analysis results in impacts for the host county (Plymouth), the remaining counties in Region C, and the rest of Massachusetts (termed "Balance of State" in the table headings in this report). The following tables show the results of the IMPLAN multiplier analysis in the Base Forecast.

In addition to the 1,797 direct jobs in Plymouth County, the operation of the resort casino will generate 1,070 indirect jobs and 642 induced jobs for a total of 3,508 in the county in year two of operations. The spending from stable year ongoing operations will have an indirect and induced impact on other communities supporting an additional 24 jobs within Region C and another 64 jobs across the state. In total, resort casino operations are estimated to support 3,596 jobs throughout Massachusetts with direct, indirect and induced employment in year two of operations.

Operating Impacts— Employment

	Plymouth County	Region C	Balance of State	Total Massachusetts
Direct Effect	1,797	0	0	1,797
Indirect Effect	1,070	14	41	1,124
Induced Effect	642	9	24	675
Total	**3,508**	**24**	**64**	**3,596**

IMPLAN Group, LLC, IMPLAN System (data and software); The Innovation Group

HIGH-LOW ANALYSIS

The following sensitivity analysis assesses the impact on gaming revenue resulting from high and low estimates for gaming demand. This analysis examines a 10% variance from the Base Case, or a total high-low spread of 20%.

The resulting five-year forecasts are shown in the tables below.

Brockton Casino Five-Year Revenue Forecast: High Case

	Year One	Year Two	Year Three	Year Four	Year Five
Gaming Revenue (MMs)	$419.2	$444.2	$455.1	$464.2	$473.5
Visitation (MMs)	5.08	5.35	5.40	5.43	5.46
Win per Visit	$82.57	$83.03	$84.22	$85.48	$86.76
Number of Units	2,844	2,844	2,844	2,844	2,844
Win/Unit/Day	$404	$428	$438	$447	$456

Source: The Innovation Group

Brockton Casino Five-Year Revenue Forecast: Low Case

	Year One	Year Two	Year Three	Year Four	Year Five
Gaming Revenue (MMs)	$343.0	$363.5	$372.4	$379.8	$387.4
Visitation (MMs)	4.15	4.38	4.42	4.44	4.47
Win per Visit	$82.57	$83.03	$84.22	$85.48	$86.76
Number of Units	2,844	2,844	2,844	2,844	2,844
Win/Unit/Day	$330	$350	$359	$366	$373

Source: The Innovation Group

NEW CASINO MARKET TRAINING STRATEGIES

A survey of Plainridge employees conducted in 2017 demonstrates that casino employment is comprised mainly of workers already residing within commuting distance: a mixture of previously employed local residents looking for a better opportunity or the ability to work closer to home, along with previously unemployed local residents. The percentage of workers who moved to take the position with Plainridge was a small percentage of the staff. Furthermore, most casino workers had not had prior casino work experience.

Plainridge Casino Source of Workforce

	# of Responses	Percentage
Prior Employment status:		
Unemployed	162	15.5%
Employed Part-time	363	34.7%
Underemployed	*189*	*18.1%*
Employed Full-time	522	49.9%
Total	1,047	100.0%
Reason for taking the position		
Job closer to home	305	29.1%
Other results		
No prior casino experience	902	86.2%
Moved to take the position	75	7.2%

New Employee Survey at Plainridge Park Casino: Analysis of First Two Years of Data Collection
University of Massachusetts Donahue Institute, Economic and Public Policy Research Group, May 10, 2017

Other studies show similar impacts on employment. The Rappaport Institute for Greater Boston and the John F. Kennedy School of Economics at Harvard University (Baxandall and Sacerdote 2005) in a national, county-level study of Native American casinos found a slight decrease in unemployment rates after casinos opened. From their total sample of 156 casino counties, the Rappaport study isolated out 57 counties with large casinos and relatively low population and nine counties with both large casinos and large populations to see if there were statistical differences in terms of community impacts. The authors compared the county unemployment rate averaged for the year before and after a casino opens in a county, and then subtracted that number from the average state change in unemployment to isolate the county-specific effect. The following table shows their results:

Rappaport Study Employment Results

	All Casino-Counties[1]	Counties with Large-Capacity Casinos[2]	Populous Casino Counties[3]
Population Growth (%)	+5*	8.6	+8.1*
Total Employment (%)	+6.7*	+14.9*	5.7
Unemployment (%)	-0.3	-1.2*	0.5

*Statistically significant results at 99% confidence interval.
1. Reports how adjusted outcomes in 156 counties that introduced Indian-run casinos during the 1990s differed from the other 2,959 that did not.
2. The effect for 21 counties in the top 10th percentile in terms of number of slot machines (over 1,760).
3. The effect for the 57 casino counties in the top population quartile (over 55,000 residents).

All this data suggests the need for training strategies as new casinos enter the regional market, since it cannot be assumed that the unemployed finding jobs will have hospitality or casino skills.

As a part of The Innovation Group's Gaming Market Analysis for the proposed casino in Brockton, we have been asked to review training strategies for new gaming markets, with emphasis on markets that may require specialized training to reach employment forecast targets. The following key strategies were discovered in our research, followed by several case studies:

Industry Tactics:

- **Work force research**
  As new casino markets are developed through enabling legislation, the Gaming Industry has historically performed socio-economic research, initially for the purposes of demand feasibility. However, such information soon becomes critical in the econometric analysis performed to gauge the economic and employment impacts of a project. This body of data also includes information related to employment and socio-economic status, which operators can begin to use to assess the job market and prepare to engage the community in fulfilling employment needs and project training requirements to meet practical and legislative employment targets.

- **Early-stage job fairs**
  Even before a gaming license is awarded it is not uncommon for developers and operators to hold job fairs. The purpose of these events is multi-fold. First, there is a community-relations component where the operator is able to meet the broader community that may not have been involved in a casino project during the pre-development phase. Organized labor relations, where relevant, are often established through this period as well. Finally, the practical aspects of the hiring process begin here through the development of lists of potential employees form the community. As the background of potential workers begins to be vetted the operator can begin to prepare for training and preparedness programs which are often customized for the subject host community.

- **Partnering with local universities and vocational schools**
  Developing partnerships with local academic and vocational institutions is another common way for operators to get ahead in the employment process. This is a particularly important tactic in brand new markets, including international markets where training infrastructure are lacking, and language barriers may need to be overcome.

- **Intensive "on-the-job" training**
  Given the importance of technical capabilities and customer service in casinos, operators are known to maintain deep training resources in their corporate organizations. Trainers are deployed to sites in new markets well ahead of the completion of construction of new facilities using trailers or converting underutilized buildings to begin early training in all areas of the casino operation.

Case Study Markets:

- **The Bahamas**
  The initial development of the Bahamas casino market, and the re-development of Resorts International into Atlantis on Paradise Island in particular, proved challenging given the small population base of the Bahamas and a poor record of leisure industry training historically. In response Sun International, the developer of Atlantis, launched a massive effort to prepare the local work force. While initially workers were brought to The Bahamas from other casino markets the market is currently predominantly served by local residents.
- **Micronesia**
  Casino development on the Islands of Tinian and Saipan in Micronesia (near Guam) were some of the least prepared work forces in the history of the gaming industry. However, a low population base with a traditional pacific island education have been overcome by intensive training and preparedness work by local operators. Although a large portion of the work force is attracted from the international market local employment is on the rise.
- **Mexico**
  Over the last decade Mexico has gradually introduced casinos and very successfully trained thousands of local residents for all types of positions. Only upper management tends to be introduced from outside jurisdictions, a trend that will be reversed over time as line employees are promoted.
- **Emerging US Casino Markets (1990's)**
  We should not leave out the large number of United States and Native American gaming markets that have been justified largely by the promise of work-force development. From underprivileged communities in urban and rural areas, and Indian reservations with low levels of education and social challenges, the US casino industry has thrived. Promotion in commercial casinos and self-sufficiency including high level management roles in many Tribal casinos has become the norm.

DISCLAIMER

Certain information included in this report contains forward-looking estimates, projections and/or statements. The Innovation Group has based these projections, estimates and/or statements on our current expectations about future events. These forward-looking items include statements that reflect our existing beliefs and knowledge regarding the operating environment, existing trends, existing plans, objectives, goals, expectations, anticipations, results of operations, future performance and business plans.

Further, statements that include the words "may," "could," "should," "would," "believe," "expect," "anticipate," "estimate," "intend," "plan," "project," or other words or expressions of similar meaning have been utilized. These statements reflect our judgment on the date they are made and we undertake no duty to update such statements in the future.

Although we believe that the expectations in these reports are reasonable, any or all of the estimates or projections in this report may prove to be incorrect. To the extent possible, we have attempted to verify and confirm estimates and assumptions used in this analysis. However, some assumptions inevitably will not materialize as a result of inaccurate assumptions or as a consequence of known or unknown risks and uncertainties and unanticipated events and circumstances, which may occur. Consequently, actual results achieved during the period covered by our analysis will vary from our estimates and the variations may be material. As such, The Innovation Group accepts no liability in relation to the estimates provided herein.

Exhibit C

Response to Public Comments: Proposed Region C Gaming Development

Massachusetts

Prepared for:

Rush Street Gaming, LLC

November 30, 2018

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Region C Massachusetts Gaming Market

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REGION C: REQUEST FOR PUBLIC COMMENTS

The Innovation Group was retained by Rush Street Gaming, LLC to provide comments on the following five items in response to the Massachusetts Gaming Commission's request for public comments:

1. What is the status of the gaming market in the Northeast and Mid-Atlantic? What are the existing gaming options? What plans exist to increase the number of gaming options, both in states that currently allow casino gaming and states where casino gaming does not currently exist? What revenues have been collected by states that have gaming over the last five (5) years and what are their projected future revenues?
2. What is the expected demand for gaming and the value of the overall gaming market in Massachusetts?
3. Should the Commission review the status of online gaming, sports betting and daily fantasy sports and their potential impact on casino gaming?
4. Is there sufficient capacity to fill new casino jobs created by a Region C casino? What impact will that have on existing casinos to fill their jobs and on existing business to replace experienced employees who move to a casino job?

11. What role should horse racing have in considering a category 1 region C gaming license application?

Question 1: Northeast and Mid-Atlantic Gaming Markets

The gaming industry in the Northeast and Mid-Atlantic region is strong and expanding, with several new casinos having opened in 2017 and 2018 in Massachusetts, Maryland, New York, and Rhode Island. Appendix A takes a detailed look at all existing and potential competitors within Brockton's gaming market. In this section, we examine the gaming offerings and revenue trends, by state, in New England and in the Mid-Atlantic states.

The following table shows the existing gaming options in the Northeast region by state:

Northeast Casinos by State

	City	Machines	Tables	Positions
Connecticut				
Mohegan Sun	Montville	5,613	350	7,713
Foxwoods	Ledyard	4,145	428	6,713
Maine				
Hollywood Bangor	Bangor	921	16	1,017
Oxford Casino	Oxford	811	22	943
Massachusetts				
Plainridge	Plainville	1,250	0	1,500
MGM Springfield	Springfield	2,550	120	3,270
New York*				
Saratoga Springs	Saratoga Springs	1,782	0	1,782
Monticello Raceway	Monticello	1,110	0	1,110
Empire City at Yonkers	Yonkers	5,349	0	5,349
Jake's 58	Islandia	1,000	0	1,000
Rivers Casino & Resort	Schenectady	1,150	82	1,642
Resorts World Aqueduct	Jamaica	5,005	0	5,005
Resorts World Catskills	Monticello	2,153	125	2,903
Rhode Island				
Twin River Casino	Lincoln	4,220	80	4,700
Tiverton Casino Hotel	Tiverton	1,000	37	1,222
Regional Total		38,059	1,260	45,869

Source: State Lotteries and Gaming Commissions; The Innovation Group. Only casinos in the eastern part of New York are considered relevant to the Massachusetts/New England market.

The following table shows the existing gaming options in the Mid-Atlantic region by state:

Mid-Atlantic Casinos by State

	City	Machines	Tables	Positions
Delaware				
Delaware Park	Wilmington	2,250	39	2,484
Dover Downs Hotel and Casino	Dover	2,177	40	2,417
Harrington Raceway and Casino	Harrington	1,787	31	1,973
Maryland				
Hollywood Casino Perryville	Perryville	822	22	954
Horseshoe Casino	Baltimore	2,200	168	3,208
Live! Casino & Hotel	Hanover	3,997	198	5,185
MGM National Harbor	Oxon Hill	2,961	180	4,041
Ocean Downs	Berlin	888	0	888
Rocky Gap Casino Resort	Flintstone	665	17	767
New Jersey				
Bally's Atlantic City	Atlantic City	1,776	164	2,760
Borgata	Atlantic City	1,994	268	3,602
Caesars Atlantic City	Atlantic City	1,889	132	2,681
Golden Nugget Atlantic City	Atlantic City	1,454	99	2,048
Hard Rock Atlantic City	Atlantic City	2,063	152	2,975
Harrah's Resort Atlantic City	Atlantic City	2,109	133	2,907
Oceans Resort	Atlantic City	1,937	107	2,579
Resorts Casino Hotel	Atlantic City	1,475	68	1,883
Tropicana Atlantic City	Atlantic City	2,476	130	3,256
Pennsylvania*				
Harrah's Philadelphia	Chester	2,450	118	3,158
Hollywood Casino at Penn National Race Course	Grantville	2,170	75	2,620
Mohegan Sun Pocono	Wilkes-Barre	2,325	89	2,859
Mount Airy Casino Resort	Mt. Pocono	1,863	81	2,349
Parx Casino and Racing	Bensalem	3,331	190	4,471
Sands Casino Resort Bethlehem	Bethlehem	3,073	252	4,585
SugarHouse Casino	Philadelphia	1,809	141	2,655
Valley Forge Casino Resort	King of Prussia	600	50	900
West Virginia**				
Hollywood Casino at Charles Town Races	Ranson	2,284	90	2,824
Regional Total		54,825	3,034	73,029

Source: State Lotteries and Gaming Commissions; The Innovation Group, *Only casinos in the eastern part of Pennsylvania, **Only Charles Town was considered relevant due to location within the state; Greenbrier has not been included because of its far southern location and lack of relevance to Massachusetts

The strength of the Northeast gaming market is prompting a number of proposed developments. The following table shows the proposed gaming options and expected openings in the region. Only Encore Boston Harbor and East Windsor are of any direct relevance to Massachusetts.

Proposed Casino Locations by State

Name	Location	Proposed Positions	Note
Connecticut			
-	East Windsor	2,000 Slot Machines 60 Tables	Joint venture between Mohegan Sun and Foxwoods. Facing legal challenge; undetermined at this time if it will proceed.
Massachusetts			
Encore Boston Harbor	Everett	4,250 Total Gaming Positions	Reported over $2 Billion property. License currently under review. Scheduled opening June 2019.
Pennsylvania			
Category 4 Casinos	-	300-750 Slot Machines up to 30 Table Games	Three casinos in the eastern side of the state: York, Shippensburg, and Morgantown.
New York			
-	Medford	1,000 VLT Machines	Previous Medford OTB site. OTB would consider building a casino in Medford with up to 1,000 machines if the state allows Suffolk County to expand to 2,000 terminals.

Source: The Innovation Group

In general, gaming revenue in calendar year 2017 was strong across the region. Revenue increased at all casinos in New England except the Hollywood Casino in Bangor, Maine. Both Connecticut casinos experienced slot revenue growth in 2017, after the lingering effects of the Great Recession and impacts from Rhode Island and Plainridge had caused multi-year declines. Twin River (TR) has experienced growth every year since 2010; although there is some apparent impact on TR's slot revenue from the opening of Plainridge the last week of June 2015, total gaming revenue continued to climb.

Plainridge also exhibited strong growth in 2017, of 6.3%. Further, its impacts on Rhode Island and Connecticut appear to have been minimal, suggesting that the large majority of Plainridge's first-year revenue came from market growth. Looking at Plainridge's impact on its two main competitors, Twin River and Foxwoods, it is apparent that as much as 75% of Plainridge's revenue resulted from market growth.

Plainridge First Year Impacts

	Twin River	Foxwoods	Subtotal	Plainridge	Market Total
FY 2014	$470,766,020	$467,970,116	$938,736,136	$6,137,976*	$944,874,112
FY 2015	$443,747,069	$462,215,501	$905,962,570	$159,908,961	$1,065,871,531
Change	($27,018,951)	($5,754,615)	($32,773,566)	$153,770,984	$120,997,418

Source: State Lotteries and Gaming Commissions; The Innovation Group. *Note: one week's data. FY=July-June.

A similar effect can be seen from the recent openings of MGM Springfield (late August 2018) in Massachusetts and Tiverton, Rhode Island (September 1, 2018). Looking at slot revenue only, since Plainridge is a slot-only casino and in Connecticut only slot revenue is reported by the State, impacts on existing facilities in September ranged from 4% to 8.8%. Mohegan Sun, which is the closest of the four to MGM Springfield, showed the largest impact.

CT, MA, and RI Slot Revenue Impact

	Plainridge Slot Revenue	Twin River Slot Revenue	Mohegan Sun Slot Revenue	Foxwoods Slot Revenue
Sep-17	$14,895,275	$36,259,349	$51,755,254	$40,062,545
Sep-18	$14,319,232	$34,709,583	$47,201,802	$37,986,949
Change	*-3.9%*	*-4.3%*	*-8.8%*	*-5.2%*

Source: Massachusetts Gaming Commission; Rhode Island Lottery; The Innovation Group

The losses at these four existing facilities were more than surpassed by the slot revenue at the two new casinos, as shown in the following table. Using slot revenues for the above properties and the former Newport Casino (roughly $4 million), the total market slot revenue reached $146.9 million in September of 2017. With the inclusion of the Tiverton and MGM Springfield revenues below, slot revenues totaled $162.2 million in September of 2018, showing a growth of 10.4%.

September 2018 Slot Revenue

	Slot Revenue
MGM Springfield	$18,149,752
Tiverton	$9,837,048

Source: Massachusetts Gaming Commission; Rhode Island Lottery; The Innovation Group

Similarly, the opening in June of 2018 of two casinos—Hard Rock Casino and Oceans Resort—have increased gaming revenue in Atlantic City without impacting competing facilities in the important feeder market of Philadelphia. Additionally, while the previous Atlantic City casinos saw a 7.7% decrease in gaming revenues from July-September 2018 as compared to the previous year, the addition of the Hard Rock and Oceans grew the total market revenues by $86.7 million or 12.6%.

Atlantic City Gaming Revenue Impact

	AC Casinos	Hard Rock	Oceans	AC Market Total
Jul-Sept 2017	$685,984,805	$0	$0	$685,984,805
Jul-Sept 2018	$633,491,325	$89,070,843	$50,136,606	$772,698,774
% Change	*-7.7%*	-	-	*12.6%*

Source: Massachusetts Gaming Commission; Rhode Island Lottery; The Innovation Group

As shown in the table below, Philadelphia casinos saw a minimal impact in the first full month of operations (July 2018) of the two new Atlantic City casinos, a drop in total gaming revenue of just 0.8%. However, in the following two months, Philadelphia gaming revenue exceeded the previous monthly totals of 2017 by 6.6% in August and 4.1% in September.

AC Impact on Philadelphia Gaming Statistics

	Slot Revenue	Table Revenue	Total Revenue	Win per Position
Jul-17	$73,531,560	$33,822,380	$107,353,940	$309
Jul-18	$73,871,810	$32,583,725	$106,455,535	$307
Change	*0.5%*	*-3.7%*	*-0.8%*	*-0.7%*
Aug-17	$68,741,290	$33,266,655	$102,007,944	$293
Aug-18	$73,198,425	$35,536,320	$108,734,745	$314
Change	*6.5%*	*6.8%*	*6.6%*	*7.2%*
Sep-17	$70,172,983	$32,351,545	$102,524,528	$305
Sep-18	$72,699,091	$34,067,310	$106,766,402	$319
Change	*3.6%*	*5.3%*	*4.1%*	*4.7%*

Source: Pennsylvania Gaming Control Board; The Innovation Group

In February of 2018, Resorts World Catskills opened at the former location of the Concord Hotel in Monticello, New York. The new gaming property introduced over 2,150 slot machines and roughly 150 table games to the market. The casino is averaging over $13 million in total GGR per month since March.

This opening had a negative effect on nearby casinos in northeastern Pennsylvania. The three closest casinos are the Mohegan Sun Pocono, Mount Airy, and Sands Bethlehem. Each casino saw a decrease in total Win, with Mount Airy being impacted the largest. The table below shows the combined total win for the three casinos by month. June was the only month that saw an increase in win from 2017 to 2018.

Resorts World Impact on Eastern Pennsylvania

	2017 Total Win (MMs)	2018 Total Win (MMs)	Change
February	$79.5	$75.6	-4.9%
March	$86.7	$85.0	-1.9%
April	$87.6	$80.8	-7.8%
May	$86.1	$82.5	-4.1%
June	$78.0	$79.1	1.3%
July	$89.4	$83.6	-6.5%
August	$83.1	$81.7	-1.7%
September	$85.6	$79.1	-7.6%
Total	$676.0	$647.4	-4.2%

Source: Pennsylvania Gaming Control Board; The Innovation Group

Looking at state tax revenue and including Mid-Atlantic states, we see that tax revenues overall have grown. Where states have declined, mostly that has resulted from the impact of new casinos in neighboring states. In the case of Rhode Island, it has partially resulted from the growth in table revenue, which is taxed at a substantially lower rate than slot machines. The overall region has experienced annual tax revenue growth of 2.6% over the past five years.

New England and Mid-Atlantic State Tax Revenue

State	FY-2013/14	FY-2014/15	FY-2015/16	FY-2016/17	FY-2017/18	CAGR
Maine	$50.8	$51.7	$53.1	$54.0	$56.0	1.9%
Massachusetts	-	-	$61.5	$62.7	$67.6	3.2%
Rhode Island	$326.4	$333.5	$320.1	$318.3	$318.6	-0.5%
Connecticut	$279.9	$268.0	$265.9	$270.7	$272.2	-0.6%
New York	$871.7	$866.9	$906.0	$928.3	$993.2	2.6%
Pennsylvania	$879.4	$890.7	$915.0	$915.5	$926.0	1.0%
New Jersey	$208.1	$196.8	$201.0	$210.5	$211.5	0.3%
Delaware	$157.5	$155.0	$156.8	$153.6	$157.1	-0.1%
West Virginia*	$426.1	$371.6	$349.5	$335.5	$321.6	-6.8%
Maryland	$272.2	$310.0	$385.7	$441.4	$526.1	14.1%
Total	$3,472.1	$3,444.2	$3,614.6	$3,690.5	$3,849.9	2.6%

Source: State Lotteries and Gaming Commissions; The Innovation Group. Note: Excludes horse industry payments. FY=July-June except NY April-March, *WV tax revenues are estimates using reported effective tax rates for table games (35%) and VLTs (53.5%)

With recent casino additions in Maryland, New York, New Jersey and Massachusetts, some of the states in the Northeast and Mid-Atlantic regions have felt a negative impact while others have grown. The following table details the last full five years of state gaming revenue for each state in these two regions that allow gaming. Additionally, the table provides high-level estimates for the next three years of gaming revenue by state using estimated annualized

revenues for 2018, previous growth rates, expected impacts of newly opened casinos, and potential impacts from the proposed Encore Boston Harbor casino.

As shown below, the inclusion of the proposed Boston casino potentially bolsters the revenues in Massachusetts while reducing the revenues in surrounding states like Connecticut and Rhode Island. Overall, the total gaming market in these regions can be expected to continue growing with the inclusion of additional gaming properties.

State by State Gaming Revenue ($MMs)

	CT	DE	MA	MD	ME	NJ	NY*	PA*	RI	WV**	Total
2013	$1,144.9	$432.1	-	$749.0	$126.3	$2,863.6	$1,567.5	$2,339.2	$558.1	$456.5	$9,780.5
2014	$1,067.5	$403.7	-	$931.1	$127.3	$2,619.3	$1,563.4	$2,313.1	$611.1	$391.9	$9,636.3
2015	$1,044.5	$404.6	-	$1,098.4	$129.8	$2,414.2	$1,609.8	$2,407.9	$615.8	$396.2	$9,725.0
2016	$1,053.5	$398.7	$155.0	$1,203.3	$133.1	$2,405.9	$1,644.5	$2,462.0	$619.1	$368.6	$10,075.2
2017	$1,075.0	$409.3	$164.8	$1,615.0	$136.7	$2,413.4	$1,738.4	$2,480.1	$624.9	$339.4	$10,657.5
CAGR	*-1.6%*	*-1.3%*	*6.3%*	*21.2%*	*2.0%*	*-4.2%*	*2.6%*	*1.5%*	*2.9%*	*-7.1%*	*2.2%*
2018	$1,010.5	$403.9	$280.1	$1,655.3	$138.1	$2,715.1	$1,764.5	$2,517.3	$649.8	$337.7	$11,134.7
2019	$909.4	$410.0	$896.4	$1,696.7	$135.3	$2,783.0	$1,790.9	$2,555.1	$617.4	$341.1	$11,794.3
2020	$864.0	$416.2	$1,075.7	$1,739.1	$138.0	$2,852.5	$1,817.8	$2,593.4	$586.5	$344.5	$12,083.3
2021	$881.2	$422.4	$1,280.1	$1,782.6	$140.8	$2,923.8	$1,845.1	$2,632.3	$595.3	$347.9	$12,525.2

Source: State Lotteries and Gaming Commissions; The Innovation Group.
*New York and Pennsylvania statistics only includes the revenues from the Eastern part of the state
**West Virginia statistics only include the revenues from Charlestown Races casino.

Question 2: Massachusetts Gaming Demand

Given the Commonwealth's large population base, the fact that the gaming licenses have been well distributed geographically, and the level of capital being invested, gaming demand in Massachusetts is expected to be strong. Two casinos are already in operation, producing substantial revenues and economic impacts. Once the Region A casino is open and statewide revenue has stabilized, the Innovation Group estimates that by 2022 gaming revenue will reach $1.3 billion.[1] Adding the Region C casino, the overall total increases by over $270 million, showing potential for market growth, as shown in the following table:

[1] The Innovation Group prepared a Gaming Market Analysis for a proposed casino in Region C, in Brockton. Included in that analysis is a detailed description of the methodology utilized in the gravity model calibration to current conditions and future forecasts.

Total Gaming Revenue Market Impact

	Without Region C	With Region C
Plainridge	$122,616,795	$94,581,694
Springfield	$379,650,509	$372,380,374
Everett	$807,886,414	$711,695,058
Brockton		$403,843,949
Massachusetts Total	$1,310,153,718	$1,582,501,074

Source: The Innovation Group

Given the projected gaming-age population for 2022, the revenue forecast with Brockton implies a win per capita of $294, well within the ranges experienced in other jurisdictions. Win per capita reaches well over $500 in several U.S. markets. In 2017, win per capita reached over $336 in Pennsylvania as detailed below.

Win per Capita

	PA 2017	MA 2022
GGR	$3,226,917,156	$1,582,501,074
Gamer Population	9,587,688	5,386,879
Win per capita	$336.57	$293.77

Source: The Innovation Group

The following table shows the growth in gaming tax revenue to the state of Massachusetts with the addition of the Region C Casino.

Total Gaming Tax Revenue Market Impact

	Without Region C	With Region C
Plainridge	$49,046,718	$37,832,678
Springfield	$94,912,627	$93,095,093
Everett	$201,971,603	$177,923,764
Brockton		$100,960,987
Total	$345,930,949	$409,812,523
Incremental		*$63,881,574*

Source: The Innovation Group

Additionally, Massachusetts would see an increase in slot license fee revenue due to the Region C casino. The following table details the incremental revenue to the state from slot license fees. Total incremental revenue to Massachusetts would be $65.1 million with the inclusion of the Region C casino.

Total Slot License Fee Market Impact

	Without Region C	With Region C
Plainridge	$750,000	$750,000
Springfield	$1,530,000	$1,530,000
Everett	$1,945,200	$1,945,200
Brockton		$1,260,000
Total	$4,225,200	$5,485,200
Incremental		*$1,260,000*

Source: The Innovation Group

Question 3: Status and Potential Impact on Casino Gaming of Online Gaming, Sports Betting, and DFS

While there has been concern in the casino industry that online gambling, sports betting, and DFS wagering will cannibalize GGR at bricks-and-mortar casinos, the data available do not support that concern. In fact, these products can be seen as an opportunity to bring in additional revenue to existing casinos. The following section discusses the landscape for these non-traditional gambling products and the data that is available for each.

Online Gaming (iGaming)

Online gaming is legal in New Jersey, Pennsylvania, and Delaware. Nevada has legal online poker. In New Jersey, licenses are issued to casinos in the state, and the casinos can partner with an online operator or software company to provide the games. This revenue is taxed at 15%. In Pennsylvania, there is a $10 million interactive license fee for the combined online poker, slots, and table games license. Table game and poker revenue are taxed at 16%, while slots are taxed at 54%. While several partnerships have been announced, no iGaming has launched in Pennsylvania. Delaware taxes iGaming at 15.5%.

Several states have expressed interest in iGaming. Bills were considered in Louisiana, Michigan, Illinois, New York, New Hampshire, Massachusetts, and West Virginia. Additional states considered online lottery, and there is a form of legal online lottery in Georgia, Illinois, Kentucky, Maine, Maryland, Michigan, New Hampshire, New York, North Carolina, North Dakota, Pennsylvania, and Virginia.

It is not possible to definitively isolate the impact to date of online gaming, since in the two states for which data is available—Delaware and New Jersey—the implementation of online gaming coincided with new casino development in Pennsylvania and Maryland, which had a substantial negative impact on bricks-and-mortar gaming revenues in both states. However, industry analysts generally consider that online gaming has helped New Jersey become more competitive in the face of growing regional competition. Since online gaming is currently limited to intra-state activity, Delaware's small population has limited the product's potential.

Brick and Mortar and Online Gaming Trends- Before and After

	Delaware				New Jersey			
Year	Online	B&M Locations	Total State Revenue	% Growth	Online	B&M Locations	Total State Revenue	% Growth
2011		$547,872,433	$547,872,433			$3,298,860,680	$3,298,860,680	
2012		$520,548,891	$520,548,891	-4.99%		$3,051,874,667	$3,051,874,667	-7.5%
2013*	$251,397	$432,058,442	$432,309,839	-17.00%	$8,371,486	$2,863,568,572	$2,871,940,058	-6.2%
2014	$2,098,532	$403,695,364	$405,793,896	-6.56%	$123,096,896	$2,619,250,907	$2,742,347,803	-8.5%
2015	$1,798,931	$404,581,100	$406,380,031	0.22%	$149,029,795	$2,414,335,959	$2,563,365,754	-7.8%
2016	$2,906,886	$398,657,403	$401,564,289	-1.5%	$196,858,746	$2,405,323,367	$2,602,182,113	-0.4%
2017	$2,391,942	$409,264,911	$411,656,853	2.7%	$246,018,441	$2,413,221,069	$2,659,239,510	0.3%

Source: State Gaming Commissions, The Innovation Group, *2013 marks the first year of legalized online gaming in DE and NJ

Sports Betting

Today, six states in the US have legal sports betting. Nevada has offered sports betting legally since 1949. The other five states have launched single-event sports wagering since the repeal of PASPA in May. They are: New Jersey, Delaware, West Virginia, Mississippi, and New Mexico. Tax rates are as follows:

- Nevada: 6.75%
- New Jersey: 9.75% (includes 1.5% to Redevelopment Fund), Online is 15%
- Delaware: 43.75% (as part of a revenue share agreement between lottery, casinos, and horsemen)
- West Virginia: 10%
- New Mexico: No tax, implemented as part of a tribal compact authorizing Class III gaming

New Jersey and Nevada have mobile sports betting, and West Virginia plans to follow in the coming months.

Rhode Island legalized sports betting in June 2018, with the Rhode Island Lottery having regulatory and oversight responsibilities. Through an RFP process, the Lottery selected IGT as the sports betting provider for Rhode Island's two casinos. There are currently no provisions for mobile or online betting, though the RFP suggested that these initiatives are likely. IGT announced a partnership with William Hill in this endeavor. The targeted launch date was October 2018, but delays have pushed the expected launch into November or December 2018. The tax rate (technically a revenue share) on sports betting revenue in Rhode Island is 51%.

Pennsylvania legalized sports betting as part of an omnibus gaming legislation overhaul in late 2017, pending the overturn of PASPA. As of this writing, of five casinos which have applied to engage in sports betting, Hollywood Casino at Penn National Race Course just began taking bets this month. The tax rate in Pennsylvania is 36% (34% to the state + 1% each to the county and municipality).

In November 2018, Arkansas authorized sports betting via ballot initiative at the state's four authorized casinos, two of which are not built yet. The state legislature now must pass legislation consistent with the referendum.

New York and Connecticut have passed legislation legalizing sports wagering in the state, but the states still have not developed a regulatory framework. Tribal compacts in both states present hurdles.

More than a dozen other states had bills considered during the most recent legislative session, and several are likely to pass legislation in 2019.

To assess the impact that sports betting has had on casinos, we look at year over year growth by market and compare 2018 to 2017 results in sports betting states versus states without. The following GGR excludes sports betting revenue so it is comparable on a same-store basis. New Jersey also excludes on-line gaming revenue. States in blue had legal sports betting in September 2018, but not in September 2017.

September 2018 vs September 2017 GGR Growth by State ($MMs)

State	Sept-17 GGR	Sept-18 GGR	Year-over-Year Change	SB Rev	Total GGR+ SB Rev	Year-over-Year Change
Colorado	$73.9	$72.5	-1.80%		$72.5	
Delaware*			-0.06%	$3.2	n/a	
Illinois	$227.4	$231.3	1.73%		$231.3	
Indiana	$176.1	$169.6	-3.65%		$169.6	
Iowa	$122.2	$122.6	0.32%		$122.6	
Kansas	$32.4	$32.7	0.79%		$32.7	
Louisiana	$247.0	$251.2	1.67%		$251.2	
Maine	$12.2	$12.6	3.50%		$12.6	
Maryland	$134.5	$143.8	6.87%		$143.8	
Michigan	$113.6	$115.2	1.39%		$115.2	
Mississippi	$168.2	$177.3	5.42%	$5.5	$182.8	8.70%
Missouri	$145.7	$144.1	-1.10%		$144.1	
Nevada	$935.0	$934.9	-0.01%		$934.9	
New Jersey	$215.2	$231.5	7.58%	$16.7	$248.2	15.36%
New Mexico	$19.7	$20.2	2.37%		$20.2	
New York	$170.8	$170.1	-0.42%		$170.1	
Ohio	$146.4	$152.2	3.98%		$152.2	
Oklahoma	$11.0	$11.3	2.94%		$11.3	
Pennsylvania	$271.0	$268.5	-0.92%		$268.5	
Rhode Island	$56.9	$57.1	0.41%		$57.1	
South Dakota	$9.6	$9.5	-1.54%		$9.5	
West Virginia	$59.4	$58.3	-1.83%	$1.8	$60.1	1.26%
Total USA**	$3,348.1	$3,386.5	1.15%	-	-	-
Total States without Sports	$2,905.4	$2,919.4	0.48%	-	-	-

Source: UNLV and State Gaming Commissions; The Innovation Group.
*Trend is for daily slot revenue; table revenue not yet reported for September 2018. Delaware reports months by last Sunday of the month—September 2017 was 28 days versus 35 days for 2018. **Excluding Delaware.

Delaware, Mississippi, West Virginia, and New Jersey all had legal sports betting in 2018 but not 2017. While Delaware and West Virginia show declines in traditional gaming revenue, New Jersey and Mississippi both show significant gains. It should also be noted that New Jersey had two new properties open in June.

Delaware and West Virginia both faced increased competition in adjacent states (Atlantic City, Maryland, and Ohio), but the declines in slots and tables are very small even if it attributable to diversion of spending to sports betting. In fact, sports betting put West Virginia in the positive in total gambling revenue.

In conclusion, the limited data available to date would suggest that sports betting is having an overall positive impact on slot and table revenues, as well as contributing new wagering revenue to casinos and states.

The following table shows recent trends in Nevada, which as noted has had sports betting since 1949. Sports betting is volatile, so year-over-year trends fluctuate highly.

Nevada GGR and Sports Betting Trends

	Gaming	% Growth	Sports Betting	% Growth	Total	% Growth
2013	$10,942,549,000		$202,838,000		$11,145,387,000	
2014	$10,789,009,000	-1.40%	$227,045,000	11.93%	$11,016,054,000	-1.16%
2015	$10,882,043,000	0.86%	$231,787,000	2.09%	$11,113,830,000	0.89%
2016	$11,037,171,000	1.43%	$219,174,000	-5.44%	$11,256,345,000	1.28%
2017	$11,323,151,000	2.59%	$248,777,000	13.51%	$11,571,928,000	2.80%

Source: Nevada Gaming Commission

Daily Fantasy Sports

Daily fantasy sports (DFS) has been explicitly legalized in many states, including: Arkansas, Colorado, Delaware, Indiana, Kansas, Louisiana, Maine, Maryland, Mississippi, Missouri, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Tennessee, Vermont, and Virginia. Michigan and Illinois have active legislation. Connecticut approved DFS, subject to agreement with the tribes, which is in negotiation. Tax rates vary, but we don't see the same high tax rates as we do on slots in many states. Not all states have defined tax rates – for example, DFS was passed by ballot initiative in 47 of Louisiana's 64 parishes in the 2018 election, so this is an agenda item for the next legislative term. But those who have are in the range of 8-15% on GGR. New York and Pennsylvania, for example, have a 15% tax on DFS.

Data on DFS wagering is limited. The New York Gaming Commission produces a report showing national spending and a breakdown of New York residents. Nationwide, DFS generated revenue of $335 million in FY 2018 (through March), with $31 million originating in New York, or less than 1% of bricks-and-mortar casino revenue if all casinos—commercial, VLT, and tribal—are included.

A Rutgers University survey showed that 22% of DFS players also participate in casino gaming, bingo, or wagering on sports and horse racing. A Fantasy Sports Trading Association survey shows that DFS players skew younger and male and have higher than average income.[2]

Given the small amount of revenue generated by DFS wagering compared to casino revenue, if any substitution effect occurs it is likely not measurable. In fact, casino GGR nationally generally increased in 2017, which would tend to suggest limited if any negative effect from DFS wagering. Further, the demographics of DFS players suggest that casinos could potentially utilize the DFS product to increase traditional gaming revenue by drawing in new gamers.

[2] https://www.playnj.com/news/nj-casino-dfs-partnerships/14193/

Summary

Sports betting can be seen as opportunity to bring in additional revenue to existing casinos. While there is potential for some substitution effect in total spending between sports bettors and other casino patrons, the demographics of the average sports bettor skews younger than slot players and even table gamers. Studies have found that the average sports bettor is between the ages of 18-34[3]. Additionally, these players tend to be familiar with casinos and have the potential to spend additional dollars once on the casino floor at a table or slot during a visit to a legal sports book. Results from September 2018 provide empirical support for the potential for sports betting to drive growth.

In addition to new sports betting ventures, Massachusetts and the competitive markets have the opportunity to pass legislation regarding online gambling and DFS. Recently, the Massachusetts House of Representatives passed an amendment removing the sunset clause on the laws regulating DFS, making a move in the direction towards permanent legalization of the gaming format.

Rhode Island elected to hold off on allowing online betting; it is expected that the State will reconsider in the long run as Massachusetts and Connecticut consider legislation allowing these wagers. Using New Jersey as a precedent, online gaming is expected to cause minimal cannibalization of land-based casino revenues and foster potential international partnerships with existing online formats.

Question 4: Casino Staffing Availability and Labor Market Impact

Jurisdictions sometimes have concern over supplying staffing to new casinos, and the potential for collateral impact on other businesses. However, given the surplus of underemployed labor in Plymouth County and Region C, and the long history of gaming in the Northeast, staffing of the Brockton casinos is not expected to be problematic, and collateral impacts on other Massachusetts casinos or businesses are expected to be minimal, if any. In fact, development and operation of the Brockton casino would be beneficial to the Massachusetts labor force.

A survey of Plainridge employees conducted in 2017 on behalf of the Massachusetts Gaming Commission demonstrates that casino employment is comprised mainly of workers already residing within commuting distance: a mixture of previously employed local residents looking for a better opportunity or the ability to work closer to home, along with previously unemployed local residents. The percentage of workers who moved to take the position with Plainridge was a

[3] HUMPHREYS, BRAD R., PEREZ, LEVI, Who Bets on Sports? Characteristics of Sports Bettors and the Consequences of Expanding Sports Betting Opportunities. Estudios de Economía Aplicada, vol. 30, no. 2, 2012, pp. 579-597

small percentage of the staff. Furthermore, most casino workers had not had prior casino work experience.

Plainridge Casino Source of Workforce

	# of Responses	Percentage
Prior Employment status:		
Unemployed	162	15.5%
Employed Part-time	363	34.7%
Underemployed	*189*	*18.1%*
Employed Full-time	522	49.9%
Total	1,047	100.0%
Reason for taking the position		
Job closer to home	305	29.1%
Other results		
No prior casino experience	902	86.2%
Moved to take the position	75	7.2%

New Employee Survey at Plainridge Park Casino: Analysis of First Two Years of Data Collection
University of Massachusetts Donahue Institute, Economic and Public Policy Research Group, May 10, 2017

This suggests the need for training strategies as new casinos enter the regional market. The New Casino Market Training Strategies section at the end of this report discusses training strategies for new gaming markets, with emphasis on markets that may require specialized training to reach employment forecast targets. The strategies include:

- Work force research
- Early-stage job fairs
- Partnering with local universities and vocational schools
- Intensive "on-the-job" training

Region C has a civilian labor force of nearly 700,000 persons, with more than 30,000 unemployed. Region C has a higher rate of unemployment (4.4%) than Region A (3.4%), suggesting that there is more potential for elasticity in Region C.

Regional Unemployment Statistics

Year	Civilian labor force	Employment	Unemployment	Unemployment rate (%)
Region A				
2009	2,346,396	2,165,368	181,028	7.7
2010	2,390,487	2,205,195	185,292	7.8
2011	2,388,063	2,228,518	159,545	6.7
2012	2,405,584	2,257,518	148,066	6.2
2013	2,428,922	2,278,217	150,705	6.2
2014	2,468,292	2,338,069	130,223	5.3
2015	2,488,537	2,378,669	109,868	4.4
2016	2,510,349	2,420,852	89,497	3.6
2017	2,544,821	2,458,120	86,701	3.4
Region B				
2009	426,331	390,982	35,349	8.3
2010	414,298	376,632	37,666	9.1
2011	410,677	377,150	33,527	8.2
2012	410,067	379,085	30,982	7.6
2013	410,362	378,791	31,571	7.7
2014	414,139	386,310	27,829	6.7
2015	414,579	391,153	23,426	5.7
2016	413,380	394,216	19,164	4.6
2017	416,702	398,287	18,415	4.4
Region C				
2009	697,661	632,658	65,003	9.3
2010	675,300	608,990	66,310	9.8
2011	670,574	612,091	58,483	8.7
2012	669,511	615,929	53,582	8.0
2013	673,548	619,788	53,760	8.0
2014	683,811	637,434	46,377	6.8
2015	685,122	646,050	39,072	5.7
2016	687,687	656,044	31,643	4.6
2017	695,649	665,073	30,576	4.4

Source: Bureau of Labor Statistics, The Innovation Group

The table below depicts historical unemployment statistics for Plymouth County and Massachusetts. The annual unemployment rate continually increased from 2009 through to 2010, peaking at 8.3% in Massachusetts and 8.9% in Plymouth County, but they have since recovered. Currently, both unemployment rates sit below 4% while labor force statistics continue to increase.

Average Annual Unemployment Statistics

Year	Civilian labor force	Employment	Unemployment	Unemployment rate (%)
Plymouth County				
2009	263,807	241,447	22,360	8.5
2010	262,176	238,720	23,456	8.9
2011	260,735	240,474	20,261	7.8
2012	260,295	242,063	18,232	7.0
2013	262,695	244,330	18,365	7.0
2014	266,779	250,756	16,023	6.0
2015	268,191	254,630	13,561	5.1
2016	270,417	259,364	11,053	4.1
2017	274,224	263,530	10,694	3.9
Massachusetts				
2009	3,470,382	3,189,010	281,372	8.1
2010	3,480,083	3,190,818	289,265	8.3
2011	3,469,308	3,217,754	251,554	7.3
2012	3,485,161	3,252,531	232,630	6.7
2013	3,512,827	3,276,792	236,035	6.7
2014	3,566,237	3,361,811	204,426	5.7
2015	3,588,241	3,415,874	172,367	4.8
2016	3,611,418	3,471,112	140,306	3.9
2017	3,657,173	3,521,482	135,691	3.7

Source: Bureau of Labor Statistics; The Innovation Group

The Brockton casino is estimated to require staffing of 1,800 people, which represents 0.26% of the labor force of Region C and 0.66% of Plymouth County.

Underemployment records the number of workers placed in jobs that are below their qualifications, and also includes the unemployed. According to the United Health Foundation's annual report of America's Health Rankings, Massachusetts has an underemployment rate of 8.1% of the civilian labor force, approximately double that of the unemployment rate. This suggests that for every unemployed worker in Massachusetts, there is an employed person working below his/her qualifications or desire for full-time hours. Using the figures from the Bureau of Labor Statistics above, Plymouth County has an underemployed work force of 22,212 and Region C has an underemployed work force of 56,348, sufficient to supply the casino with the staffing required.

As for the potential impact that the filling of MG&E casino jobs will have on existing businesses that have to replace experienced employees, there is no hard data showing a direct negative impact on other businesses. However, there is indirect evidence from Plainridge that no such negative impact took place. We would refer to a MGC presentation dated June 26, 2018 (https://massgaming.com/wp-content/uploads/SEIGMApresentation6.26.18.pdf) which shows a greater increase in the number of businesses in Plainville from 2009-2016 (13%) than in other

surrounding communities (10.6%) or the control counties of Norfolk and Bristol Counties (9%).

Question 11: Massachusetts Horse Racing

The Region C casino would not a significant effect on the Race Horse Development Fund (RHDF or "Fund"), and thus there does not appear to be justification for considering horse racing in the decision regarding the Region C license. As discussed below, 9% of Plainridge's gaming revenue goes to the Fund, whereas 2.5% of Brockton's tax revenue (ergo 2.5% of 25% of GGR) would go toward the Fund. The gain to the Fund from Brockton is estimated to counteract nearly precisely the loss to the Fund from Brockton's impact on Plainridge.

RHDF Net Impact from Brockton	
Loss from Plainridge	-$2,523,159
Gain from Brockton	$2,524,025

Further, the horse racing industry has not been able to fully utilize the existing Fund since the Commonwealth's Thoroughbred track has dramatically reduced operations.

Massachusetts has two established horse racecourses. Located in East Boston, Suffolk Downs Horse Racing Track (Thoroughbred) was established in 1935, at the time when pari-mutuel wagering had just been legalized in Massachusetts. The other, Plainridge Racecourse, opened in 1999 as a harness (Standardbred) horse racing track in Plainville, offering both live and simulcast racing.

The Massachusetts State Racing Commission oversees Thoroughbred and harness racing, ensuring that rules are adhered to, for the welfare of the horses, as well as to protect the integrity of the horse racing industry. The following table details the racing and purse statistics of the two racecourses as reported by the Racing Commission in their annual reports.

Massachusetts Historical Racecourse Statistics

		Suffolk Downs	*% Share*	Plainridge	*% Share*	Total
Total Purses	2013	$8,375,400	*80.8%*	$1,988,055	*19.2%*	$10,363,455
	2014	$6,929,400	*72.9%*	$2,581,552	*27.1%*	$9,510,952
	2015	$1,620,200	*27.8%*	$4,210,636	*72.2%*	$5,830,836
	2016	$2,735,902	*25.6%*	$7,954,092	*74.4%*	$10,689,994
	2017	$3,844,306	*27.9%*	$9,912,523	*72.1%*	$13,756,829
Number of Races	2013	720	*48.0%*	780	*52.0%*	1,500
	2014	560	*43.2%*	736	*56.8%*	1,296
	2015	34	*3.5%*	949	*96.5%*	983
	2016	63	*5.5%*	1,092	*94.5%*	1,155
	2017	92	*7.2%*	1,182	*92.8%*	1,274
Number of Race Days	2013	80	*46.5%*	92	*53.5%*	172
	2014	62	*43.7%*	80	*56.3%*	142
	2015	3	*2.8%*	105	*97.2%*	108
	2016	6	*5.0%*	115	*95.0%*	121
	2017	8	*6.0%*	125	*94.0%*	133

Source: Massachusetts State Racing Commission Annual Reports; *2017 numbers have not been audited

Suffolk Downs has scaled back live racing since failing to secure the Region A resort casino license. Inversely, Plainridge has increased live racing since opening a slot machine casino. The Commonwealth levies a 9% tax on slot revenues at Plainridge that goes towards the Race Horse Development Fund (RHDF). The RHDF was created by the Legislature's 2011 expanded gaming law to increase purses, assist the breeding industry, and help pay for benefits for riders, trainers and others who work in the business. Of the RHDF totals, 80% is designated for purses, 16% goes to breeders, and 4% is allocated to backstretch welfare.

The following table shows the annual RHDF contributions since the Plainridge casino opened in late June 2015.

Massachusetts RHDF

2015	$7,940,749
2016	$13,953,773
2017	$14,830,761

Source: Massachusetts Gaming Commission

The RHDF is split between the Thoroughbred and Standardbred sectors. Originally, the Thoroughbred sector received 75% of the RHDF, but after Suffolk Downs reduced live racing starting in 2015, the share was shifted 55%-45% in favor of the Standardbred (harness) sector. The increases in purses at Plainridge show the impact of the RHDF on the harness industry. However, the Thoroughbred sector has not utilized its full share of the RHDF and a surplus resulted.

In 2017, the Massachusetts State Senate proposed a budget for fiscal 2018 that would have repurposed the balance of the RHDF to other state departments. The fund had a balance of $15,543,988.88 as of mid-April 2017, according to the Massachusetts Gaming Commission. Ultimately, the $15.5 million was maintained within the RHDF.

APPENDIX A: COMPETITIVE ENVIRONMENT

Existing competition for the proposed casino in Brockton will come mainly from casinos in neighboring states, specifically Rhode Island, Massachusetts, New York and Connecticut. Two of the existing competitors, MGM Springfield and Tiverton, opened in late August/early September. More distant competitors include casinos in New Jersey, Pennsylvania, and Maine. Additionally, Foxwoods and Mohegan are twice the distance but two of the largest casinos in the U.S. outside of Las Vegas, NV.

More distant competitors include casinos in New Jersey and Pennsylvania.

In addition to the existing facilities, for the purposes of this analysis, two facilities in the Catskill/Hudson Valley region and two casinos in Massachusetts, as well as a proposed casino in East Windsor, Connecticut have also been included as competitors for the proposed casino in Brockton.

Gaming revenue described in this section is net of free play.

The following table presents all of the existing competitive casinos in the Northeast and Mid-Atlantic region:

Existing Competitive Casinos

Location	Name	Machines	Tables	Positions
Montville, CT	Mohegan Sun Resort	5,613	350	7,713
Yonkers, NY	Empire City at Yonkers Raceway	5,349	0	5,349
Hanover, MD	Live! Casino & Hotel	3,997	198	5,185
Jamaica, NY	Resorts World Casino at Aqueduct	5,005	0	5,005
Lincoln, RI	Twin River Casino	4,220	80	4,700
Bethlehem, PA	Sands Casino Resort Bethlehem	3,073	252	4,585
Bensalem, PA	Parx Casino and Racing	3,331	190	4,471
Oxon Hill, MD	MGM National Harbor	2,961	180	4,041
Atlantic City, NJ	Borgata	1,994	268	3,602
Springfield, MA	MGM Springfield	2,550	120	3,270
Atlantic City, NJ	Tropicana Atlantic City	2,476	130	3,256
Baltimore, MD	Horseshoe Casino	2,200	168	3,208
Chester, PA	Harrah's Philadelphia	2,450	118	3,158
Atlantic City, NJ	Hard Rock Atlantic City	2,063	152	2,975
Atlantic City, NJ	Harrah's Resort Atlantic City	2,109	133	2,907
Monticello, NY	Resorts World Catskills	2,153	125	2,903
Wilkes-Barre, PA	Mohegan Sun Pocono	2,325	89	2,859
Atlantic City, NJ	Bally's Atlantic City	1,776	164	2,760
Atlantic City, NJ	Caesars Atlantic City	1,889	132	2,681
Philadelphia, PA	SugarHouse Casino	1,809	141	2,655
Grantville, PA	Hollywood Casino at Penn National Race Course	2,170	75	2,620
Atlantic City, NJ	Oceans Resort	1,937	107	2,579
Wilmington, DE	Delaware Park	2,250	39	2,484
Dover, DE	Dover Downs Hotel and Casino	2,177	40	2,417
Mt. Pocono, PA	Mount Airy Casino Resort	1,863	81	2,349
Atlantic City, NJ	Golden Nugget Atlantic City	1,454	99	2,048
Harrington, DE	Harrington Raceway and Casino	1,787	31	1,973
Atlantic City, NJ	Resorts Casino Hotel	1,475	68	1,883
Saratoga Springs, NY	Saratoga Gaming and Raceway	1,782	0	1,782
Schenectady, NY	Rivers Casino and Resort	1,150	82	1,642
Plainville, MA	Plainridge Park Casino	1,250	0	1,500*
Monticello, NY	Monticello Casino and Raceway	1,110	0	1,110
Tiverton, RI	Tiverton Casino Hotel	1,097	0	1,097
Bangor, ME	Hollywood Casino Hotel & Raceway Bangor	921	16	1,017
Islandia, NY	Jake's 58 Hotel & Casino	1,000	0	1,000
Perryville, MD	Hollywood Casino Perryville	822	22	954
Oxford, ME	Oxford Casino	811	22	943
King of Prussia, PA	Valley Forge Casino Resort	600	50	900
Berlin, MD	Ocean Downs	888	0	888
Flintstone, MD	Rocky Gap Casino Resort	665	17	767
Total	40	86,552	3,739	109,236

Source: The Innovation Group, Various Gaming Boards and Commissions, CasinoCity.com; *Note: Plainridge has electronic tables that count as one machine but that bring its seat count to approximately 1,500 positions.

Existing

This section details the eleven existing competitors within Brockton's gaming market categorized by state.

Connecticut

Foxwoods Casino

The Foxwoods Casino is located near the town of Ledyard, Connecticut along the Thames River in New London County. Foxwoods was founded in 1986 as a bingo hall and was later converted to a casino in 1993. The property features over 4.7 million square feet of gaming, food and beverage and entertainment space and is one of the largest casino resorts in the world. Foxwoods latest expansion, the MGM Grand at Foxwoods was a $700 million addition in 2008.

Slot revenues continued to decline to $728 million in the year 2008 from a total of $783 million in the year 2007 despite the expansion; however, the expansion at the facility coincided with the national economic recession. Gaming revenues continued to decrease at the resort given the opening of competitive facilities and their amenities in Pennsylvania and the VLTS racinos in New York and the soft economy. However, 2017 saw its first year of growth in gaming revenue in over a decade. Foxwoods currently offers about 4,100 machines, and over 250 table games.

Foxwoods Casino, Ledyard, CT Slot Performance Statistics

Year	Gaming Revenue	Change	Machines	Change	Win per Position	Change
2008	$728,024,927		7,734		$257	
2009	$684,424,106	-6.0%	7,641	-1.2%	$245	-4.6%
2010	$649,020,622	-5.2%	6,964	-8.9%	$255	4.0%
2011	$633,815,234	-2.3%	6,440	-7.5%	$270	5.6%
2012	$576,794,502	-9.0%	6,276	-2.5%	$252	-6.6%
2013	$530,572,312	-8.0%	5,921	-5.7%	$246	-2.5%
2014	$483,559,414	-8.9%	5,693	-3.9%	$233	-5.2%
2015	$465,010,320	-3.8%	4,695	-17.5%	$271	16.6%
2016	$456,156,085	-1.9%	4,466	-4.9%	$279	2.9%
2017	$468,048,004	2.6%	4,145	-7.2%	$309	10.8%

Source: Connecticut Gaming Board; The Innovation Group

The following table shows fiscal years so slot revenue does not match the previous calendar-year tables above.

Foxwoods Total Gaming Revenues ($MMs)		
	FY2016	FY2015
Slot rev	$481.4	$483.1
Table rev	$245.1	$234.4
Total gaming rev	$726.5	$717.5
# of slots	5,807	5,808
# of tables	428	429
Table rev ratio	33.7%	32.7%

Fiscal years ending Sept. 30

Mohegan Sun Casino

The Mohegan Sun Casino and Entertainment complex opened in October 1996. The Mohegan Sun is located on a 185-acre site on the Tribe's reservation overlooking the Thames River with direct access from Interstate 395 and Connecticut Route 2A. Mohegan Sun is approximately 10 miles from Foxwoods. In fiscal 2002, the property completed a major expansion of Mohegan Sun known as Project Sunburst, which included increased gaming, restaurant and retail space, an entertainment arena, an approximately 1,200-room luxury Sky Hotel Tower and approximately 100,000 square feet of convention space. In fiscal 2007 and 2008, the Sunrise Square and Casino of the Wind components of Project Horizon expansions were completed. The property now boasts 3.1 million square feet of gaming, food and beverage, and entertainment space.

Mohegan Sun's gaming revenues have been declining due to a combination of the effects from the national economic recession and the development of competitive facilities in Pennsylvania and the New York VLTs. The property currently offers 4,511 machines and over 300 table games.

Mohegan Sun Casino Resort, Montville, CT Slot Performance Statistics						
	Gaming Revenue	Change	Machines	Change	Win per Position	Change
2008	$842,873,026		6,300		$366	
2009	$763,879,790	-9.4%	6,752	7.2%	$310	-15.2%
2010	$736,157,773	-3.6%	6,405	-5.1%	$315	1.6%
2011	$712,346,164	-3.2%	6,318	-1.4%	$309	-1.9%
2012	$652,780,377	-8.4%	5,880	-6.9%	$303	-1.8%
2013	$614,364,394	-5.9%	5,533	-5.9%	$304	0.3%
2014	$583,912,203	-5.0%	5,426	-1.9%	$295	-3.1%
2015	$579,495,965	-0.8%	5,216	-3.9%	$304	3.2%
2016	$597,383,584	3.1%	5,111	-2.0%	$319	4.9%
2017	$606,937,856	1.6%	4,939	-3.4%	$337	5.4%

Source: Connecticut Gaming Board; The Innovation Group

Table revenue is not subject to revenue sharing and therefore is not reported through the Connecticut Gaming Board. However, the Mohegan Tribal Gaming Authority (MTGA) releases table game revenues in its reporting to the Securities and Exchange Commission. Altogether, gaming revenues at Mohegan Sun are approximately $910 million in 2016, with table revenue

accounting for about 35% of win.

Mohegan Sun Total Gaming Revenues ($MMs)

	FY2016	FY2015	FY2014	FY2013	FY2012
Slot rev	$592.1	$582.5	$582.1	$618.7	$675.1
Table rev	$317.8	$297.2	$293.3	$310.0	$302.6
Total gaming rev	$909.9	$879.7	$875.4	$928.6	$977.7
# of slots	5,267	5,268	5,470	5,553	6,038
# of tables	325	325	330	327	353
Table rev ratio	34.9%	33.8%	33.5%	33.4%	31.0%

Fiscal years ending Sept. 30

Rhode Island

Twin River Casino

The Twin River Casino in Lincoln, Rhode Island is approximately 50 miles southwest of Brockton, located at the former Lincoln Greyhound Park off State Highway 146. The racetrack, just 10 minutes from downtown Providence, began offering video lottery terminals in 1992 and completed a $220 million expansion in 2007 under new ownership. In 2012 voters approved a state referendum to allow live table games at the Twin River Casino.

The facility includes a 190,000 square foot gaming floor, 9 food and beverage options and a 29,000 square foot event center frequently hosting national acts and live boxing/MMA fights. The facility has a 135-room on-site hotel. The casino at Twin River currently offers guest over 4,200 slots, 80 gaming tables with a separate poker room and a simulcast racebook betting room.

Twin River Property Statistics

Year	Slot Revenue	Machines	Table Revenue	Table Games	Total Revenue	Change	Win per Position
2008	$407,503,857	4,748			$407,503,857		$234.5
2009	$399,662,955	4,741			$399,662,955	-1.9%	$231.0
2010	$423,660,592	4,749			$423,660,592	6.0%	$244.4
2011	$462,793,306	4,748			$462,793,306	9.2%	$267.1
2012	$477,827,613	4,751			$477,827,613	3.2%	$274.8
2013	$470,391,984	4,592	$41,322,389	66	$511,714,373	7.1%	$281.1
2014	$466,015,784	4,537	$99,886,924	80	$565,902,708	10.6%	$309.0
2015	$456,830,932	4,408	$114,446,240	80	$571,277,172	0.9%	$320.2
2016	$438,054,054	4,258	$135,048,433	80	$573,102,487	0.3%	$330.5
2017	$434,829,065	4,212	$143,855,958	80	$578,685,023	1.0%	$337.9

Source: Rhode Island Lottery; The Innovation Group

Newport Grand Casino/Tiverton Casino

Newport Grand Casino was located off the exit from the Claiborne Pell Newport Bridge on Aquidneck Island, approximately 50 miles east of Foxwoods. Formerly known as Newport

Grand Slot parlor, Twin River Management Group finalized the purchase of this casino in July 2015 with intentions of relocating the gaming license to Tiverton, RI. Newport closed as of August 28th, 2018 and Tiverton opened on September 1st, 2018.

The current facility has a 33,600 square foot gaming floor, three dining options and one lounge. Slot revenues at Newport Grand had declined over the last decade and while Twin River expanded into table games, voters refused the state referendum to allow table games at the Newport facility. However, the Tiverton Casino features 32 table games, 1,000 slot machines, and an 84-room hotel.

Newport Property Statistics

Year	Machines	Slot Revenue	Change	Win per Position
2008	1,244	$67,546,725		$148.4
2009	1,484	$61,505,924	-8.9%	$113.5
2010	1,182	$53,297,539	-13.3%	$123.6
2011	1,097	$50,071,495	-6.1%	$125.0
2012	1,093	$50,131,054	0.1%	$125.3
2013	1,093	$46,350,614	-7.5%	$116.2
2014	1,097	$45,179,615	-2.5%	$112.9
2015	1,097	$44,543,308	-1.4%	$111.3
2016	1,096	$46,006,384	3.3%	$114.7
2017	1,097	$46,166,038	0.3%	$115.3

Source: Rhode Island Lottery; The Innovation Group

Massachusetts

Plainridge Park Casino

Plainridge Park Casino, owned by Penn National Gaming, is the newest competitor in the market having opened in late June 2015 at the Plainridge harness-racing track on Route 1 about 20 miles west of Brockton. The racetrack became the first and only slot parlor and live harness racing venue in the state. The $225 million facility includes 8 food and beverage options, one live entertainment lounge bar and parking garage. The casino offers gamers over 1,250 slots, video table games and simulcast and live harness racebook betting. Plainridge generated revenue of $165 million in its first full year of operation.

Plainridge Property Statistics

Year	Machines	Slot Revenue	Change	Win per Position
2016	1,250	$155,041,918		$338.9
2017	1,250	$164,786,230	6.3%	$361.2

Source: Massachusetts Gaming Commission; The Innovation Group

MGM Springfield

MGM opened its nearly $1 billion integrated resort in Springfield on August 24th, 2018. The property includes a 250-room hotel tower and 125,000 square feet of gaming space with 2,550 slot machines and 120 gaming tables. Additionally, it provides typical amenities found in such resort properties such as restaurants, spas, retail shops, and meeting space in addition to an 8,000-seat entertainment venue, TopGolf swing suite, and a bowling alley.

MGM Springfield Property Statistics

	Slot GGR	Table GGR	Total GGR
Aug-18*	$7,347,491	$2,109,486	$9,456,977
Sep-18	$18,149,752	$8,802,344	$26,952,096
YTD	$25,497,243.51	$10,911,829.78	$36,409,073.29

Source: Massachusetts Gaming Commission; The Innovation Group; *August 2018 had 7 days in it

New York

Saratoga Springs

Saratoga Gaming and Raceway is a ½-mile standardbred harness racing dirt track located in Saratoga Springs, New York, just across Nelson Avenue from Saratoga Race Course which hosts thoroughbred racing each August. Saratoga Raceway aka The Saratoga Equine Sports Center – otherwise known as the Saratoga Gaming and Raceway – was opened in 1941 as a facility for American harness racing and was the third racetrack in the State of New York to feature pari-mutuel wagering. The casino opened in January 2004 featuring approximately 1,300 video lottery terminals. The casino now features 1,700 video lottery terminals.

Saratoga Springs Historical Gaming Revenues

Year	Gaming Revenue	Change	Machines	Change	Win per Position	Change
2008	$134,373,560		1,770		$207	
2009	$136,038,290	1.2%	1,770	0.0%	$211	1.5%
2010	$139,721,687	2.7%	1,775	0.3%	$216	2.4%
2011	$150,420,830	7.7%	1,782	0.3%	$231	7.3%
2012	$159,751,975	6.2%	1,780	-0.1%	$245	6.0%
2013	$159,594,798	-0.1%	1,782	0.1%	$245	0.1%
2014	$158,765,338	-0.5%	1,782	0.0%	$244	-0.5%
2015	$160,919,293	1.4%	1,763	-1.0%	$250	2.4%
2016	$167,212,392	3.9%	1,718	-2.6%	$266	6.4%
2017	$137,438,160	-17.8%	1,707	-0.6%	$221	-17.1%

Source: New York Lottery, The Innovation Group

Monticello Raceway

The Monticello Gaming and Raceway originally opened in June 1958 featuring the "Mighty M" half mile track featuring standard bred horse races. The casino portion opened in June 2004 featuring 1,700 video lottery terminals, but it has since scaled back to 1,110. Gaming revenue has fluctuated up and down, but roughly stayed flat over the last decade at $58 million.

Monticello Raceway Historical Gaming Revenues

Year	Gaming Revenue	Change	Machines	Change	Win per Position	Change
2008	$58,109,181		1,587		$100	
2009	$53,751,367	-7.5%	1,401	-11.7%	$105	5.0%
2010	$57,394,484	6.8%	1,089	-22.3%	$144	37.3%
2011	$60,918,062	6.1%	1,110	1.9%	$150	4.2%
2012	$63,873,596	4.9%	1,110	0.0%	$157	4.6%
2013	$62,821,386	-1.6%	1,110	0.0%	$155	-1.4%
2014	$59,142,393	-5.9%	1,110	0.0%	$146	-5.9%
2015	$59,326,309	0.3%	1,110	0.0%	$146	0.3%
2016	$61,086,135	3.0%	1,110	0.0%	$150	2.7%
2017	$58,508,310	-4.2%	1,110	0.0%	$144	-4.0%

Source: New York Lottery, The Innovation Group

Empire City at Yonkers Raceway

Yonkers Raceway, founded in 1899 in Yonkers as the Empire City Race Track, is a one-half-mile standardbred harness racing dirt track. The casino opened in October 2006 after a $225 million renovation and featured only 1,870 video lottery terminals. The casino now features approximately 5,200 video lottery terminals.

Yonkers Raceway Historical Gaming Revenues

Year	Gaming Revenue	Change	Machines	Change	Win per Position	Change
2008	$486,459,681		5,339		$249	
2009	$540,495,929	11.1%	5,320	-0.4%	$278	11.8%
2010	$582,229,271	7.7%	5,309	-0.2%	$300	7.9%
2011	$624,432,033	7.2%	5,351	0.8%	$320	6.4%
2012	$544,698,569	-12.8%	4,987	-6.8%	$298	-6.7%
2013	$559,946,387	2.8%	5,327	6.8%	$288	-3.5%
2014	$537,491,608	-4.0%	5,344	0.3%	$276	-4.3%
2015	$558,287,537	3.9%	5,277	-1.3%	$290	5.2%
2016	$589,716,723	5.6%	5,232	-0.8%	$308	6.2%
2017	$599,218,590	1.6%	5,221	-0.2%	$314	2.1%

Source: New York Lottery; The Innovation Group

Resorts World Casino at Aqueduct Racetrack

The Aqueduct Racetrack is a horse racing facility in Jamaica, New York with three tracks that feature thoroughbred racing. The Resorts World casino opened in October of 2011, and features over 5,000 gaming machines, including electronic table games that are extremely popular with the Asian population in Queens and Brooklyn.

Aqueduct Historical Gaming Revenues

Year	Gaming Revenue	Change	Machines	Change	Win per Position	Change
2011*	$89,293,498		2,919		$471	
2012	$672,570,324		4,954	69.7%	$371	-21.2%
2013	$785,128,863	16.7%	5,004	1.0%	$430	15.9%
2014	$807,988,805	2.9%	5,003	0.0%	$442	2.9%
2015	$831,222,582	2.9%	5,060	1.1%	$450	1.7%
2016	$826,486,601	-0.6%	5,423	7.2%	$416	-7.5%
2017	$702,120,545	-15.0%	5,207	-4.0%	$369	-11.3%

Source: New York Lottery; *2011 has 65 Days, The Innovation Group

Rivers Casino & Resort

Rivers Casino & Resort is a $330 gaming and entertainment venue located in Schenectady, New York, which is roughly 200 miles west of Brockton. Rivers Casino opened in February of 2017. The venue opened its hotel in the second quarter of operations. The property offers roughly 1,150 slot machines and 80 table games. In its first complete Fiscal Year in operation, Rivers Casino reported approximately $140 million in GGR.

Rivers Historical Gaming Revenues

Year	Slot Revenue	Machines	Table Revenue	Table Games	Total Revenue	Change	Win per Position
2017	$82,016,111	1,150	$40,611,458	67	$122,627,569		$216
Last 12 Months	$97,537,310	1,150	$44,947,233	67	$142,484,543	n/a	$252

Source: New York Lottery; *2017 has 327 Days, The Innovation Group

Resorts World Catskills

Resorts World Catskills was the last of the four nontribal casinos licensed by the state of New York in 2014 to open. Gaming operations at this $900 million hotel casino located at the old Concord Hotel near Monticello started in February of 2018. The hotel has 332 rooms and the casino floor has over 2,150 slot machines and 150 table games including poker. In its first full month of operations, the casino generated $12.4 million in GGR.

Resorts World Historical Gaming Revenues

Year	Slot Revenue	Machines	Table Revenue	Table Games	Total Revenue	Change	Win per Position
2018*	$31,727,284	2,153	$23,814,682	125	$55,541,966	n/a	$233

Source: New York Lottery; *2018 has 82 Days of data, The Innovation Group

Maine

Hollywood Casino Hotel & Raceway Bangor

Hollywood Casino is located at the junction of Interstates I-95 and I-395 next to the Penobscot River in Bangor, central Maine. The facility is almost 5 hours or 275 miles north of Brockton, MA and is not considered a strong competitor. The casino first opened in 2005 at a temporary location before building the current facility at an existing racetrack in 2008. The casino is operated by Penn National Gaming, who expanded casino operations in 2012 to include the state's first table games. The facility currently includes a 152-room hotel, three dining options, one live entertainment lounge, banquet facilities, live-harness racetrack and 10,000 square foot gaming floor currently offering 784 slots and 16 poker and table games.

Hollywood Casino Bangor Property Statistics

Year	Slot Revenue	Machines	Table Revenue	Tables	Total Revenue	Change	Win per Position
2008	$50,515,382	740			$50,515,382		$187
2009	$59,224,270	1,000			$59,224,270	17.2%	$162
2010	$61,667,214	1,000			$61,667,214	4.1%	$169
2011	$59,453,078	1,000			$59,453,078	-3.6%	$163
2012	$56,212,925	936	$6,470,964	16	$62,683,888	5.4%	$166
2013	$47,269,709	909	$7,388,848	16	$54,658,557	-12.8%	$149
2014	$46,410,579	877	$8,026,814	16	$54,437,393	-0.4%	$153
2015	$44,274,063	763	$8,966,225	16	$53,240,288	-2.2%	$170
2016	$43,494,044	779	$9,133,204	17	$52,627,248	-1.2%	$163
2017	$41,698,800	773	$8,730,574	18	$50,429,374	-4.2%	$157

Source: Maine Gaming Board; The Innovation Group

Oxford Casino

The Oxford Casino opened in 2012 as Black Bear Four Season Resort & Casino but changed its name before being sold to Churchill Downs Inc. the following year. The facility is located 20 miles off Interstate I-95 just outside of Oxford in southwest Maine. The casino currently has three dining options and a 30,281 square foot gaming floor with over 850 slots, 28 table games and 12-seat video poker bar. A 107-room hotel as opened in November of 2017.

Oxford Casino Property Statistics

Year	Slot Revenue	Machines	Table Revenue	Tables	Total Revenue	Change	Win per Position
2012	$29,887,262	688	$6,652,279	16	$36,539,541		$218
2013	$58,353,948	811	$13,261,868	23	$71,615,816	96.0%	$207
2014	$58,368,047	858	$14,464,188	26	$72,832,235	1.7%	$197
2015	$62,091,956	855	$14,475,213	26	$76,567,169	5.1%	$208
2016	$64,856,476	857	$15,637,882	27	$80,494,358	5.1%	$218
2017	$68,722,796	852	$17,564,142	28	$86,286,938	7.2%	$234

Source: Maine Gaming Board; *2012 has 213 Days, The Innovation Group

New Jersey

Bally's Atlantic City

Bally's Atlantic City is a hotel and casino on the Boardwalk in Atlantic City, New Jersey that opened in 1979. The property has grown to feature over 1,700 slot machines, and 171 table and poker games. The hotel, Bally's Park Place is located adjacent to the casino and features 1,251 rooms and suites, a large fitness center, pool and spa. The property features 13 food and beverage facilities including seven "quick bite" locations, five casual dining restaurants, and a flagship Guy Fieri Steakhouse. The property features five additional bars including a beach bar and a nightclub while also offering frequent live shows managed by Caesars Entertainment. There have been several small-scale renovations to some of the rooms and suites with no major renovations planned.

Bally's Historical Gaming Revenues

Year	Slot Revenue	Machines	Table Revenue	Tables	Total Revenue	Change	Win per Position
2008	$394,629,796	4,914	$173,440,327	212	$568,070,123		$251
2009	$314,338,881	3,818	$160,007,217	204	$474,346,098	-16.5%	$258
2010	$283,638,705	3,511	$142,366,290	204	$426,004,995	-10.2%	$247
2011	$264,441,156	3,319	$113,869,996	207	$378,311,152	-11.2%	$227
2012	$198,656,540	2,464	$98,112,689	147	$296,769,229	-21.6%	$242
2013	$163,416,180	2,250	$81,034,095	135	$244,450,275	-17.6%	$219
2014	$150,319,270	1,921	$74,578,853	163	$224,898,123	-8.0%	$212
2015	$140,223,513	1,867	$70,334,072	169	$210,557,585	-6.4%	$200
2016	$135,577,882	1,835	$75,132,527	171	$210,710,409	0.1%	$201
2017	$138,812,736	1,774	$72,211,812	165	$211,024,548	0.1%	$209

Source: New Jersey Division of Gaming Enforcement, The Innovation Group

Borgata

Borgata is one of the most prominent casinos in Atlantic City, originally featuring 1,700 video lottery terminals, and has grown to host 3,000 gaming machines and over 250 table and poker games. The Borgata features 2,000 standard rooms while the Water Club at Borgata features 800

standard rooms. The hotels also feature five separate specialty pools, large fitness center, two spas, and retail center with five featured brand names including Hugo Boss and Misura. The casino as experienced several internal lobby renovations while the hotel has experienced renovated rooms and pool areas. Borgata hosts two nightclubs and the Borgata Beer Garden as well as three separate bars.

Borgata Historical Gaming Revenues

Year	Slot Revenue	Machines	Table Revenue	Tables	Total Revenue	Change	Win per Position
2008	$441,443,988	3,956	$297,334,851	274	$738,778,839		$360
2009	$431,395,370	3,928	$263,935,199	274	$695,330,569	-5.9%	$342
2010	$422,852,611	3,600	$224,817,026	276	$647,669,637	-6.9%	$338
2011	$430,412,456	3,475	$221,401,551	275	$651,814,007	0.6%	$348
2012	$417,234,016	3,368	$195,457,441	270	$612,691,457	-6.0%	$336
2013	$419,907,236	3,200	$198,562,125	273	$618,469,361	0.9%	$350
2014	$433,410,358	3,113	$209,561,815	273	$642,972,173	4.0%	$371
2015	$468,397,051	3,051	$227,820,100	274	$696,217,151	8.3%	$406
2016	$491,483,634	3,025	$231,288,615	276	$722,772,249	3.8%	$422
2017	$508,152,357	3,029	$246,943,501	279	$755,095,858	4.5%	$440

Source: New Jersey Division of Gaming Enforcement, The Innovation Group

Caesars Atlantic City

Caesars opened in 1979 and is Atlantic City's second casino. The casino and hotel have been recently renovated with updated lobbies, pool areas, and nightclubs. The casino now features more than 2,000 slot machines, and 137 table and poker games. The Hotel features 1,141 updated rooms and suites, a rooftop pool, spa, salon, meeting rooms, and the Playground Mall. The property features three nightclubs and bars with 12 additional restaurants. Restaurants include five casual options, two buffets, one "quick bite" location, and three upscale restaurants.

Caesars Historical Gaming Revenues

Year	Slot Revenue	Machines	Table Revenue	Tables	Total Revenue	Change	Win per Position
2008	$327,475,136	3,113	$216,293,908	166	$543,769,044		$361
2009	$284,752,454	2,860	$175,456,897	168	$460,209,351	-15.4%	$326
2010	$248,514,994	2,610	$160,215,001	180	$408,729,995	-11.2%	$304
2011	$241,776,432	2,404	$162,606,717	181	$404,383,149	-1.1%	$318
2012	$229,462,232	2,245	$129,102,488	178	$358,564,720	-11.3%	$296
2013	$209,421,964	2,131	$127,025,395	180	$336,447,359	-6.2%	$287
2014	$210,635,652	1,947	$119,977,272	144	$330,612,924	-1.7%	$323
2015	$197,709,639	1,881	$112,604,162	146	$310,313,801	-6.1%	$308
2016	$195,049,635	1,854	$106,954,998	137	$302,004,633	-2.7%	$308
2017	$205,240,148	1,853	$119,821,259	137	$325,061,407	7.6%	$333

Source: New Jersey Division of Gaming Enforcement; The Innovation Group

Golden Nugget Atlantic City

The Golden Nugget is one of the largest casinos in Atlantic City and features over 1,450 gaming machines and 88 table and poker games. The casino is located within the hotel which currently has 545 standard rooms and 171 suites. The hotel hosts a fitness center, marina, salon, spa, and rooftop pool. The hotel currently has ten restaurant options, featuring a Chart House Steakhouse, Grotto Italian Restaurant and the Deck Bayfront Bar & Restaurant. Within the hotel is the Haven Nightclub, Rush Lounge, and Bar 46 as well as a shopping center with eleven shops.

Golden Nugget Historical Gaming Revenues

Year	Slot Revenue	Machines	Table Revenue	Tables	Total Revenue	Change	Win per Position
2008	$155,075,095	1,971	$48,568,409	74	$203,643,504		$231
2009	$125,270,157	1,876	$37,329,676	72	$162,599,833	-20.2%	$193
2010	$113,359,416	1,779	$34,027,123	70	$147,386,539	-9.4%	$184
2011	$97,553,342	1,512	$27,645,876	71	$125,199,218	-15.1%	$177
2012	$97,915,534	1,473	$33,171,681	89	$131,087,215	4.7%	$178
2013	$95,605,199	1,430	$29,266,019	93	$124,871,218	-4.7%	$171
2014	$128,332,077	1,339	$46,427,593	92	$174,759,670	40.0%	$254
2015	$146,000,772	1,380	$54,260,282	92	$200,261,054	14.6%	$284
2016	$150,548,958	1,449	$59,135,210	92	$209,684,168	4.7%	$286
2017	$159,736,626	1,453	$59,940,049	93	$219,676,675	4.8%	$299

Source: New Jersey Division of Gaming Enforcement; The Innovation Group

Taj Mahal/Hard Rock Atlantic City

The previous Taj Mahal, which closed in 2016, has reopened on June 28th, 2018 as the Hard Rock Casino. The property has undergone substantial renovations with both the hotel and casino obtaining new designs. The casino features over 2,100 gaming machines and 120 table and poker games. The hotel is separated to two towers with the North tower hosting 708 standard rooms and 74 suites, and the south tower hosting 1012 standard rooms and 216 suites. The hotel currently has 20 food and beverage options including the Council Oak Fish Restaurant, Kuro Restaurant, Song, and Il Mulino. Amenities include a full-service pool, spa, and gym, meeting rooms, mercantile shops, and full nightclub. The property features the Etess Arena which hosts live performances and shows. Gaming revenue totaled $32.4 in the Hard Rock's first full month of operation.

Taj Mahal Historical Gaming Revenues

Year	Slot Revenue	Machines	Table Revenue	Tables	Total Revenue	Change	Win per Position
2008	$296,075,931	3,235	$48,568,409	74	$186,331,878		$298
2009	$274,660,169	3,029	$37,329,676	72	$172,268,053	-7.5%	$287
2010	$258,070,652	2,912	$34,027,123	70	$144,327,704	-16.2%	$267
2011	$228,837,319	2,788	$27,645,876	71	$119,720,880	-17.0%	$243
2012	$206,902,415	2,592	$33,171,681	89	$88,589,664	-26.0%	$217
2013	$186,424,133	2,529	$29,266,019	93	$73,490,148	-17.0%	$197
2014	$159,928,015	2,522	$46,427,593	92	$55,934,907	-23.9%	$166
2015	$142,221,456	2,518	$54,260,282	92	$38,047,795	-32.0%	$151
2016*	$96,787,797	2,510	$59,940,049	93	$28,593,940	-24.8%	$137

Source: New Jersey Division of Gaming Enforcement; *2016 Closed October 10th, The Innovation Group

Harrah's Resort Atlantic City

Harrah's Resort opened in 1980 and has since established itself as one of the top-grossing casinos in the city. The current property has seen a resent renovation to the hotel lobbies and rooms in addition to the casino being recently renovated. The hotel hosts 890 rooms and 281 suites, two pools, a fitness center, spa, meeting centers, and shopping center. The hotel also hosts three bars, an additional pool bar, and thirteen food and beverage options. Restaurants include four casual dining options, four "quick bite" options, one buffet, and four upscale restaurants including the Gordon Ramsay Steakhouse.

Harrah's Historical Gaming Revenues

Year	Slot Revenue	Machines	Table Revenue	Tables	Total Revenue	Change	Win per Position
2008	$446,455,951	3,677	$98,268,682	132	$544,724,633		$333
2009	$388,327,533	3,244	$100,151,362	149	$488,478,895	-10.3%	$323
2010	$350,535,636	2,955	$102,935,424	162	$453,471,060	-7.2%	$316
2011	$345,374,645	2,855	$94,436,900	170	$439,811,545	-3.0%	$311
2012	$297,684,341	2,682	$101,356,469	179	$399,040,810	-9.3%	$290
2013	$269,851,423	2,412	$86,515,519	179	$356,366,942	-10.7%	$280
2014	$273,238,828	2,305	$92,119,539	178	$365,358,367	2.5%	$297
2015	$283,102,384	2,224	$91,212,679	177	$374,315,063	2.5%	$312
2016	$266,299,345	2,179	$91,769,157	176	$358,068,502	-4.3%	$302
2017	$280,339,059	2,152	$83,366,378	176	$363,705,437	1.6%	$311

Source: New Jersey Division of Gaming Enforcement; The Innovation Group

Resorts Casino Hotel

Resorts Casino Hotel was the first casino to open in Atlantic City. The hotel has 942 standard rooms and the casino floor has over 1,553 slot machines and 74 table and poker games. The hotel offers a pool, spa & health club, salon, and boardwalk. The hotel is comprised of two towers, the

Rendezvous Tower, and the recently renovated Ocean Tower. The property host six bars, an event center, and ten restaurants, including four fine dining restaurants, four casual dining restaurants, a quick-bites food court, and coffee shop.

Resorts World Historical Gaming Revenues

Year	Slot Revenue	Machines	Table Revenue	Tables	Total Revenue	Change	Win per Position
2008	$174,294,678	2,584	$58,921,514	89	$233,216,192		$204
2009	$142,390,803	2,419	$49,285,001	85	$191,675,804	-17.8%	$179
2010	$122,010,528	2,292	$41,034,133	83	$163,044,661	-14.9%	$160
2011	$115,757,070	2,163	$38,346,133	82	$154,103,203	-5.5%	$159
2012	$99,136,427	2,057	$31,691,937	84	$130,828,364	-15.1%	$140
2013	$104,551,454	1,664	$26,251,715	72	$130,803,169	0.0%	$171
2014	$110,222,299	1,723	$29,167,535	73	$139,389,834	6.6%	$177
2015	$128,183,105	1,617	$34,049,911	71	$162,233,016	16.4%	$218
2016	$135,090,368	1,555	$38,038,452	74	$173,128,820	6.7%	$237
2017	$146,001,303	1,502	$44,507,005	75	$190,508,308	10.0%	$268

Source: New Jersey Division of Gaming Enforcement; The Innovation Group

Tropicana Atlantic City

Tropicana Hotel and Casino opened in 1981 and currently hosts over 2,300 gaming machines, 125 table and poker games, and a hotel with 2047 business suites. The hotel recently saw renovations to their hotel rooms and lobbies. The hotel offers two full-service spas, salon, fitness center, pool, and business center. In addition to the four bars and nightclub, the property also hosts 29 different food and beverage options including the Pal Restaurant, Il Verdi, and Golden Dynasty. The property is known for its "Quarter" which features a large selection of shops in a Havana-style street setting.

Tropicana Historical Gaming Revenues

Year	Slot Revenue	Machines	Table Revenue	Tables	Total Revenue	Change	Win per Position
2008	$252,178,402	3,606	$104,808,388	178	$356,986,790		$209
2009	$221,775,764	3,322	$91,822,325	172	$313,598,089	-12.2%	$197
2010	$205,543,341	3,054	$94,899,480	159	$300,442,821	-4.2%	$205
2011	$191,905,012	2,739	$85,247,531	141	$277,152,543	-7.8%	$212
2012	$190,371,544	2,639	$59,622,147	141	$249,993,691	-9.8%	$196
2013	$180,858,101	2,609	$47,163,837	132	$228,021,938	-8.8%	$184
2014	$221,010,199	2,530	$53,617,131	130	$274,627,330	20.4%	$227
2015	$225,618,527	2,294	$54,451,928	129	$280,070,455	2.0%	$250
2016	$241,439,840	2,246	$62,709,449	130	$304,149,289	8.6%	$274
2017	$281,390,455	2,268	$66,944,924	126	$348,335,379	14.5%	$316

Source: New Jersey Division of Gaming Enforcement; The Innovation Group

Revel/Oceans Resort

Opened in June of 2018, Oceans Resort is one of the newest casinos in Atlantic City and features 1,399 rooms and suites, over 2,000 gaming machines, and 100 table and poker games. The property was formerly the Revel Casino which was only open between March 2012 and September 2014. The new hotel building features ocean view rooms, fitness center, Exhale Spa, Top Golf Swing Suites, and retail district. The property features six food and beverage options including Harper's and American Cut. Oceans is known for its large variety of nightclub options including Ovation Hall, HQ2, Villain and Saint, and Ivan Kane's Royal Jelly Burlesque Nightclub. In its first full month of operation, Oceans Resort had a gaming revenue of $15.7 million.

Revel Historical Gaming Revenues

Year	Slot Revenue	Machines	Table Revenue	Tables	Total Revenue	Change	Win per Position
2012	$80,264,208	2,409	$42,051,867	150	$122,316,075		$133
2013	$96,835,844	2,360	$58,316,675	139	$155,152,519	26.8%	$135
2014	$64,140,024	2,201	$34,013,219	113	$98,153,243	-36.7%	$103

Source: New Jersey Division of Gaming Enforcement; The Innovation Group

Pennsylvania

Sands Casino Resort Bethlehem

Sands Bethlehem Casino is located west of New York City in Bethlehem, PA. The casino location is off Interstate 78 and is over four hours away from Foxwoods casino. The casino opened May 22, 2009. In the winter of 2009–2010, the casino was granted a license for table games which allowed the casino to expand to include 180 table games which began operations in July of 2010. The Sands Hotel opened its 282-room facility in May of 2011. The casino has 139,000 square feet of gaming space and operates roughly 3,000 slots and 240 table games.

Sands Bethlehem Property Statistics

Year	Slot Revenue	Machines	Table Revenue	Tables	Total Revenue	Change	Win per Position
2009*	$142,267,867	2,964			$142,267,867		$212
2010	$258,735,860	3,099	$27,366,916	89	$286,102,776	101.1%	$216
2011	$270,967,159	3,022	$106,380,000	118	$377,347,159	31.9%	$277
2012	$291,547,632	3,015	$146,492,966	151	$438,040,597	16.1%	$305
2013	$288,378,796	3,014	$176,577,739	181	$464,956,535	6.1%	$311
2014	$280,979,456	3,013	$188,974,141	201	$469,953,597	1.1%	$305
2015	$299,528,646	3,013	$214,409,351	207	$513,937,997	9.4%	$331
2016	$305,036,579	3,013	$230,151,256	222	$535,187,835	4.1%	$337
2017	$302,568,558	2,996	$243,170,902	240	$545,739,460	2.0%	$337

Source: Pennsylvania Gaming Control Board; The Innovation Group; *2009 Has 226 Days

Mount Airy Casino Resort

Mount Airy Casino Resort is in Mount Pocono, Pennsylvania roughly 4 hours west of Foxwoods. The casino and 188-room hotel opened in October of 2007. Mount Airy Casino and Resort is one of two AAA 4 Diamond Casino Resorts in Pennsylvania, the other being the Sands Casino Resort Bethlehem. The facility includes 62,000 square feet of gaming space, seven F&B options including a Guy Fieri restaurant, a golf club, and a spa. The casino has roughly 1,900 slots and starting in 2010 started offering table games that now number over 80.

Mount Airy Casino Property Statistics

Year	Slot Revenue	Machines	Table Revenue	Tables	Total Revenue	Change	Win per Position
2008	$176,389,714	2,521			$176,389,714		$191
2009	$164,634,128	2,506			$164,634,128	-6.7%	$180
2010	$143,811,645	2,415	$19,466,397	75	$163,278,042	-0.8%	$156
2011	$145,776,853	2,296	$39,607,114	73	$185,383,967	13.5%	$186
2012	$149,842,697	2,076	$39,670,415	72	$189,513,113	2.2%	$207
2013	$142,856,720	1,930	$40,523,390	73	$183,380,110	-3.2%	$212
2014	$140,635,829	1,869	$43,028,021	79	$183,663,850	0.2%	$215
2015	$139,765,235	1,870	$46,582,339	80	$186,347,574	1.5%	$217
2016	$141,953,231	1,868	$42,584,186	81	$184,537,417	-1.0%	$214
2017	$147,803,674	1,865	$50,084,907	81	$197,888,581	7.2%	$231

Source: Pennsylvania Gaming Control Board; The Innovation Group

Mohegan Sun Pocono

Located in Wilkes-Barre, PA, Mohegan Sun Pocono was the first slots casino in operations in the state of Pennsylvania in 2006. Formerly known as the Pocono Downs Racetrack, Mohegan Sun acquired the racetrack on January 25, 2005 in a $280 million purchase from Penn National Gaming. In November 2013, Mohegan Sun opened a 238-room hotel connected to the casino floor. The facility includes notable F&B options, such as Ruth's Chris Steakhouse, shopping center, comedy club, horse racing track, and more. The casino currently operates 2,300 slot machines and 90 table games including poker.

Mohegan Sun Pocono Property Statistics

Year	Slot Revenue	Machines	Table Revenue	Tables	Total Revenue	Change	Win per Position
2008	$185,583,564	1,798			$185,583,564		$282
2009	$220,808,247	2,466			$220,808,247	19.0%	$245
2010	$224,762,570	2,350	$18,453,735	78	$243,216,305	10.1%	$236
2011	$232,814,363	2,356	$42,021,546	84	$274,835,909	13.0%	$263
2012	$232,175,872	2,332	$42,747,972	84	$274,923,844	0.0%	$265
2013	$219,667,892	2,332	$43,764,894	84	$263,432,787	-4.2%	$254
2014	$217,175,321	2,331	$45,644,444	87	$262,819,765	-0.2%	$252
2015	$216,419,629	2,333	$48,851,817	91	$265,271,446	0.9%	$252
2016	$216,247,247	2,325	$45,441,506	91	$261,688,752	-1.4%	$249
2017	$204,461,556	2,332	$42,413,840	91	$246,875,395	-5.7%	$235

Source: Pennsylvania Gaming Control Board; The Innovation Group

Parx Casino and Racing

Parx Casino is located just outside of Philadelphia and four hours from Foxwoods. Originally called the Keystone Racetrack, the facility operated solely as a horse racetrack until the facility was granted a slots license by the Pennsylvania Gaming Control Board in December 2006. The facility now operates over 3,400 slot machines and 180 table games.

Parx Casino Property Statistics

Year	Slot Revenue	Machines	Table Revenue	Tables	Total Revenue	Change	Win per Position
2008	$345,502,693	2,816			$345,502,693		$335
2009	$359,274,246	2,904			$359,274,246	4.0%	$339
2010	$398,155,075	3,385	$34,447,042	69	$432,602,118	20.4%	$312
2011	$376,668,692	3,454	$114,763,592	169	$491,432,284	13.6%	$301
2012	$384,566,137	3,462	$109,959,936	175	$494,526,073	0.6%	$300
2013	$368,423,345	3,363	$119,244,192	165	$487,667,537	-1.4%	$307
2014	$360,755,915	3,276	$129,884,887	157	$490,640,802	0.6%	$319
2015	$379,077,877	3,268	$144,401,468	162	$523,479,345	6.7%	$338
2016	$389,843,195	3,446	$161,821,309	174	$551,664,504	5.4%	$336
2017	$388,220,901	3,428	$178,297,138	180	$566,518,039	2.7%	$344

Source: Pennsylvania Gaming Control Board; The Innovation Group

SugarHouse Casino

SugarHouse is the only casino located in Philadelphia and is just 2.6 miles from the city center. This casino received one of the five original gaming licenses from the Pennsylvania Gaming Control Board in 2006; however, due to legal complications, the casino was not able to open until September of 2010. SugarHouse, located on the site of a former sugar refinery, is a 1.3 million square foot complex with 45,000 square feet of gaming space. A recent $164 million expansion project included new amenities, featuring six new restaurants, a new event space, a seven-story parking garage and more. The casino currently operates over 1,800 slot machines and roughly 140 table games.

SugarHouse Casino Property Statistics

Year	Slot Revenue	Machines	Table Revenue	Tables	Total Revenue	Change	Win per Position
2010*	$37,076,304	1,601	$17,118,033	41	$54,194,337		$288
2011	$170,967,818	1,587	$74,212,407	47	$245,180,225	352.4%	$360
2012	$190,192,054	1,604	$83,941,815	55	$274,133,869	11.8%	$388
2013	$180,760,342	1,603	$84,797,895	58	$265,558,237	-3.1%	$373
2014	$174,368,864	1,605	$90,755,766	64	$265,124,630	-0.2%	$365
2015	$174,263,728	1,605	$94,747,202	84	$269,010,931	1.5%	$349
2016	$181,187,600	1,865	$116,492,823	129	$297,680,423	10.7%	$308
2017	$177,837,718	1,825	$119,869,572	139	$297,707,290	0.0%	$307

Source: Pennsylvania Gaming Control Board; The Innovation Group; *2010 has 102 Days

Harrah's Philadelphia Casino & Racetrack

Harrah's Philadelphia is located in Chester, PA on the Delaware River and roughly 30 minutes south of Philadelphia and five hours from Foxwoods. The racino, formerly known as Harrah's Chester, changed its name in 2012 to appeal to a broader market. The racetrack held its first race in 2006 and slot machine only casino opened in early 2007. Currently, the gaming facility includes 100,000 square feet of gaming space, 2,500 slot machines, and a 14,000 square foot event center. Additional amenities include a Krispy Kreme, a Guy Fieri restaurant, shopping center, and more. Harrah's Philadelphia started offering live table games in July of 2010.

Harrah's Philadelphia Casino Property Statistics

Year	Slot Revenue	Machines	Table Revenue	Tables	Total Revenue	Change	Win per Position
2008	$328,443,772	2,816			$328,443,772		$319
2009	$315,938,366	2,915			$315,938,366	-3.8%	$297
2010	$296,491,721	2,912	$30,019,768	106	$326,511,489	3.3%	$252
2011	$268,113,984	2,957	$80,971,453	121	$349,085,437	6.9%	$259
2012	$259,799,107	2,832	$81,004,213	124	$340,803,319	-2.4%	$260
2013	$233,875,716	2,786	$77,285,609	123	$311,161,325	-8.7%	$242
2014	$217,836,232	2,794	$68,989,732	124	$286,825,965	-7.8%	$222
2015	$218,365,368	2,800	$68,233,556	116	$286,598,924	-0.1%	$224
2016	$206,845,371	2,740	$65,296,774	107	$272,142,145	-5.0%	$220
2017	$198,193,939	2,451	$65,270,571	117	$263,464,509	-3.2%	$229

Source: Pennsylvania Gaming Control Board; The Innovation Group

Valley Forge Casino Resort

Valley Forge Resort Casino, located in the town of King of Prussia 35-minutes west of Philadelphia, became the eleventh casino to operate in Pennsylvania when it opened in March of 2012. Valley Forge operates with a Category 3 gaming license limiting the number of slot machines to 600 and tables to 50. This property has two hotels offering 486 hotel rooms and

suites. The Valley Forge Casino Resort has over 100,000 square feet of meeting space including the Valley Forge Convention Center. The complex also includes a spa, fitness center, and two stores. In September 2018, Boyd Gaming Corporation finalized its purchase of Valley Forge for a reported price of $280.5 million.

Valley Forge Casino Property Statistics

Year	Slot Revenue	Machines	Table Revenue	Tables	Total Revenue	Change	Win per Position
2012*	$36,466,250	600	$21,419,727	50	$57,885,978		$210
2013	$63,207,408	600	$33,046,232	50	$96,253,639	66.3%	$293
2014	$73,495,317	600	$33,209,169	50	$106,704,486	10.9%	$325
2015	$78,059,250	600	$34,819,102	50	$112,878,352	5.8%	$344
2016	$77,801,417	600	$37,059,368	50	$114,860,785	1.8%	$349
2017	$82,760,824	599	$34,419,700	50	$117,180,524	2.0%	$357

Source: Pennsylvania Gaming Control Board; The Innovation Group; *2012 Has 306 Days

Hollywood Casino at Penn National Race Course

Located 110 miles west of Philadelphia and 300 miles southwest of Foxwoods, Hollywood Casino originally started as a racetrack in 1972. The casino began operations in February of 2008 and began offering table games in July of 2010. The facility includes meeting and event space, five F&B options, and live entertainment. The casino currently operates over 2,300 slot machines and 74 table games.

Hollywood Casino Property Statistics

Year	Slot Revenue	Machines	Table Revenue	Tables	Total Revenue	Change	Win per Position
2008*	$171,117,626	2,120			$171,117,626		$247
2009	$237,721,830	2,318			$237,721,830	38.9%	$281
2010	$253,403,976	2,433	$15,062,128	54	$268,466,104	12.9%	$267
2011	$248,924,977	2,466	$38,410,926	62	$287,335,903	7.0%	$277
2012	$244,021,769	2,472	$38,579,543	69	$282,601,312	-1.6%	$267
2013	$230,334,692	2,458	$36,427,141	69	$266,761,833	-5.6%	$254
2014	$213,954,040	2,437	$33,396,373	70	$247,350,413	-7.3%	$237
2015	$215,578,964	2,406	$34,761,184	69	$250,340,147	1.2%	$243
2016	$209,885,267	2,392	$34,361,514	71	$244,246,780	-2.4%	$237
2017	$209,014,353	2,347	$35,758,641	74	$244,772,994	0.2%	$240

Source: Pennsylvania Gaming Control Board; The Innovation Group; *2008 Has 327 Days

Proposed New England

Encore Boston Harbor

Wynn Resorts is developing a $2.5 billion casino at the former Monsanto Chemical Plant site on the Mystic River in Everett, a northern suburb of Boston. The proposed resort, named Encore

Boston Harbor, will focus on open-space amenities to reconnect the public to the waterfront through a harborwalk, park, pavilion and docking facilities for ferry operations to Boston. The project also includes 670 hotel accommodations, spa, retail, multiple food and beverage options, convention space and parking garage. The casino gaming floor is estimated to offer patrons over 3,000 slots and 150 table games and is expected to open in June 2019.

In January of 2018, the Massachusetts Gaming Commission launched an investigation into Steve Wynn and what Wynn Resorts executives knew of sexual misconduct allegations against him when the company obtained a Massachusetts casino license. The investigation is intended to determine the suitability of Wynn Resorts holding a gaming license in Massachusetts. The Gaming Commission agreed to remove Steve Wynn, who resigned from the company and divested his holdings, from the list of people who must be deemed individually suitable for Wynn Resorts to continue to hold its casino license. The Commission is expected to make its findings public in December 2018. No details have been made clear as to what would happen to the Encore resort property if the commission determines that Wynn will no longer hold one of the state's casino licenses.

Connecticut

MMCT Venture LLC, the joint venture formed by the Mashantucket Pequot and Mohegan tribes, have plans to develop a $300-$400 million venue with 100,000 square feet of gaming space in East Windsor, Connecticut. MMCT said the proposed casino would have roughly 2,000 slot machines and 60 table games. MGM Resorts International has fought the project, and a recent federal court ruling has suspended the project. The ultimate legal outlook for the project is unknown at this time.

APPENDIX B: SIGNATURE PAGE

Respectfully Submitted,

Thomas Zitt
Executive Vice President
The Innovation Group

November 30, 2018

Exhibit D

HOST COMMUNITY AGREEMENT

By and Between the City of Brockton, Massachusetts

and

Mass Gaming & Entertainment, LLC

This Host Community Agreement (the "**Agreement**") is made and entered into as of February 19, 2015 (the "**Effective Date**"), by and between the City of Brockton, Massachusetts (the "**City**" or "**Brockton**"), a municipality of the Commonwealth of Massachusetts, and Mass Gaming & Entertainment, LLC ("**MGE**"), a Delaware limited liability company (each a "**Party**", both collectively, the "**Parties**").

RECITALS

The following are the recitals underlying this Agreement:

MGE has acquired and/or plans to acquire approximately forty-five acres of the Brockton Fairgrounds, located off Belmont Street, Brockton, MA, as generally shown on Exhibit A (the "**Project Site**"), the exact dimensions and boundaries of which Project Site may be subject to adjustment during the permitting process with the City's or the City Council's approval.

MGE plans to apply to the Massachusetts Gaming Commission (the "**Commission**") for a Category 1 gaming license, and to develop on the Project Site a hotel and destination resort casino.

MGE is affiliated with Rush Street Gaming, LLC ("Rush Street") and, if granted a final, non-appealable Category 1 gaming license by the Commission, MGE plans to make a Project Investment of approximately Six Hundred Fifty Million Dollars ($650,000,000) to develop the Project Site with a high quality gaming facility, at least two hundred fifty hotel rooms, restaurants, sundry retail, multifunction event and entertainment space, back of house spaces, and surface and structured parking, which shall be consistent in quality with other casinos overseen by Rush Street (collectively, the "**Project**").

The City believes that the Project will bring economic development to the City, creating new jobs for residents and new sources of income for the City, and accordingly, the City desires to support MGE in the development of the Project.

MGE desires to mitigate impacts from the development and operation of a gaming establishment through the means described herein, in accordance with Chapter 194 of the Acts and Resolves of 2011 (the "**Massachusetts Gaming Act**" or the "**Act**"), which established Chapter 23K of the Massachusetts General Laws.

Subject to a City-wide referendum ballot to authorize the operation in Brockton of a Category 1 gaming establishment licensed by the Commission, MGE and the City desire to enter into this Agreement to set forth the conditions to have a gaming establishment located within the City, in full satisfaction of G.L. c. 23K, § 15(8).

Accordingly, the Parties, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, enter into this Agreement to effectuate the purposes set forth above and to be bound by the provisions set forth below:

Section 1. Definitions

Capitalized terms used in this Agreement that are not otherwise defined herein and are defined in Section 2 of the Act shall be given such definition as of the date of this Agreement for purposes of the Agreement.

1.1 "Gross Gaming Revenue" has the meaning currently given to the term in Section 2 of the Act, *i.e.*, "the total of all sums actually received by a gaming licensee from gaming operations less the total of all sums paid out as winnings to patrons; provided, however, that the total of all sums paid out as winnings to patrons shall not include the cash equivalent value of any merchandise or thing of value included in a jackpot or payout; and provided further, that [Gross Gaming Revenue] shall not include any amount received by a gaming licensee from simulcast wagering or from credit extended or collected by the gaming licensee for purposes other than gaming; provided further, that the issuance to or wagering by patrons of a gaming establishment of any promotional gaming credit shall not be taxable for the purposes of determining gross revenue." For avoidance of doubt, Gross Gaming Revenue for purposes of this Agreement and consistent with the Parties' interpretation of the Act, as set forth in this definition, does not include the issuance to or wagering by patrons of the gaming establishment of any promotional gaming credit, nor revenues from the sale of food and beverage, retail sales, hotel revenues, parking fees, ATM fees, or any other non-casino sources of revenue.

1.2 Open for Business to the General Public means that the Project's gaming area (as defined in the Act) is open for business to the general public.

1.3 Project Investment means all Project costs, whether or not such costs are included in the minimum capital investment requirement of $500 million for a Category 1 gaming establishment under the Act as determined by the Massachusetts Gaming Commission, and include but are not limited to all of the Project's hard and soft costs, FF&E, the Eighty-Five Million Dollar ($85,000,000) license fee, interest expense and financing fees, land cost, costs of onsite and offsite improvements, preopening costs (marketing, personnel/training, supplies, and other), legal fees, consultant costs, a development fee, initial cage cash, pursuit and application costs, upfront costs assessed by the Massachusetts Gaming Commission, travel expenses, and payments under this Agreement before the Project is first Open for Business to the General Public.

Section 2. Impact Payments to Brockton

The Parties agree that, except as otherwise expressly provided in this Agreement, the Impact Payments to be made pursuant to this Section 2 are made in lieu of all taxes and other assessments otherwise due from MGE to the City and/or City departments, boards, or commissions, including, but not limited to, its school district, and police and fire departments. In conjunction with the measures set forth in this Agreement, the Impact Payments constitute MGE's mitigation efforts and are in full and complete satisfaction of MGE's obligations under the Act and this Agreement to

mitigate impacts, known or unknown, whether or not identified in this Agreement, except as agreed to by the Parties in the Mitigation Agreement described in Section 2.1(c) of this Agreement. Nothing in this Agreement will prevent the City from imposing lawful taxes and assessments on third party tenants and vendors of the Project, consistent with lawful taxes, fees, and assessments of general applicability to all tenants and vendors in Brockton.

2.1 Project Planning and Review Payments

(a) Budget and Approval Process. Subject to the budget and approval process set forth in this Section 2.1(a), MGE agrees to pay directly or reimburse the City, as appropriate, for the City's reasonable, direct costs (including but not limited to planning and peer review costs and reasonable legal fees) of determining the impacts of the Project and negotiating this Agreement and related agreements, as well as other reasonable, direct costs incurred by the City in connection therewith (including but not limited to costs incurred in connection with holding a ballot election, communicating with/appearing before the Commission in connection with MGE's license application, preparing and presenting amendments to the City's Ordinances and other necessary legislative enactments, and participating in other permitting activities and proceedings relative to the Project). The City will prepare and submit to MGE a budget(s) for all costs for which the City will seek payment or reimbursement hereunder, which budget(s) shall be subject to MGE's review and approval, which approval shall not be unreasonably withheld or delayed. Any costs not included in the approved budget(s) will require MGE's separate prior approval. The City will also provide MGE with advance copies of any proposal, contract, or scope of work for any consultants for which the City seeks or will seek payment from MGE. The City will provide reasonable substantiation and documentation for any and all costs paid for or reimbursed by MGE pursuant to this Agreement but shall not be required to divulge privileged billing entries by its legal counsel. MGE hereby approves the law firm of Mintz Levin Cohn Ferris Glovsky and Popeo, P.C. ("**Mintz Levin**") as a legal consultant to the City for whose services to the City MGE will pay as provided above, on the condition that Mintz Levin notify the City and MGE each time the total amount of legal fees and costs owed to Mintz Levin in connection with this Agreement increases by Fifty Thousand Dollars ($50,000).

(b) Payment Process. Within seven days after the execution of this Agreement, MGE will make an initial payment of Fifty Thousand Dollars ($50,000.00) to the Commission and, subject to the budget and approval process of Section 2.1(a), such further payments as may be necessary to cover the City's costs. The Parties will cooperate in seeking approval and payment of such costs through the Commission. The City shall provide reasonable substantiation and documentation for any and all costs paid for or reimbursed by MGE pursuant hereto, but shall not be required to divulge privileged billing entries by its legal counsel. The City will promptly return to MGE any payment made to the City under this Agreement which is not spent by the City as provided for in this Agreement.

(c) Impact Studies. Immediately upon the execution of this Agreement, MGE will commission and fund comprehensive studies to be prepared by an independent, mutually-acceptable third party(ies) to assess the impacts of the Project on the City's (i) traffic and transportation infrastructure, (ii) utility infrastructure, and (iii) public safety, and (iv) on the City generally, including schools and housing impacts (collectively, the "**Impact Studies**"). The Impact Studies will be designed and undertaken in collaboration with the City's Planning Department and Chiefs of Police and Fire, and in accordance with the requirements of the Act. Upon MGE's

submittal of the Impact Studies to the City, the Parties agree to work together in good faith and in an expeditious manner to reasonably agree on the required mitigation, and the timing of completion of such mitigation, which will be memorialized in a separate agreement in accordance with the Act (the "**Mitigation Agreement**"). The City may hire, at MGE's reasonable expense, an independent, mutually-acceptable third party peer reviewer(s) to review the Impact Studies in a timely manner. For the avoidance of doubt, MGE will only commission and fund one study of each of items (i) through (iv) listed above, and will only pay for one peer reviewer to review each of the Impact Studies.

(d) Permitting and Review Fees. MGE will pay to the City all permitting fees associated with this Project according to a fee schedule that applies to all developments in the City, including but not limited to building permitting, planning, and zoning fees, and reasonable costs and expenses to supplement the ability of the City's Planning and Building Departments to process Project-related permits, approvals, and inspections and the like, including costs of temporary staff (but only their direct compensation and only to the extent they are working on this Project, and only for activities occurring before the Project is Open for Business to the General Public) and outside consultants, pursuant to Section 2.1(a) and exclusive of other payments made by MGE pursuant to this Agreement.

2.2 Payments Following Award of Category 1 Gaming License

If the Commission awards a final, non-appealable Category 1 gaming license to MGE for the Project, MGE will make the following payments to the City:

(a) The Shaw's Center Study. MGE will provide the City with a one-time grant of Twenty-Five Thousand Dollars ($25,000) for the City to use as it wishes to study potential impacts of the Project on, and potential new economically viable uses of, The Shaw's Center.

(b) Real and Personal Property Taxes. From the time MGE purchases the Project Site until the Project is first Open for Business to the General Public, in satisfaction of all Real and Personal Property Taxes on the Project Site (including after construction begins) and of any other assessments due from MGE to the City and/or any City department, board, or commission for the Project, except as otherwise expressly provided herein, MGE will pay annual Real Property Taxes to the City based on the purchase price of the Project Site, prorated for any partial year; provided further that no property tax exemptions shall apply. The Parties will calculate the amount of this annual payment by applying the City's then current commercial/ industrial/ personal property tax rate (currently $33.88 per $1,000 of assessed value) to the purchase price, which MGE represents is the result of a negotiated, arm's length transaction contemplating the receipt of the site-specific Category 1 gaming license and the redevelopment of the Project Site into the Project.

(c) Mitigation of Impact Studies Findings. MGE will fund the mitigation of impacts on the City identified in the Impact Studies, as agreed to by the Parties in the Mitigation Agreement, in the amounts and according to the timetable set forth in the Mitigation Agreement. The Parties intend that most, if not all, of the mitigation activities agreed to in the Mitigation Agreement will be completed before the Project is Open for Business to the General Public. The Parties also acknowledge that weather, the need for third-party approvals or actions, or other events or circumstances may prevent certain mitigation activities from occurring before, or make it

mutually-desirable that certain mitigation activities occur after, the Project is first Open for Business to the General Public. If the Mitigation Agreement includes activities to be undertaken by parties other than MGE, MGE will fund the agreed-upon reasonable costs of those activities.

(d) Community Enhancement Fee. After commencing construction of the Project, MGE will pay the City Three Million Dollars ($3,000,000) (the "**Community Enhancement Fee**") in three installments as follows: One Million Dollars ($1,000,000) within thirty (30) days after MGE commences construction of the Project; and One Million Dollars ($1,000,000) on or before each of the first and second anniversaries of the initial payment.

2.3 Payments after the Project is first Open for Business to the General Public

After the Project is first Open for Business to the General Public, MGE will make payments to the City as set forth in this Section 2.3.

(a) PILOT Agreement. The Parties intend to enter a payment in lieu of taxes ("**PILOT**") agreement through the use of a G.L. c. 121A urban redevelopment corporation and agreement, which may carry additional benefits for both parties, the details and requirements of which must be reviewed and agreed upon by the Parties and by the Massachusetts Department of Housing and Community Development ("**DHCD**"). Recognizing the mutual desirability of having a PILOT agreement in place before the Project is first Open for Business to the General Public, the Parties will begin working diligently on the process set forth in this paragraph immediately upon the execution of this Agreement. The Parties will work cooperatively to negotiate such an agreement and to seek the necessary approvals thereof, including the approval of DHCD.

If the Parties are unable to negotiate and obtain all the approvals necessary to enter a PILOT agreement under G.L. c. 121A, they will work cooperatively to prepare and seek all necessary approvals of special legislation to authorize such a PILOT.

If such special legislation is not passed by the General Court and signed into law by the Governor, the parties agree that the City will be required to assess real and personal property taxes in accordance with Massachusetts law and generally accepted assessment standards. If in any given year, the real and personal property taxes so assessed on the Project are more than the PILOT would be under Section 2.3(a) of this Agreement, then the Community Impact Fee and the contribution to the Brockton Community Fund (collectively, the "**non-PILOT payments**") will be decreased, in pro rata shares, by a total amount equal to such difference, provided that if such decreases would exceed the total amount of the non-PILOT payments otherwise due, then the City shall not be required to make any repayments to MGE, but MGE will be entitled to a credit against any future year(s) non-PILOT payments for the amount by which the difference exceeds the total amount of non-PILOT payments otherwise due. Likewise, if in any given year, the real and personal property taxes so assessed on the Project are less than the PILOT would be under Section 2.3(a) of the Agreement, then the non-PILOT payments will be increased, in pro rata shares, by a total amount equal to such difference. For avoidance of doubt, the foregoing reconciliation provision is intended to ensure that if MGE is paying real and personal property taxes rather than the proposed PILOT payment, then such real and personal property taxes when added to the annual non-PILOT payments for the same period shall be equal the amount of PILOT and non-PILOT payments that would have been paid hereunder for the same period.

(b) Annual Payments. To achieve certainty for both parties, the City and MGE agree that, as an alternative to any and all real and personal property taxes or other assessments due from MGE to the City for the Project after the Project is first Open for Business to the General Public (but excluding hotel and meal, and motor vehicle excise taxes, which shall be paid as provided in Sections 2.3(b) and (c) of this Agreement), MGE will annually make three defined payments to the City (collectively, the "**Annual Payments**"): (i) a PILOT, (ii) a Community Impact Fee, and (iii) a Brockton Community Foundation contribution, each as further defined below.

MGE will make the Annual Payments in a total amount equal to the greater of (i) Ten Million Dollars ($10,000,000) (the "**Fixed Amount**") or (ii) two and a quarter percent (2.25%) of the Project's annual Gross Gaming Revenue (the "**Revenue-based Amount**"), with the Annual Payments to be allocated as follows:

(i) A PILOT in satisfaction of all Real and Personal Property Taxes otherwise owed to the City in the amount eighty percent (80%) of the Annual Payments amount, which shall be exclusive of and in addition to any and all applicable hotel, meals and excise taxes;

(ii) A **Community Impact Fee** payment to the City in the amount of fifteen percent (15%) of the Annual Payments amount; and

(iii) A contribution to the Brockton Community Foundation, to be administered by the City or its designee, to be used for supporting and promoting local groups, associations, and programs with important City initiatives, in the amount of five percent (5%) of the Annual Payments amount.

On the first days of May, August, November, and February, MGE will make the Fixed Amount portions of the Annual Payments, in four equal payments, quarterly in arrears for the quarters ending on the last days of March, June, September, and December. On the first day of February of each year, MGE will make true-up payments for the prior calendar year to the extent that the Revenue-based Amount exceeded the Fixed Amount for the prior calendar year (prorated as applicable). If any date for payment set forth in this paragraph falls on weekend day, holiday, or other day on which banks in Plymouth County are not open for business, MGE will make the corresponding payments on the next business day.

In the calendar year in which the Project is First Opens for Business to the General Public, the amounts of the Annual Payments will be prorated based on the number of days that the Project is Open for Business to the General Public in that year. For the avoidance of doubt, no Annual Payments will be earned or due before the Project is first Open for Business to the General Public.

If a Tribal casino opens in Region C, the Fixed Amount will be reduced to Six Million Seven Hundred Fifty Thousand Dollars ($6,750,000), starting in the quarter that the Tribal casino first opens for business. If Massachusetts law is changed to allow an additional gaming license(s), certificate(s), or other authorization(s) in Region C, the Parties will renegotiate the amount of the Annual Payments to reflect the anticipated corresponding annual reduction in Project revenues, and will amend this Agreement to reflect the results of such renegotiation.

If, after it is first Open for Business to the General Public, the Project is prevented from remaining Open for Business to the General Public for ten or more consecutive days or for more than forty-five days during a calendar year by reason of any cyber-threat or attack, terrorist act, strike

or labor troubles, government preemption in connection with a national emergency or by reason of any rule, order, or regulation of any department or subdivision thereof of any government agency, fire, war, act of God or other emergency or circumstances not within MGE's reasonable control (collectively "**Force Majeure**"), then the Fixed Amount for that calendar year will be reduced pro rata based on the number of days in the calendar year that the Project is prevented from being Open for Business to the General Public by the Force Majeure event(s).

(c) Hotel and Meals Taxes. MGE will assess and collect all local hotel/room occupancy and meals taxes from its customers and will remit payment of such taxes to the City in accordance with applicable law; hotel/room occupancy taxes will be collected and remitted on all occupied rooms regardless of length of occupancy.

(d) Motor Vehicle Excise Taxes. MGE will garage all motor vehicles owned by the Project in Brockton and will pay excise taxes on those vehicles to the City in accordance with applicable law.

(e) Late Payment Penalty. MGE acknowledges that time is of the essence with respect to its timely payment of the amounts required under this Agreement and agrees to pay interest at eight percent (8%) per annum on any required payment not timely paid in accordance with the terms of this Agreement, calculated on a daily basis using a 365-day year, provided that, with the exception of real and personal property taxes pursuant to Section 2.2(b), the City provides on the first three occasions when such payment is late written notice five (5) business days in advance of assessing such late penalty and MGE shall not owe a late payment penalty if MGE pays the outstanding amount within such five (5) business day period.

Section 3. Workforce Development; Local Hiring Preferences

3.1 Construction Jobs

Subject to the Act, and to the extent that such a practice and its implementation are consistent with federal, state, and municipal laws and regulations, MGE will work in a good faith, legal and non-discriminatory manner with the Project's general contractor, construction manager, and/or subcontractors to give reasonable preference in the hiring for Project construction jobs first to properly qualified Brockton residents, and then to properly qualified residents of Surrounding Communities (as determined by the Commission).

MGE will work to have the Project's general contractor, construction manager, and/or subcontractors hold a career / job fair in Brockton to highlight and publicize the potential construction jobs at the Project and explain to attendees the process by which they may seek to be hired in connection with construction of the Project.

3.2 Permanent Jobs

Subject to the Act, and to the extent that such a practice and its implementation are consistent with federal, state, and municipal laws and regulations, MGE will work in a good faith, legal and non-discriminatory manner to give reasonable preference in the hiring for permanent Project jobs first to properly qualified Brockton residents, and then to properly qualified residents of Surrounding Communities (as determined by the Commission). MGE will select properly qualified individuals to be trained for certain permanent Project positions through MGE's training programs.

MGE will hold a career / job fair in Brockton to highlight and publicize the Project's permanent job needs and explain to attendees the process by which they may seek to be hired in connection with the Project.

3.3 Local Vendors

MGE will make a good faith effort to utilize properly-qualified, price-competitive local contractors and suppliers (collectively, "local vendors") for the operation of the Project and will provide reasonable assistance to such local vendors in satisfying the requirements of the Massachusetts Gaming Commission;

MGE will hold a vendor fair in Brockton to educate local vendors about opportunities to provide goods and services to the Project.

As part of its rewards / frequent guests / loyalty or similar programs, MGE will issue gift cards, gift certificates, and/or store/restaurant discounts to be redeemed at Brockton businesses outside the Project Site, in the annual amount of at least Fifty Thousand Dollars ($50,000).

Section 4. Additional Undertakings by MGE

In planning and designing the Project, MGE will consider recommendations by the City with respect to certain mutually-advantageous, non-gaming entertainment elements of the Project, including the planned multi-function event and entertainment space, and potentially incorporating historical boxing memorabilia and other items of relevance to the City; provided, however, MGE in its sole discretion will determine the program and design of the Project.

If, after the Project is first Open for Business to the General Public, MGE seeks permits and approvals to expand the Project's total gross floor area (including structured parking but not surface parking areas) by twenty percent (20%) or more in the aggregate, then MGE will reopen negotiations with the City concerning the amounts of the PILOT payment and the Community Impact Fee that MGE will make to the City after such expansion is completed.

Section 5. Total Investment; Project Development

If the Commission awards a final, non-appealable Category 1 gaming license to MGE for the Project, MGE will make a Project Investment of approximately Six Hundred Fifty Million Dollars ($650,000,000), and not less than ninety-five percent (95%) of that amount, to develop the Project in a single phase.

Upon a favorable city-wide referendum ballot authorizing the operation in Brockton of the Project as a Category 1 gaming establishment licensed by the Commission, MGE will use all reasonable efforts to promptly apply for, pursue, and obtain a Category 1 gaming license from the Commission for the Project.

Section 6. Project Demands on City Services

MGE recognizes that the Project may require upgrades to certain components of the City's utility infrastructure. The nature and extent of any required utility infrastructure upgrades will be determined through the Impact Studies process set forth in Section 2.1(c) of this Agreement and

MGE's obligation to construct and/or pay for others to construct such upgrades will be memorialized in a separate Mitigation Agreement under that section of this Agreement.

Section 7. Responsible Gaming

MGE recognizes that, while gaming is an enjoyable leisure and entertaining activity for most, there is a small percentage of the population that may not gamble responsibly. MGE will implement a responsible gaming plan at the Project in compliance with the Act and all applicable regulations of the Commission.

Section 8. City Obligations

In consideration of the mitigation measures that MGE will undertake, and in further recognition of the benefits the Project will bring to Brockton, the City will do the following:

8.1 Hold City-wide vote. The Mayor will promptly request that the Brockton City Council formally approve the holding of an election pursuant to Section 15(13) of the Act, and consistent with the regulations and interpretations of the Commission. Upon receipt of the Mayor's request, the City Council will schedule a City-wide election so that qualified Brockton residents can vote on a ballot question to support or reject this Agreement and, by extension, the Project. The Mayor will request that the City Council schedule such election on or before May 12, 2015, provided that holding the election on such date is not in direct violation of state law or any duly promulgated regulation of the Commission, and subject to any determination by the Commission that the election should be held on a different date. If the election is not so permitted to be held on May 12, 2015, it will be held upon a mutually acceptable date as soon as permitted under applicable state law and regulations and any Commission directive.

8.2 Support MGE's license application. The City will support and actively work with MGE in its application for a Category 1 gaming license from the Commission, including issuing a written statement of the City's support of the Project.

8.3 Seek funds available under the Act. The City will use best efforts to seek monies available under the Act, including but not limited to, those monies in the Community Mitigation Fund, the Local Capital Projects Fund, the Massachusetts Cultural Council, and the Transportation Infrastructure and Development Fund; provided, however, that any monies obtained by the City under this provision will not change MGE's obligation to mitigate impacts as described herein.

8.4 Support local permitting and approval efforts. The City will work cooperatively and in good faith with MGE to assist MGE in securing in a prompt and efficient manner all zoning/land use, site plan, and other City licenses, permits, and approvals from the City which are required or advisable in connection with the construction and operation of the Project, including processing license, permit, and approval applications in an expeditious manner after customarily required application materials have been submitted, provided that nothing herein shall require the City to waive any review and approval rights set forth in applicable statutes or regulations.

8.5 Amend local regulations. The City will work cooperatively with MGE to prepare and submit an amendment to the Brockton Zoning Ordinance, and to any other City land use regulations requiring amendment, to allow construction and operation of the Project at the Project Site, provided however that the MGE acknowledges that such amendment(s) may include an administrative site plan review process and the adoption of reasonable design guidelines.

8.6 Support other permitting and approval efforts for the Project. The City will actively support MGE in obtaining all other licenses, permits, or approvals required or advisable in connection with the construction and operation of the Project.

8.7 No new taxes or fees targeting the Project. The City will not attempt, directly or indirectly, to adopt or implement, nor accept, any taxes, fees, or other assessments specific or unique, by language or effect, to a gaming establishment, its customers, employees, tenants, vendors, suppliers, or owners that do not generally apply to other businesses in the City.

Section 9. Transferability

MGE may transfer or assign, subject to the Act, its rights and obligations under this Agreement to any transferee or assignee of the Category 1 gaming license to operate the Project as approved by the Commission, provided that the transferee or assignee assumes all obligations and liabilities hereunder. Brockton will be bound by this Agreement regardless of any such transfer or assignment. Any transferee or assignee of MGE will likewise be bound by this Agreement to the fullest extent allowed by law. For the avoidance of doubt, after any transfer or assignment of the Agreement in accordance with the terms of this Section 9, MGE shall have no further obligations under this Agreement provided that MGE has paid and performed all of its undisputed obligations up to the date of assignment or transfer.

The City acknowledges and agrees MGE and its successors or assigns may, at any time and on one or more occasions, to provide security to a lender, mezzanine lender, or equity holder in connection with a financing or equity contribution, pledge or otherwise collaterally assign this Agreement and all documents, agreements, understandings, and arrangements relating to the transaction contemplated by this Agreement. The City will, within ten (10) days after receiving such a request, execute any commercially reasonable and customary instruments that do not deviate from its rights or increase its obligations.

Section 10. Modification

This Agreement may be modified or amended by written agreement of the Parties, subject to approval of the City or the City Council, but not otherwise.

Section 11. Choice of Law; Forum Selection

This Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Massachusetts, without regard to its conflict of laws provisions. Any dispute arising under or in connection with this Agreement shall be within the exclusive jurisdiction of the Massachusetts Superior Courts for Suffolk or Plymouth Counties.

THE PARTIES HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES AGAINST THE OTHER ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR THE MITIGATION AGREEMENT CONTEMPLATED HEREUNDER, THE RELATIONSHIP OF MGE AND THE CITY, AND/OR ANY CLAIM OF INJURY OR DAMAGE, AND ANY EMERGENCY STATUTORY OR ANY OTHER STATUTORY REMEDY.

Notwithstanding the foregoing provisions for forum selection, the Parties agree that before resorting to any formal dispute resolution process concerning any dispute arising from or in any way relating to this Agreement, they will first engage in good faith negotiations in an effort to find a solution that serves their respective and mutual interests. If the Parties engage the services of a professional mediator or arbitrator, MGE and the City will bear the cost of such services equally.

Section 12. Indemnification.

MGE will indemnify and hold harmless the City from and against any and all claims, actions, proceedings, or demands brought against the City, its agents, departments, officials, or employees, by any third party in connection with this Agreement, or exercise of its rights or obligations hereunder, or the issuance of City permits and approvals for the Project, and any reasonable costs incurred by the City in connection with defending legal challenges of City actions taken in good faith in pursuit of any of the foregoing (collectively "Claims"), to the extent that any such Claims are premised upon the gross negligence or willful misconduct of MGE; provided, however, that MGE shall not be obligated to the City in any manner for indemnification of the City for any Claims unless such Claims are determined to be the result of the gross negligence or willful misconduct of MGE. If the City and MGE are asserted to have been grossly negligent or to have committed willful misconduct giving rise to the Claims, then MGE shall only be liable to the City for indemnification of a judgment against the City as provided for herein if the trier of fact in such matter determines that the gross negligence or willful misconduct of MGE, as compared to the City, was greater than fifty percent (50%) responsible for the damages asserted by the third party in such Claims, but, subject to the last sentence of this Section, shall in any event reimburse the City for all reasonable defense costs (including reasonable counsel fees) incurred in defending the Claims. MGE shall have the right to reasonably approve the identity of counsel selected by the City to provide the defense of any Claims in which the City asserts a right to indemnification pursuant to this Section. Subject to the last sentence of this Section, subsequent to the reasonable approval by MGE of the counsel selected by the City, MGE agrees, within thirty (30) days of written notice by the City, to reimburse the City for all reasonable legal costs and fees incurred in defending itself with respect to any Claims covered by this Section. Notwithstanding the foregoing or any other provision of this Agreement, if MGE has reimbursed costs to the City pursuant to this Section and it is subsequently determined that such costs were not eligible for reimbursement because the Claim was not caused (i) by MGE's gross negligence or willful misconduct or (ii) more than fifty (50%) percent by MGE's gross negligence or willful misconduct, as compared to the City, MGE will be entitled to reduce the amount of future PILOT payments on a dollar-for-dollar basis by the amount of such improperly reimbursed costs.

Section 13. Miscellaneous

13.1 No Third Party Beneficiaries. No provisions of this Agreement shall be construed in any manner so as to create any rights in any third parties not party to this Agreement. The Agreement shall be interpreted solely to define specific duties and responsibilities between

the City and MGE, and shall not provide any basis for claims of any other individual, partnership, corporation, organization, or municipal entity.

13.2 Entire Agreement. This Agreement, together with any separate Mitigation Agreement between the City and MGE to be entered into after the Effective Date, embodies the entire agreement between the Parties and supersedes all prior agreements and understandings relating to the Project, including without limitation the Memorandum of Terms for Host Community Agreement By and Between The City of Brockton, Massachusetts and Mass Gaming & Entertainment, LLC, dated February 19, 2015.

13.3 Exercise of Rights and Waiver. The failure of any party to exercise any right under this Agreement shall not, unless otherwise provided or agreed to in writing, be deemed a waiver thereof; nor shall a waiver by any Party of any provisions hereof be deemed a waiver of any future compliance therewith, and such provisions shall remain in full force and effect.

13.4 Severability. If any clause, provision, or remedy in this Agreement is, for any reason, deemed invalid or unenforceable, the remaining clauses and provisions shall not be affected, impaired, or invalidated and shall remain in full force and effect.

13.5 Headings and Construction. The section headings in this Agreement are inserted for convenience of reference only and shall in no way affect, modify, define, or be used in construing the text of the Agreement. Where the context requires, all singular words in the Agreement shall be construed to include their plural and all words of neuter gender shall be construed to include the masculine and feminine forms of such words.

13.6 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

13.7 Time is of the Essence. The Parties agree and acknowledge that time is of the essence under this Agreement.

Section 14. Notices

Any notices, consents, demands, requests approvals or other communications issued under this Agreement must be made in writing and must be delivered by hand, overnight delivery service, or certified mail, postage pre-paid (return receipt requested), and will be effective upon receipt for hand or overnight delivery and three days after mailing, to the other Party at the following addresses:

If to the City:
City of Brockton
Office of the Mayor
45 School Street
Brockton, MA 02301

With copy to:
City of Brockton
Law Department
45 School Street
Brockton, MA 02301

With a copy to:	Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C. One Financial Center Boston, MA 02111 Attn: Dan Gaquin, Esq.
If to MGE:	Mass Gaming & Entertainment, LLC 900 N. Michigan Avenue, Suite 1600 Chicago, IL 60611 Attention: Chief Financial Officer
With a copy to	Mass Gaming & Entertainment, LLC 900 N. Michigan Avenue, Suite 1600 Chicago, IL 60611 Attention: Legal Department
With a copy to	Dain, Torpy, Le Ray, Wiest & Garner, P.C. 745 Atlantic Avenue, 5th Floor Boston, MA 02111 Attention: Charles N. Le Ray, Esq.

Section 15. Term

The term of this Agreement commences on the Effective Date and will end on the earliest of:

A. Any date on which MGE provides written notice that it elects to abandon efforts to obtain a Category 1 gaming license to be located in Brockton;

B. Any date on which the Commission has issued a Category 1 gaming license for Region C to another applicant and MGE has provided written notice that it has decided to discontinue pursuit of a Category 1 gaming license for the Project;

C. Any date on which MGE provides written notice that it elects not to construct, or to permanently cease operations of, the Project; or

D. Any date upon which the Category 1 gaming license previously issued to MGE for the Project is revoked, rescinded, or expires without having been renewed.

If the Agreement is terminated, notwithstanding any other provisions of this Agreement, MGE and the City will have no further obligations to each other under this Agreement, except that MGE will pay the following:

(i) costs incurred by the City as of the termination date that MGE is obligated to pay under Sections 2.1 and 2.2 of this Agreement;

(ii) any payments then due under Section 2.2 as of the date of termination and pro rated as of the date of termination, if applicable;

(iii) the costs of completing or restoring to original conditions any in progress phase(s) of work underway under Section 2.2(c) as of the date of termination;

(iv) prorated portions of any annual payments due under Section 2.3 of this Agreement, calculated as of the date of termination; and

(v) any applicable penalties under Section 2.3(e).

Such termination of this Agreement shall not absolve MGE of responsibility for any lawfully assessed, post-termination taxes or regulatory fees in connection with the Project Site for so long as MGE continues to own the Project Site.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the Effective Date.

City of Brockton, Massachusetts

By: William Carpenter BILL CARPENTER
Title: Mayor of Brockton

Mass Gaming & Entertainment, LLC

By: Neil G. Bluhm
Title: Chairman

Exhibit A

Project Site

BROCKTON

MASS GAMING & ENTERTAINMENT LLC

VICINITY AERIAL

KLAI JUBA WALD

Exhibit E

GOODWIN

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100 Northern Avenue
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June 6, 2018

BY HAND AND E-MAIL

Massachusetts Gaming Commission
Chairman Stephen P. Crosby
Commissioner Gayle Cameron
Commissioner Eileen O'Brien
Commissioner Bruce W. Stebbins
Commissioner Enrique Zuniga

Re: Mass Gaming & Entertainment LLC's Application for Region C

Dear Chairman Crosby and Commissioners Cameron, O'Brien, Stebbins, and Zuniga:

On behalf of our client, Mass Gaming & Entertainment ("MG&E"), we petition the Massachusetts Gaming Commission ("MGC" or the "Commission" or "you") to reconsider MG&E's application for a license to develop a casino in Brockton, Massachusetts, in Region C.

* *

In July 2016, U.S. District Court Judge William Young held that the Department of Interior "lacked the authority to acquire land in trust for the Mashpee Tribe." Close on the heels of that ruling, the Commission stated on its website:

> At a time deemed appropriate, the Massachusetts Gaming Commission will engage in a public discussion to further our review of what course of action will be in the short and long-term best interests of Southeastern Mass. and the Commonwealth.

Today, nearly two full years after the posting of this website announcement, we write on behalf of MG&E to express our strong view that: (i) the appropriate time to "engage in a public discussion" regarding the future of Southeastern Massachusetts is now; and (ii) the course of action that is in the "short and long-term best interests" of both the Southeast region and the Commonwealth as a whole would be for the Commission to reconsider MG&E's Brockton proposal without further delay.

As you know, MG&E's application for a license to build a $700 million casino and resort in Brockton was rejected by a 4-1 vote of the Commission in April 2016. The rejection came notwithstanding the fact that the Commission had unanimously found MG&E "suitable" and financially able to perform, and

also had found its application "sufficient" on the merits in every measured category – overview; finance; economic development; building and site design; and mitigation. But, at the time that the Commission first considered MG&E's application, the Mashpee Wampanoag (the "Mashpees" or the "Tribe") had achieved land-in-trust status, and Genting Corporation (the Mashpees' financial backer) and the Mashpees had broken ground on a casino development in Taunton, Massachusetts. The public record expressly indicates that the Mashpees were the "800 pound elephant in the room" when the Commission voted to reject MG&E's application. *See* Transcript of April 28, 2016 Commission Hearing ("4/28/16 Tr.") at 83. Based on the Mashpees' land-in-trust status, the Commission believed there was a "clear presumption of a [Mashpee] casino" in Region C. *Id.* at 116. That "clear" – albeit flawed – presumption led to the denial of MG&E's application, as there was obvious concern on the part of the Commission over the prospect of the "saturation" that would result from two casinos being developed in Southeastern Massachusetts. As Chairman Crosby stated at the time: "If the tribe isn't able to do anything, whether it's because of a lawsuit or something else, then we will have made a mistake [in denying MG&E's application]."[1] In the two years since the Commission's decision, the Mashpees have *not* been able to do anything in Taunton – and they will not be able to do anything in the future either.

Since your April 2016 decision, much has changed:

- U.S. District Court Judge Young issued his opinion that the Department of Interior ("DOI") had erred as a matter of law in granting the Mashpees land-in-trust status in Taunton, noting that the question was "not a close call." *Littlefield v. U.S. Dep't of the Interior*, 199 F. Supp. 3d 391, 396 (D. Mass. 2016). That same day – July 28, 2016 – final Judgment was entered against the defendants by Judge Young, and the matter was remanded to the DOI for further proceedings.

- The defendants in the *Littlefield* litigation appealed the Judgment to the First Circuit Court of Appeals. Ultimately, the DOI, the Bureau of Indian Affairs, and the U.S. government withdrew their appeal of Judge Young's ruling, and the First Circuit entered final Judgment ordering their appeal voluntarily dismissed on May 8, 2017.[2]

- On remand, the DOI issued a preliminary opinion in June 2017, rejecting alternative theories that the Mashpees had presented for obtaining land-in-trust status. *See* attached Ex. A.

- The Mashpees, who had broken ground on their casino development in Taunton on April 5, 2016, promptly stopped work after Judge Young issued his July 28, 2016 land-in-trust opinion. No work on the Mashpees' site has been done since, their Taunton office has been closed, and all equipment has been removed.

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[1] *Casino Dreams Become Reality for Mashpee Wampanoag*, Cape Cod Times (May 1, 2016, 7:14 AM).

[2] Though the Tribe has maintained its appeal before the First Circuit, the appeal exists in name only, as the Court lacks jurisdiction to consider a Mashpee appeal without the government agencies' participation. *See, e.g., Pit River Tribe v. U.S. Forest Serv.*, 615 F.3d 1069, 1075-76 (9th Cir. 2010).

- Rhode Island approved the construction of a casino development in Tiverton, Rhode Island, just over the Massachusetts-RI border, and just minutes from Fall River, Massachusetts. That development – the Twin River Tiverton Casino – is nearly finished. It is scheduled to open just months from now, and it is expected to generate approximately $65-$70 million in annual tax revenue for Rhode Island,[3] with Twin River publicly stating that it expects $20 million of its first-year revenue to come from Massachusetts residents.

- While Region C remains in limbo, the Encore Resort Casino in Everett and the MGM Casino and Hotel in Springfield are well underway, and scheduled to open in June 2019 and September 2018 respectively.

None of this has been good for Southeastern Massachusetts, which continues to languish, and is being left further and further behind with each passing day. And none of this has been good for the Commonwealth, which will not only lose the estimated $20 million in revenue over the next year (and then annually) to Twin River, but will continue to be denied the benefit of the $85 million license fee that MG&E would pay the Commonwealth immediately upon the grant of the license. That is a loss of over $100 million in needed revenue for Massachusetts, not to mention the many tens of millions of dollars in annual tax revenue that will be forthcoming to Massachusetts and the City of Brockton as soon as MG&E's casino opens.

MG&E and its principal owner, Rush Street Gaming LLC, are eager and ready to help reverse the course for the Southeast region, and to make the requisite payments to the Commonwealth. Despite the setback of the Commission's April 2016 vote, Rush Street and MG&E remain interested in pursuing a casino and hotel development in Brockton. Their project is poised to begin promptly, and their $85 million license fee is ready to be paid. They are ready to provide 2,000 construction phase jobs, and 1,800 permanent, well-paying jobs to the citizens of Brockton and surrounding communities in Southeastern Massachusetts. MG&E estimates that, in the first year of operation, its Region C casino would generate a minimum of $70 million in tax revenue to the Commonwealth and an estimated $12-13 million annually to the City of Brockton.

In voting against the MG&E proposal on April 28, 2016, Chairman Crosby noted that "if it turns out that there is no land in trust ultimately, or there is no financing and no casino, as others have said, we can reopen this at any time."[4] "Ultimately" has arrived. There is no land in trust. There is no financing. And there is no casino in Taunton. The time to reopen consideration of MG&E's application is now.

We respectfully request that you agree to hold a public hearing regarding the short and long-term best interests of Southeastern Massachusetts, and also agree to reconsider MG&E's application without reopening the RFA process more broadly.

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[3] Christiansen Capital Advisors, LLC, *Rhode Island Gaming and State Revenue Forecast* 23, 26 (2017).

[4] 4/28/16 Tr. at 120-21.

A. The Time Is Ripe For The Commission To Renew A Public Discussion Of Region C.

The most obvious reason to reopen and reconsider MG&E's application now is exactly the same reason the Commission voted in April 2013 to open the competitive RFA process in that Region, namely, the loss of economic benefit to the region and to the Commonwealth. As Chairman Crosby explained at the time: "The Commonwealth loses a hundred million or so in revenues for every year that this unknown delay goes on. And the Commonwealth loses whatever the economic development and jobs impact is of the construction of a commercial facility."[5]

If anything, there is even more urgency today to end the "unknown delay" than there was back in 2013. After all, it is more than five years later, and we still have not made any progress in Region C. To the contrary, we have moved backwards. The Southeast region is now further behind the other regions of the state, which already have benefitted, and continue to benefit, from the ongoing "economic and jobs impact" of construction of their approved commercial casino developments. Those other regions will benefit even more when those developments open for business later this year and in 2019. In addition, as we note above, increased competition from out of state, specifically from the casino that is about to open in Tiverton, Rhode Island, adjacent to the southern tip of Region C, as well as ongoing competition from the two tribal Connecticut casinos, decreases the potential economic viability of a casino development in Southeast Massachusetts. In other words, the longer the Commission waits, the more vulnerable Region C becomes, and the more likely it becomes that the Commonwealth will permanently lose hundreds of millions of dollars in tax revenue.

To be clear, the Commission cannot wait any further for the Mashpees. The Mashpees' land-in-trust status is dead. Judge Young's *Littlefield* judgment is final and bullet-proof. And the DOI has made clear in its preliminary opinion (*see* attached Ex. A) that the Mashpees' alternative arguments are equally unavailing. Indeed, the Mashpees themselves realize that their land-in-trust efforts are dead, and that is why they are engaged in a futile, last-ditch effort to obtain special interest federal legislation that would unconstitutionally set aside Judge Young's final Judgment.

B. There Will Be No Federal Legislation To Resuscitate The Mashpees' Bid For A Casino, And Even If There Were, It Would Be Challenged And Likely Found Unconstitutional.

The Boston Globe and other sources[6] have recently reported that the Mashpees are lobbying the Massachusetts Congressional delegation for federal legislation to end-run the litigation they lost before Judge Young. The Mashpees have not liked the results in federal court or before the DOI, so they are "forum shopping" and seeking to have Congress set aside Judge Young's ruling. This effort, like the Tribe's preceding efforts, is doomed to failure. The Commission should not permit the prospect of what

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[5] *See* Transcript of April 18, 2013 Commission Hearing ("4/18/13 Tr.") at 102.

[6] Shirley Leung, *In Taunton, a Gamble That Has Yet to Pay Off*, Boston Globe (Apr. 6, 2018), https://www.bostonglobe.com/business/2018/04/05/taunton-gamble-that-has-yet-pay-off/hGTMYcxB6AXCPx9NrLv6fM/story.html.

is at best highly unlikely federal legislation to cause yet further delay, which would only continue to harm Southeastern Massachusetts and the Commonwealth.

Before recently reaching an accommodation with the Mashpee Tribe, the Town of Mashpee Board of Selectmen accurately criticized the contemplated legislation as "creat[ing] prospective legal ambiguities that will benefit no one."[7] For their part, the *Littlefield* plaintiffs have described the bill as a "Hail Mary on top of a Hail Mary" and have expressed their intent to move forward with a constitutional challenge to the legislation if it were somehow enacted by Congress.[8]

As a practical and political matter, there is little chance that federal legislation will be passed this term or any time in the near future. Neither the Republican-controlled House or Senate, nor the Trump Administration is likely to support legislation filed by the Massachusetts Democratic delegation, particularly in an election year. Moreover, separate and apart from standard partisan politics, the legislation is unlikely to garner support, because it will be seen for what it is, namely, a bill that would not so much help a Native American Tribe, as it would protect and fund the interests of the Genting Corporation, a multinational corporation and casino developer based in Malaysia. According to Genting itself, the Mashpees already owe Genting more than $380 million as of December 31, 2017, with Genting charging the Tribe 15-18% annually in interest.[9] Thus, for the foreseeable future, the lion's share, if not all, of the profits from the "Mashpee casino" would pass through to Genting. In other words, the proposed federal legislation would not only improperly circumvent current law, it would assist Genting, not the Mashpees. We believe, and it is likely that most members of Congress will share our view, that Brockton – one of the region's nine majority-minority cities – should gain the benefits of a casino, not Genting.

Politics and practical reality aside, the proposed legislation – the "Mashpee Wampanoag Tribe Reservation Reaffirmation Act" – would be legally unenforceable even if it were enacted. Most fundamentally, the proposed law violates constitutional separation-of-powers principles that preclude Congress from "prescrib[ing] rules of decision to the Judicial Department . . . in cases pending before it." *United States v. Klein*, 80 U.S. 128, 146 (1871).

The bill would attempt to reopen Judge Young's final Judgment declaring that the Department of Interior lacks authority to acquire land in trust for the Mashpees. This is impermissible. Indeed, it is well-settled that Congress cannot "retroactively command[] the federal courts to reopen final judgments" based on existing law. *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 219 (1995). Where, as here, the suit that was before Judge Young is closed, with a final Judgment having issued, the

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[7] Tanner Stening, *Mashpee Selectmen Announce Opposition to Tribe Land Legislation*, Cape Cod Times (Apr. 24, 2018, 12:39 PM), http://www.capecodtimes.com/news/20180423/mashpee-selectmen-announce-opposition-to-tribe-land-legislation.

[8] Charles Winkoor, *Taunton Lawyer Calls Congressional Bill a Double 'Hail Mary'*, Taunton Gazette (Mar. 22, 2018, 4:34 PM), http://www.southcoasttoday.com/news/20180322/taunton-lawyer-calls-congressional-bill-double-hail-mary.

[9] *See* https:www.gentingmalaysia.com/wp-content/uploads/2018/03/GENM-4Q-ANN-Press-Release.pdf, at 22.

proposed bill would inevitably be found unconstitutional.[10] And even if our assessment of the constitutional concerns were not well founded (which is not the case), years of litigation would follow the unlikely passage of the proposed bill, to the continued detriment of Region C.

C. ***Failure To Act On MG&E's Petition To Reconsider Would Raise Constitutional Concerns***

The current delay also implicates constitutional due process and equal protection concerns. With regard to equal protection, for instance, the events of the past several years, including the current delay, have recreated the circumstances that led the First Circuit in the *KG Urban* case to question whether the exclusivity rights afforded the Mashpees by the Compact and the Expanded Gaming Act run afoul of the Fourteenth Amendment. *See KG Urban Enters., LLC v. Patrick*, 693 F.3d 1, 25 (1st Cir. 2012) (reversing the district court's dismissal of KG Urban's constitutional claim, and noting that the Commonwealth's argument in favor of the constitutionality of the exclusivity rights afforded the Mashpees, "would become weaker with the passage of time and the continuation of the status that there are no 'Indian lands' in the region.").

The First Circuit further noted, somewhat presciently, that the constitutional footing of the Commonwealth's argument would be "even weaker, to the extent that Congressional action is required to provide the Secretary [of the DOI] authority to take this land into trust," *Id.* Remarkably, the Mashpees have now turned to Congress, six years after the *KG Urban* court made this observation, in a futile, eleventh-hour effort to obtain land-in-trust status. If anything, the current delay has put the Commission right back where it was when it decided in 2013 to accept commercial license applications in Region C. As then Commissioner McHugh noted at the time, while referencing the First Circuit's opinion in *KG Urban*:

> The First Circuit has made a decision, the last seven pages of which talk about how the longer we wait without a defined deadline, the more the wait begins to look like a violation of the equal protection clause of the 14th Amendment. So, simply doing nothing, it seems to me, feeds into the clear indication. The First Circuit didn't decide the issue. But the longer we wait without some kind of a plan for allowing events to proceed to a

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[10] The Supreme Court's recent plurality decision, in *Patchak v. Zinke*, 138 S. Ct. 897 (2018), is not to the contrary. Although the *Patchak* Court upheld a law with similar language to the Mashpee bill, *Patchak* would not apply here, as there is a critical difference in the timing of the legislative action. In *Patchak*, Congress enacted the Gun Lake Trust Land Reaffirmation Act while Patchak's lawsuit was pending; indeed, before the district court had even considered Patchak's case on the merits. In contrast, here, the proposed bill would attempt to undo Judge Young's final decision about the scope of Interior's authority. Judge Young's decision is a "final judgment" that cannot be legislatively undone because it is "the last word of the judicial department with regard to a particular case or controversy." *Plaut*, 514 U.S. at 227. Unlike the law at issue in *Patchak*, the proposed Mashpee bill would impermissibly "'compel . . . findings or results under old law.'" *Patchak*, 138 S. Ct. at 905 (quoting *Robertson v. Seattle Audobon Soc.*, 503 U.S. 429, 438 (1992)). As the Court made clear in *Patchak*, 138 S. Ct. at 909, the law at issue there did "not offend Article III," "because Patchak's suit [was] not final." Here, the *Littlefield* lawsuit is final, and that finality is dispositive.

> predetermined point, one of which is supporting the IGRA process, which a wait will do, the more the wait is simply undefined, the more it looks like it may be in violation of the equal protection clause.[11]

Commissioner McHugh's remarks were spot-on in April 2013. Even more so now, more than *five* years later, with a new wait that is "simply undefined." Holding a public discussion now about what needs to be done in Region C is not only the right thing to do for the citizens of that region, it is the only way to avoid further constitutional violations. We ask that the discussion proceed immediately, and that as part of that discussion you reconsider MG&E's Brockton proposal.

D. The Commission Has The Authority To Reconsider MG&E's Application

There can be little question that, should it choose to do so, the Commission has the authority to reconsider the licensing process in Region C and reconsider MG&E's application. As Chairman Crosby has often noted, the Commission has the ability to "re-open [the process] at any time."[12] And lest there were any doubt, there is ample authority to support the Chairman's view.

First, as a general matter, it is well-settled in Massachusetts and elsewhere that administrative agencies, like the Commission, possess the inherent power to reconsider any of their past decisions. *Soe v. Sex Offender Registry Bd.*, 466 Mass. 381, 396 (2013); *Moe v. Sex Offender Registry Bd.*, 444 Mass. 1009, 1009 (2005); *e.g.*, *Foley v. City of North Adams*, No. D1-14-30, 2014 WL 11497936, at *2 (Mass. Civil Service Comm'n Sept. 18, 2014) (exercising "inherent power to re-open concluded proceedings").

Second, reconsideration of an earlier administrative decision has been deemed particularly appropriate, both where, as here, there are compelling reasons to do so (*e.g.*, the economic challenges in Region C and the risk of irreparable harm stemming from out-of-state competition), and where reconsideration of an existing proposal provides the least costly means of addressing those reasons. *See, e.g., Soe*, 466 Mass. at 383, 396; *In re Town of Hull*, Nos. MUP-10-5951, MUP-10-5952, MUP-10-5953, MUP-10-5954, 2016 WL 453496, at *2 (Mass. Labor Relations Comm'n Jan. 15, 2016) (granting reconsideration in light of change in administrative precedent and "in the interests of promoting the orderly administration of labor relations *and conserving the resources of the DLR, the parties, and the courts*" (emphasis added)).

Third, the Expanded Gaming Act authorizes the Commission to reconsider MG&E's application. It states that the Commission has "all powers necessary or convenient to carry out and effectuate its purposes including . . . the power to determine which applicants shall be awarded gaming licenses." M.G.L. c. 23K, § 4(13). The power to issue licenses comes with "full discretion." While applicants who

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[11] 4/18/13 Tr. at 93-94.

[12] Marc Laroque, *With Tribe's Legal Woes, Will the Brockton Casino Plan Get Another Shot?*, Taunton Gazette (Oct. 23, 2016, 4:41 PM).

have been rejected are not "entitled" to further review, M.G.L. c. 23K, § 17(g), nothing in the Act forecloses the Commission from exercising its discretionary authority to engage in reconsideration.

Fourth, the Commission's own regulations contemplate that the Commission has the procedural flexibility to grant reconsideration. For instance, while the regulations, 205 CMR § 101.01(8), foreclose "further review" of "determinations of suitability," there is no similar prohibition on reconsideration on the merits. Furthermore, although the regulations do not explicitly provide for reconsideration, they authorize the Commission to exercise "reasonable discretion" to address reconsideration as a "[m]atter not specifically provided for" pursuant to 205 CMR § 102.06.

In short, the Commission has solid legal authority to reopen the discussion of the future of Region C, and to reconsider MG&E's proposal.

E. Approval Of MG&E's Application Would Be In The Best Interests, Short And Long-Term, Of Southeastern Massachusetts And The Commonwealth.

We request that you not only reconsider MG&E's application, but that you approve it as well. In our view, doing so would be in the best short and long-term interests of Southeastern Massachusetts and the Commonwealth. Of course, to the extent the Commission believes modifications would improve MG&E's application, MG&E would be happy to discuss and consider any and all proposals made by the Commission.

That the approval of MG&E's application, with agreed-upon modifications as may be proposed, would be in the best short-term interest of the Southeast region and the Commonwealth is beyond dispute. After all, MG&E is the only prior applicant in the region that was found suitable, went through the entire RFA-1 and RFA-2 applications process, and whose proposal was found "sufficient" in every category evaluated by the Commission. Approving the Brockton license for MG&E would translate into an $85 million license fee; hundreds of construction jobs; regional economic development; a minimum of $70 million in taxes paid to the Commonwealth annually once the casino development opens; thousands of permanent jobs in the casino, hotel, and retail establishments (for a region where the unemployment rate remains higher than the state average). Put simply, reconsideration and approval of MG&E's application would mean over $100 million dollars in the Commonwealth's coffers and thousands of jobs for Massachusetts residents during the next 2-3 years as opposed to zero revenue and zero jobs for at least the next 2-3 years or more if any other potential bidder is considered. A Region C casino would provide a dedicated revenue stream both to the Commonwealth and to Brockton, both of which are wrestling with serious budget challenges. This is the very definition of short-term benefit.

With regard to the long-term best interest of Region C and the Commonwealth, there is a sense in which it is no different from the short-term best interest. After all, if there is a delay of what would be, at a minimum, another two or three years before a casino license is issued in Region C, there likely would never be a viable casino built in that region because of the market penetration and first-mover advantage of the Tiverton, Rhode Island casino, and the continued marketing in Southeastern Massachusetts by the two tribal casinos in Connecticut.

The window to build a viable resort casino in Region C is quickly closing. Analyses that have been done by Rush Street and MG&E have convinced them that they can still build a profitable resort casino in Brockton, provided it is built soon. But further delay, particularly one that lasts at least two or three more years and continues to allow the out-of-state casinos to build customer loyalty from Region C residents, would change the economics of the investment.

Independent of whether a delay of another two or three years (and likely much more) would permanently kill any chance of anyone ever building a viable casino development in the Southeast region, we are confident that the short-term approval of MG&E's renewed application would yield long-term benefits to the region and to the Commonwealth. As you know, Neil Bluhm, the driving force behind MG&E, has a long history of success in reviving distressed communities throughout the country, including Massachusetts. Indeed, one need look no further than Faneuil Hall and Copley Place to see iconic examples of great work in the Commonwealth by Neil Bluhm and his prior real estate companies. The resort casino project that Rush Street now envisions for Brockton will do for that city and surrounding Southeastern Massachusetts communities what the Faneuil Hall project did for Boston's downtown, and Copley Place did for what was a rundown section of the Back Bay bordering the South End. Under Mr. Bluhm's leadership, the Region C casino project in Brockton promises to result in the long-term transformation of Brockton.

On the merits, the Commission found MG&E's prior application "sufficient" in every category (overview; finance; economic development; building and site design; and mitigation). But the Commission denied the application because MG&E had purportedly not "presented convincing evidence" that its "proposed gaming establishment [would] provide value to Region C and to the Commonwealth."[13] Of course, the principal reason, if not the only reason, for the denial of MG&E's application was the Commission's belief at the time of its vote that the Mashpees would retain land-in-trust status, and would be able to build a casino in Taunton.

As noted above, the Commission's prior denial of MG&E's application, as well as the ongoing delay in Commission action vis-à-vis Region C, fuel constitutional due process and equal protection concerns, and suggest, rightly or wrongly, that the goal of the Commonwealth has always been for there to be a Tribal casino, and only a Tribal casino, in Southeastern Massachusetts. Even when the Region C RFA process for commercial bids was first opened in April 2013, Chairman Crosby stated that, if the Mashpees were to perform as they said they would "with the compact and land in trust, . . . they very likely will get what they want, no matter what else anybody does."[14] It now appears as if, even by *not* performing, the hope and design of the process is (and has always been) to make sure the Mashpees "get what they want, no matter what else anybody does."

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[13] Draft Decision Denying a License to Operate a Category I Gaming Establishment in Region C at 10, *In re Application of Mass Gaming & Entertainment*, *available at* http://massgaming.com/wp-content/uploads/Commissioners-Packet-5-26-16.pdf.

[14] 4/18/13 Tr. at 104.

These concerns easily could have led Rush Street and MG&E to pursue litigation. But they have not done so. Instead, they have chosen to respond in a constructive way. They hope to raise MG&E's proposal to a level which the Commission will recognize as going beyond the "merely" sufficient. They hope to demonstrate to the satisfaction of the Commission that MG&E's proposed project "would maximize revenue to the Commonwealth," and "offer the highest and best value to create a secure and robust gaming market in Region C and the Commonwealth."[15]

If you agree to reopen the public discussion regarding Region C, and reconsider MG&E's proposal, MG&E will, without question, consider any and all substantive concerns the Commission may have with its proposal, discuss those concerns with the Commission and its staff, and make reasonable modifications to its proposal as need be.

In the words of former Commissioner Lloyd Macdonald:

> So, we've got a city [Brockton] that desperately needs economic development, workforce development, and the infusion of capital in order to be able to serve its citizens. And then we have in the form of Rush Street, a private party, not a government entity, a private party that is committed to invest almost $700 million into the community with a proven track record in three other highly competitive urban areas.
>
> So, I go back to the question let's look at what a no vote means. A no vote means Brockton we're sorry, you can't have it....

4/29/16 Tr. at 98-99.

Now is the time for the Commission to say "yes" to Brockton, and to state unequivocally "you can have it." MG&E's application should be reconsidered and granted without further delay.

F. Reconsideration And Approval Of MG&E's Application Without Opening Up A New RFA Process Is Lawful And Appropriate.

At the same time that we ask you to reconsider MG&E's renewed proposal, we request that you *not* reopen the RFA process to new applicants or to prior applicants that withdrew their applications. A broader reopening would be unfair to Region C as it would inevitably cause years of delay during which much of the prospective Region C market would be ceded to Rhode Island (Twin River/Tiverton) and other regional casinos in Connecticut. Likewise, a broader reopening would be unfair to MG&E, which is the only prior applicant that saw the initial process through to conclusion. As the Commission well knows, there was ample opportunity over a three-year period for other applicants to submit Region C license bids. Indeed, in its effort to promote competition, the Commission permitted KG Urban three

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[15] *See* M.G.L. c. 23K, s. 18(11) & (13). *See also* Draft Decision Denying A License to Operate A Category 1 Gaming Establishment in Region C at 5.

extensions for a proposed casino development in New Bedford so that KG Urban could develop its proposal, which, ultimately, it decided to abandon.

The Mashpees/Genting chose a different path. Rather than pursuing the Region C commercial license to compete with the Brockton proposal, which they had every right and ability to do, they chose what they hoped would be an easier, less expensive, and less time-consuming option than the Commission's rigorous process, and one that, if successful, was destined to be far more profitable for them (and less profitable for the Commonwealth). While we have no evidence that Genting/Mashpees have any intent to seek a commercial license, in the name of basic fairness and equity, we believe that they should not be given an opportunity to benefit from their prior choice. They should not get a second bite at the apple. If Genting/Mashpees were to request, let alone be given, the opportunity to submit a commercial casino application, we would aggressively oppose any consideration of their request, not simply on grounds of equity and fairness, but also because there are serious questions regarding the Tribe's suitability to obtain a license.

Our request for a limited reopening of the process is not only fair and equitable, and in the best interest of Region C and the Commonwealth, it is consistent with and supported by the Expanded Gaming Act and procurement law more generally. For instance, the Expanded Gaming Act contemplates a single application process for each Region, with definite deadlines. The Act specifically instructs the Commission to "establish deadlines for the receipt of all applications for a gaming license," and it contemplates an end to the process, as it expressly bars the Commission from entertaining "[a]pplications received after the deadline." M.G.L. c. 23K, § 8(c). The deadline in Region C has come and gone. And reopening the process to newcomers would be an end-run of the statutory bar on reviewing "[a]pplications received after the deadline." We ask that the Commission reconsider MG&E's application based on the initial process sanctioned by statute. Although the Commission has discretion to decide whether to reconsider an application submitted and considered within the deadline, its discretion cannot bypass the limits set forth in the Act of a single application process. *See Moe*, 444 Mass. at 1009 (agency discretion subject to "statutory limitations").

Independent of limitations on the RFA process imposed by the Expanded Gaming Act, well settled procurement law also strongly disfavors any "broad reopening of discussions" where, as here, the reopening would "cause more harm than good," would "unfairly harm" qualified offerors, and "would cause more delay to the procurement." *Caddell Constr. Co. v. United States*, 125 Fed. Cl. 30, 56 (Ct. Fed. Cl. 2016). As we have noted above, MG&E would be unfairly harmed if it were compelled to begin the RFA process afresh, re-do all the work it has already done, and compete, once again, with others who chose not to apply during the RFA process, or bowed out of the competition before the Commission considered their plans on the merits. *See Sys. Applications & Techs., Inc. v. United States*, 100 Fed. Cl. 687, 708 (Ct. Fed. Cl. 2011) (a company suffers a "nontrivial competitive injury" if it is "forced to recompete for a contract"); *Carahsoft Tech. Corp. v. United States*, 86 Fed. Cl. 325, 345 (Ct. Fed. Cl. 2009) (decision to reopen should "recognize the agency's interest in preserving its resources *and the resources of the parties*" (emphasis added)). More importantly, Southeastern Massachusetts would be harmed, potentially irreparably, by the *at least* two or three years of additional delay that would inevitably result from a complete reopening of the RFA process. Regardless of how one looks at the matter, a reopening of the RFA process to all bidders would "cause more harm than good."

Where a winning bidder fails to perform or drops out of an RFA process after it has been selected, procurement law favors limiting reconsideration of other bids to the next most qualified bidder, as that bidder "stands to receive the contract in lieu of the challenged awardee." *See, e.g.*, *United States v. Int'l Bus. Machine Corp.*, 892 F.2d 1006, 1011 (Fed. Cir. 1989). Here, since there was no winning bidder, this principle of procurement law would be served by reopening the process to MG&E which was the only "suitable" and qualified bidder in the completed RFA process. Furthermore, in connection with reconsideration, it is legally appropriate and standard to give the next most qualified bidder the opportunity to modify and enhance its prior bid, just as MG&E is prepared to consider doing here if need be. *See, e.g., Carahsoft*, 86 Fed. Cl. at 345.

Furthermore, procurement law specifically bars those who fail to participate in contract/licensing award processes from the outset from seeking a resolicitation that would include them. *MCI Telecommc'ns Corp. v. United States*, 878 F.2d 362, 365 (Fed. Cir. 1989). The "opportunity to qualify either as an actual or prospective bidder" ends "when the proposal period ends." *Id.* Here, this principle should bar any prospective bid from any candidate, including the Mashpees/Genting, who chose not to participate in the original RFA. Indeed, entertaining any bid for a commercial license from the Mashpees/Genting would be particularly inappropriate and unlawful, as it would implicate constitutional equal protection concerns (discussed above) as well as state prohibitions on bias and favoritism in the procurement process. *See, e.g., Bowman v. Drewry*, No. 942576, 1996 WL 178441, at *12 (Mass. Super. Ct. Jan. 11, 1996) (pursuant to Massachusetts Uniform Procurement Act, ordering town to award contract to "a reasonable and responsive proposal" and admonishing town for rejecting all applicants so as to continuously reopen the RFP process to permit a favored vendor to enter a satisfactory bid).

Procurement law likewise disfavors allowing prior bidders who have withdrawn from the bidding process from seeking resolicitation. *See, e.g.*, *Federal Data Corp. v. United States*, 911 F.2d 699, 705 (Fed. Cir. 1990). Those bidders are barred from seeking review of award decisions because they could have, but deliberately declined to, "continue to compete for the . . . award." Here, this principle should preclude the Commission from reopening the RFA process to accommodate KG Urban and Crossroads, the two bidders who submitted initial applications but then withdrew from the process after each was unable to assemble a viable financing package.

In sum, the law uniformly favors reconsideration of MG&E's prior application, and disfavors permitting those who failed to participate in, or withdrew from, the completed RFA process from being given a second chance. Reconsideration of MG&E's application is not just the right thing to do for the Southeast region and the Commonwealth, it also is the legal thing to do.

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We request that the Commission, as soon as possible, schedule a public discussion of the future of Region C, and then hold a meeting at which MG&E would be provided the opportunity to present its Brockton proposal, and address any questions or concerns the Commission may have. In the

meanwhile, if you have questions regarding any of the points articulated in this letter, please do not hesitate to contact either of us.

We look forward to your response.

Very truly yours,

David J. Apfel

Roberto M. Braceras

ACTIVE/95515757.1

EXHIBIT A

Chairman Cedric Cromwell
Mashpee Wampanoag Tribe
483 Great Neck Road
Mashpee, Massachusetts 02649

Dear Chairman Cromwell:

In 2012, the Mashpee Wampanoag Tribe (Mashpee Tribe or Tribe) submitted an amended fee-to-trust application to the Bureau of Indian Affairs (BIA) to acquire approximately 321 acres of lands in the Towns of Mashpee and Taunton, Massachusetts in trust for the Tribe pursuant to Section 5 of the Indian Reorganization Act (IRA or Act). Having been federally acknowledged in 2007 pursuant to 25 C.F.R. Part 83, the Tribe sought the land as its initial reservation for purposes of tribal government, tribal housing, and economic development, including Indian gaming. Section 5 of the IRA (Section 5) authorizes the Secretary of the Interior (Secretary) to acquire land in trust for "Indians."[1] The IRA, in Section 19, defines "Indian" in three ways:

> 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 [3] shall further include all other persons of one-half or more Indian blood.[2]

On September 18, 2015, the Department of the Interior (Department) determined that the Tribe satisfied the IRA's second definition of "Indian" as descendants of members of a recognized tribe occupying an Indian reservation in 1934.[3] The Department based its determination in part on the Tribe's long and continuous occupation of tribal lands in what is today Mashpee, Massachusetts. The Department also determined that phrase "such members" in the IRA's second definition of "Indian" was ambiguous and was properly construed as referring only to the phrase "members of any recognized Indian tribe" in the first definition, but not the entire phrase, "members of any recognized Indian tribe now under Federal jurisdiction." Accordingly, the Department's reading did not incorporate the phrase "now under federal jurisdiction" from the first definition which,

[1] 25 U.S.C. § 5108. Prior to the 2016 reclassification of Title 25 by the Office of Law Revision Counsel, Section 19 had been codified as 25 U.S.C. § 465.
[2] 25 U.S.C. § 5129 (bracketed numerals added). Prior to the 2016 reclassification of Title 25 by the Office of Law Revision Counsel, Section 19 had been codified as 25 U.S.C. § 479.
[3] U.S. Dept. of the Interior, Bureau of Indian Affairs, Record of Decision, Trust Acquisition for 151 Acres in the City of Taunton, Massachusetts, and 170 Acres in the Town of Mashpee, Massachusetts, for the Mashpee Wampanoag Tribe (Sept. 18, 2015) (2015 Decision).

based on the Supreme Court's ruling in *Carcieri v. Salazar*,[4] requires a tribe seeking land in trust under the IRA to show it was under federal jurisdiction in 1934.

Residents of Taunton, Massachusetts filed suit challenging the 2015 Decision.[5] On July 28, 2016 the United States District Court for the District of Massachusetts ruled that the phrase "such members" in the IRA's second definition of "Indian" unambiguously incorporates the entire antecedent phrase "members of any recognized Indian tribe now under Federal jurisdiction," thereby incorporating the temporal limitation of the first definition.[6] Because the Department's decision had not considered that issue, the District Court remanded to the Department for consideration in the first instance whether the Tribe was under federal jurisdiction in 1934.[7] The Department thereafter established procedures by which the Tribe and the *Littlefield* plaintiffs (Littlefields) could submit evidence and arguments on the issue of whether the Tribe was under federal jurisdiction in 1934. The submission period closed on February 28, 2017.

I have assessed the parties' submission under the Department's two-part framework for interpreting "under federal jurisdiction" for purposes of the IRA, as set forth in M-37029.[8] Having completed my review of the submissions and supporting documentation provided by the parties, and as explained in more detail below, I conclude that the Tribe's evidence does not demonstrate that the United States took an action or series of actions in or before 1934 that sufficiently establishes or generally reflects federal obligations, duties, responsibility for or authority over the Tribe. Based on the record before the Department I cannot conclude that the Tribe was under federal jurisdiction in 1934.[9] I therefore regret to inform you that I cannot acquire land in trust for the Tribe under the IRA's first definition of "Indian," nor under the second definition as it has been interpreted by the United States District Court for the District of Massachusetts.

I. BACKGROUND

In 1975, the Tribe petitioned the Department for federal acknowledgment.[10] Thirty-two years later, in 2007, the Department determined that the Tribe was entitled to acknowledgment as a federally recognized Indian tribe pursuant to the administrative

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[4] 555 U.S. 379 (2009) (*Carcieri*).
[5] *Littlefield v. United States DOI*, 199 F.Supp.3d 391 (D.Mass. 2016).
[6] *Littlefield*, 199 F.Supp.3d at 399.
[7] The district court decision contained language to the effect that the Tribe was not under federal jurisdiction in 1934. *See, e.g., Littlefield*, 199 F.Supp.3d at 397. The district court subsequently issued an order on October 12, 2016 clarifying that the 2015 Decision contained no such finding concerning the Tribe's jurisdictional status in 1934 and that the Secretary had presented no such argument to the court. *See Littlefield v. United States DOI*, No. 16-cv-10184, Dkt. 121 at 2 (D. Mass. Oct. 12, 2016).
[8] The Meaning of 'Under Federal Jurisdiction' for Purposes of the Indian Reorganization Act, Op. Sol. Interior M-37029 (Mar. 12, 2014) (M-37029).
[9] As of April 6, 2017, the authority for off-reservation land-into-trust acquisitions for gaming lies with the Acting Deputy Secretary of the Department of the Interior. *See* Delegated Authority for Off-Reservation Fee to Trust Decisions, Acting Assistant Secretary – Indian Affairs to All Regional Directors (Apr. 6, 2017).
[10] Proposed Finding for Federal Acknowledgment of the Mashpee Wampanoag Indian Tribal Council, Incorporated of Massachusetts, 71 Fed. Reg. 17,488 (Apr. 6, 2006).

procedures set forth at 25 C.F.R. Part 83.[11] That determination was based on the research and analysis of the historians, anthropologists, and genealogists in the Department's Office of Federal Acknowledgment, who supported the conclusion that the Tribe satisfied the criteria for federal acknowledgment.[12] The Department based its decision on evidence showing that the Tribe's members and ancestors had maintained consistent interaction and significant social relationships since the time of first sustained contact with Europeans in the seventeenth-century, through the colonial and Revolutionary eras up until the present time. The Tribe presented evidence showing that nearly all the Tribe's members lived in a defined geographical area, namely, the Town of Mashpee (or "Marshpee" as it was formerly known), which was inhabited almost exclusively of the Tribe and its members.[13] The decision also relied on evidence showing that the Tribe had also continued to maintain an autonomous political existence as a tribe from the time of first sustained contact to the present.[14] Moreover, the Tribe had shown that nearly all of its members (97%) descended from the historical Tribe identified by outside observers in the nineteenth-century.[15] The Department published a proposed finding in favor of federal acknowledgment in 2006[16] and its final determination in 2007.[17] The Tribe's acknowledgment became effective on May 23, 2007.[18]

A. Fee-to-Trust Application

In 2007, the Tribe submitted applications seeking to have the Department acquire certain lands in trust for the Tribe's benefit pursuant to the authority of Section 5 of the IRA, including a parcel totaling approximately 170 acres in Mashpee, Massachusetts (Mashpee parcel). It later amended its application in March 2012 so as to remove certain parcels and add a 150-acre parcel near the Town of Taunton, Massachusetts (Taunton parcel).

The Tribe sought trust land in order to meet the present and future needs of its members by providing land for self-determination and self-governance, housing, education, and cultural preservation.[19] The Mashpee parcel included culturally significant sites such as the Mashpee Old Indian Meeting House and historic Tribal burial grounds that have been used by the Tribe and its members for centuries.[20] Revenue from economic development would be used to enhance the Tribe's ability to preserve its history and community by funding the preservation and restoration of culturally significant sites.[21] The Tribe showed a need for economic development to create sufficient revenue to meet the needs of tribal members, many of whom are unemployed with incomes below the poverty

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[11] Final Determination for Federal Acknowledgment of the Mashpee Wampanoag Indian Tribal Council, Inc. of Massachusetts, 72 Fed. Reg. 8007 (Feb. 22, 2007).
[12] 2015 Dec. at 59.
[13] MWT FD at 9.
[14] MWT FD at 18.
[15] MWT FD 30, 34; 72 Fed. Reg. at 8,009.
[16] 71 Fed. Reg. 17,488 (Apr. 6, 2006).
[17] *See* 72 Fed. Reg. 8,007 (Feb. 22, 2007); 73 Fed. Reg. 18,553, 18553-54 (Apr. 4, 2008).
[18] 72 Fed. Reg. at 8,009.
[19] 2015 Dec. at 7.
[20] 2015 Dec. at 6, 15, 110.
[21] 2015 Dec. at 8.

level.[22] Because the Tribe's members also face serious needs for housing, the Tribe would use revenue for economic development to fund construction of tribal housing and programs such as the Wampanoag Housing Program and the Low Income Home Energy Assistance Program.[23] The Tribe intended to use the Mashpee parcel for tribal administrative purposes, tribal housing, and cultural purposes. It intended to use the Taunton parcel for economic development by the construction and operation of a gaming facility under the Indian Gaming Regulatory Act.[24]

1. *Carcieri v. Salazar*, 555 U.S. 379 (2009)

While the Tribe's 2007 application was pending, the U.S. Supreme Court rendered its decision in *Carcieri v. Salazar*,[25] which considered the Secretary's trust-acquisition authority under Section 5 of the IRA. Section 5 provides the Secretary discretionary authority to acquire land in trust for "Indians." As noted above, Section 19 of the IRA includes the following three definitions 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 [3] shall further include all other persons of one-half or more Indian blood.[26]

Carcieri held that the word "now" in the first definition of "Indian" refers to the time of the IRA's passage in 1934. The Court did not further address the meaning of the phrase "under federal jurisdiction," however, finding no need to do so in the context of the case.[27] As a result, it was left to the Department to utilize its expertise in interpreting and applying Section 19's temporal qualification and the meaning of "under federal jurisdiction."

2. Department's *Carcieri* Framework

To continue implementing the IRA in accordance with the holding in *Carcieri*, the Department was required to determine the meaning of the phrase "under federal jurisdiction" and to consider what evidence could demonstrate it.[28] The Department

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[22] 2015 Dec. at 7.
[23] 2015 Dec. at 8.
[24] 25 U.S.C. § 2701 et seq.
[25] 555 U.S. § 379 (2009).
[26] 25 U.S.C. § 5129.
[27] *Carcieri* also did not address the Secretary's authority to acquire land in trust for groups that fall under other definitions of "Indian" in Section 19 of the IRA.
[28] The Meaning of 'Under Federal Jurisdiction' for Purposes of the Indian Reorganization Act, Op. Sol. Interior M-37029 at 4 (Mar. 12, 2014) (M-37029). The Department announced its framework for interpreting "now under federal jurisdiction" in a December 2010 record of decision to acquire land in trust for another tribe, the Cowlitz Indian Tribe. U.S. Dep't of the Interior, Bureau of Indian Affairs, Record of Decision, Trust Acquisition of, and Reservation Proclamation for the 151.87-acre Cowlitz Parcel in Clark

considered the text of the IRA and concluded the Act did not establish the meaning of "under federal jurisdiction" and that the phrase itself had no plain meaning.[29] A review of its legislative history suggested only that Congress intended the phrase to qualify the expression "recognized Indian tribe" in some manner.[30] Based on this, the Department determined that the phrase "under federal jurisdiction" had no clear and unambiguous meaning and that Congress had left an interpretive gap for the agency to fill.[31]

The Solicitor closely considered the IRA's text, remedial purpose, and legislative history, as well as the Act's early implementation by the Department and concluded that "under federal jurisdiction" requires a tribe to show that the United States exercised jurisdiction over the tribe at some point in or before 1934 and that such jurisdictional status remained intact as of 1934.[32] By requiring evidence of particular exercises of federal jurisdictional authority, the Solicitor rejected the assertion that the phrase "under federal jurisdiction" has a plain meaning that is synonymous with Congress' plenary authority over tribes pursuant to the Indian Commerce Clause.[33] Under that view, every Indian tribe as such could be considered "under federal jurisdiction."[34] Agreeing that the general principle of plenary authority served as the relevant backdrop to the analysis, the Solicitor determined that *Carcieri* required a tribe to do more by showing indicia of federal jurisdiction that demonstrate the federal government's exercise of responsibility for and obligation toward a tribe and its members in or before 1934.[35]

M-37029 establishes a two-part inquiry for ascertaining whether a tribe was "under federal jurisdiction" as of 1934. The first step requires a tribe to show that the United States took an action or series of actions in or before 1934 that sufficiently established or generally reflected federal obligations, duties, responsibility for or authority over the tribe.[36] The second step of the inquiry is to ascertain whether that jurisdictional status continued through 1934.

M-37029 describes the types of evidence that may be used at step one of the "under federal jurisdiction" analysis.[37] A tribe might provide evidence of a course of dealings or

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County, Washington, for the Cowlitz Indian Tribe (Dec. 17, 2010). Issued while the Mashpee Tribe's own fee-to-trust application was pending, the Cowlitz analysis formed the basis for the framework in M-37029.

[29] M-37029 at 18.

[30] M-37029 at 17.

[31] M-37029 at 17, citing *Chevron v. Natural Resources Defense Council*, 467 U.S. 837, 840-843 (1984).

[32] M-37029 at 18-19.

[33] M-37029 at 17.

[34] *See United States v. Holliday*, 70 U.S. 407, 419 (1866) (tribes, as such, are placed by the Constitution within the control of Congress); William Wood, "Indians, Tribes, and (Federal) Jurisdiction," 65 KANSAS L. REV. 415, 422 (2017) (whether federal jurisdiction exists with respect to a particular people involves a singular inquiry into whether they continue to exist as a distinct Indian community such that the federal Indian affairs jurisdiction attaches to them). *See also United States v. Sandoval*, 231 U.S. 28, 46 (1913) (Congress may not arbitrarily bring a body of people within its plenary authority by arbitrarily calling them an Indian tribe).

[35] M-37029 at 17.

[36] M-37029 at 19.

[37] The broad range of the Solicitor's non-exclusive list of evidence reflects that the federal government applied its Indian policies "to numerous tribes with diverse cultures" and necessarily "fluctuate[d]

other relevant acts by the federal government for or on behalf of the tribe or, in some instances, its members.[38] In some cases, one federal action can, in and of itself, conclusively establish that a tribe was under federal jurisdiction in 1934, obviating the need to consider the tribe's broader history.[39] In other cases a variety of federal actions, when viewed together, can demonstrate that a tribe was under federal jurisdiction. This might include, for example, guardian-like actions taken by the United States, or a continuous course of federal dealings with a tribe.[40] Such evidence may include federal approval of contracts between a tribe and non-Indians or enforcement of the Trade and Intercourse Acts (Indian trader, liquor laws, and land transactions).[41] Such evidence might also consist of actions by the Office of Indian Affairs or other federal officials with respect to the tribe and its affairs[42] evidencing the Federal Government's obligations, duties to, acknowledged responsibility for, or power or authority over a particular tribe.[43]

Once having identified that the tribe was under federal jurisdiction prior to 1934, the second question is to ascertain whether the tribe's jurisdictional status remained intact in 1934. For some tribes, the circumstances or evidence will demonstrate that the jurisdiction was retained in 1934.[44] In some instances, it will be necessary to explore the universe of actions or evidence that might be relevant to such a determination or to ascertain generally whether certain acts are, alone or in conjunction with others, sufficient indicia of the tribe having retained its jurisdictional status in 1934.[45]

3. Tribe's Prior *Carcieri* Submissions

In September 2012, the Tribe submitted a detailed discussion of its statutory eligibility with supplementary exhibits totaling more than 300 pages.[46] The Tribe's 2012

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dramatically as the needs of the Nation and those of the tribes changed over time." *United States v. Lara*, 541 U.S. 193, 202 (2004).

[38] M-37029 at 19.

[39] *See e.g., Shawano County v. Acting Midwest Regional Director, Bureau of Indian Affairs*, 53 I.B.I.A. 62 (2011) (Secretarial calling of vote to accept or reject IRA necessarily recognizes tribe as under federal jurisdiction). *See generally* Theodore H. Haas, *Ten Years of Tribal Government Under I.R.A.* (1947) (specifying, in part, tribes that either voted to accept or reject the IRA).

[40] M-37029 at 19.

[41] M-37029 at 19.

[42] The OIA had responsibility for the administration of Indian reservations and the implementation of Indian legislation. M-37029 at 19.

[43] M-37029 at 19.

[44] M-37029 at 19.

[45] M-37029 at 19.

[46] Letter, MWT Chairman Cedric Cromwell to Assistant Secretary Donald "Del" Laverdure (Sept. 4, 2012) (MWT 2012 Letter). The Tribe elaborated on the arguments and evidence contained its September 2012 submission with follow-up submissions in 2012 and 2013. *See* Chairman Cedric Cromwell to Assistant Secretary – Indian Affairs Donald "Del" Laverdure (Sept. 4, 2012); Arlinda Locklear, Esq. to Bella Wolitz, Esq. Dep't of the Interior, Knoxville Field Solicitor's Office (Nov. 5, 2012); *same* (Nov. 29, 2012). The Tribe had included a discussion of the Secretary's statutory authority to take land in trust for the Tribe in light of *Carcieri* when it amended its application in 2010. 2010 App. The Tribe asserted that *Carcieri* did not impair the Secretary's authority to acquire land in trust for the Tribe but deferred providing supplementary evidence or detailed discussion of the issue. 2010 App. at 9. The Tribe also claimed that amendments to the IRA in 1994 prohibited the Department from making any decision or determination that

submission offered two different views of why the Tribe should be considered to have been "under federal jurisdiction" in 1934 for purposes of the IRA's first definition of "Indian."

The Tribe first argued that, by operation of law, it had been under federal jurisdiction since 1789.[47] This argument relied on three separate claims. First, that by reserving specific rights to the Tribe in the colonial era, the British Crown had created "functional treaty" obligations to which the United States later succeeded.[48] Second, that the Tribe had always exercised and maintained aboriginal fishing and other usufructuary rights on lands the Tribe had ceded over time.[49] Third, a federal trust relationship had always existed by virtue of federal common law and the Indian Trade and Intercourse Act regardless of attempts by Massachusetts to extinguish the Tribe's title to its lands.[50] Next the Tribe argued that it was under federal jurisdiction in 1934 by virtue of particular, affirmative acts of federal supervision from before 1934, which included the federal government's consideration and ultimate rejection of whether to subject the Tribe to the federal Removal Policy in the 1820s; federal supervision of Mashpee students at the Carlisle Indian school at the turn of the twentieth century; and the inclusion of Mashpee Indians in both general and Indian-specific Federal censuses.[51]

In addition to arguing that the Tribe satisfied the IRA's first definition of "Indian," however, the Tribe's 2012 submission argued that the Tribe independently satisfied the second definition of "Indian," which defines "Indian" to include "all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation."[52] The Tribe argued that the lands in the Town of Mashpee that it had continuously occupied for centuries constituted a "reservation" for purposes of the IRA's second definition of "Indian."[53] It did not, however, address the other components of the second definition.

B. Department's September 2015 Decision

On September 18, 2015, Assistant Secretary – Indian Affairs (AS-IA) Kevin K. Washburn issued a record of decision (2015 Decision) to acquire the Mashpee and Taunton parcels in trust for the Tribe.[54] The Department determined that it had statutory authority to acquire the lands in trust for the Tribe under the second definition of "Indian"

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disadvantaged or diminished its rights as a federally recognized tribe relative to other recognized tribes. *Id.*, citing 25 U.S.C. § 5126(f) [476(f)].

[47] MWT 2012 Letter at 2.

[48] MWT 2012 Letter at 2.

[49] MWT 2012 Letter at 3.

[50] MWT 2012 Letter at 3.

[51] MWT 2012 Letter at 3.

[52] MWT 2012 Letter at 3; 25 U.S.C. § 5129.

[53] MWT 2012 Letter at 31-36.

[54] U.S. Dept. of the Interior, Bureau of Indian Affairs, Record of Decision, Trust Acquisition for 151 Acres in the City of Taunton, Massachusetts, and 170 Acres in the Town of Mashpee, Massachusetts, for the Mashpee Wampanoag Tribe (Sept. 18, 2015) (2015 Dec.).

set forth in IRA Section 19.[55] As a result, the Department found it unnecessary to decide whether the Tribe could also qualify under the first definition.[56]

The 2015 Decision detailed the Department's interpretation and application of Section 19's second definition of Indian, that is, "all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation." The Department found that the phrases "descendants," "such members," and "any Indian reservation" to be ambiguous, compelling the Department to review the statutory language and legislative history, and to consider the Department's prior implementation of the Act.[57]

1. Interpretation of Ambiguous Terms

The Department found it unclear whether the phrase "such members" in the second definition referred only to the expression "members of any recognized Indian tribe" or to "members of any recognized Indian tribe *now under Federal jurisdiction*."[58] Among other things, the Department concluded that "such members" was ambiguous and was properly construed as referring back to the phrase "members of any recognized Indian tribe" in the first definition of "Indian," and not the entire phrase "members of any recognized now under federal jurisdiction." The Department reasoned that incorporating all of the requirements of the first definition would render the second definition largely redundant of the first definition. .[59]

The Department found that the IRA does not define "Indian reservation"[60] and that Section 19 left unclear whether its residency requirement applied to the members of a recognized Indian tribe or to their "descendants." The Department concluded that Congress apparently removed the definitions of these terms contained in the original draft bill of the IRA[61] so as to leave such determinations to the Department's expertise in order

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[55] 2015 Dec. at 79.

[56] 2015 Dec. at 79. *See* 80 Fed. Reg. 57,848 (Sept. 25, 2015). The BIA accepted title to the parcels in trust on behalf of the United States for the benefit of the Tribe on November 10, 2015, and proclaimed them the Tribe's initial reservation.

[57] 2015 Dec. at 80.

[58] 2015 Dec. 93-95 (emphasis added for clarity). The Department also found ambiguous the phrase "descendants of such members who were, on June 1, 1934, residing...on an Indian reservation." Neither the Act's language nor its legislative history made clear whether it was the members or their descendants who had to be in residence on June 1, 1934. If the former, then the category of individuals eligible for trust acquisitions under the second definition of "Indian" would be open to all descendants. If the latter, however, eligibility would be limited to the closed class of descendants alive and residing on the reservation in 1934.

[59] 2015 Dec. at 93. The Department additionally determined that Congress intended the second definition to be independent of the first as shown by the use of the conjunction "and" to link the two definitions. *Id.* Further, it would have been redundant for Congress to incorporate "under federal jurisdiction" into the second definition at a time when it was well-established that Indian residents of a reservation were automatically under federal authority. 2015 Dec. at 94.

[60] 2015 Dec. at 81.

[61] 2015 Dec. at 82. While Congress did not explain its emendation, Commissioner John Collier elsewhere emphasized that the bill was designed to be flexible to meet unique problems arising across Indian country. *Id.* at 83.

to accommodate the particular circumstances of each tribe and reservation.[62] The Department's later implementation of the IRA showed that reservations established and primarily regulated under state law could be considered "reservations" for purposes of the second definition.[63] This was consistent with the historical evolution of the concept of a "reservation," which evolved alongside federal policy.[64] Current federal regulations contain different definitions of the term "reservation,"[65] while the Department's own Handbook on Federal Indian Law described the different forms a reservation may take and the different methods by which they are created.[66] The Department ultimately concluded that at the time Congress enacted the IRA, the generally accepted understanding of "Indian reservation" meant lands set aside for Indian use and occupation through a variety of ways,[67]which in turn required a case-by-case evaluation to determine whether a specific tract qualifies as such and what its "present boundaries" might be.[68]

The Department conducted a comprehensive, fact-intensive legal analysis of the Tribe's eligibility under Section 19 in light of the Department's interpretation of "reservation."[69] The Department examined the Tribe's continuous history in the Town of Mashpee from before European contact until modern times,[70] relying on extensive historical documentation, including materials assembled before the Office of Federal Acknowledgment when considering the Tribe's petition for federal acknowledgment. The record showed the Tribe's long-standing relationship with the lands now comprising the Town of Mashpee and the intertwined relationship between the Tribe, the British Crown and Province of Massachusetts before the United States was founded. [71] The record showed the recognition and protection of that relationship by the Crown and Colonial governments and by the Commonwealth of Massachusetts, separate and apart from protections later enacted by the United States, such as the Non-Intercourse Act.[72] It further showed that the federal government had considered the Tribe as inhabiting a reservation in the 1820s when considering implementation of the federal removal policy.[73]

The Department determined that the historical record showed that a reservation had been set aside for the Tribe's occupation and use under the protection of the colonial court and government, and that such reservation continued to exist and continued to be occupied by Mashpee tribal members through 1934.[74] Based on this information, the Department found that the Tribe was composed of descendants of members of a recognized Indian

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[62] 2015 Dec. at 83.
[63] 2015 Dec. at 87-88.
[64] 2015 Dec. at 95.
[65] 2015 Dec. at 95, comparing 25 C.F.R. §§ 151.20 and 292.2.
[66] 2015 Dec. at 96-97.
[67] 2015 Dec. at 98.
[68] 2015 Dec. at 98-99.
[69] *See* 2015 Dec. at101-120.
[70] 2015 Dec., at 101 ff..
[71] 2015 Dec. at 102.
[72] 2015 Dec. at 110-112. 25 U.S.C. § 177.
[73] 2015 Dec. at 104-105.
[74] 2015 Dec. at 113-119.

tribe.[75] Accordingly, the Department determined that it had the authority to acquire land in trust for the Tribe's benefit under the IRA's second definition of "Indian."

C. *Littlefield* Litigation

On February 4, 2016, certain residents of the City of Taunton brought suit in the United States District Court for the District of Massachusetts under the Administrative Procedure Act[76] challenging the Department's decision to acquire land in trust for the Tribe.[77] In addition to challenging the Department's interpretation of the IRA's second definition, the Littlefields claimed, among other things, that the Department erred by concluding that the Tribe satisfied the second definition.[78] The parties subsequently filed cross-motions for summary judgment on that claim.[79]

On July 28, 2016, the District Court ruled, contrary to the Department's position, that the phrase "such members" as it appears in the IRA's second definition of "Indian" unambiguously incorporates the entire antecedent phrase "members of any recognized Indian tribe now under Federal jurisdiction" in the first definition and remanded the matter to the Secretary for further proceedings consistent with the court's opinion.[80] The district court's decision included language suggesting that the Court further concluded that the Tribe was not under federal jurisdiction in 1934. Because the Department had expressly declined to reach that issue in the 2015 Decision, however,[81] the Department sought reconsideration or clarification by the court of its July 28, 2016 order.[82]

On October 12, 2016, the district court clarified its July 28, 2016 decision.[83] The court explained that its previous ruling had held that in order to qualify as an eligible beneficiary under the IRA's second definition of "Indian," the Tribe must have been under federal jurisdiction in 1934.[84] The court noted that the 2015 Decision included no such finding based on the Department's conclusion that the second definition did not incorporate the "under federal jurisdiction" phrase.[85] The court therefore clarified that it

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[75] 2015 Dec. at 112. Since the Tribe had also shown that its current members included persons who had resided on the Mashpee reservation in 1934 as well as descendants thereof, the Department found no need to address whether the second definition's residency requirement applied to "descendants" or "members." 2015 Dec. at 100.

[76] 5 U.S.C. §§ 701-706.

[77] *Littlefield, et al. v. United States Dep't of the Interior*, Case No. 16-CV-10184 (D. Mass).

[78] Plaintiffs' remaining causes of action challenged the Department's conclusions that the Tribe had significant historical connection to the City of Taunton; that the distinct Mashpee and Taunton parcels could together form the Tribe's "initial reservation"; and that the Tribe's Mashpee lands constituted a "reservation" for purposes of the IRA. Plaintiffs' fifth cause of action challenged Section 5 of the IRA as an unconstitutional delegation of legislative authority. Plaintiffs further sought to collaterally attack the Tribe's federal acknowledgment. *See* Complaint at ¶¶ 91-96.

[79] *Littlefield v. United States Dep't of the Interior,* 16-CV-10184 (D. Mass.), Dkt. Nos. 55, 59 (July 7, 2016).

[80] *Littlefield v. United States DOI*, 199 F.Supp.3d 391, 400 (D. Mass. 2016).

[81] Dkt. 87 at 22.

[82] Dkt. 99 (Aug. 24, 2016).

[83] Dkt. 121 (Oct. 12, 2016).

[84] Dkt. 121 at 2.

[85] Dkt. 121 at 2.

would be "no violation of the Court's [July 28] order should the agency wish to analyze the Mashpees' eligibility under the first definition of 'Indian'" or to "reassess the Mashpees' eligibility under the second definition consistent with the Court's ruling on the proper interpretation of that definition."[86]

Although the Department initially filed a notice of appeal challenging the district court's interpretation of the IRA, the Department ultimately moved for voluntarily dismissal of its appeal.[87] The United States Court of Appeals for the First Circuit granted the Department's motion for voluntary dismissal on May 8, 2017. Because the Department is bound to apply the district court's interpretation of the IRA's second definition in this remand proceeding, I therefore may grant the Tribe's land-into-trust application under the IRA's second definition only if I find that the Tribe was under federal jurisdiction in 1934.

D. Remand Proceedings

On December 6, 2016, the Department notified the parties to the *Littlefield* litigation of the procedures to be followed on remand.[88] The Department invited the Tribe to submit by January 6, 2017, any evidence or argument it wished the Department to consider in determining whether the Tribe was under federal jurisdiction in 1934 for purposes of the IRA. The Department provided Plaintiffs with a thirty-day window in which to respond to the Tribe's submission, and it provided the Tribe with a final 15-day window in which to reply. The Tribe provided its opening submissions on December 21, 2016 and January 5, 2017. Plaintiffs requested and received an extension of time to submit their response, which Plaintiffs ultimately filed on February 14, 2017. The Tribe's reply was timely submitted to the Department on February 28, 2017. On April 19, 2017, the Department notified the parties that its decision would issue by June 19, 2017.[89]

II. DISCUSSION

I first summarize the arguments presented by the Tribe and the Littlefields on remand. I next address the Littlefields' request for the "vacatur" of M-37029 and its two-part framework and explain why M-37029 governs my analysis. I then set out the standard of review under M-37029 and discuss the parties' interpretations thereof. Applying the M-37029 framework to the record before me, I conclude that the evidence submitted by the Tribe fails to show particular exercises of federal authority sufficient to conclude that the Tribe was under federal jurisdiction in or before 1934.

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[86] Dkt. 121 at 2.
[87] Motion to Voluntarily Dismiss Appeal, *Littlefield, et al. v. U.S. Dep't of the Interior*, No. 16-2481 (1st Cir. Apr. 27, 2017).
[88] *See* Letters, Principal Deputy Assistant Secretary- Indian Affairs Lawrence Roberts to Adam Bond, Cedric Cromwell, Matthew Frankel, David Tennant (Dec. 6, 2016).
[89] Email, Associate Solicitor – Indian Affairs Eric Shepard to the parties (Apr. 19, 2017).

A. Summary of Arguments

1. Mashpee Tribe Opening Brief

Part one of the Tribe's opening submissions addresses the single legal question of whether the historical relationship between the Tribe and the Commonwealth of Massachusetts (State) precludes the possibility of federal jurisdiction over the Tribe.[90] The Tribe argues that the federal government's authority over Indian affairs is paramount throughout the United States, including within the original thirteen states. While some of the original thirteen states exercised authority over tribes within their borders, the federal government assumed plenary authority over tribes everywhere upon ratification of the United States Constitution in 1788. Assertions of state authority over tribes within a state cannot and do not oust paramount federal authority, which may be exercised at any time and which can only be terminated by Congress. Based on these principles, the Tribe argues that Massachusetts's treatment of the Tribe and its members could not, as a matter of law, oust the federal government's supreme jurisdictional authority. The Tribe explained that by 1882 the State had ceased treating the Tribe as Indians, having enacted legislation making Tribal members state citizens and making Tribal lands into alienable fee property. The Tribe asserts that federal officials erred in and around 1934 in claiming that the Tribe remained under state jurisdiction. Instead, the Tribe argues, the Tribe at that time was solely within the federal government's Indian affairs authority.

Part two of the Tribe's opening submissions addresses the evidence of the Tribe's federal jurisdictional status before and in 1934. The Tribe claims that, viewed in totality, its evidence indisputably shows exercises of federal jurisdiction over the Tribe.[91] Largely repeating its 2012 arguments (*see above*), the Tribe offers general and particular grounds why it was "under federal jurisdiction" in 1934. Broadly, the Tribe argues for being under federal jurisdiction as a matter of law based on "treaty-like" obligations of the British Crown to which the United States later succeeded; federal restraints against alienation of the Tribe's aboriginal lands; and the continuing existence of usufructuary rights into the twentieth-century. More particularly, the Tribe claims it was placed under federal jurisdiction through specific federal activities, including considering the Tribe for removal in the 1820s; federal policy recommendations concerning Massachusetts tribes in the 1850s; mention of the Tribe on federal censuses between 1850 and 1910; and the enrollment of Tribal students at the Carlisle Indian Industrial School in the early decades of the 1900s. The Tribe offered as further evidence of specific federal acts including references to the Tribe and its history in federal reports or studies in 1888, 1890 and 1935.

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[90] Mashpee Wampanoag Tribe, "The Early Relationship Between The Mashpee Wampanoag Tribe And The Commonwealth Of Massachusetts Cannot Preclude Federal Jurisdiction Under The IRA" (Dec. 21, 2016).

[91] Mashpee Wampanoag Tribe, "The Mashpee Wampanoag Tribe Is Eligible For Land Into Trust Under the Indian Reorganization Act As A Tribe Under Federal Jurisdiction In 1934" (Jan. 5, 2017) (MWT Op. Br.).

2. Littlefield Response

The Littlefields submitted a 112-page response to the Tribe's submission on February 14, 2017.[92] They devote nearly half to arguing for the "vacatur" of Solicitor's Opinion M-37029. The remainder offers several arguments to refute the Tribe's claims and show that the Tribe could not be under federal jurisdiction under any test. The Littlefields first contend that the United States is judicially estopped from finding that the Tribe was recognized and under federal jurisdiction in 1934, based on 1970s litigation finding that the Tribe lacked standing to bring claims under the Nonintercourse Act. They next argue that the Tribe cannot show it was under federal jurisdiction because its history of state jurisdiction cannot meaningfully be distinguished from that of the Narragansett Tribe, which *Carcieri* concluded was not under federal jurisdiction in 1934. The Littlefields also reject the particular forms of evidence submitted by the Tribe, arguing that *Carcieri* requires evidence of federal actions akin to a treaty, legislation, or formal benefits enrollment with the Office of Indian Affairs. The Littlefields conclude by arguing that Office of Indian Affairs officials disclaimed responsibility for the Tribe in and around 1934, conclusively showing the Tribe could not then have been under federal jurisdiction.

3. Mashpee Tribe Reply

The Tribe submitted its reply to the Littlefield Response on February 28, 2017.[93] The Tribe's Reply includes a new argument not raised in the Tribe's opening submissions.[94]The Tribe in its Reply additionally argues that because the Tribe occupied a reservation in 1934, as the Department in its 2015 Decision determined, it was automatically eligible to conduct a vote under IRA Section 18 to approve the IRA, and that such eligibility alone should be dispositive of its jurisdictional status.

Second, the Tribe argues that its 2007 federal acknowledgment entailed a finding of continuous tribal existence for all purposes of federal law. Based on this, the Tribe also claims that the Littlefields' argument for collateral estoppel amounts to an improper collateral attack on the acknowledged status of the Tribe.

Third, the Tribe presents arguments showing why the Narragansett Tribe's history is not relevant. The Tribe contends that Narragansett's jurisdictional status was never at issue in the *Carcieri* litigation, which turned instead on the meaning of "now" in the IRA's first definition of "Indian." The Tribe further argues that unlike with Mashpee, the federal government retroactively disclaimed jurisdiction over the Narragansett in 1934.

The Tribe also challenges the evidentiary standard relied on by the Littlefields. The Tribe contends that the test does not require an active guardian-ward relationship in effect in 1934 or even specific evidence from the year 1934. The Tribe further contends that the Littlefield Response confuses two distinct issues, namely, whether Massachusetts'

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[92] Citizens Group, "Submission on Remand, *Littlefield, et al. v. Department of the Interior*, No. 16-10184 (D. Mass 2016) (Littlefield Resp.).

[93] Mashpee Wampanoag Tribe, "Reply to Citizens' Group Submission on Remand, Littlefield, et al. v. Department of the Interior, No. 16-10184 (D. Mass., 2016) (Feb. 28, 2017) (MWT Reply).

[94] The Littlefields raised no objection to the Tribe's new argument.

exercise of jurisdiction over the Tribe could preclude federal jurisdiction, and whether federal officials in 1934 could waive federal jurisdiction in favor of state jurisdiction over a tribe. The Tribe concludes that state jurisdiction cannot, as a matter of law, preclude federal jurisdiction over Indian affairs and, separately, that M-37029 specifically states that once federal responsibility to a tribe attaches, only Congress may terminate it.

The Tribe concludes by denying that its evidence is episodic or insubstantial, as the Littlefields claim. The Tribe further notes the Littlefields' purported failure to address the Tribe's continued occupation of its aboriginal territory and the unique legal consequences thereof.[95] According to the Tribe, this forms a "fundamental feature" of the Tribe's interaction with the United States that must be viewed with the Tribe's other evidence of federal jurisdiction.

B. Littlefield "Vacatur" Request

The Littlefields devote nearly half of their Response to argue for the "vacatur" of M-37029 for being contrary to law and for lacking any meaningful test for determining when a tribe is *not* under federal jurisdiction in 1934.[96] While signed M-opinions are binding on Departmental offices and officials, including the Assistant-Secretary – Indian Affairs,[97] they may be modified by the Secretary, Solicitor, or Deputy Secretary.[98] The courts to have thus far assessed its interpretive framework have upheld its interpretation of IRA Section 19 and its two-step procedure for determining when a tribe was under federal jurisdiction in 1934.[99]

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[95] MWT Reply at 31 ff.

[96] *See* Littlefield Resp. at 2, 8-49. Despite being aimed at M-37029, the Littlefields include numerous arguments in this section of their Response that in fact challenge the merits of the Tribe's submissions, not M-37029.

[97] U.S. Dep't of the Interior, Departmental Manual, Part 209, ch. 3.2(A)(11), available at *http://elips.doi.gov/elips/. See also Rocky Mountain Oil & Gas Ass'n v. Andrus*, 500 F. Supp. 1338, 1341-42 (D. Wyo. 1980), *rev'd on other grounds and remanded*, 696 F.2d 734 (10th Cir. 1982) (Solicitor's opinions considered the "law of the Department"). The Secretary has delegated the authority to perform all the legal work of the Department to the Solicitor, 209 DM 3.1(A), who has responsibility for issuing final legal interpretations in the form of published M-Opinions on all matters within the jurisdiction of the Department. 209 DM 3.2(A)(11).

[98] 209 DM 3.2(A)(11).

[99] *See Confederated Tribes of the Grande Ronde Cmty. of Or. v. Jewell*, 75 F.Supp.3d 387 (D.D.C. 2014), *aff'd*, 830 F.3d 552 (D.C. Cir. 2016), *cert. den. sub nom. Citizens Against Reservation Shopping v. Zinke*, 137 S.Ct. 1433 (2017); *Cent. N.Y. Fair Bus. Ass'n v. Jewell*, No. 6:08-cv-0660 (LEK/DEP), 2015 U.S. Dist. LEXIS 38719 (N.D.N.Y. Mar. 26, 2015), *aff'd*, 2016 U.S. App. LEXIS 21965 (2d Cir. 2016), *petition for cert. filed*, (U.S. Mar. 9, 2017) (No. 16-1135) (deferring to Department's reasonable interpretation of "under federal jurisdiction"); *Citizens for a Better Way v. United States DOI*, No. 2:12-cv-3021-TLN-AC, 2015 U.S. Dist. LEXIS 128745, at *54 (E.D. Cal. Sep. 23, 2015) (upholding Department's reliance on IRA Section 18 vote in 1935 as dispositive evidence of being "under federal jurisdiction" for purposes of IRA Section 5); *Stand Up for Cal.! v. United States DOI*, 204 F. Supp. 3d 212, 282 (D.D.C. 2016) (same); *No Casino in Plymouth and Citizens Equal Rights Alliance v. Jewell*, 136 F. Supp. 3d 1166 (E.D. 2015), *appeal docketed*, No. 15-17189 (9th Cir. Nov. 3, 2015); *County of Amador v. Jewell*, 136 F. Supp. 3d 1193 (E.D. 2015), *appeal docketed*, No. 15-17253 (9th Cir. Nov. 13, 2015).

Many of the Littlefields' arguments for vacatur in addition seem misdirected, going as they do to the merits of the Tribe's remand submissions.[100] Such arguments have less to do with M-37029's interpretive framework than with how the Littlefields think it should be applied to the Tribe's submissions. The actual vacatur arguments the Littlefields proffer have two targets. The first is M-37029's interpretation of "under federal jurisdiction," which the Littlefields challenge as contrary to the IRA's purpose, intent, and historical context. The Littlefields claim that Congress intended to limit the IRA's benefits only to "restricted" Indians who were impoverished, uncivilized, and not state citizens. As explained below, such views have no support in the text or legislative history of the IRA.

The Littlefields' second aim is the two-step test for assessing jurisdictional status under M-37029. The Littlefields claim the test is inadequate since it can be satisfied easily by virtually any tribe, contrary to the decision in *Carcieri*. They further attack the kind of evidence M-37029 suggests may be used as insufficient. The Littlefields separately challenge the second step of M-37029's jurisdictional test, which considers whether a tribe's pre-1934 jurisdictional status (if any) continues or not through 1934. This includes two extraordinary claims: first, that Congress does not have sole authority to terminate a tribe; and second, that the courts may also terminate a tribe's acknowledged status when a tribe fails to continuously maintain a "tribal" status. These arguments find no support in judicial precedent or congressional enactments, and they run counter to the Constitutional foundations of the federal Indian affairs authority. I briefly address and reject the Littlefields' criticisms of M-37029 before turning to the question whether the Tribe's submissions meet its two-part framework, concluding that they unquestionably fall short.

1. Meaning of "UFJ"

The Littlefields claim that the interpretation of UFJ in M-37029 is contrary to law for several reasons. They first argue that UFJ must be interpreted narrowly to include only "restricted Indians" having a guardian-ward relationship with the United States who (1) had financial need; (2) were "unassimilated"; and (3) were not state citizens. Ignoring M-37029's exhaustive analysis of the legislative history behind the IRA, the Littlefields derive the requirement of financial need from the IRA's general "historical context." They assert that the Act was a "Depression-era" statute intended to limit benefits to Indians who "truly needed the Federal Government's ... support."[101] The Littlefields' suggested "restricted Indian" and "unassimilated" criteria derive from the Meriam Report, a *pre*-Depression study of the history and status of the federal government's implementation of the General Allotment Act. The plain language of the IRA, however, provides no support for the criteria suggested by the Littlefields, who do not dispute that the phrase "under federal jurisdiction" is ambiguous and subject to more than one interpretation. Neither the Act's plain terms nor its legislative history suggest that its

[100] *See, e.g.*, Littlefield Resp. at 15 (arguing legal effect of Massachusetts' extension of state citizenship to Tribe in 1869); 30 (significance of federal correspondence with Tribe in 1930s); 44-45 (discussing effect Mashpee land-claim litigation); 25-32 (arguing similar historical circumstances means that *Carcieri*'s finding of no federal jurisdiction for Narragansett Tribe renders Mashpee ineligible as well); 39-40 (challenging reliance on Carlisle Indian School records).
[101] Littlefield Resp. at 11.

benefits are conditioned by financial need, much less "civilizational" status. Nor would that make sense, since the Act's benefits are not directly financial, but instead meant to assist Indians in reorganizing their communities and replacing lost opportunities for economic development in the wake of the discredited General Allotment Act.

Next, the Littlefields argue that M-37029 is an "administrative nullification" of *Carcieri* that ignores the benchmark the Supreme Court set for the Narragansett Tribe.[102] This argument goes to the substance of the evidence submitted by the Tribe on remand, not the Solicitor's interpretation of UFJ in M-37029. It further misrepresents *Carcieri*, which did not offer an interpretation of UFJ, much less establish a "benchmark" for use by other tribes, finding instead that the parties had already conceded that the Narragansett were not under federal jurisdiction in 1934.[103]

2. Test of Federal Jurisdiction

a. Criteria

In addition to attacking M-37029's legal foundation generally, the Littlefields challenge its two-part framework for assessing federal jurisdiction particularly.[104] The Littlefields offer broad, conclusory assertions about the test while offering no evidence in support of their claims. For example, they claim that M-37029's two-step test is "too loosely structured"; may be satisfied by any listed evidence "*or, remarkably, without any of them*" (emphasis original); "basically any historical facts can count"; offers no meaningful guidance; amounts to "we know it when we see it" test; and is an "absurdity" that thwarts judicial review.[105] Courts, after considering arguments such as these, have consistently upheld the test set forth in M-37029 as reasonable,[106] and the Littlefields' own arguments rely on examples of its prior application.[107]

Consistent with their misunderstanding of the IRA's legislative intent, the Littlefields argue that the test under M-37029 should be narrower. The Littlefields inaccurately assert that M-37029 does not address "a key limiting principle" of the IRA, namely, "living under federal tutelage," which the Littlefields do not otherwise define.[108] To the contrary, M-37029's exhaustive review of the IRA's legislative history[109] expressly noted that it includes references to "more limiting terms such as 'federal supervision,' 'federal guardianship,' and 'federal tutelage.'"[110] Nevertheless the Solicitor concluded in M-37029 that, by relying "on the *broader* concept of under federal jurisdiction," Congress chose not to rely on those terms.[111] The Littlefields assert that the jurisdictional analysis

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[102] Littlefield Resp. at 25, 47.
[103] M-37029 at 5. *See Carcieri*, 555 U.S. at 399.
[104] Littlefield Resp. at 32-39.
[105] Littlefield Resp. at 32, 38, 39.
[106] *See, supra*, n. 97.
[107] Littlefield Resp., App. A (table detailing evidence relied on by the Department in prior determinations of "under federal jurisdiction" status).
[108] *See, e.g.*, Littlefield Resp. at 8.
[109] M-37029 at 6-12 (analyzing legislative history).
[110] M-37029 at 11, n. 71.
[111] M-37029 at 11-12, n. 71 (emphasis added).

should rely on criteria including financial need,[112] Indian service enrollment,[113] and "assimilated"[114] or civilizational status[115] (which the courts might evaluate at any time[116]), including state citizenship.[117] The Littlefields offer no authority for limiting the meaning of "under Federal jurisdiction" in this way, nor do they offer any examples of the type of records that might be used to satisfy their criteria.

I conclude that the Littlefields' interpretation runs counter to the plain text and legislative history of the IRA. Though they claim to derive their criteria from the IRA's historical context as a "Depression-era law,"[118] they rely primarily on a pre-Depression study of the General Allotment Act's implementation published six years before the IRA's enactment.[119] Further, as even the Littlefields note, Congress added the phrase "now under federal jurisdiction" to restrict the IRA's *first* definition of "Indian."[120] Its other provisions contain no reference to "assimilation" or state citizenship, and nowhere does the IRA require means-testing.[121] The remaining provisions of Section 19 make plain that the benefits of the IRA may extend to Indians based on their degree of Indian ancestry or on their status as Eskimos or aboriginal peoples of Alaska.[122]

b. Evidence

The Littlefields favorably offer Justice Breyer's view that the "under federal jurisdiction" requirement implies an obligation that is "jurisdictional in nature."[123] Under Justice Breyer's view, they claim, evidence to show a jurisdictional act must be more than a casual contact with a tribe. It must be dispositive, "something like a federal treaty, congressional appropriation, or direct supervision through the Indian Office," and must generally go beyond contacts with individuals.[124] Yet M-37029 already takes this approach. It rejects any test of under federal jurisdiction that relies only on Congress' plenary authority as inconsistent with the decision in *Carcieri*. Far from the

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[112] Littlefield Resp. at 11.
[113] *See* Littlefield Resp. at 16, n. 7.
[114] Littlefield Resp. at 11 (IRA distinguishes unassimilated "long hairs" from Indians "assimilated as state citizens").
[115] *See, e.g.*, Littlefield Resp. at 11ff. (purpose of IRA is to provide emergency relief to unassimilated Indians).
[116] Littlefield Resp. at 35.
[117] Littlefield Resp. at 16.
[118] Littlefield Resp. at 11, 15.
[119] *See* M-37029 at 6, n. 40, citing The Institute for Govt. Research, Studies in Administration, *The Problem of Indian Administration* (1928).
[120] *See* Littlefield Resp. at 13-14, citing *To Grant to Indians Living under Federal Tutelage the Freedom to Organize for Purposes of Local Self-Government and Economic Enterprise: Hearing on S. 2755 Before the Senate Committee on Indian Affairs*, 73rd Cong. at 237 (May 17,1934); *see also* M-37029 at 10. The District Court has since determined, contrary to the Department's interpretation of Section 19, that the second definition of "Indian" incorporates the jurisdictional requirement of the first.
[121] The IRA provides no direct financial benefits, but is instead intended to restore measures of political economic self-determination.
[122] The Littlefields err in their description of the IRA's third definition of "Indian," which does not, on its face, require a showing of "*more* than ½ [Indian] blood." Littlefield Resp. at 13 (emphasis added).
[123] Littlefield Resp. at 29, citing *Carcieri*, 555 U.S. at 399.
[124] Littlefield Resp. at 30.

"administrative nullification" the Littlefields claim,[125] M-37029 instead expressly acknowledges that *Carcieri* counsels the Department to point to "some indication...*beyond* the general principle of plenary authority to show that a tribe was under federal jurisdiction in 1934."[126]

M-37029 includes a discussion of the kinds of historical evidence that can show federal jurisdiction over a tribe, including treaties, congressional appropriations, and direct federal supervision.[127] But it also notes that a one-size-fits-all list of evidence types would not reflect the changing nature of federal Indian policy over time, from treaty-making to legislation to assimilation and allotment.[128] As a result, the types of federal actions that might show that a tribe was under federal jurisdiction may differ depending on the tribe and when first contact with non-Indians occurred.[129] However, my determination that the Tribe fails to satisfy the two-part analysis set forth in M-37029 eliminates any need to address the Littlefields' hypothetical claims whether a reasonable alternative analysis exists.

Finally, I note that the view that only Congress may terminate a tribe's government-to-government relationship with the United States, which the Littlefields characterize as "extreme,"[130] is in fact the view of Congress itself. In 1994 Congress expressly stated that a tribe acknowledged by Congressional legislation, administrative procedures, *or* judicial decision "may not be terminated *except by an Act of Congress*."[131]

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[125] Littlefield Resp. at 47.

[126] M-37029 at 18 (emphasis added).

[127] M-37029 at 14-16; 19-21.

[128] M-37029 at 14. *See also Confederated Tribes of the Grand Ronde Cmty. of Or. v. Jewell*, 830 F.3d 552, 565 (D.C. Cir.), *cert. denied sub. nom. Citizens Against Reservation Shopping v. Zinke*, 137 S.Ct. 1433 (2017) (contextual analysis takes into account the diversity of kinds of evidence a tribe might be able to produce, as well as evolving agency practice in administering Indian affairs and implementing the statute).

[129] The Littlefields also reject the jurisdictional significance of elections called by the Secretary pursuant to Section 18 of the IRA. Littlefield Resp. at 38. They equate a tribe's vote to reject the IRA with a rejection of federal jurisdictional authority. That mistakes the exercise of tribal self-determination for the federal exercise of Indian affairs jurisdiction, however, and neglects that the Indians who vote in a Section 18 election only do so *after* federal officials determine their eligibility – that is, conclude that they are eligible Indians over whom the federal government has jurisdiction. The Littlefields' view is also contrary to federal law. In 1983, Congress enacted the Indian Land Consolidation Act (ILCA). Pub. L. N. 97-459, 96 Stat. 2517, as amended. ILCA expressly directs that Section 5 of the IRA "shall apply to *all* tribes" notwithstanding the opt-out provisions of Section 18. 25 U.S.C. § 2202. As the majority in *Carcieri* stated, "[Section] 2202 by its terms simply ensures that tribes may benefit from [Section 5] *even if they opted out of the IRA pursuant to [Section 18]*." 555 U.S. at 394-95 (emphasis added). *See also Upstate Citizens for Equal., Inc. v. United States*, 841 F.3d 556, 572 (2d Cir. 2016) (emphasis original), citing 25 U.S.C. § 2202.

[130] Littlefield Resp. at 36. M-37029 relies on this settled principle of law in pointing out that the failure by federal officials to take actions on behalf of a tribe or their disavowal of legal responsibility toward a tribe may not, in themselves, necessarily reflect a termination or loss of jurisdictional status "absent express congressional action." M-37029 at 20.

[131] Pub. L. No. 103-454, § 103, 108 Stat. 4791 (Nov. 2, 1994) (emphasis added). *See, e.g., United States v. Zepeda*, 738 F.3d 201, 211 n.11 (9th Cir. 2013) ("Congress has declared that it alone has the authority to terminate a tribe's federally recognized status"); *Stand Up for Cal.! v. United States DOI*, 204 F. Supp. 3d 212, 301 (D.D.C. 2016) (tribe recognized through legislation, part 83 or by US court decision may not be terminated without an Act of Congress); *Muwekma Tribe v. Babbitt*, 133 F. Supp. 2d 30, 37 (D.D.C. 2000). *See also Baker v. Carr*, 369 U.S. 186, 216 (1962), citing *United States v. Sandoval*, 231 U.S. 28, 46 (1913)

C. Standard of Review

As already explained,[132] the Department construes the phrase "now under federal jurisdiction" in light of *Carcieri* as requiring a two-part inquiry.[133] The first part considers whether a tribe can show that the United States took an action or series of actions in or before 1934 that establish, or that generally reflect, federal obligations, duties, responsibility for or authority over the tribe by the federal government.[134] Such actions could include a course of dealings or other relevant acts for or on behalf of the tribe or, in some instances, its tribal members.[135] Evidence of such action might be specific to the tribe, such as treaties and treaty negotiations; the approval of contracts between a tribe and non-Indians; enforcement of the Trade and Intercourse Acts (Indian trader, liquor laws, and land transactions); or the provision of health or social services to a tribe. Other evidence might include actions by the Office of Indian Affairs, which exercised administrative jurisdiction over tribes, individual Indians, and their lands.

Where a tribe can establish it was historically under federal jurisdiction , the second part of the test ascertains whether there exists evidence or circumstances sufficient to demonstrate that the tribe's jurisdictional status remained intact as of 1934.[136] The lack of federal actions following the original establishment of jurisdiction does not, in itself, necessarily reflect a termination or loss of the tribe's jurisdictional status since in some instances a tribe's federal jurisdictional status may have continued even where federal officials thought otherwise.[137]

D. Analysis

M-37029 requires that I first determine whether the Tribe's submissions demonstrate a federal action or series of actions establishing or reflecting federal obligations, duties,

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(settled that Congress has right to determine for itself when guardianship over Indians shall cease); *Shinnecock Indian Nation v. Kempthorne*, No. 06-CV-5013 (JFB) (ARL), 2008 U.S. Dist. LEXIS 75826, at *28 (E.D.N.Y. Sep. 30, 2008) (federal recognition of Indian tribes poses a political question for Congress -- or, by delegation, the BIA -- to decide in the first instance and for federal courts to review pursuant to the APA only after a final agency determination), citing *Golden Hill Paugussett Tribe of Indians v. Weicker*, 39 F.3d 51, 60 (2d Cir. 1994); *Kahawaiolaa*, 386 F.3d at 1276; *Miami Nation of Indians of Ind., Inc. v. Dep't of Interior*, 255 F.3d 342, 346-48 (7th Cir. 2001); *Western Shoshone Business Council v. Babbitt*, 1 F.3d 1052, 1057 (10th Cir. 1993); *James v. United States Dep't of Health & Human Servs.*, 824 F.2d 1132, 1137 (D. C. Cir. 1987); *Samish Indian Nation v. United States*, 419 F.3d 1355, 1372-73 (Fed. Cir. 2005). As this further suggests, there is no basis in law for the Littlefields' unusual claim that the courts may *revisit* acknowledgement determinations from time to time to ensure a tribe's continuing adherence to recognition criteria. Littlefield Resp. at 35 ("Should the facts on the ground change with respect to an Indian group's organizational status and ability to satisfy the Montoya test, as may happen over time, nothing would preclude a court from reaching a different decision at a later date, again without any need for congressional approval").

[132] *See* Sec. I.A.2 above.

[133] M-37029 at 18-19.

[134] M-37029 at 19.

[135] M-37029 at 19.

[136] M-37029 at 19-20.

[137] M-37029 at 20, citing Stillaguamish Memo.

responsibility for or authority over the Tribe at or before 1934.[138] The Tribe claims that its evidence shows it was under federal jurisdiction before 1934 by operation of law and by virtue of specific exercises of federal authority that include federal acknowledgment of the Tribe's collective rights in land and natural resources; federal acknowledgment of its jurisdiction over the Tribe; federal management of tribal funds; inclusion of the Tribe in federal censuses; enrollment of Tribal children at an off-reservation federal Indian school; agency jurisdiction over the Tribe; and the federal provision of healthcare to the Tribe. As explained in more detail below, however, I conclude that the Tribe's submissions fail to provide evidence to satisfy the first step of M-37029's two-part inquiry.

1. Jurisdiction by Operation of Law

In stating the standard of review under M-37029,[139] the Tribe accurately notes that tribes lacking dispositive jurisdictional evidence in 1934 may show that their jurisdictional status arose before then. In doing so the Tribe further states that the analysis under M-37029 may look to federal obligations as well as activities, "since federal jurisdiction can exist as a matter of law" even if the government is unaware that it does.[140] The Tribe appears to do so in order to suggest that it came under federal jurisdiction as a matter of law in the early constitutional period.[141] The Tribe argues that after the American Revolution, the United States automatically succeeded to "treaty-like" obligations of the British Crown to the Tribe. [142] As evidence of these obligations the Tribe points to seventeenth-century colonial deeds from Wampanoag sachems conveying lands to the Tribe in perpetuity. The Tribe also cites a 1763 law by the Massachusetts Bay Province recognizing Mashpee as a self-governing Indian district.[143]

I disagree, however, that these title deeds and legislative acts are comparable to treaties. They are not "contracts between governments" and do not evidence mutual commitments between the Tribe and Crown, much less any reciprocal grant of rights by the Tribe to the

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[138] M-37029 at 18-19.

[139] MWT Op. Br. at 3. The Littlefields' objections to M-37029's analytic framework are addressed in Section II.B above.

[140] MWT Op. Br. 4-5, citing M-37029 at 18, 19, 23.

[141] MWT Op. Br. at 10-21.

[142] The Littlefields claim that any British obligations to the Tribe could only have been assumed by Massachusetts, since "[n]o Federal Government existed before 1789." Littlefields Resp. at 62. Yet the Supreme Court has held that when Britain's colonial sovereignty ceased, its powers in respect of external affairs passed to the American colonies "in their collective and corporate capacity as the United States of America." *United States v. Curtiss-Wright Exp. Corp.*, 299 U.S. 304, 317 (1936). As the Court noted, the purpose of the Constitution was to make "more perfect" that already existing Union. *Id. See also United States v. Lara*, 541 at 202 (in first century of America's national existence, Indian affairs were aspect of military and foreign policy, not domestic or municipal law).

[143] MWT Op. Br. at 13, citing Ex. E. By its terms, the 1763 Act incorporated the Mashpee Indians and their lands and provided for governance by five elected overseers, two of whom where to be Englishmen, with sole power to regulate the fishery at Mashpee and the allotment and leasing of Mashpee lands. *See* ACTS AND RESOLVES OF THE PROVINCE OF THE MASSACHUSETTS BAY. VOL. IV at 639-641 (1890).

Crown.[144] Further, while the Tribe characterizes the 1763 Act that established Mashpee as an Indian district to be the result of a "negotiated relationship" with the Crown,[145] the Office of Federal Acknowledgment showed it was the result of Tribal appeals to the Provincial legislature and Crown.[146] The Province passed the 1763 Act in response to "diplomatic pressure" from the King, not a treaty between Crown and Tribe.[147] The absence of any evidence of federal action in acknowledging or relying on the deeds or provincial acts, though not dispositive, diminishes the significance for our purposes.

Though the Mashpee Tribe asserts otherwise, the absence of any federal action with respect to its "treaty-like" rights distinguishes it from the Tunica-Biloxi Tribe, for whom the Department issued a favorable *Carcieri* analysis in 2011.[148] The Tunica-Biloxi Tribe fell under Spanish colonial authority before the United States acquired the Louisiana Territory through the 1803 Treaty of Paris. The Tribe held rights in its aboriginal lands by grant from Spain, and the Spanish government followed through on their commitment to defend the Tunica and their land by establishing a military post near the Tunica village to protect the Tunica and settlers from English and American colonists.[149] When the United States acquired the Louisiana Territory from France, the United States expressly assumed the same obligations to tribes in the Territory as those held by Spain.[150] To that end, Congress extended the Nonintercourse Act to the Louisiana Territory, and, more importantly, federal agents later used that law to affirmatively protect the Tunica-Biloxi Tribe's lands.[151]

The Mashpee Tribe elsewhere seeks to rely on the Nonintercourse Act to establish its own jurisdictional status;[152] yet the Tribe's own evidence shows that the federal government took no action to protect the Tribe's lands despite invitations to do so.[153] M-37029 makes clear that the *first* step of the jurisdictional inquiry looks to an "action or series of actions" or to "a course of dealings or other relevant acts" by federal officials demonstrating or reflecting the exercise of authority over the tribe at some point in or before 1934.[154] Only when that status is established does the inquiry turn to whether that jurisdictional relationship remained intact in 1934. As a result, the Tribe cannot rely on an inchoate jurisdictional status as the basis for being under federal jurisdiction.

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[144] *United States v. Wash.*, 520 F.2d 676, 684 (9th Cir. 1975), citing *United States v. Winans*, 198 U.S. 371, 381 (1905). *See also BG Grp. PLC v. Republic of Arg.*, 134 S. Ct. 1198, 1208 (2014) ("As a general matter, a treaty is a contract, though between nations.")
[145] MWT Op. Br. at 14.
[146] MWT PF at 96.
[147] MWT PF 96.
[148] *See* MWT Op. Br., Ex. D (Letter, Randall Trickey, Acting BIA Eastern Regional Director to Early Barbry, Sr., Chairman, Tunica-Biloxi Tribe of Louisiana (Aug. 11, 2011)).
[149] MWT Op. Br., Ex. D at 8-9.
[150] MWT Op. Br., Ex. D at 9, citing The Treaty between the United States of America and the French Republic of April 30, 1803 at Art. 6, 8 Stat. 200.
[151] MWT Op. Br. at 6-7 (discussing Tunica-Biloxi); *id.*, Ex. D.
[152] MWT Op. Br. at 16-17.
[153] MWT Op. Br. at 20, citing Exhibits Y, Z (1886-1887 correspondence relating to state allotment of Tribe's lands); *Mashpee Tribe v. Town of Mashpee*, 447 F.Supp. 940 (D. Mass. 1970), *aff'd sub nom. Mashpee Tribe v. New Seabury Corp.*, 592 F.2d 575 (1st Cir. 1979) (Tribe's Nonintercourse Act claims).
[154] M-37029 at 19.

In its Reply, the Tribe makes a similar argument for jurisdiction by operation of law based the Department's previous determination that the Tribe occupied a reservation in 1934. The Tribe claims the Department's determination has "legal consequences" for the M-37029 analysis.[155] The Tribe notes that after passage of the IRA, the Department's attorneys interpreted it as permitting any tribe in occupation of a reservation to vote in a Section 18 election, regardless how the tribe's reservation was established.[156] Based on that, the Tribe claims the Department's 2015 Decision entailed the finding that the Tribe was eligible to vote on the IRA in 1934 and was thus also under federal jurisdiction. I reject any claim that the 2015 Decision speaks to whether the Tribe was under federal jurisdiction in 1934 at all. The Department's inquiry there concerned only whether the Tribe occupied a "reservation" for IRA purposes. Based on the Department's understanding of the second definition of "Indian" at that time, it had no need address the Tribe's federal jurisdictional status. Moreover, the Tribe's argument misstates the role of the Secretary in conducting a vote on a tribe's reservation and misunderstands why the Department considers the calling of a Section 18 election to be dispositive evidence of a tribe's under federal jurisdiction status.

Whether the Secretary could have called a Section 18 election for the Tribe around 1934, a question we need not resolve here, the Tribe's eligibility alone would likely not satisfy the first step of the M-37029 analysis. As already noted, M-37029 requires evidence of particular federal acts. Before the Secretary could actually conduct any vote, he had to make an overt determination—i.e., take an action. He had to determine that adults lived on an eligible reservation and met the statute's definition of "Indian" such that they were entitled to the opportunity, provided by Section 18, to vote on whether to accept or reject the IRA. Indeed, the very reason a Section 18 vote is dispositive of a tribe's jurisdictional status is that it required the Secretary to determine the existence of a reservation and that the adult residents met the IRA's definition of "Indian," such that they were under federal jurisdiction and eligible for IRA benefits unless they opted out of the Act. In this way, the calling of a Section 18 election is an unmistakable assertion of federal jurisdiction.[157] As a result, the Tribe's argument in effect begs the question of whether it was under federal jurisdiction.

The parties also submit arguments concerning the import of Massachusetts' historical exercise of authority over Indians.[158] These arguments also do not address the issue of

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[155] MWT Reply at 2, citing Ex. A (2015 Dec.) at 120.
[156] MWT Reply at 2.
[157] M-37029 at 20-21.
[158] The state legislation referenced by the parties demonstrates the scope of authority that Massachusetts exercised over Indians in the Commonwealth. *See, e.g.*, Mass. Gen. L., ch. 148 (Mar. 26, 1793) (settling boundaries of Mashpee Tribe of Indians); Mass. Gen. L., ch. 27 (1798) (appropriating funds to compensate for costs incurred in recovering possession of Mashpee Indian lands); Mass. Gen. L., ch. 89 (1818) (appointing individuals to review Mashpee Indian system of governance); Mass. Gen. L., ch. 105 (1819) (requiring Indian descent to be Mashpee proprietor; granting overseers powers as "Guardians" over Mashpee Indians; penalizing liquor sales to Mashpee Indians; penalizing trespass and felling of timber on Mashpee lands; requiring annual review of overseer accounts by Court of Common Pleas); Mass. Gen. L., ch. 167 (1834) (establishing Mashpee plantation as district; limiting vote to proprietors; exempting proprietors from state and county taxes and prohibiting forfeiture of lands for taxes); Mass. Gen. L., ch. 72

particular exercises of federal authority. The Tribe argues that the United States retained paramount authority over Indian affairs in the original thirteen states, including Massachusetts, though it suggests that its exercise was slow to develop in the early constitutional period. It adds that, in any event, a state's relationship with a tribe does not oust or otherwise limit federal authority.[159] The Littlefields make several arguments in response why Massachusetts' authority over the Tribe precluded any federal jurisdictional relationship in or before 1934. The Littlefields assert that because the Tribe was always under the Commonwealth's care and authority, its members could never have been wards of the federal government.[160] They add that no Massachusetts tribe was ever recognized as a distinct political community by the United States via treaty or other legislative or executive act.[161] The Littlefields also claim that the Tribe's members voluntarily abandoned tribal relations when they acquired state citizenship[162] and that by 1934 they had fully assimilated into non-Indian society.[163]

The discussion by the parties of claimed state assertions of authority and provision of services and whether those assertions and provisions were illegal or improper miss the mark. The M-37029 analysis unfolds against the backdrop of federal plenary authority.[164] The question is not whether such authority exists, but whether federal officials ever exercised it with respect to a particular tribe at or before 1934. The inquiry is not a type of balancing test in which the instances of state assertions or exercises are compared and contrasted with exercises of federal authority. Instead, as M-37029 makes clear, in order to determine whether the Tribe was under federal jurisdiction for purposes of the M-37029 analysis, I must look instead to the arguments and evidence purporting to show specific exercises of federal authority over the Tribe.

2. Evidence of Particular Acts

The Tribe claims its submissions evidence particular exercises of federal authority over the Tribe in the years before 1934. These include an 1822 report prepared by the

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(1842) (allotting Mashpee lands in severalty; providing that remaining lands to be held in common exclusively for the use of Mashpee district; restricting alienation of allotted lands); Mass. Gen. L., ch. 463 (1869) (enfranchising all Massachusetts Indians; deeming all state lands held by Indians in severalty to be fee lands; restricting alienation of such lands for debts incurred before date of Act); Mass. Gen. L., ch. 293 (1870) (abolishing Mashpee Indian district; incorporating town of Mashpee; transferring all common lands, funds and all fishing and other rights to the town); Mass. Gen. L., ch. 248 (1878) (incorporating Town of Mashpee; ordering county register of deeds to record land records from prior Mashpee district in separate volume); Mass. Gen. L., ch. 151 (1882) (providing for appraisal and private sale of remaining common lands of Mashpee).

[159] Mashpee Wampanoag Tribe, "The Early Relationship Between The Mashpee Wampanoag Tribe And The Commonwealth Of Massachusetts Cannot Preclude Federal Jurisdiction Under The IRA" (Dec. 21, 2017).

[160] Littlefield Resp. at 2-3.

[161] Littlefield Resp. at 3.

[162] Littlefield Resp. at 15, 45, 52-53, 66. The Littlefields inaccurately assert that the Tribe's members "voted to become citizens of Massachusetts." *Id.* at 46. The enfranchisement of the Tribe's members came about through an act of the Massachusetts legislature aimed at all Indians in the Commonwealth. *See* Mass. Gen. L., ch. 463 (1869).

[163] *See, e.g.,* Littlefield Resp. at 32.

[164] M-37029 at 12-14 (discussing constitutional authorities that form backdrop of federal plenary authority).

Reverend Jedidiah Morse on the condition of Indians in the United States as a prelude to possible removal of eastern tribes;[165] the Office of Indian Affairs' reliance between 1825 and 1850 on statistical tables that referenced the Mashpee;[166] a six-volume work on the tribes of the United States commissioned by Congress and prepared by Henry Schoolcraft, which included a description of the Mashpee Tribe and policy recommendations concerning them;[167] several federal reports prepared between 1888 and 1934 that reference the Tribe and its history; federal censuses from 1910 and 1911that list Tribal members;[168] the enrollment of Tribal children in the Carlisle Indian Industrial School between 1905 and 1918;[169] and the purported acknowledgment by the United States Navy of the Tribe's usufructuary rights around 1950. [170] I address each in turn.

a. Morse Report

The discussion of the Tribe in an 1822 report commissioned by the United States from the Reverend Jedidiah Morse does not evidence the exercise of federal authority over the Tribe. In 1820, Secretary of War John C. Calhoun commissioned Reverend Morse, a reputable geographer, to visit various tribes in the country "in order to acquire a more accurate knowledge of their social and political conditions, and to devise the most suitable plan to advance their civilization and happiness."[171] Morse spent four months traveling from the eastern seaboard to the Northwest Territory gathering information from some tribes himself.[172] Acknowledging the difficulty of personally visiting "the whole territory inhabited by the Indians,"[173] information about other tribes was collected from other materials, including questionnaires.[174] Morse compiled the information in statistical tables "embracing the names and numbers of all the tribes within the jurisdiction of the United States."[175] The Report includes a 400-page appendix detailing the information Morse collected and summarizing it in several tables.

The Tribe fails to show how the Morse Report constitutes a federal action reflecting an exercise of authority over the Tribe. The Tribe characterizes the Morse Report as the "first explicit application of federal Indian policy" – not, however, to the Tribe in particular but "to eastern tribes" generally.[176] Yet as even the Tribe concedes, Congress ultimately took no steps to remove any tribes based on the Morse Report and, despite its

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[165] MWT Op. Br. at 21.
[166] MWT Op. Br. at 25-28.
[167] MWT Op. Br. at 28.
[168] MWT Op. Br. at 29, 30, 38.
[169] MWT Op. Br. at 32.
[170] MWT Op. Br. at 38.
[171] Rev. Jedidiah Morse, A REPORT TO THE SECRETARY OF WAR OF THE UNITED STATES ON INDIAN AFFAIRS 11-12 (1822) (Morse Report).
[172] Morse Report at 13.
[173] Morse Report at 21.
[174] *See, e.g.*, Morse Report at 22 (announcing intent to collect and arrange existing facts and materials presently scattered in books and manuscripts).
[175] Morse Report at 23. *See also* at 22 (describing task as to "lay before the Government, as full and correct a view of the numbers and actual situation of the *whole* Indian population within their jurisdiction") (emphasis original).
[176] MWT Op. Br. at 21.

deliberations, enacted no national removal policy until the following decade.[177] The Tribe's evidence demonstrates that the federal government did little more than consider the Tribe, along with tribes across the United States, as *potentially* subject to the exercise of the federal Indian authority, in this case for the purpose of removal and resettlement. As this further suggests, the Morse Report only provides evidence of Congress' plenary authority over tribes.[178] This is consistent with the Department's 2015 Decision, which characterized the lands set aside for the Tribe as "subject to federal oversight as part of the Federal Government's larger agenda to remove Indians from their aboriginal territories" based on the Morse Report.[179] While the Morse Report provides evidence that the federal government was cognizant of the existence of the Tribe and its lands,[180] it does not further demonstrate any exercise of federal authority over any tribe, much less the Tribe itself. The Morse Report's compilation of general information about tribes in the United States, without more, does not amount to an action or course of dealings for purposes of the first part of M-37029's two-part analysis.[181]

The same is true of the subsequent use made of the Morse Report by Executive officials and Congress. The Tribe notes that the Morse Report was circulated to Congress and the Executive Branch for use in considering the development and application of federal trade and removal policies.[182]

The Tribe asserts that Congress "debated" the Morse Report, noting an express reference to Indians that "reside on their respective reservations" in Massachusetts, including the Mashpee Tribe.[183] But the House Report cited shows that the Morse Report was referred to the House Committee on Indian Affairs so its members could "know something of the situation of [the Indian tribes], and of their numbers" in considering proposed amendments to the Trade and Intercourse Act.[184] The passage relied on by the Tribe further shows that Representative Metcalf recited passages verbatim from the Morse Report.[185] As the full House Report makes clear, the Committee's concern was whether the government's plans for the "civilization of the Indians" was appropriately within the scope of federal authority generally. While such use of the Morse Report shows that the existence of certain tribes and their lands, including the Mashpee, was made known to Congress, it fails to demonstrate that Congress or the Executive Branch took any further action with respect to the Tribe in response.

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[177] MWT Reply at 36, n. 33; *see also* Littlefield Resp. at 73. It thus also remains unclear what "course of dealings between the Tribe and the United States" the Morse Report initiated. MWT Op. Br. at 21.
[178] MWT Reply at 22 (Administration's authority to consider Mashpee for removal based on federal jurisdictional authority over tribal lands wherever located).
[179] 2015 Decision at 115.
[180] *See* MWT PF at 40 (discussing Morse Report for evidence of Tribe's existence as a distinct community from historical times to the present).
[181] *See* MWT Op. Br. at 25-28 (describing federal government's use of statistical information). *Cf.* MWT Reply at 38 (federal jurisdictional inquiry "is not limited to federal actions but the presence of federal jurisdiction").
[182] MWT Op. Br. at 23 ff.
[183] MWT Op. Br. at 23, citing Ex. ZB (House of Representatives Report on Indian Trade, 17th Cong., 1st Sess., at 1794 (remarks of Rep. Metcalf)).
[184] MWT Op. Br., Ex. ZB at 1792.
[185] MWT Op. Br., Ex. ZB at 1793.

Similarly, the transmittal by Secretary of War John Calhoun of statistical information compiled by Colonel Thomas McKenney and based in part from the Morse Report reflects no exercise of federal authority over the Tribe. Indeed, when transmitting the information to President Monroe, Secretary Calhoun does not even mention the Tribe, but instead refers to "the small remnants of tribes in Maine, Massachusetts, Connecticut, Rhode Island, Virginia, and South Carolina."[186] He does so, moreover, for the limited purpose of reporting his presumption that any arrangement for the removal of Indians "is not intended to comprehend" those tribes.[187] President Monroe's transmittal to Congress is even less specific, as the Tribe notes.[188] It broadly recommends the removal of Indian tribes "from the lands they now occupy, within the limits of the several States and Territories,"[189] and it transmits the Department of War's best estimate of the number of Indians "within our States and Territories, and of the amount of lands held by the several tribes within each."[190] The Tribe concedes that this simply shows that the Tribe was "deemed subject to federal Indian policy, that is, within the jurisdiction of the United States,"[191] not that it was ever subjected to such authority by the federal government. The same is true of the subsequent uses of such statistical information noted by the Tribe.[192] For these reasons, the federal government's use of information compiled by Reverend Morse and Colonel McKenney do not, in and of themselves, satisfy the first-step of the M-37029 analysis.[193]

b. Schoolcraft Report

The Tribe submits for the first time on remand a survey of tribes in the United States published in 1851. The Tribe does so as particular evidence that federal Indian agents treated the Mashpee Tribe as subject to federal jurisdiction.[194] The report was prepared by Henry R. Schoolcraft, a United States Indian Agent, using funds appropriated by Congress in 1847 for that purpose.[195] His six-volume Report includes historical and statistical information on the condition and prospects of tribes in the United States and it totaled several thousand pages. The Schoolcraft Report refers to the Mashpee Tribe only

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[186] MWT Op. Br., Ex. ZC at 542.
[187] MWT Op. Br., Ex. ZC at 542; *see also* MWT Op. Br. at 24.
[188] MWT Op. Br. at 25.
[189] MWT Op. Br. Ex. ZC at 541.
[190] MWT Op. Br. Ex. ZC at 542.
[191] MWT Op. Br. at 25 (quoting Morse Report) (internal quotations omitted).
[192] MWT Op. Br. at 25-26.
[193] MWT Op. Br. at 25-28. The Tribe's evidence shows that McKenney later provided copies of the table in response to requests by Congress, the Executive, and private scholars for information about tribes in the United States.
[194] MWT Op. Br. 38-39. Henry R. Schoolcraft, HISTORICAL AND STATISTICAL INFORMATION RESPECTING THE HISTORY, CONDITION AND PROSPECTS OF THE INDIAN TRIBES OF THE UNITED STATES: COLLECTED AND PREPARED UNDER THE DIRECTION OF THE BUREAU OF INDIAN AFFAIRS. PT. I at 524 (1851) (Schoolcraft). The Schoolcraft Report did not form part of the evidence evaluated by the Department in preparing the 2015 Decision.
[195] MWT Op. Br. at 27, citing Act of March 3, 1847, ch. 66, § 6, 9 Stat. 263.

twice, once in a consolidated table listing the combined population of tribes existing within Massachusetts,[196] and later as part of a list of tribes residing in Massachusetts.[197]

The Schoolcraft Report describes a proposed plan of improvement for the Massachusetts Indians generally,[198] which includes the enactment of a uniform system of laws for the Indians, merging certain tribes (excluding the Mashpee) into one community, and appointing an Indian commissioner for the Indians' supervision and improvement.[199] The Tribe claims that these recommendations evidence "a clear exercise of federal jurisdiction by the Office of Indian Affairs." because made by Schoolcraft himself.[200] A closer examination reveals that Schoolcraft was merely reporting recommendations contained in an 1849 report of state commissioners to the Massachusetts legislature on the condition of Indians in the state.[201] While the recommendations suggest that Massachusetts considered the Tribe and its lands within the state's authority, in and of themselves the recommendations do not demonstrate any federal activity, and the Tribe offers no other evidence that the United States adopted or approved them. As with the Morse Report, the Schoolcraft Report at best suggests federal awareness of the existence of the Tribe and its lands, but does not demonstrate any exercise of federal authority over the Mashpee Tribe.[202]

c. Federal Reports

The Tribe also submits several reports prepared by or for federal officials between 1888 and 1934 as evidence of a continuing federal acknowledgment of the Tribe's collective rights in its tribal lands. These reports do not formally acknowledge Tribal rights as such, but rather provide accounts of the Tribe's historical and contemporary circumstances. None provides evidence of any exercises of federal authority by officials over the tribe. While M-37029 points to "annual reports, surveys, and census reports" produced by the Office of Indian Affairs as evidence of federal authority, it makes clear that such material may provide evidence of federal authority when produced "as part of the exercise of [the Office of Indian Affairs'] administrative jurisdiction" over a tribe.[203] While the reports might reflect that the federal government's authority to act persisted during this period, none of the reports submitted by the Tribe reflect that they were prepared as an exercise of administrative jurisdiction over the Tribe. Neither does the Tribe suggest that the

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[196] Schoolcraft at 524.
[197] Schoolcraft at 287.
[198] Schoolcraft at 287.
[199] Schoolcraft at 287.
[200] MWT Op. Br. at 29; MWT Reply at 30.
[201] *See* House No. 46, *Report of the Commissioners Relating to the Condition of the Indians in Massachusetts* at 24-38, 54-57 (Mass. 1849).
[202] The Tribe further argues that the Department has already determined that inclusion in a federal survey "for federal Indian policy purposes" is probative evidence of a tribe's jurisdictional status, relying on a record of decision prepared for the Tunica-Biloxi Tribe of Louisiana. MWT Reply at 38, citing Ex. D (Dept. of the Interior, Bureau of Indian Affairs, Record of Decision for the Tunica-Biloxi Tribe of Louisiana (Aug. 11, 2011)). The Tunica-Biloxi ROD relied instead on a federal agent's defense of the Tribe's aboriginal title under the Non-Intercourse Act, which "clearly demonstrated the Tribe's jurisdictional relationship with the Federal Government." Id. Ex. D at 11.
[203] M-37029 at 16.

reports provide evidence demonstrating a course of dealings over time that, when viewed as a whole, demonstrates a federal obligation to the Tribe beyond the general principle of plenary authority.

The 1888 report prepared by Alice C. Fletcher is a nearly 700-page account of the history and current state of administration of Indian affairs and Indian education on federal Indian reservations in the United States.[204] Prepared in response to a Senate resolution and under the direction of the Department's Commissioner of Education, it includes a brief, two-page account of the seventeenth-century history of Massachusetts tribes, including the Mashpees, and an account of contemporary state legislation affecting the Mashpees based on information from a Tribal member.[205] The 2015 Decision relied on Mrs. Fletcher's report as evidence of the existence of the Mashpee reservation and the external recognition of the Town's "reservation-like" character.[206] On remand the Tribe also argues that, "acting effectively as an Indian agent," Mrs. Fletcher "confirmed the Tribe's tenacious ties to its land."[207] While the Fletcher report does describe the Tribe's historical ties to its lands, it makes no assertion as to the federal government's role, if any, in establishing or maintaining such ties, and thus offers no evidence of the exercise of federal authority over the Tribe or its members beyond the general principle of plenary authority.

The 2015 Decision relied on a draft report on New England tribes prepared by Gladys Tantaquidgeon for the Office of Indian Affairs to show the Tribe's continuing occupation of its lands through 1934.[208] The 2015 Decision described the Tantaquidgeon report as providing "details on their 'reservation,' subsistence practices, education facilities, health needs, arts and language, and governance.[209] The 2015 Decision noted that though the BIA commissioned Tantaquidgeon's report, the BIA never officially published it.[210] On remand the Tribe now also claims that the Tantaquidgeon report demonstrates "federal treatment of the Tribe has having collective rights."[211] The Tribe relies on Tantaquidgeon's description of the Tribe as "in occupation of an Indian town, also referred to by [Tantaquidgeon] as a reservation."[212] Though the Tribe describes the contents of the Tantaquidgeon report, it does not address how the report demonstrates any exercise of federal authority over the Tribe. The 2015 Decision relied on the report for its contemporary and historical account of the Tribe's lands and its occupancy thereof. While such information supports the Department's earlier determination that the Tribe

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[204] MWT Reply at 39; MWT Op. Br. at 30.

[205] S. Ex. Doc. No. 48-95, *Indian Education and Civilization. A Report Prepared in Answer to Senate Resolution of February 23, 1885* at 59-60 (1888). Fletcher's account relied on information provided by a Mashpee tribal member who was also a sitting member of the Massachusetts state legislature. *Id.* at 60, n. 1.

[206] 2015 Decision at 114; *see also id.* at 106.

[207] MWT Op. Br. at 30.

[208] 2015 Decision at 109.

[209] 2015 Decision at 109.

[210] 2015 Decision at 109, n. 340. The 2005 Proposed Finding in favor of the Tribe's federal acknowledgment noted that Tantaquidgeon's findings were summarized in an Office of Indian Affairs newsletter. MWT PF at 23.

[211] MWT Op. Br. at 6.

[212] MWT Op. Br. at 38.

could be considered to have occupied a reservation for IRA purposes in 1934, it does not show any formal action by a federal official determining any rights of the Tribe. Neither does the Tribe offer any arguments or evidence demonstrating what use, if any, Department officials made of Tantaquidgeon's report. While the Tantaquidgeon report offers historical evidence of the Tribe's long-standing historical use and continued occupation of Tribal lands, it provides little if any demonstration of the exercise of federal jurisdictional authority over the Tribe.[213]

In finding that the Tribe occupied a reservation for IRA purposes, the 2015 Decision also relied on the 1890 Annual Report of the Commissioner of Indian Affairs (ARCIA) to show external recognition of the fact that the Tribe historically occupied lands set aside for its use.[214] On remand the Tribe argues that the ARCIA "unambiguously acknowledges collective rights [on the part of the Tribe] in tribal land"[215] which, the Tribe claims, gives "rise to federal responsibilities toward the Tribe."[216] While the 1890 ARCIA plainly notes the existence of the Tribe's Massachusetts reservation, that does not amount to an acknowledgment of federal responsibility for, or an exercise of federal authority over, the Tribe. The passage the Tribe cites occurs in a discussion of Indian title generally. It states that "only in Massachusetts, New York, and North Carolina are Indians found holding a tribal relation and in possession of specific tracts." However the Commissioner's statement follows his assertion that as of the early nineteenth century, "no Indians within the limits of the thirteen original States retained their original title of occupancy."[217] As noted in the 2015 Decision, the Commissioner explained that the Tribe had a State-appointed board of overseers that governed the Tribe's internal affairs and held the Tribe's lands in trust.[218] The Tribe's claim that the 1890 ARCIA constitutes an express acknowledgment of *federal* responsibility is also inconsistent with the remainder of the Commissioner's report, which describes the federal government's pursuit at that time of "a uniform course of extinguishing the Indian title."[219] A table showing the population of Indians by state and the areas of Indian reservations contained later in the 1890 ARCIA omits any reference to Massachusetts or to Massachusetts tribes.[220] The Commissioner concluded his discussion of Indian title with a statement of then-applicable federal policy: "The sooner tribal relations are broken up and the reservation system done away with the better it will be for all concerned."[221] These statements weigh heavily against the Tribe's interpretation of the 1890 ARCIA as acknowledging or assuming federal responsibilities for the Tribe.

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[213] MWT PF at 23.
[214] 2015 Decision at 106, 114.
[215] MWT Reply at 39; MWT Op. Br. at 30-31.
[216] MWT Op. Br. at 31.
[217] MWT Op Br. at 30. *See also* H. Ex. Doc. No. 51-1, Pt. 5, *Report of the Secretary of the Interior*, vol. II at XXVI (1890).
[218] 2015 Decision at 106, 114; MWT Op. Br. at 30-31.
[219] 1890 ARCIA at xxix.
[220] 1890 ARCIA at xxxvii, Table 10.
[221] 1890 ARCIA at xxxix.

d. Federal Acknowledgment of Usufructuary Rights

The Tribe relies on a title report prepared for condemnation proceedings brought by the Department of the Navy in the late 1940s against lands in which a Mashpee Tribal member had interests as evidence showing "clear federal knowledge of, and acquiescence to" aboriginal hunting, fishing and gathering rights of the Tribe.[222] A title report[223] prepared in connection therewith indicated that some of the lots in question were subject to the reserved right of the Proprietors of Mashpee to cross over the lots for the purpose of gathering seaweed and marsh hay.[224] The title report states that the reservations of rights originated in deeds prepared by the Mashpee Commissioners.[225] The Tribe states that the deeds were prepared pursuant to laws enacted by the State of Massachusetts for the purpose of allotting the Tribe's lands in the late nineteenth century.[226] The Tribe claims the deeds "confirm" the existence of aboriginal usufructuary rights that "are subject to federal protection."[227] This neglects several things. As noted above, the evidence of action by the State of Massachusetts with respect to the Tribe's property under state law does not provide evidence of federal action or authority, either expressly or by operation of law. Moreover, while the deeds on which the Tribe relies reserve to the Tribe's members the right to cross over the subject parcels to gather seaweed and marsh hay elsewhere, they nowhere indicate whether such rights arise as a matter of common law or aboriginal right. Even if the Tribe retained aboriginal rights at the time of the condemnation proceedings, rather than common law property rights under state law, that fact alone would not satisfy the M-37029 analysis because it would not show any exercise of federal authority with respect to such rights.

The absence of any federal actions with respect to Mashpee's usufructuary rights distinguishes the Tribe from the case of the Stillaguamish Tribe.[228] In 1976, the Department declined to take land into trust for Stillaguamish based on doubts whether it was under federal jurisdiction in 1934. In 1980, the Department found that the Tribe was a beneficiary of fishing rights acknowledged and protected under the 1855 Treaty of Port Elliott, to which the Stillaguamish Tribe was a signatory.[229] For purposes of the M-37029 analysis, the issue is not whether aboriginal usufructuary rights are subject to federal protection as a matter of law[230] or whether they exist absent a tribe's federal acknowledgment.[231] The issue instead is whether the federal government took any action or series of actions in the exercise of its plenary power over a tribe.[232] The reservation

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[222] MWT Op. Br. at 38 ff.
[223] MWT Op. Br., Ex. ZZD.
[224] MWT Op. Br., Ex. ZZD at 3-4.
[225] MWT Op. Br., Ex. ZZD at 3-4.
[226] MWT Op. Br. at 39-40; *see also* MWT Reply at 46.
[227] MWT Op. Br. at 42; *see also id.* at 6, 11, 16-17.
[228] MWT Reply at 47.
[229] M-37029 at 20, 23; *see also Carcieri*, 555 U.S. at 398 (Breyer, J., concurring).
[230] MWT Reply at 47, citing *Mitchel v. United States*, 34 U.S. 711, 748 (1835); *United States v. Michigan*, 471 F. Supp. 192, 256 (W.D. Mich. 1979), *aff'd as modified*, 653 F.2d 277 (6th Cir. 1981).
[231] MWT Reply at 47, citing *Timpanogo Tribe v. Conway*, 286 F.3d 1195, 1203 (10th Cir. 2002); *United States v. Suquamish Indian Tribe*, 901 F.2d 772, 776 (9th 1990).
901 F.2d 772, 776 (9th Cir. 1990).
[232] M-37029 at 17-19.

under state law of usufructuary rights for tribal members does not, standing alone, provide such evidence.

e. Censuses & School Enrollment

The Tribe on remand argues that by admitting Mashpee children as students to the Carlisle Indian School between 1905 and 1918, the federal government "explicitly acknowledged its jurisdiction over the Tribe."[233] The Tribe appears also to suggest that the direct supervision of Mashpee students by federal officials at Carlisle constitute indicia of federal jurisdiction over the Tribe. The Tribe's claim that the enrollment of students constituted an explicit acknowledgment of federal jurisdiction over Tribe appears to rely on several things. These include funding of Carlisle through congressional appropriations; the federal government's use of Carlisle as an instrument of Indian educational policy; Departmental regulations governing non-reservation Indian schools; and school records for individual Mashpee students.[234] While such evidence clearly demonstrate exercises of federal authority over Indians generally and individual Indians specifically, none suffice to show an exercise of federal authority over the Mashpee Tribe as distinct from some of its members.

The Tribe asserts that the provision of federal services to individual tribal members, such as health or social services, can be the basis for finding of federal jurisdiction over a tribe,[235] and it notes that the provision of educational services was used to demonstrate federal jurisdiction over other tribes like the Cowlitz Tribe.[236] While that is true, it neglects that the Cowlitz determination also relied on a wide range of other evidence covering an extended period of time. This included a history of the BIA regularly providing services to the Cowlitz Indians such as "supervising allotments, adjudicating probate proceedings, providing education services, assistance in protecting fishing activities, investigating tribal claims to aboriginal lands, and approving attorney contracts,"[237] none of which the Tribe has shown here.

The evidence of Mashpee student enrollment at Carlisle does not unambiguously demonstrate that such enrollment was predicated on a jurisdictional relationship with the Tribe as such. Without any other evidence that the federal government provided services to the Tribe, the Mashpee student records fall short of demonstrating that Tribe itself came under federal jurisdiction. Even if it could, however, the Tribe also offers no argument or evidence that any such jurisdictional status continued after Carlisle closed in 1918. Thus while the evidence of enrollment Carlisle is plainly relevant to the M-37029

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[233] MWT Op. Br. at 36.
[234] MWT Op. Br. at 32-36.
[235] MWT Reply at 44, citing M-37029 at 16, 19.
[236] MWT Reply at 44, citing *Confederated Tribes of the Grand Ronde Community v. Jewell*, 75 F. Supp.3d 387, 403 (D.D.C.) *aff'd* 830 F.3d 552, *cert. denied sub nom. Citizens Against Reservation Shopping v. Zinke*, 137 S.Ct. 1433 (2017).
[237] U.S. Dep't of the Interior, Bureau of Indian Affairs, Record of Decision, Trust Acquisition of, and Reservation Proclamation for the 151.87-acre Cowlitz Parcel in Clark County, Washington, for the Cowlitz Indian Tribe at 97-103 (Apr. 22, 2013) (describing course of dealings between Cowlitz Tribe and federal government between 1855 and 1932).

inquiry, without more it is insufficient to show that the Tribe "was subjected to...clear, federal jurisdiction."[238]

The Tribe also argues that inclusion on a 1910 Indian census "reflects the existence of a federal-Indian relationship and demonstrates that the federal government acknowledged responsibility for the tribes and the Indians identified therein."[239] Yet as with the nineteenth-century federal reports referencing the Tribe and its lands, the listing of Tribal members on a federal census, though it may be probative of federal jurisdiction over the Tribe, in and of itself is inconclusive,[240] and the Tribe provides no argument or evidence to suggest otherwise.[241]

CONCLUSION

As explained in Section II.B above, the framework contained in M-37029 for determining whether a tribe was under federal jurisdiction for purposes of Section 19 of the IRA governs my analysis. Applying that framework here, I must conclude that the evidence submitted by the Tribe on remand provides insufficient indicia of federal jurisdiction beyond the general principle of plenary authority. The evidence does not demonstrate that the United States had, at or before 1934, taken an action or series of actions that sufficiently establish or reflect federal obligations, duties, responsibilities for or authority over the Tribe. As a result I conclude that the evidence does not show that the Tribe was under federal jurisdiction in 1934 for purposes of the IRA.

Based on that finding, I must also conclude that the Tribe cannot meet the IRA's first definition of "Indian," or its second definition as interpreted by the United States District Court for the District of Massachusetts in the *Littlefield* litigation. I therefore cannot grant the Tribe's land-into-trust application under either of those definitions. As discussed above, the Court's reading of the second definition of "Indian" in the IRA incorporates the "under Federal jurisdiction" requirement. Because I have concluded that the Tribe was not under federal jurisdiction in 1934, I need not reconsider or reevaluate whether

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[238] MWT Op. Br. at 34. The same is true of the listing of Mashpee students on a 1911 census entitled "Census of Pupils Enrolled at Carlisle Indian School." MWT Op. Br. at 32.

[239] MWT Reply at 41, citing Memorandum, Michael J. Berrigan, Associate Solicitor, Division of Indian Affairs to Pacific Regional Director, *Determination of Whether Carcieri v. Salazar or Hawaii v. Office of Hawaiian Affairs limits the authority of the Secretary to Acquire Land in Trust for the Santa Ynez Band of Chumash Indians*, 9 (May 23, 2012).

[240] MWT Op. Br. at 31. The Tribe notes it members were listed as "Wampanoag." It further notes that a number of Indian families in Mashpee were shown on the general federal census in 1900, not the Indian census, an omission the Tribe describes as an error. MWT Op. Br. at 31, n. 25.

[241] The 1910 Indian census was prepared by the Director of the Census, not the Office of Indian Affairs as the Tribe suggests. *See* Act of March 3, 1899, ch. 419, 30 Stat. 1014; Act of March 6, 1902, ch. 139, 32 Stat. 51 (Permanent Census Act). Neither was it prepared under authority of the 1884 Act directing Indian agents to submit an annual census of the Indians at the agency or on the reservation under their charge. *See* MWT Op. Br. at 32, citing Act of July 4, 1884, ch. 180, § 9, 23 Stat. 76, 98.

the Tribe meets the other requirements of the second definition of "Indian," nor do I need to reconsider any other determinations made in the 2015 Decision.

Respectfully,

James E. Cason
Associate Deputy Secretary

North Baptist Church of Brockton, MA
Where Jesus Christ is Lord

Richard D. Reid, Pastor

Sunday, June 10, 2018

The Massachusetts Gaming Commission
101 Federal St., 12th Floor
Boston, MA 02110

Dear Chairman Crosby and Commissioners,

It is not really much of a surprise at the news on this past Wednesday that Rush Street Gaming has filed a request to have the Region C casino reconsidered. The facts have not changed for Brockton. A casino is not the solution for Brockton.

Once again I want to thank the commission for the diligence you took in coming to your decision in April of 2016. The churches of Brockton, Stand Up for Brockton and I all encourage you to simply decline the reconsideration of the Rush Street Gaming proposals. Since your decision they have not changed, nor have the consequences to Brockton should it have a casino next to the Brockton High School.

Here in Brockton we are dealing with many different crisis situations including the opioid problem, a recent upturn in gun violence and murders and are dealing with the recreational marijuana businesses that the Mayor of Brockton wants to attach the future of Brockton to as the savior to our city's woes.

In 2016 he used Destination Brockton as his theme and he dusted it off this year for the marijuana industry. I know this industry is not of concern to the Gaming Commission, but it is to Brockton.

Should you proceed with a reconsideration of Rush Gaming, I would appreciate a notification from you as I will and others will want to be there for any hearings an present our position and evidence before you.

Sincerely,

Pastor Richard Reid
North Baptist Church

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http://www.jesussavesinbrockton.com -- pastor@jesussavesinbrockton.com

That if thou shalt confess with thy mouth the Lord Jesus, and shalt believe in thine heart that God hath raised him from the dead, thou shalt be saved. - Romans 10:9

The Commonwealth of Massachusetts
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JOINT COMMITTEE ON PUBLIC SAFETY AND HOMELAND SECURITY
JOINT COMMITTEE ON CONSUMER PROTECTION AND PROFESSIONAL LICENSURE

June 28, 2018

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

Dear Chairman Crosby,

I am writing to express my support for Mass Gaming & Entertainment's (MG&E) proposed casino in the City of Brockton.

I have expressed support for this project in the past due to its potential economic impact on the city.

MG&E is prepared to make an investment of more than $675 million in Brockton, which will create 1,800 permanent, good-paying jobs, as well as 2,000 temporary union construction jobs. MG&E 's commitment to providing more than $12 million in annual payments to our city will enable the city to improve our public schools, public safety, and infrastructure for years to come.

The casino will help revitalize downtown Brockton, and will attract visitors from all over the region to Brockton's restaurants and shops. Local businesses, including businesses that focus on construction and operations, will feel a huge boost, as MG&E has pledged to utilize local workers as much as possible.

This resort casino represents a once in a lifetime opportunity to improve our community.

Thank you in advance for your consideration.

Sincerely,

Michael D. Brady

Michael D. Brady
State Senator
2nd Plymouth & Bristol District

The Commonwealth of Massachusetts
HOUSE OF REPRESENTATIVES
STATE HOUSE, BOSTON 02133-1054

GERRY CASSIDY
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Ways and Means
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July 25, 2018

Massachusetts Gaming Commission
101 Federal Street, 12th Floor
Boston, MA 02110

Dear Chairman Crosby and fellow Commissioners,

Thank you for the chance to submit written testimony in support of the proposed resort casino in Brockton. I thank you for your reconsideration of Mass Gaming & Entertainment's request to establish and operate a casino in Region C. Respectfully, I request, in light of current events, that the Gaming Commission reconsider and approve Mass Gaming & Entertainment's proposal.

In May of 2015, Brockton held a Special Election and the residents of Brockton voted in favor of the casino. As a representative of this community, I support my constituents and their opinions; a casino in Brockton would greatly benefit the city. The proposed casino would create an influx of jobs, an increase of visitors to the city, and much needed revenue for our schools and public safety. As a member of the Legislative Gateway Cities Caucus, I recently had the opportunity to tour Everett's Wynn Casino and was impressed by the impact the unfinished casino was already having in the community.

The resort casino would greatly benefit the economy of not only Brockton, but also the surrounding communities. Mass Gaming & Entertainment has promised preferential hiring to Brockton residents, who are in dire need of increased job opportunities. They are ready to make an investment in Brockton, contributing 1,800 permanent jobs, plus an additional 2,000 temporary union construction jobs. Furthermore, the casino will provide entertainment to the residents of Brockton and other communities in the area. The influx of visitors to the city will create an opportunity for economic development and growth. Local businesses will benefit from the tourist attraction.

In addition to the economic benefits that the casino will provide, Mass Gaming & Entertainment will make annual payments of more than $12 million to Brockton. This much needed revenue will allow Brockton to invest in the future of the city. The additional money would greatly benefit the school system, infrastructure and public safety in the city.

Thank you for your consideration.

Sincerely,

Gerard Cassidy

Gerard Cassidy
State Representative
Ninth Plymouth District