



# Gaming Facility Location Board

## REPORT AND FINDINGS OF THE NEW YORK GAMING FACILITY LOCATION BOARD

February 27, 2015



# TABLE OF CONTENTS

December 17, 2015 Resolution .....	1
Introduction .....	4
Evaluation .....	7
Selection of the Gaming Facility Location Board .....	11
Conclusion .....	38
Notable Milestones .....	39
The New York Gaming Facility Location Board .....	42
Gaming Facility Location Board Members .....	43
Gaming Advisory Services Consultant and State Agency Assistance .....	46
Application Materials Received .....	48
Public Disclosure of Application Materials .....	49
Applicant Presentations .....	50
Public Comments .....	51
Public Comment Events .....	53
Issuance of Licenses .....	55
List of Appendices .....	56
Summaries of Each Applicant .....	57
Caesars New York .....	58
The Grand Hudson Resort & Casino .....	74
Hudson Valley Casino & Resort .....	91
The Live! Hotel and Casino New York .....	105
Mohegan Sun at The Concord .....	121
Montreign Resort Casino .....	139
Nevele Resort, Casino & Spa .....	158
Resorts World Hudson Valley .....	176
Sterling Forest Resort .....	191
Capital View Casino & Resort .....	209
Hard Rock Rensselaer .....	229
Howe Caverns Resort & Casino .....	243
Rivers Casino & Resort at Mohawk Harbor .....	261
Lago Resort & Casino .....	276
Tioga Downs Casino, Racing & Entertainment .....	294
Traditions Resort & Casino .....	311
Appendices .....	328

## DISCLAIMER

In determining which Applicants (as defined herein) shall be eligible for a gaming facility license, the Gaming Facility Location Board's determinations are made, in part, subject to the commitments, assurances, representations and other statements the Applicants made in their original submissions to the Request for Applications to Develop and Operate a Gaming Facility in Upstate New York ("RFA"), any updates to the RFA submission and the Applicants' public presentations.

This report is for the benefit of the public and has been prepared by New York State Gaming Commission staff at the direction of the Gaming Facility Location Board ("Board"). The Board, in making its determinations, has relied on the information and materials each Applicant submitted in response to the RFA, any updates to the RFA submission and each Applicant's public presentation (together, an "Application"). To the extent that this report contains any errors or omissions, the staff is solely responsible for such errors or omissions, and such errors and omissions are not findings adopted by the Board. To the extent that any summary or description in this report of information or material submitted in an Application differs from the actual information or material submitted in such Application, those differences are the results of the staff's summaries or descriptions. In reaching its determinations, the Board has relied on the actual information or material submitted in such Application.

The Board's evaluation of an Applicant's gaming revenues, including those anticipated to be recaptured from out-of-state as projected by the Applicant's market study, were reviewed by the Board's gaming consultants who compared such revenues to the consultants' estimates of revenues for a hypothetical facility at the same location that was assumed to be neither exceptional nor unappealing. For the vast majority of Applicants, the results of the consultants' estimates were substantially lower than those of the Applicants. Such differences can be attributed to a number of factors including an Applicant's market study's assumptions of the attractiveness of the facility, the robustness of an Applicant's player database and marketing plan or the specific methodology used to project gaming revenues in the market study. Accordingly, any reference in this report and the appendices to gaming revenues, recapture rates and tax revenues based on gaming revenues should be viewed in light of these differences.

# RESOLUTION

## **RESOLUTION OF THE NEW YORK GAMING FACILITY LOCATION BOARD TO SELECT APPLICANTS TO BE CONSIDERED FOR GAMING FACILITY LICENSURE BY THE NEW YORK STATE GAMING COMMISSION**

WHEREAS, the New York legislature passed, in two consecutive legislatures in 2012 and 2013, concurrent resolutions to amend the State constitution to permit casino gaming; and

WHEREAS, the people of the State of New York voted to amend section 9 of Article I of the Constitution of the State of New York to permit casino gaming as authorized and prescribed by the legislature; and

WHEREAS, the legislature passed, and the governor approved, the Upstate New York Gaming Economic Development Act ("Act") in 2013, authorizing and prescribing casino gaming in New York State upon appropriate amendment of the State constitution; and

WHEREAS, the Act authorized up to four destination casinos to boost upstate economic development, create thousands of well-paying jobs and provide added revenue to the State located in three defined regions of the State: Hudson Valley/Catskill area (Region One, Zone Two), Capital Region (Region Two, Zone Two), and Eastern Southern Tier (Region Five, Zone Two), with a second license to a qualified applicant to be awarded in no more than a single region; and

WHEREAS, the New York State Gaming Commission ("Commission") established the Gaming Facility Location Board ("Board"), as prescribed by Racing Pari-Mutuel Wagering and Breeding Law ("PML") section 109-a, to select up to four Applicants, following a competitive Application process, to be considered for gaming facility licensure; and

WHEREAS, on March 31, 2014 the Board issued a Request for Applications to develop and operate a gaming facility in New York State ("RFA"); and

WHEREAS, on June 30, 2014, the Board received 17 sets of application material (each set, an "Application") from 16 entities (each, an "Applicant") in response to the RFA; and

WHEREAS, on August 7, 2014 the Board determined that one Application for Region Two, Zone Two was substantially non-responsive to the RFA and by unanimous vote eliminated such Applicant from further consideration; and

WHEREAS, on September 8 and 9, 2014, each of the 15 remaining Applicants made an informational introductory presentation of its Application(s) to the Board; and

WHEREAS, at public comment events convened in each of the regions on September 22, 23 and 24, 2014 in Albany, Poughkeepsie and Ithaca, respectively, the Board heard comments on the 16 responsive Applications from more than 400 individual speakers; and

WHEREAS, the Board received and catalogued more than 12,000 pieces of unique communications relating to the siting of casinos; and

WHEREAS, the Board is required to evaluate the RFA submissions pursuant to the statutory criteria of PML section 1320; and

WHEREAS, the Board is authorized under subdivision 3 of PML section 1306 to develop additional criteria to assess which Applications provide the highest and best value to the State; and

WHEREAS, the Board is required under subdivision 7 of PML section 1306 to issue detailed findings of fact and conclusions demonstrating the reasons supporting its decision to select Applicants for licensure and to issue a finding on how each Applicant proposes to advance the criteria of PML section 1320;

NOW, THEREFORE BE IT RESOLVED, that the Board evaluated 16 Applications based on the statutory criteria of PML section 1320 and the additional criterion developed by the Board under subdivision 3 of PML section 1306 as to which proposals best fulfill the intent of the Act in regard to providing economic assistance to disadvantaged areas of the State while enhancing upstate New York's tourism industry; and

BE IT FURTHER RESOLVED, that based on the Board's evaluation, the Board selects the following Applicants to apply to the Commission for a gaming facility license:

Montreign Operating Company, LLC, proposer of Montreign Resort Casino in the Town of Thompson in Sullivan County (Region One, Zone Two);

Capital Region Gaming, LLC, proposer of Rivers Casino & Resort at Mohawk Harbor in the City of Schenectady in Schenectady County (Region Two, Zone Two); and

Lago Resort & Casino, LLC, proposer of Lago Resort & Casino in the Town of Tyre in Seneca County (Region Five, Zone Two); and

BE IT FURTHER RESOLVED, that the Board hereby adopts as its initial findings, the attached "Selection of the New York Gaming Facility Location Board" dated December 17, 2014 which summarizes the Board's evaluation and selection of Applicants to apply to the Commission for a gaming facility license; and

BE IT FURTHER RESOLVED, that the Board hereby shall issue the findings required by subdivision 7 of PML section 1306 and PML section 1320, with the intention of issuing such findings on or about 30 days following adoption of this resolution; and

BE IT FURTHER RESOLVED, that the aforesaid resolutions shall be effective immediately; and

BE IT FURTHER RESOLVED, that the chair of the Board be authorized to sign this resolution indicating the assent of the Board to the contents herein.

Kevin S. Law	<input checked="" type="checkbox"/> Aye	<input type="checkbox"/> Nay
Dennis E. Glazer	<input checked="" type="checkbox"/> Aye	<input type="checkbox"/> Nay
Stuart Rabinowitz	<input checked="" type="checkbox"/> Aye	<input type="checkbox"/> Nay
Paul E. Francis	<input checked="" type="checkbox"/> Aye	<input type="checkbox"/> Nay
William C. Thompson, Jr.	<input checked="" type="checkbox"/> Aye	<input type="checkbox"/> Nay



Kevin S. Law  
Chair  
Gaming Facility Location Board

Albany, New York  
December 17, 2014

## INTRODUCTION

In 2012, New York State Governor Andrew M. Cuomo proposed an amendment to the State constitution to permit casino gaming. The constitutional amendment process—passage of legislation by two consecutive Legislatures followed by a public referendum—culminated in November 2013, when voters overwhelmingly approved the constitutional amendment.

Governor Cuomo and the Legislature reasoned that New Yorkers spend more than \$1 billion per year at out-of-state casinos. As those dollars leave the State, so do good jobs, tourism and economic development that could be kept and grown within New York's borders.

On July 30, 2013, Governor Cuomo signed into law The Upstate New York Gaming Economic Development Act of 2013 ("Act"). The Act authorized up to four Upstate destination gaming resorts with at least one gaming facility located in each of three defined regions of the State (each a "Region"): Catskill/Hudson Valley Region (Region One, Zone Two), Capital Region (Region Two, Zone Two), and Eastern Southern Tier/Finger Lakes Region (Region Five, Zone Two). Pursuant to the Act, the New York State Gaming Commission ("Commission") established the Gaming Facility Location Board ("Board") to select up to four Applicants, following a competitive bid process, to apply to the Commission for a gaming facility license.

On March 31, 2014 the Board issued a Request for Applications to develop and operate a gaming facility in New York State ("RFA"). The RFA required Applicants to specify how they would meet certain criteria as specified in the Act. On June 30, 2014, the Board received 17 Applications seeking to develop and operate commercial gaming facilities in New York State. On August 7, 2014, the Board determined that an Application by Florida Acquisition Corp. for Region Two, Zone Two was substantially non-responsive to the RFA and by unanimous vote eliminated that Applicant from further consideration.

Therefore, the Board evaluated 16 responsive Applications. The Board treated these Applications as public records and has made them available to the public on the Commission's Web site with applicable exemptions pursuant to the Freedom of Information Law. The Applications evaluated, by region, follow on the next page.

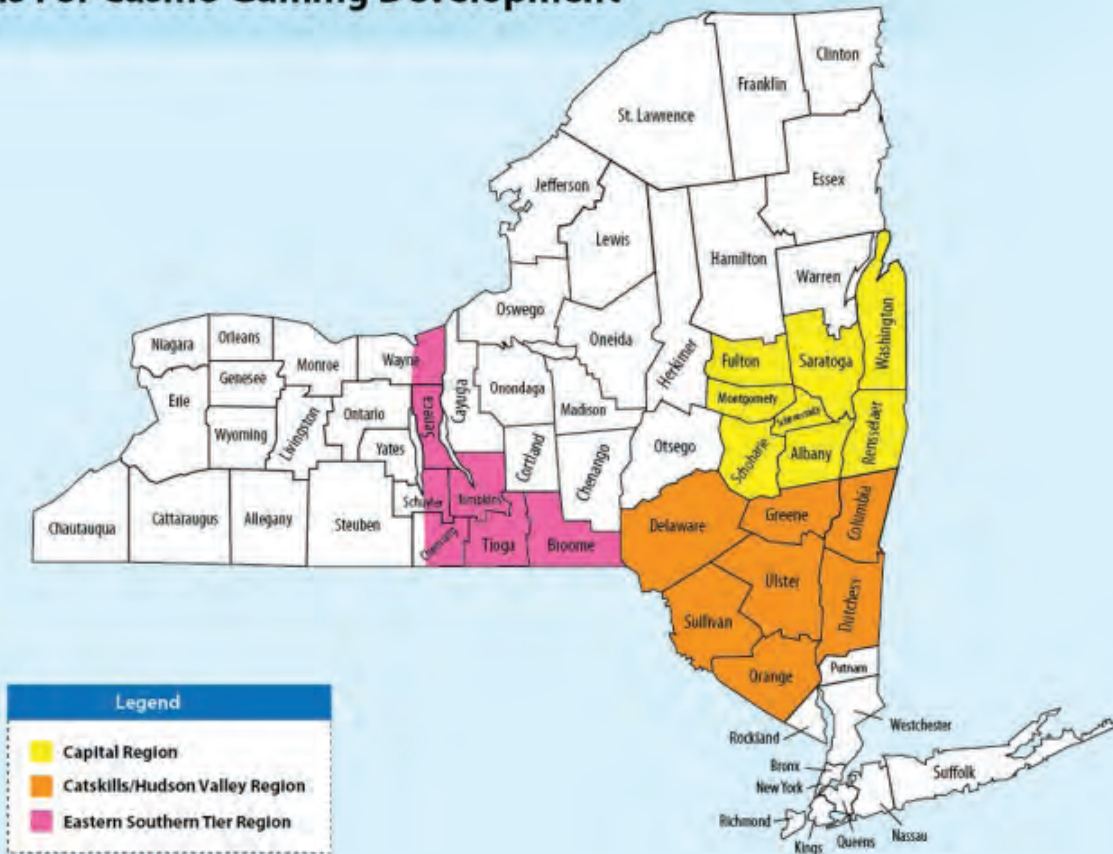


<b>REGION ONE, ZONE TWO (Catskill/Hudson Valley Region)</b>		
APPLICANT	PROJECT	PROPOSED LOCATION
Woodbury Casino, LLC	Caesars New York	Woodbury, Orange County
New Windsor Casino & Resort, LLC	The Grand Hudson Resort and Casino	New Windsor, Orange County
Hudson Valley Casino and Resort, LLC	Hudson Valley Casino and Resort	Newburgh, Orange County
OCCR Enterprises, LLC	Live! Hotel & Casino New York	Blooming Grove, Orange County
Concord Kiamesha, LLC	Mohegan Sun at The Concord	Thompson, Sullivan County
Montreign Operating Company, LLC	Montreign Resort Casino	Thompson, Sullivan County
Nevele-R, LLC	Nevele Resort, Casino & Spa	Wawarsing, Ulster County
RW Orange County, LLC	Resorts World Hudson Valley	Montgomery, Orange County
RW Orange County, LLC	Sterling Forest Resort	Tuxedo, Orange County

<b>REGION TWO, ZONE TWO (Capital Region)</b>		
APPLICANT	PROJECT	PROPOSED LOCATION
Capital View Casino and Resort, LLC	Capital View Casino and Resort	East Greenbush, Rensselaer County
NYS Funding, LLC	Hard Rock Hotel & Casino Rensselaer	Rensselaer, Rensselaer County
Howe Caverns Resort & Casino, LLC	Howe Caverns Resort and Casino	Cobleskill, Schoharie County
Capital Region Gaming, LLC	Rivers Casino & Resort at Mohawk Harbor	Schenectady, Schenectady County

<b>REGION FIVE, ZONE TWO (Eastern Southern Tier/Finger Lakes Region)</b>		
APPLICANT	PROJECT	PROPOSED LOCATION
Lago Resort & Casino, LLC	Lago Resort & Casino	Tyre, Seneca County
Tioga Downs Racetrack, LLC	Tioga Downs Casino, Racing & Entertainment	Nichols, Tioga County
Traditions Resort & Casino, LLC	Traditions Resort & Casino	Union, Broome County

## Regions For Casino Gaming Development



On September 8 and 9, 2014, each Applicant was required to make an informational introductory presentation of its Application to the Board. The presentation was intended to afford the Applicant an opportunity to provide the Board with an overview of the contents of the Application, explain any particularly complex information and highlight any specific areas it desired. The Board had the opportunity to ask Applicants questions following their presentations.

On September 22, 23 and 24, 2014, the Board convened a 12-hour public comment event in each eligible Region to provide the Board with the opportunity to receive questions and concerns from the public in regard to the Applicants' proposals in that Region, including the scope and quality of the gaming area and amenities, the integration of the gaming facility into the host municipality and nearby municipalities and the extent of required mitigation plans and to receive input from members of the public and impacted communities. The Board heard more than 400 individual speakers at the three public comment events, with approximately 30 percent of the total project-specific comments voicing opposition to a project and approximately 70 percent indicating support.

In addition to the public comment events, the Board received more than 12,000 pieces of unique communications relating to the siting of casinos. Board members also visited proposed sites.

## EVALUATION

The Board reviewed and evaluated the proposals (constituting more than 150,000 pages) submitted in response to the RFA issued on March 31, 2014. The Board was impressed by the strong interest in investing in the development of Upstate New York and appreciates the effort, care, time and skill that went into the preparation of extensive responsive submissions on an aggressive response schedule.

In evaluating the Applications, the Board followed the statutory criteria of Racing, Pari-Mutuel Wagering and Breeding Law (“PML”) section 1320 set forth below, which requires the evaluation of economic activity and business development (70 percent weight), local impact and siting (20 percent weight) and workforce enhancement (10 percent weight) including but not limited to the following factors:

### **Economic Activity & Business Development Factors**

- Realizing maximum capital investment exclusive of land acquisition and infrastructure improvements
- Maximizing revenues received by the state and localities
- Providing the highest number of quality jobs in the gaming facility
- Building a gaming facility of the highest caliber with a variety of quality amenities to be included as part of the gaming facility
- Offering the highest and best value to patrons to create a secure and robust gaming market in the Region and the State
- Providing a market analysis detailing the benefits of the site location of the gaming facility and the estimated recapture rate of gaming-related spending by residents travelling to an out-of-state gaming facility
- Offering the fastest time to completion of the full gaming facility
- Demonstrating the ability to fully finance the gaming facility
- Demonstrating experience in the development and operation of a quality gaming facility

### **Local Impact and Siting Factors**

- Mitigating potential impacts on host and nearby municipalities which might result from the development or operation of the gaming facility
- Gaining public support in the host and nearby municipalities which may be demonstrated through the passage of local laws or public comment received by the board or gaming Applicant
- Operating in partnership with and promoting local hotels, restaurants and retail facilities so that patrons experience the full diversified regional tourism industry
- Establishing a fair and reasonable partnership with live entertainment venues that may be impacted by a gaming facility under which the gaming facility actively supports the mission and the operation of the impacted entertainment venues

## Workforce Enhancement Factors

- Implementing a workforce development plan that utilizes the existing labor force, including the development of workforce training programs that serve the unemployed
- Taking additional measures to address problem gambling including, but not limited to, training of gaming employees
- Utilizing sustainable development principles
- Establishing, funding and maintaining human resource hiring and training practices that promote the development of a skilled and diverse workforce and access to promotion opportunities
- Purchasing, whenever possible, domestically manufactured slot machines for installation in the gaming facility
- Implementing a workforce development plan that<sup>1</sup>:
  - Incorporates an affirmative action program
  - Utilizes the existing labor force in the state
  - Includes specific goals for the utilization of minorities, women and veterans on construction jobs
  - Identifies workforce training programs
  - Identifies the methods for accessing employment
- Demonstrating that the Applicant has an agreement with organized labor, including hospitality services, and has the support of organized labor for its Application, which specifies:
  - The number of employees to be employed at the gaming facility
  - Detailed plans for assuring labor harmony during all phases of the construction, reconstruction, renovation, development and operation

In addition to the specific economic activity and business development factors set forth above, the Board developed an additional criterion as permitted under PML section 1306, subdivision 3. This criterion was that the Board consider which proposals best fulfill the intent of the Act to provide economic assistance to disadvantaged areas of the State while enhancing Upstate New York's tourism industry. This additional criterion supports the legislative intent of the Act, namely that selected proposals capitalize on economic development potential, boost economic development, create well-paying jobs, and enhance Upstate tourism. (PML section 1300, subdivisions 3, 5 and 6).

The RFA was structured to require the Applicants to describe how they would advance these objectives. The Board reviewed summaries of each application that summarized this submission and included observations of experts retained on behalf of the Board and of New York State agencies that reviewed aspects of the Applications that were within such agencies' expertise. The Board considered these summaries, its experts' observations, additional facts and observations the Board obtained through its public hearings and dialogues with its experts and subsequent analyses prepared by such experts at the direction of the Board, in making determinations and reaching conclusions about the Applicants' ability to advance the objectives of economic activity and business development, local impact and siting and workforce enhancement. The Board did not create numerical scores with regard to the criteria, but reached its conclusions based on a

<sup>1</sup> As stated in the Addendum to the RFA, the Board recognizes the importance placed upon minority and women-owned business enterprises (MWBE) business participation by the State and encourages contract opportunities for all small businesses including State-certified MWBEs. To this end, the Board recommends that the Gaming Commission implement conditions to licensure requiring the three successful Applicants to match or exceed Governor Andrew M. Cuomo's Executive Order establishing a 30 percent goal for MWBE contracting.

qualitative judgment after careful consideration of all these factors in determining which Applicants would best achieve the objectives of the Act, giving a qualitative weight to categories of factors as the legislature directed in PML section 1320.

The Board expresses its gratitude to the Commission staff for their extensive and effective work. Similarly, numerous State agencies provided useful input regarding the Applicants and the Applications, work for which the Board is grateful.

The Board received expert analyses regarding the revenue-generating capabilities of the Applicants as well as proposed financing and capital structures, credit support, impacts and mitigation plans. The Board directed expert analyses of revenue projections, potential cannibalization of existing gaming facilities, potential impact of competing new casinos within a single region and qualitative factors that might affect the attractiveness of the new gaming facility, including development and operating experience and project design. In many cases, the Board sought and received more specific analysis as it continued to evaluate the Applications.

In particular, the Board studied projections of gross gaming revenue and impacts to State revenue in various scenarios, accounting for potential cannibalization of revenue from existing video lottery gaming and Native American facilities and the potential impact of competing new casinos within a single region.

The Board considered the proposed debt and equity financing structures of the Applicants and the credibility of the proposed financing plans. The Board considered debt-to-equity ratios, projected earnings relative to proposed debt levels and projected debt service requirements, as well as the sensitivity of earnings potential in various economic climates and in the event of earnings before interest, taxes, depreciation and amortization (EBITDA) margin compression.

Finally, the Board considered data provided by the New York State Division of Budget regarding various indicators of economic distress within each of the proposed host counties, as follows on the next page.

### Region One: Catskill/Hudson Valley Region

Indicator of Economic Distress	NYS Average	Sullivan County	Orange County	Ulster County
Median Family Income	\$80,249.18	\$58,051.67	\$81,470.58	\$75,877.24
Percent with Bachelor's Degree or Higher	33.2%	25.15%	27.36%	28.8%
Median Home Prices	\$232,610	\$179,110	\$195,090	\$198,470
Unemployment Rate	5.7%	6.4%	5.4%	5.7%
Poverty Rate	15.3%	18.2%	12.5%	13.6%

### Region Two: Capital Region

Indicator of Economic Distress	NYS Average	Rensselaer County	Schenectady County	Schoharie County
Median Family Income	\$80,249.18	\$75,321.64	\$75,398.83	\$71,695.79
Percent with Bachelor's Degree or Higher	33.2%	31.36%	26.8%	20.81%
Median Home Prices	\$232,610	\$171,750	\$171,250	\$149,160
Unemployment Rate	5.7%	5%	5.2%	5.7%
Poverty Rate	15.3%	11.6%	12.4%	14.4%

### Region Five: Eastern Southern Tier/Finger Lakes Region

Indicator of Economic Distress	NYS Average	Seneca County	Tioga County	Broome County
Median Family Income	\$80,249.18	\$65,752.88	\$70,272.03	\$63,013.65
Percent with Bachelor's Degree or Higher	33.2%	21.05%	23.7%	30.3%
Median Home Prices	\$232,610	\$146,590	\$107,140	\$112,570
Unemployment Rate	5.7%	5.1%	5.8%	6%
Poverty Rate	15.3%	12.9%	10.2%	17.3%

## SELECTION

After careful evaluation of each proposal received during this RFA process, the Board determined that the selection of three Applicants—one in each Region—from among the proposals received would maximize prospects for success and be in the best overall interest of the State. Based on the 16 proposals received during this RFA process, the Board declined to select a fourth Applicant.

The Board selected the following three entities to apply to the Commission for a gaming facility license:

**Region One: Montreign Resort Casino in the Town of Thompson  
proposed by Montreign Operating Company LLC (“Montreign”)**

**Region Two: Rivers Casino & Resort at Mohawk Harbor in the City of Schenectady  
proposed by Capital Region Gaming, LLC (“Rivers”)**

**Region Five: Lago Resort & Casino in the Town of Tyre  
proposed by Lago Resort & Casino, LLC (“Lago”)**

As summarized below, the Board determined that these three gaming facility proposals each has local support, will provide a good environment for its workforce and is of the desired scope and quality to fulfill the intent of the Act to bring jobs and economic development to long-distressed regions of the State. These gaming facilities will also increase tax revenue to New York State and contribute to its tourism industry. Finally, the Board believes these three gaming facility proposals best meet the statutory criteria to maximize the potential for long-term economic growth and sustainability.

The Board expects that before issuing a license in connection with any of these three facility proposals, the Commission will take appropriate steps to ensure that these selected Applicants substantially fulfill the commitments and execute the development plans that the Applicants have presented as part of this competitive process, specifically the Adelaar and Mohawk Harbor projects being constructed as part of the Montreign and Rivers proposals, respectively. Additionally, the Board recommends that the Commission work with Lago to address potential traffic impacts of its facility on the local community. The Board also expects that the Commission will take appropriate steps to ensure that these selected Applicants reach agreements to not take actions to increase debt-to-equity ratios substantially beyond the levels presented in the Applicants’ proposals and/or standard industry practices. Finally, as stated in the Addendum to the RFA, the Board recognizes the importance placed upon minority and women-owned business enterprises (MWBE) business participation by the State and encourages contract opportunities for all small businesses including State certified MWBEs. To this end, the Board recommends that the Gaming Commission implement conditions to licensure requiring the three successful Applicants to match or exceed Governor Andrew M. Cuomo’s Executive Order establishing a 30 percent goal for MWBE contracting.

A discussion of each Applicant follows, including the conclusions and findings of the Board in regard to each. In addition, the Board directed staff to prepare an appendix showing how each Applicant proposed to advance each of the statutory objectives set forth in PML section 1320, including input from the Board's experts and various State agencies that reviewed and commented upon aspects of the Applications within their respective areas of expertise. The Board adopts the appendix as part of its findings.

## Region One, Zone Two (Catskill/Mid-Hudson Region)

# MONTREIGN™

Montreign submitted alternative proposals for several potential competitive scenarios. Because the Board is not recommending that a gaming facility be licensed in Orange or Dutchess Counties, the applicable proposal is Montreign's "Preferred Scenario" proposal. The Board selects Montreign to apply to the Commission for a gaming facility license in Region One, Zone Two for its "Preferred Scenario."

### Montreign's Proposed Gaming Facility

Montreign, a subsidiary of Empire Resorts, Inc. ("Empire Resorts"), has proposed to develop the Montreign Resort Casino in a planned destination resort known as Adelaar in the Town of Thompson in Sullivan County. Montreign proposes an 18-story casino, hotel and entertainment complex featuring an 86,300-square-foot casino with 61 gaming tables, 2,150 slot machines, 391 hotel rooms, multiple dining and entertainment options, and several meeting spaces. As presented, Adelaar would also feature an indoor waterpark and hotel, an "entertainment village" with dining and retail outlets, a golf course and significant residential development.

### Board's Evaluation

Montreign's total proposed capital investment is \$630 million. Montreign states that the other components of the Adelaar development, as presented, represent potentially several hundred million dollars in additional capital investment. The Board finds that Montreign's commitment to pay \$1 million in addition to the required \$50 million licensing fee will enhance State revenue accordingly. Montreign proposes to open the gaming facility within 24 months of award of license. Montreign projects gross gaming revenues and gaming tax revenues in 2019 of \$301.6 million and \$103.4 million, respectively.

The Board finds that Montreign's location in Sullivan County presents the potential to revive a once-thriving resort destination area that has experienced a significant downturn and has a great need for economic development and well-paying jobs. Montreign's inclusion in the Adelaar development increases prospects for an attractive tourism destination.

Montreign anticipates creating approximately 1,209 full-time and 96 part-time permanent jobs. Montreign also anticipates using New York-based subcontractors and suppliers and has demonstrated strong minority and women business enterprise procurement practices.



The Board finds that the design and amenities of Montreign’s gaming facility are strong, especially in combination with the other proposed elements of the Adelaar development. The Board’s expert observed that the proposed casino floor configuration is larger, more varied and potentially more interesting than some other competitive proposals.

Moreover, the Board believes the project is designed in a way that will take advantage of its location within the Catskills and will strike an appropriate balance of onsite and offsite resort activities. Montreign stated in its Applicant presentation that the inclusion of the facility within the Adelaar development was similar to the Camelback Resort in the Poconos (also owned by EPR Properties (“EPR”)), where visits are roughly evenly split between gaming and non-gaming purposes.

The Board finds that Montreign’s access to the existing player’s club program and player database at the affiliated Monticello Casino & Raceway is an asset of the proposal.

The Board notes Montreign’s anticipated recapture of a substantial amount of out-of-state gaming revenues. Because of Montreign’s location in Sullivan County, the Board believes that Montreign will have a small adverse impact on other New York State racing, VLT and tribal gaming facilities, with the exception of Monticello Casino & Raceway, which is owned and operated by Empire Resorts.

The Board finds that Montreign has proposed a reasonable and credible financing structure. Montreign states that it intends to finance the gaming facility through a combination of equity to be raised by Empire Resorts via a rights offering and institutional third-party debt. Montreign states that an affiliate of the Lim family of Malaysia, which currently owns a majority of Empire Resorts, has committed to fully backstop the rights offering<sup>2</sup>. Montreign also presents a debt commitment letter, subject to certain conditions, from a major institutional lender to evidence the viability of the proposed debt financing.

The Board finds that the executive team at Empire Resorts has sufficient experience in developing, constructing and operating casinos and related facilities.

The Board further notes that Montreign presents an appropriate analysis of the project’s infrastructure and service needs and a reasonable mitigation plan of impacts. Montreign demonstrates local support and stated it intends to partner with local businesses and promote regional tourism, including impacted live entertainment venues in the area.

Montreign commits to implement a workforce development program that employs the existing nearby labor force, including those who are currently unemployed. Montreign states that it has experience in recruitment, hiring and retention of local labor that goes beyond equal employment opportunity initiatives. The Board finds that Montreign proposes to establish and implement an affirmative action program that identifies specific goals for the engagement of minorities, women, persons with disabilities and veterans in order to increase the diversity of the gaming industry workforce. Empire Resorts has demonstrated very strong labor-management cooperation, and Montreign has organized labor’s support of the project through signed agreements.

The Board is impressed by Montreign’s measures to address problem gambling, including training employees in recognizing problem gambling.

---

2 According to media reports, the rights offering was successfully completed.

Montreign commits to use sustainable development principles in construction and operation of the gaming facility and to establish robust and well-articulated human resource practices. Montreign also commits to purchase, whenever possible, domestically manufactured slot machines.

### **Regarding Other Proposals in Region One, Zone Two**

The Board determined that to fulfill the intent of the Act, one gaming facility license in the region should be awarded to a qualified and desirable Applicant in Sullivan County or Ulster County. The Board recognized that an Orange County casino could generate substantial revenues as a result of proximity to New York City, however, review of various internal modeling scenarios found an additional facility in Orange County or a second facility in Sullivan County could destabilize that single project in the traditional Catskill area. Therefore, the Board has determined not to recommend the award of a license to any proposal in Orange County or a second facility in the Catskill counties. This decision, which was not taken lightly, was determined at the conclusion of the review and analysis process of all Applications shortly before finalization of selections.

The Board notes that certain proposals in Orange County had attractive features including strong casino operators, established loyalty programs and supplemental license fees but certain proposals also had weaknesses, including (depending on the Applicant) local opposition, environmental concerns with proposed sites that threatened to delay their speed to market, traffic issues and uncertainties about the financial condition of the sponsor and/or proposed financing package. Moreover, because of the proximity to New York City of the Orange County proposals, each resulted in a high level of cannibalization of existing downstate gaming facilities.

Although the Board noted there were strengths and weaknesses among all three Catskills Applicants, the Board concluded that Montreign offers the superior proposal based upon consideration of all of the statutory factors.

The Board gave considerable weight in this Region to the additional criterion it established, as follows:

**Regarding providing economic assistance to disadvantaged areas of the State while enhancing Upstate New York's tourism industry:** The Board considered the additional criterion it established: determining which proposals best fulfill the intent of the Act in regard to providing economic assistance to disadvantaged areas of the State while enhancing Upstate New York's tourism industry. In this regard, the Board considered several indicators of economic distress in Orange County, including a variety of data, such as median family income, percent of population with a bachelor's degree or higher, per capita personal income, home prices, the unemployment rate and the poverty rate. According to the New York State Division of Budget, in Orange County the median family income is \$81,470.58; percent of population with a bachelor's degree or higher is 27.36%, median home price is \$195,090, the unemployment rate is 5.4% and the poverty rate is 12.5%. The Board concludes and finds that these indicia of economic distress were less severe than in the Catskill counties.

Montreign and Mohegan Sun proposed gaming facilities to be located in Sullivan County. The Board looked at the economic distress of Sullivan County, considering a variety of data, such as median family income, percent of population with a bachelor's degree or higher, per capita personal income, home prices, the unemployment rate and the poverty rate. According to the New York State Division of Budget, in Sullivan County the median family income is \$58,051.67; percent of population with a bachelor's degree or higher is 25.15%, median home price is \$179,110, the unemployment rate is 6.4%

and the poverty rate is 18.2%.

Nevele proposed a gaming facility to be located in Ulster County. The Board looked at the economic distress of Ulster County, considering a variety of data, such as median family income, percent of population with a bachelor's degree or higher, per capita personal income, home prices, the unemployment rate and the poverty rate. According to the New York State Division of Budget, in Ulster County the median family income is \$75,877.24; percent of population with a bachelor's degree or higher is 28.8%, median home price is \$198,470, the unemployment rate is 5.7% and the poverty rate is 13.6%.

The Board finds that Sullivan and Ulster counties had levels of unemployment that exceed the New York State average and Sullivan County had poverty levels that were substantially higher than those in Orange County. Additionally, Sullivan had lower median home price, per capita income and percentage of population with a bachelor's degree or higher than Orange County. Furthermore, the Board finds that both Sullivan and Ulster counties had endured consistent population outmigration.

Although these findings in regard to economic distress and tourism apply to all of the Applicants in this region and with particular force to each of the six Orange County Applicants, the Board further analyzed and considered each of the six Orange County Applicants and makes additional conclusions and findings in regard to those Applications, as set forth below:

### Mohegan Sun at The Concord

Although the Mohegan Sun Application had both strengths and weaknesses in its ability to advance the objectives of the Act, the Board has important concerns that it considered in comparing the Catskill region Applicants. Among the Board's concerns is the complexity of the proposed financing structure of the Mohegan Sun proposal and the ability of the principals to backstop the financing if necessary. The Board is also concerned about potential conflicts that might arise in the operation of casinos in New York and Connecticut and whether management attention or customer marketing might be focused more on Connecticut than New York. Further, the Board concludes that Montreign presented a superior integrated resort experience, when compared to Mohegan Sun.

**Regarding the objective of advancing Economic Activity and Business Development:** The Board finds the level of total proposed capital investment was \$480 million which the Board notes is more than the required minimum capital investment. Mohegan Sun proposed to open the full gaming facility on June 1, 2016. The Board finds that the projection submitted by Mohegan Sun estimated gross gaming revenues and gaming tax revenues in 2019 of \$265 million and \$69.9 million, respectively, and a substantial recapture rate of gaming-related spending by residents travelling to out-of-state gaming facilities. Mohegan Sun anticipated creating 962 full-time and 234 part-time jobs. The Board finds that Mohegan Sun's use of an established and successful player reward program could have helped create a secure and robust gaming market in the Region and State.

The Mohegan Sun proposal had certain attractive features, but also important weaknesses.

- **Financing concerns.** The Board finds that the complexity of this finance structure presented an execution risk. It is unclear from the Application whether either of the Mohegan Tribal Gaming Authority or the Cappelli family has sufficient resources to backstop the project financing should the need arise.

- **Operating concerns.** Mohegan had demonstrated experience in the development and operation of a quality gaming facility. An issue that concerned the Board was Mohegan Sun’s use of the larger Mohegan Sun player database/loyalty program. Because Mohegan Sun has properties in nearby states, particularly Connecticut, it was unclear from the Application the extent to which players in the loyalty program would be encouraged to visit Mohegan Sun in New York or properties in other states.
- **Facility concerns.** Mohegan presented a gaming facility plan of a satisfactory caliber with certain quality amenities to be included as part of the gaming facility. Although the Board finds aspects of Mohegan Sun’s proposal compelling, the Board was concerned that the design of the facility was more representative of a local/regional casino-hotel and not a true resort. The Board was also concerned with the size of Mohegan Sun’s hotel, 252 rooms, particularly compared to Montreign’s projected 391 hotel rooms. Lastly, the Board noted that Mohegan Sun was one of the few Applicants that would not commit to abiding by LEED certification for its construction project and instead stated that their proposed project would operate in the “spirit of LEED.”

**Local Impact and Siting Factors:** The Board concludes and finds, in regard to local impact and siting factors, that Mohegan Sun presented an analysis of anticipated local impacts and strategies for mitigating those impacts. The Board finds that Mohegan Sun demonstrated substantial local support. The Board finds that Mohegan Sun committed to partner with local businesses and promote regional tourism, including impacted live entertainment venues in the area, although Mohegan Sun did not reach an agreement with Bethel Woods, the nearest live entertainment venue, or the Upstate Theater Coalition for a Fair Game.

**Regarding workforce enhancement factors:** The Board concludes and finds, in regard to workforce enhancement factors, that Mohegan Sun’s stated intention was to implement a workforce development program that used the existing labor force in the Region, including the unemployed. The Board finds that Mohegan Sun presented reasonable measures to address problem gambling, including training employees in recognizing problem gambling. The Board finds that Mohegan Sun stated it intended to use sustainable development principles in construction and operation of the gaming facility, with the exception of only meeting LEED equivalent standards. The Board finds that Mohegan Sun intended to establish a hiring and training program that promotes a skilled and diverse workforce. The Board finds that Mohegan Sun committed to purchase, whenever possible, domestically manufactured slot machines. The Board finds that Mohegan Sun stated it intended to establish and implement an affirmative action program that identifies specific goals for the engagement of minorities, women, persons with disabilities and veterans, in order to increase the diversity of the gaming industry workforce. The Board finds that Mohegan Sun demonstrated organized labor’s support of the project through signed agreements.

### Nevele Resort, Casino & Spa

Although the Nevele Application had both strengths and weaknesses in its ability to advance the objectives of the Act, the Board has important concerns that it considered in comparing the Catskill region Applicants. Among the Board’s concerns is a critical concern about a lack of commitment for financing the proposed project. The Board also has operating concerns in regard to the proposed management of the casino, the marketing challenges faced by a new operator and the lack of onsite entertainment<sup>3</sup>.

<sup>3</sup> Per a December 8, 2014 update, Nevele engaged White Sand Consulting to manage its facility.

**Regarding the objective of advancing Economic Activity and Business Development:** The Board finds the level of total proposed capital investment was \$640 million which the Board notes is more than the required minimum capital investment. Nevele proposed to open the full gaming facility within 24 months of award of license. The Board finds that the projection submitted by Nevele estimated gross gaming revenues and gaming tax revenues in 2019 of \$336 million and \$104.8 million, respectively, and a substantial recapture rate of gaming-related spending by residents travelling to out-of-state gaming facilities. Nevele anticipated creating 1,638 full-time and 712 part-time jobs. The Board finds that Nevele did not have access to an established player reward program, which would have hindered the creation of a secure and robust gaming market in the Region and State. The Board finds that Nevele presented a gaming facility plan of a satisfactory caliber with certain quality amenities to be included as part of the gaming facility.

The Nevele proposal had certain attractive features, but also important weaknesses.

- **Financing concerns.** A critical concern was the substantial amount of uncommitted equity financing. In addition, much of the committed equity capital was subject to numerous conditions, including obtaining third-party debt financing in an amount substantially greater than the highly confident letter submitted as part of its proposal. Further, there was an execution risk by an equity source. Nevele's bank references, representative of several financial institutions, lacked specifics on which to assess financial suitability. The Board noted that Nevele had listed several judgment creditors and there was an obligation to pay prior owners up to \$5 million within 60 days of opening.
- **Operating concerns.** Although two members of the management team had prior casino experience, they had not worked together before. The Board was also concerned that as a new casino operator, the company would be working without an established player database. In addition, the Board was concerned that Nevele did not propose onsite entertainment venues and instead would defer all entertainment to third-party locations, thereby losing patrons who otherwise might spend more time at the facility.

**Local Impact and Siting Factors:** The Board concludes and finds, in regard to local impact and siting factors, that Nevele presented a substantially complete analysis of anticipated local impacts and reasonable strategies for mitigating those impacts. The Board finds that Nevele demonstrated substantial local support. The Board finds that Nevele intended to partner with local businesses and promote regional tourism, including impacted live entertainment venues in the area.

**Regarding workforce enhancement factors:** The Board concludes and finds, in regard to workforce enhancement factors, that Nevele stated it committed to implement a workforce development program that used the existing labor force in the Region, including the unemployed. The Board finds that Nevele presented reasonable measures to address problem gambling, including training employees in recognizing problem gambling. The Board finds that Nevele intended to use sustainable development principles in construction and operation of the gaming facility. The Board finds that Nevele committed to establish a hiring and training program that promotes a skilled and diverse workforce. The Board finds that Nevele stated it intended, but did not commit, to purchase, whenever possible, domestically manufactured slot machines. The Board finds that Nevele committed to establish and implement an affirmative action program that identifies specific goals for the engagement of minorities, women, persons with disabilities and veterans, in order to increase the diversity of the gaming industry workforce. The Board finds that Nevele demonstrated organized labor's support of the project through signed agreements.

The Caesars Application had both strengths and weaknesses in its ability to advance the objectives of the Act. The Board has important concerns, however, in addition to the Board's concerns with the proposed location in Orange County. Among the Board's concerns, the Board was especially concerned about the bankruptcy risk relating to Caesars and the implications that such a bankruptcy might have on the focus of Caesars management, the reputation of gaming in New York State and the willingness of customers to patronize a facility related to bankruptcy proceedings.<sup>4</sup> Further, although Caesars had plans to address vehicle traffic congestion in the area, with its proposed facility close to the heavily-trafficked Woodbury Common Premium Outlet Mall, the Board has concerns about the effectiveness of potential traffic mitigation and local opposition based upon traffic complaints.

**Regarding the objective of advancing Economic Activity and Business Development:** The Board finds the level of total proposed capital investment was \$880 million which the Board notes is more than the required minimum capital investment. Caesars proposed to open the full gaming facility within 24 months of award of license. The Board finds that the projections submitted by Caesars estimated gross gaming revenues and gaming tax revenues in 2019 of \$738 million and \$188.7 million, respectively, and a substantial recapture rate of gaming-related spending by residents travelling to out-of-state gaming facilities. Caesars anticipated creating 2,129 full-time and 703 part-time jobs. The Board finds that the anticipated use by Caesars of its internationally recognized player loyalty program would help create a secure and robust gaming market in the Region and State. The Board finds that Caesars presented a gaming facility plan of a satisfactory caliber with certain quality amenities to be included as part of the gaming facility. The Board finds that Caesars demonstrated very extensive experience in the development and operation of a quality gaming facility.

The Board concludes that there were risks that might impact operations at the proposed facility, in particular:

- **Litigation and credit risk.** The Board was concerned about litigation and credit rating having a negative impact on Caesars. On August 5, 2014, Caesars Entertainment Corporation, along with its three operating entities, were sued by certain creditors for, in part, allegedly improperly transferring assets of a separate subsidiary of Caesars Entertainment Corporation, known as Caesars Entertainment Operating Corporation (CEOC), to Caesars Growth Partners (the parent company of Caesars New York). Simultaneously, Caesars also sued those creditors and litigation is ongoing. The financial instability of CEOC creates the risk of significant management distraction if CEOC is required to restructure its debt in or outside of a bankruptcy proceeding.

**Local Impact and Siting Factors:** The Board concludes and finds, in regard to local impact and siting factors, that Caesars presented a substantially complete analysis of anticipated local impacts and reasonable strategies for mitigating those impacts. However, concerns remain about whether the traffic impact could be mitigated successfully, given the project's proximity to the already heavily-trafficked Woodbury Common Premium Outlet Mall. The Board finds that Caesars demonstrated local support, but the Board notes that there was also strong opposition to the project from some parts of the community. The Board finds that Caesars committed to partner with local businesses and promote regional tourism, but failed to reach an agreement with impacted live entertainment venues in the area.

---

<sup>4</sup> Since the December 17, 2014 announcement of the Board's selection, Caesar's parent and various affiliated companies filed for bankruptcy and its chief executive officer resigned.

**Regarding workforce enhancement factors:** The Board concludes and finds, in regard to workforce enhancement factors, that Caesars committed to implement a workforce development program that used an existing labor force in the Region, including the unemployed. The Board finds that Caesars presented reasonable measures to address problem gambling, including training employees in recognizing problem gambling. The Board finds that Caesars intended to use sustainable development principles in construction and operation of the gaming facility. The Board finds that Caesars committed to establish a hiring and training program that promotes a skilled and diverse workforce. The Board finds that Caesars stated it intended, but did not commit, to purchase, whenever possible, domestically manufactured slot machines. The Board finds that Caesars intended to establish and implement an affirmative action program that identifies specific goals for the engagement of minorities, women, persons with disabilities and veterans, in order to increase the diversity of the gaming industry workforce. The Board finds that Caesars demonstrated organized labor's support of the project through signed agreements.

### The Grand Hudson Resort & Casino

The New Windsor Application for its Grand Hudson project had both strengths and weaknesses in its ability to advance the objectives of the Act. The Board has important concerns, however, in addition to the Board's concerns with the proposed location in Orange County. Among the Board's concerns, the Board is especially concerned about New Windsor's financial ability to fund the proposed project and concludes that there is significant execution risk for the project. Further, the Board has concerns about the Applicant's ability to manage and operate successfully the proposed gaming facility. The Board also has concerns about the proposed design and location of the facility.

**Regarding the objective of advancing Economic Activity and Business Development:** The Board finds the level of total proposed capital investment was \$732 million which the Board notes is more than the required minimum capital investment. New Windsor proposed to open the full gaming facility within 24 months of award of license. The projections submitted by New Windsor estimated gross gaming revenues and gaming tax revenues in 2019 of \$568.9 million and \$172.6 million, respectively, and a substantial recapture rate of gaming-related spending by residents travelling to out-of-state gaming facilities. New Windsor anticipated creating 2,310 full-time and 269 part-time jobs. The Board finds further, however, that New Windsor's lack of access to an established player reward program which would hinder the creation of a secure and robust gaming market in the Region and State. New Windsor presented a gaming facility plan of a satisfactory caliber with certain quality amenities to be included as part of the gaming facility.

The Board concludes that certain factors created significant risk about whether New Windsor could produce the revenues and level of economic activity proposed, including the following:

- **Financing concerns.** The Board is concerned that New Windsor's financing plan did not demonstrate that it or its financial sponsors had the ability to raise or otherwise fund the full amount of equity needed for the proposed project. The Board concluded that there were also uncertainties in regard to New Windsor's ability to arrange debt financing. The Board concluded that the financial reference letters were very general in nature and offered very few specifics on which to assess financial suitability.
- **Operating concerns.** The Board has concerns about the stability of the operating team of the Grand Hudson project. The Board finds that Greenetrack and its CEO have been the subject of investigations by the Alabama Attorney General over potential illegal operation

of bingo machines and owed sales taxes. The Board notes that Grand Hudson's operator, Full House Resorts announced on October 22, 2014 that it was pursuing a sale process. Recently, senior management had been replaced and its board expanded to allow for more outside directors. Finally, although New Windsor demonstrated experience in the development and operation of quality gaming facilities, all of these facilities are smaller in size and scope than Grand Hudson.

- **Facility concerns.** Notwithstanding the positive features of the gaming facility New Windsor proposed to build, the Board took note of observations by its experts of factors that might have diminished the project's appeal, including that Grand Hudson was a relatively unknown brand without a local customer database, and that its location was so close to the Stewart international Airport as potentially to detract from a resort casino experience.

**Regarding Local Impact and Siting Factors:** The Board concludes and finds, in regard to local impact and siting factors, that Grand Hudson presented an analysis of anticipated local impacts and strategies for mitigating those impacts. The Board finds that New Windsor demonstrated an acceptable level of local support. The Board finds that New Windsor committed to partner with local businesses and promote regional tourism, including with impacted live entertainment venues in the area.

**Regarding workforce enhancement factors:** The Board concludes and finds, in regard to workforce enhancement factors, that New Windsor committed to implement a workforce development program that used the existing labor force in the Region, including the unemployed. The Board finds that Grand Hudson presented reasonable measures to address problem gambling, including training employees in recognizing problem gambling. The Board finds that New Windsor stated it intended to use sustainable development principles in construction and operation of the gaming facility. The Board finds that New Windsor intended to establish a hiring and training program that promotes a skilled and diverse workforce. The Board finds that New Windsor committed to purchase, whenever possible, domestically manufactured slot machines. The Board finds that New Windsor demonstrated organized labor's support of the project through a signed and executed agreement.

The Board finds one significant weakness in the New Windsor workforce enhancement plan. Notwithstanding the important consideration that New Windsor qualified as an MWBE enterprise, the Board observes that New Windsor's submission reflected an affirmative action policy that was not current with industry practice. Although New Windsor had the infrastructure necessary for equal employment opportunity compliance, the workforce enhancement plan appeared to lack a strategy for engagement and compliance.

### Hudson Valley Casino & Resort

The Hudson Valley Application had both strengths and weaknesses in its ability to advance the objectives of the Act. The Board has important concerns, however, in addition to the Board's concerns with the proposed location in Orange County. Among the Board's concerns is whether Rush Street Gaming, which is involved in the control and management of the Rivers Application in Region Two, would have had the resources to manage two new projects in New York State. Furthermore, awarding two licenses to the same principal might have created a risk of over-reliance on the same operator.

**Regarding the objective of advancing Economic Activity and Business Development:** The Board finds the level of total proposed capital investment was \$825 million which the Board notes is more than the required minimum capital investment. Hudson Valley proposed to open the full gaming facility



within 23 months of award of a license. The Board finds that the projections submitted by Hudson Valley estimated gross gaming revenues and gaming tax revenues in 2019 of \$559 million and \$137.1 million, respectively, and a substantial recapture rate of gaming-related spending by residents travelling to out-of-state gaming facilities. Hudson Valley anticipated creating 2,412 full-time and 530 part-time jobs. Hudson Valley's use of an established and successful player reward program might have helped create a secure and robust gaming market in the Region and State although the player database includes relatively few local market patrons. The Board finds that Hudson Valley presented a gaming facility plan of a satisfactory caliber with certain quality amenities to be included as part of the gaming facility. The Board finds that Hudson Valley demonstrated substantial experience in the development and operation of a quality gaming facility.

The Board finds that Hudson Valley presented a credible financing plan, although deal terms were not specific.

**Local Impact and Siting Factors:** The Board concludes and finds, in regard to local impact and siting factors, that Hudson Valley presented a substantially complete analysis of anticipated local impacts and reasonable strategies for mitigating those impacts. The Board finds that Hudson Valley demonstrated local support. The Board finds that Hudson Valley committed to partner with local businesses and promote regional tourism, including impacted live entertainment venues in the area, although Hudson Valley had not reached an agreement with the Upstate Theater Coalition for a Fair Game.

**Regarding workforce enhancement factors:** The Board concludes and finds, in regard to workforce enhancement factors, that Hudson Valley stated it intended to implement a workforce development program that used an existing labor force in the Region, including the unemployed. The Board finds that Hudson Valley presented reasonable measures to address problem gambling, including training employees in recognizing problem gambling. The Board finds that Hudson Valley intended to use sustainable development principles in construction and operation of the gaming facility. The Board finds that Hudson Valley intended to establish a hiring and training program that promotes a skilled and diverse workforce. The Board finds that Hudson Valley intended, but did not commit, to purchase, whenever possible, domestically manufactured slot machines. The Board finds that Hudson Valley intended to establish and implement an affirmative action program that identifies specific goals for the engagement of minorities, women, persons with disabilities and veterans, in order to increase the diversity of the gaming industry workforce. The Board finds that Hudson Valley demonstrated organized labor's support of the project through signed agreements.

### The Live! Hotel and Casino New York

The Live! OCCR Application for its project had both strengths and weaknesses in its ability to advance the objectives of the Act. The proposed location of its facility made the Board's concern about adversely affecting the economic need of the Catskill region particularly acute in that this location would have had a pronounced cannibalization effect on a potential Sullivan County casino. The Board has important concerns, however, that it weighted heavily, in addition to the Board's concerns with the proposed location in Orange County. Among the Board's concerns is that while Live! did show support from the town in which it proposed to locate, it did not demonstrate support from nearby communities.

**Regarding the objective of advancing Economic Activity and Business Development:** The Board finds the level of total proposed capital investment was \$766 million which the Board notes is more

than the required minimum capital investment. OCCR proposed to open the full gaming facility within 24 months of award of license, though the Board notes that it was unclear how far along Live! was in the SEQR process. The Board finds that the projections submitted by OCCR estimated gross gaming revenues and gaming tax revenues in 2019 of \$662 million and \$149.9 million, respectively, and a substantial recapture rate of gaming-related spending by residents travelling to out-of-state gaming facilities. OCCR anticipated creating 3,264 full-time and 1,444 part-time jobs. The Board finds that OCCR committed to use an established player reward program, which might have helped create a secure and robust gaming market in the Region and State although the player database includes relatively few local market patrons. The Board finds that OCCR presented a gaming facility plan of a satisfactory caliber with certain quality amenities to be included as part of the gaming facility. The Board finds that Live! demonstrated experience in the development and operation of a quality gaming facility.

The Board finds that the proposed financing plan was credible.

**Local Impact and Siting Factors:** The Board concludes and finds, in regard to local impact and siting factors, that OCCR presented a substantially complete analysis of anticipated local impacts and reasonable strategies for mitigating those impacts. The Board finds that OCCR demonstrated local support, but is concerned that OCCR did not demonstrate adequate support from nearby communities. The Board finds that OCCR committed to partner with local businesses and promote regional tourism, but had failed to reach an agreement with impacted live entertainment venues in the area.

**Regarding workforce enhancement factors:** The Board concludes and finds, in regard to workforce enhancement factors, that OCCR committed to implement a workforce development program that used an existing labor force, including the unemployed. The Board finds that OCCR presented reasonable measures to address problem gambling, including training employees in recognizing problem gambling. The Board finds that OCCR committed to use sustainable development principles in construction and operation of the gaming facility. The Board finds that OCCR committed to establish a hiring and training program that promotes a skilled and diverse workforce. The Board finds that OCCR stated it intended, but did not commit, to purchase, whenever possible, domestically manufactured slot machines. The Board finds that OCCR committed to establish and implement an affirmative action program that identifies specific goals for the engagement of minorities, women, persons with disabilities and veterans, in order to increase the diversity of the gaming industry workforce. The Board finds that OCCR demonstrated organized labor's support of the project through signed agreements.

## Resorts World Hudson Valley

The RW Orange County Application for Resorts World Hudson Valley had both strengths and weaknesses in its ability to advance the objectives of the Act. The Board has important concerns, however, in addition to the Board's concerns with the proposed location in Orange County. Among the Board's concerns is whether the principal of RW Orange County, Genting, which is behind the video lottery facility at Aqueduct, might have created a risk of over-reliance by the State on the same sponsor.

**Regarding the objective of advancing Economic Activity and Business Development:** The Board finds the level of total proposed capital investment was \$1 billion which the Board notes is more than

the required minimum capital investment. RW Orange County proposed to open the full gaming facility within 24 months of award of a license. The Board finds that the projections submitted by RW Orange County estimated gross gaming revenues and gaming tax revenues in 2019 of \$758 million and \$201.4 million, respectively, and a substantial recapture rate of gaming-related spending by residents travelling to out-of-state gaming facilities. RW Orange County anticipated creating 2,662 full-time and 765 part-time jobs. The Board finds that RW Orange County's use of an established and successful player database would help create a secure and robust gaming market in the Region and State. The Board finds that RW Orange County presented a gaming facility plan of a satisfactory caliber with certain quality amenities to be included as part of the gaming facility, although the size of the proposed capital investment might not be justified by the location and the proposed facility.

The Board finds that RW Orange County presented a credible financing plan. The Board finds that RW Orange County demonstrated substantial experience in the development and operation of a quality gaming facility.

**Local Impact and Siting Factors:** The Board concludes and finds, in regard to local impact and siting factors, that RW Orange County presented a substantially complete analysis of anticipated local impacts and reasonable strategies for mitigating those impacts. The Board finds that RW Orange County demonstrated local support, however the Board notes there was strong grass roots opposition to the project. The Board finds that RW Orange County intended to partner with local businesses and promote regional tourism, including with impacted live entertainment venues in the area.

**Regarding workforce enhancement factors:** The Board concludes and finds, in regard to workforce enhancement factors, that RW Orange County committed to implement a workforce development program that used an existing labor force, including the unemployed. The Board finds that RW Orange County presented reasonable measures to address problem gambling, including training employees in recognizing problem gambling. The Board finds that RW Orange County committed to use sustainable development principles in construction and operation of the gaming facility. The Board finds that RW Orange County committed to establish a hiring and training program that promotes a skilled and diverse workforce. The Board finds that RW Orange County intended, but did not commit, to purchase, whenever possible, domestically manufactured slot machines. The Board finds that RW Orange County committed to establish and implement an affirmative action program that identifies specific goals for the engagement of minorities, women, persons with disabilities and veterans, in order to increase the diversity of the gaming industry workforce. The Board finds that RW Orange County demonstrated organized labor's support of the project through signed agreements.

### Sterling Forest Resort

The RW Orange County Application for Sterling Forest Resort had both strengths and weaknesses in its ability to advance the objectives of the Act. The Board has important concerns, however, in addition to the Board's concerns with the proposed location in Orange County. While the proposed economic benefits that Sterling Forest proposed would have been substantial, among the Board's concerns is whether the business plan was achievable and whether the potential litigation risk over environmental issues would jeopardize the realization of the project. The Board has concerns about whether the sponsor of RW Orange County, Genting, which is the licensee operating the video lottery facility at Aqueduct, might have created a risk of over-reliance by the State on the same sponsor.

**Regarding the objective of advancing Economic Activity and Business Development:** The Board finds the level of total proposed capital investment was \$1.95 billion which the Board notes is more than the required minimum capital investment. RW Orange County proposed to open the full gaming facility within 24 months of award of license. Although the Board notes with favor the Applicant's proposed supplemental license fee and increased gaming tax, those proposals do not overcome the doubts the Board has about the various risks to the project's success. The Board finds that the projections submitted by RW Orange County estimated gross gaming revenues and gaming tax revenues in 2019 of \$1.133 billion and \$264.1 million, respectively, and a substantial recapture rate of gaming-related spending by residents travelling to out-of-state gaming facilities. RW Orange County anticipated creating 3,129 full-time and 1,614 part-time jobs. The Board finds that RW Orange County's use of an established and successful player reward program would help create a secure and robust gaming market in the Region and State. The Board finds that RW Orange County presented a gaming facility plan of a satisfactory caliber with many quality amenities to be included as part of the gaming facility. The Board finds that RW Orange County demonstrated very substantial experience in the development and operation of a quality gaming facility.

The Board finds that RW Orange County presented a credible financing plan.

The Board makes the following additional conclusions and findings in regard to advancing economic activity and business development:

- **Business plan.** The Board finds that Genting's successful operation in New York City could indicate success operating a gaming facility in Upstate New York. The Board notes, however, that the proposed spending on the Sterling Forest facility was very substantial, especially related to non-gaming activities, although it was unclear if market demand would support the expense and capital investment. Further, the Board believes Sterling Forest presented unique risks because of its reliance on the international ultra-premium gaming market segment.
- **Litigation risk.** The Board notes that the project has been the subject of pending litigation brought by a group of residents of host municipality Tuxedo.

**Local Impact and Siting Factors:** The Board concludes and finds, in regard to local impact and siting factors, that RW Orange County presented a substantially complete analysis of anticipated local impacts. Although RW Orange County presented plans to mitigate these impacts, the project's proximity to nearby Sterling Forest State Park and development impacts on streams and wetlands presented potential environmental impact risks. The Board finds that RW Orange County demonstrated local support, however the Board noted there was strong grass roots opposition to the project. The Board finds that RW Orange County committed to partner with local businesses and promote regional tourism, including with impacted live entertainment venues in the area.

**Regarding workforce enhancement factors:** The Board concludes and finds, in regard to workforce enhancement factors, that RW Orange County stated it intended to implement a workforce development program that used an existing labor force, including the unemployed. The Board finds that RW Orange County presented reasonable measures to address problem gambling, including training employees in recognizing problem gambling. The Board finds that RW Orange County committed to use sustainable development principles in construction and operation of the gaming facility. The Board finds that RW Orange County intended to establish a hiring and training program that promotes a skilled and diverse workforce. The Board finds that RW Orange County intended, but

did not commit, to purchase, whenever possible, domestically manufactured slot machines. The Board finds that RW Orange County committed to establish and implement an affirmative action program that identifies specific goals for the engagement of minorities, women, persons with disabilities and veterans, in order to increase the diversity of the gaming industry workforce. The Board finds that RW Orange County demonstrated organized labor's support of the project through signed agreements.

## Region Two, Zone Two (Capital Region)



The Board unanimously selects Rivers to apply to the Commission for a gaming facility license in Region Two, Zone Two.

### **The Rivers Proposed Gaming Facility**

Rivers, owned by affiliates of casino and real estate developer Neil Bluhm, proposes to develop the Rivers Casino & Resort at Mohawk Harbor on the Mohawk River in the City of Schenectady in Schenectady County. The facility is proposed to include a 50,000-square-foot casino featuring 1,150 slot machines and 66 gaming tables (including poker tables), a high-end steakhouse and other casual and light fare restaurants, an entertainment lounge, a banquet facility and a spa. The Rivers facility is part of Mohawk Harbor, an integrated 60-acre mixed use waterfront development being completed by The Galesi Group, a large and experienced real estate developer, which combines residential, commercial and retail uses as well as a new harbor, riverfront trails and open spaces. Rivers states that The Galesi Group will develop a hotel at the Rivers facility with 150 rooms in addition to another planned 124-room hotel being developed on the northern portion of the Mohawk Harbor project.

### **Board's Evaluation**

The Rivers total proposed capital investment is \$300.1 million. The Board acknowledges the opportunities for enhanced economic impact in the Region due to the inclusion of Rivers in the Mohawk Harbor development, which is the subject of a separate investment of approximately \$150 million. Rivers projects gross gaming revenues and gaming tax revenues in 2019 of \$222.5 million and \$82.1 million, respectively, and a substantial recapture rate of gaming-related spending by residents travelling to out-of-state gaming facilities. The Board notes the Rivers assertion that its facility will produce "as much or more revenue" as any of the other proposed facilities in the Capital Region and its observation that the "gravity model" that forms the basis for most market surveys does not take into account the particular abilities of the operator. Rivers proposes to use an established customer loyalty program that the Board finds will help create a secure and robust gaming market in the Region and State. The Board finds that Rivers presents a gaming facility plan of a satisfactory caliber with certain quality amenities to be included as part of the gaming facility.

Rivers anticipates creating approximately 877 full-time and 193 part-time jobs in central Schenectady. Another compelling aspect of the Rivers project is that it supports revitalization of the City of Schenectady by replacing one of the country's oldest brownfield sites.

The Board notes that Rivers proposes to brand the hotel (to be owned by The Galesi Group) with a national hotel flag such as the “Four Points by Sheraton” or “Aloft” flags of Starwood Hotels & Resorts. The Board notes the advantages of branding the Rivers hotel with a strong national hotel flag.

Rivers presented a strong and credible plan to finance its project. The Board notes favorably that affiliates of Rivers have successfully raised capital in difficult financial markets and completed other comparable gaming developments on time and on budget. Rivers also committed to provide a completion guaranty if required by the financing arrangements.

Gaming operations at Rivers will be overseen by local management and Rush Street Gaming LLC, an affiliate of Rivers. Although Rush Street has not formally been designated as the operator of the facility, the ownership structure makes clear that Rush Street will be the driving force of the Rivers operations. The Board finds that Rush Street is a gaming company with experience in developing, financing and operating entertainment and gaming destinations on a scale comparable to the proposed Rivers project.

The Board finds that Rivers presents a complete analysis of anticipated local impacts and provides reasonable strategies for mitigating those impacts. Rivers demonstrates local support and the Board notes that Rivers stated an intention to partner with local businesses and promote regional tourism, including impacted live entertainment venues in the area.

Rivers stated an intention to implement a workforce development program that employs the existing nearby labor force, including those who are currently unemployed. Rivers demonstrates organized labor’s support of the project through signed agreements.

The Board finds that Rivers presents reasonable measures to address problem gambling, including training employees in recognizing problem gambling.

Rivers commits to using sustainable development principles in construction and operation of the gaming facility and will establish a hiring and training program that promotes a skilled and diverse workforce. The Board finds that Rivers proposes to establish and implement an affirmative action program for the engagement of minorities, women, persons with disabilities and veterans in order to increase the diversity of the gaming industry workforce. Rivers committed to purchase primarily domestically manufactured slot machines.

In addition, the Board notes that the proposed gaming site would support revitalization of the City of Schenectady by replacing one of the country’s oldest brownfields with a \$300 million destination resort that would attract new visitors and help restore opportunities and vitality to the area. The Board supports the use of a brownfield site and finds that the project will directly create jobs and indirectly create tax income to be used for education, training and a better quality of life.

The Board finds that Rush Street Gaming’s experience in operating casinos in urban areas would help Rivers understand the challenges of an urban development and develop creative solutions to optimize potential. The Board believes that the placement of the gaming facility within the broader Mohawk Harbor mixed use development strengthens the sustainability of the project.

**Regarding providing economic assistance to disadvantaged areas of the State while enhancing Upstate New York’s tourism industry:** The Board considered the additional criterion it established: determining which proposals best fulfill the intent of the Act in regard to providing economic assistance to disadvantaged areas of the State while enhancing Upstate New York’s tourism industry. In this regard, the Board considered several indicators of economic distress in counties in the region, including a variety of data, such as median family income, percent of population with a bachelor’s degree or higher, per capita personal income, home prices, the unemployment rate and the poverty rate. According to the New York State Division of Budget, in Schenectady County the median family income is \$75,398.83; percent of population with a bachelor’s degree or higher is 26.8%, median home price is \$171,250, the unemployment rate is 5.2% and the poverty rate is 12.4%. The Board concludes and finds that Schenectady County had higher levels of poverty, along with below average home prices, than Rensselaer County and New York State averages.

## **Regarding Other Proposals in Region Two, Zone Two**

### **Capital View Casino & Resort**

The Capital View Application had both strengths and weaknesses in its ability to advance the objectives of the Act. While Capital View’s ability to advance the objective of generating economic activity and business development was comparable to that of other Applicants in the region, among the Board’s concerns is that the level of public support for the Capital View project was significantly less strong than was the case for other Applicants in the region. The Board is concerned with the scope of local opposition to the Capital View proposal, despite the Town’s formal municipal endorsement of it. The Board concludes that the Rivers facility, as part of a broader, integrated economic development plan, made that proposal superior to the Capital View proposal..

**Regarding the objective of advancing Economic Activity and Business Development:** The Board finds the level of total proposed capital investment was \$325 million which the Board notes is more than the required minimum capital investment. Capital View proposed to open the full gaming facility within 19 months of award of a license, however the Board notes that due to legal and environmental challenges there might have been delays in this timeline. The Board finds that the projections submitted by Capital View estimated gross gaming revenues and gaming tax revenues in 2019 of \$227 million and \$82 million, respectively, and a substantial recapture rate of gaming-related spending by residents travelling to out-of-state gaming facilities. Capital View anticipated creating 769 full-time and 256 part-time jobs. The Board finds that Capital View’s use of an established and successful player reward program has helped create a secure and robust gaming market in the Region and State. The Board finds that Capital View presented a gaming facility plan of a satisfactory caliber with certain quality amenities to be included as part of the gaming facility. The Board finds that Capital View demonstrated experience in the development and operation of a quality gaming facility.

The Board finds it likely that Capital View’s sponsors, Saratoga Harness Racing, Inc., and Churchill Downs, Inc. combined, would have had sufficient borrowing capacity and/or commitment letters for new financing to fund both the debt and equity components of the Capital View project. However, the certainty of financing of Capital View was less strong than several of its competitors in the Region.

**Local Impact and Siting Factors:** The Board concludes and finds, in regard to local impact and siting factors, that Capital View presented an analysis of anticipated local impacts and strategies for

mitigating those impacts. The Board finds that Capital View demonstrated local support in the form of an endorsement from its local municipal entity. The Board notes, however, that there was strong grass roots opposition to the project raising concerns as to its ability to commence operations in a timely fashion. The Board finds that Capital View committed to partner with local businesses and promote regional tourism, including with impacted live entertainment venues in the area.

**Regarding workforce enhancement factors:** The Board concludes and finds, in regard to workforce enhancement factors, that Capital View committed to implement a workforce development program that used the existing labor force in the Region, including the unemployed. The Board finds that Capital View presented reasonable measures to address problem gambling, including training employees in recognizing problem gambling. The Board finds that Capital View committed to use sustainable development principles in construction and operation of the gaming facility. The Board finds that Capital View committed to establish a hiring and training program that promotes a skilled and diverse workforce. The Board finds that Capital View listed a number of domestic slot machine manufacturers from whom it proposed to purchase such machines. There was no commitment to purchase only domestically manufactured slot machines or any certain percentage of such machines. The Board finds that Capital View intended to establish and implement an affirmative action program that identifies specific goals for the engagement of minorities, women, persons with disabilities and veterans, in order to increase the diversity of the gaming industry workforce. The Board finds that Capital View demonstrated organized labor's support of the project through signed agreements.

**Regarding providing economic assistance to disadvantaged areas of the State while enhancing Upstate New York's tourism industry:** The Board considered the additional criterion it established: determining which proposals best fulfill the intent of the Act in regard to providing economic assistance to disadvantaged areas of the State while enhancing Upstate New York's tourism industry. In this regard, the Board considered several indicators of economic distress in counties in the Region, including a variety of data, such as median family income, percent of population with a bachelor's degree or higher, per capita personal income, home prices, the unemployment rate and the poverty rate. According to the New York State Division of Budget, in Rensselaer County the median family income is \$75,321.64; percent of population with a bachelor's degree or higher is 31.36%, median home price is \$171,750, the unemployment rate is 5% and the poverty rate is 11.6%. The Board concludes and finds that, while Rensselaer County could benefit from economic development, compared to both Schoharie and Schenectady counties, Rensselaer County showed comparatively less indicia of economic distress and was more strongly positioned economically than the two other potential host counties in this Region.

### Hard Rock Rensselaer

The NYS Funding Application for its Hard Rock project had both strengths and weaknesses in its ability to advance the objectives of the Act. Indeed, the choice between Rivers and Hard Rock was a particularly difficult comparison. Among the Board's concerns is that Hard Rock would not have been an equity investor in the project, but merely a franchisor licensing its name. Further, the Board concludes that the Rivers facility, as part of a broader, integrated economic development plan, would have a wider economic development impact than the Hard Rock proposal.

**Regarding the objective of advancing Economic Activity and Business Development:** The Board finds the level of total proposed capital investment was \$280 million which the Board notes is more than the required minimum capital investment. NYS Funding proposed to open the full gaming



facility in 13 months of award of license. The Board finds that the projections submitted by NYS Funding estimated gross gaming revenues and gaming tax revenues in 2019 of \$284 million and \$105.4 million, respectively, and a substantial recapture rate of gaming-related spending by residents travelling to out-of-state gaming facilities. NYS Funding anticipated creating 889 full-time and 179 part-time jobs. The Board finds that use of an established and successful player reward program might have helped create a secure and robust gaming market in the Region and State, although the player database includes relatively few local market patrons. The Board finds that NYS Funding presented a gaming facility plan of a satisfactory caliber with certain quality amenities to be included as part of the gaming facility.

The Board finds that NYS Funding presented a strong and credible plan to finance its project.

The Hard Rock proposal had certain attractive features but also important weaknesses.

- **Operating concerns.** The Board was concerned that the Seminole Tribe of Florida was not an equity investor in the project but merely a franchisor licensing the Hard Rock name to the project. Accordingly, the Seminole Tribe of Florida would not have been as fully aligned with the success of the project as an equity investor would have been, because it shared in the upside but did not face the risk of loss of capital if the project was not successful.
- **Facility concerns.** The Hard Rock proposal was not part of a broader, integrated economic development intended to revitalize a brownfield site, in contrast to the Rivers proposal.

**Local Impact and Siting Factors:** The Board concludes and finds, in regard to local impact and siting factors, that NYS Funding presented an analysis of anticipated local impacts and strategies for mitigating those impacts. The Board finds that NYS Funding demonstrated an acceptable level of local support. The Board finds that NYS Funding committed to partner with local businesses and promote regional tourism, including with impacted live entertainment venues in the area.

**Regarding workforce enhancement factors:** The Board concludes and finds, in regard to workforce enhancement factors, that NYS Funding stated it intended to implement a workforce development program. The Board finds that NYS Funding presented reasonable measures to address problem gambling, including training employees in recognizing problem gambling. The Board finds that NYS Funding committed to use sustainable development principles in construction and operation of the gaming facility. The Board finds that NYS Funding stated it intended to establish a hiring and training program that promotes a skilled and diverse workforce. The Board finds that NYS Funding intended, but did not commit, to purchase, whenever possible, domestically manufactured slot machines. The Board finds that NYS Funding committed to establish and implement an affirmative action program that identifies specific goals for the engagement of minorities, women, persons with disabilities and veterans, in order to increase the diversity of the gaming industry workforce. The Board finds that NYS Funding demonstrated organized labor's support of the project through a signed agreement.

**Regarding providing economic assistance to disadvantaged areas of the State while enhancing Upstate New York's tourism industry:** The Board considered the additional criterion it established: determining which proposals best fulfill the intent of the Act in regard to providing economic assistance to disadvantaged areas of the State while enhancing Upstate New York's tourism industry. In this regard, the Board considered several indicators of economic distress in counties in the region, including a variety of data, such as median family income, percent of population with a bachelor's degree or higher, per capita personal income, home prices, the unemployment rate and the poverty

rate. According to the New York State Division of Budget, in Rensselaer County the median family income is \$75,321.64; percent of population with a bachelor's degree or higher is 31.36%, median home price is \$171,750, the unemployment rate is 5% and the poverty rate is 11.6%. The Board concludes and finds that while Rensselaer County could benefit from economic development, compared to both Schoharie and Schenectady counties, Rensselaer County showed comparatively less indicia of economic distress and was more strongly positioned economically than the two other potential host counties in the Region.

### Howe Caverns Resort & Casino

The Howe Caverns Application had both strengths and weaknesses in its ability to advance the objectives of the Act. Among the Board's concerns is the credibility of the Howe Caverns financing plans.

**Regarding the objective of advancing Economic Activity and Business Development:** The Board finds the level of total proposed capital investment was \$358 million which the Board notes is more than the required minimum capital investment. Howe Caverns proposed to open the full gaming facility within 24 months of award of license. The Board finds that the projections submitted by Howe Caverns estimated gross gaming revenues and gaming tax revenues in 2019 of \$139 million and \$52.7 million, respectively, and a substantial recapture rate of gaming-related spending by residents travelling to out-of-state gaming facilities. Howe Caverns anticipated creating 804 full-time equivalent jobs. The Board finds that Howe Caverns did not have access to an established player reward program which would hinder the creation of a secure and robust gaming market in the Region and State. The Board finds that Howe Caverns presented a gaming facility plan of a satisfactory caliber with certain quality amenities to be included as part of the gaming facility.

The Howe Caverns proposal had certain attractive features, but also important weaknesses.

- **Financing concerns.** The Board has concerns with respect to the financing plans submitted by Howe Caverns. Of critical concern to the Board was the failure of Howe Caverns to provide in its initial Application any commitment or highly confident letters for either its proposed equity or debt financing. The Howe Caverns sponsors stated they could not propose a detailed capital structure prior to receiving a gaming license. Although Howe Caverns expressed confidence in obtaining financing for its project, the Board concluded that a critical weakness in the Howe Caverns application was the lack of financing commitments in the amounts necessary to fully fund its project.
- **Operating concerns.** Although Howe Caverns demonstrated experience in the development and operation of a quality gaming facility, the Board had concerns with the entertainment aspects of its project. Howe Caverns would have had no access to an existing New York area player database. Towards the end of the Board's selection process the project's operator, Full House Resorts, began a corporate transition and current management was recently replaced.

**Local Impact and Siting Factors:** The Board concludes and finds, in regard to local impact and siting factors, that Howe Caverns presented an analysis of anticipated local impacts and strategies for mitigating those impacts. Generally, Howe Caverns failed to provide specific measures to mitigate impacts. The Board finds that Howe Caverns demonstrated substantial local (and regional) support. The Board finds that Howe Caverns committed to partner with local businesses and promote regional

tourism, including with impacted live entertainment venues in the area.

**Regarding workforce enhancement factors:** The Board concludes and finds, in regard to workforce enhancement factors, that Howe Caverns stated an intention to implement a workforce development program that used the existing labor force in the Region, including the unemployed. The Board finds that Howe Caverns presented reasonable measures to address problem gambling, including training employees in recognizing problem gambling. The Board finds that Howe Caverns committed to use sustainable development principles in construction and operation of the gaming facility. The Board finds that Howe Caverns committed to establish a hiring and training program that promotes a skilled and diverse workforce. The Board finds that Howe Caverns intended, but did not commit, to purchase, whenever possible, domestically manufactured slot machines. The Board finds that Howe Caverns committed to establish and implement an affirmative action program that identifies specific goals for the engagement of minorities, women, persons with disabilities and veterans, in order to increase the diversity of the gaming industry workforce. The Board finds that Howe Caverns demonstrated organized labor's support of the project through signed and executed agreements.

**Regarding providing economic assistance to disadvantaged areas of the State while enhancing Upstate New York's tourism industry:** The Board considered the additional criterion it established: determining which proposals best fulfill the intent of the Act in regard to providing economic assistance to disadvantaged areas of the State while enhancing Upstate New York's tourism industry. In this regard, the Board considered several indicators of economic distress in counties in the region, including a variety of data, such as median family income, percent of population with a bachelor's degree or higher, per capita personal income, home prices, the unemployment rate and the poverty rate. According to the New York State Division of Budget, in Schoharie County the median family income is \$71,695.79; percent of population with a bachelor's degree or higher is 20.81%, median home price is \$149,160, the unemployment rate is 5.7% and the poverty rate is 14.4%. The Board finds Schoharie County, much like Schenectady County, to be economically disadvantaged and more in need of economic development compared with Rensselaer County.

## Region Five, Zone Two (Eastern Southern Tier/Finger Lakes Region)



The Board unanimously selects Lago to apply to the Commission for a gaming facility license in Region Five, Zone Two.

### Lago's Proposed Gaming Facility

Lago, a partnership of Wilmot Gaming, LLC and PGP Investors, LLC, proposes to develop the Lago

Resort & Casino in the Town of Tyre in Seneca County. Lago's facility is proposed to include a 94,000 square foot casino with 2,000 slot machines and 85 gaming tables, 207 hotel rooms, multiple restaurants and lounges featuring local fare, and a spa.

### **Board's Evaluation**

Lago's total proposed capital investment is \$425 million. This capital investment far exceeds the proposed capital investment required for this Region. In addition, even after considering potential cannibalization of existing facilities, the Board observes that Lago's proposal is projected to generate significantly greater tax revenues to the State than the other Applications for this Region. Further, the Board finds Lago will provide many opportunities for enhanced economic impact and increased tourism in the Finger Lakes area. Lago proposes to complete construction within 20 months of award of license. Lago projects gross gaming revenues and gaming tax revenues in 2019 of \$282 million and \$80 million, respectively, and a substantial recapture rate of gaming-related spending by residents travelling to out-of-state gaming facilities.

The Board finds that Lago is a new company and currently does not have a player reward program or access to an existing player database.

Lago anticipates creating approximately 1,250 to 1,500 jobs. Lago has confirmed in a signed construction manager agreement, a commitment to use a minimum of 95 percent New York-based contractors and 90 percent New York-based suppliers.

The Board finds that Lago proposes a thoughtful and well-designed facility that would provide a leisurely, resort-like atmosphere for guests.

The Board finds that Lago has proposed a reasonable and credible financing plan. Lago proposes to finance the gaming facility through a combination of institutional third-party debt and preferred equity and common equity raised from its members. Lago's three investors have committed to provide a total of \$90 million of cash equity investment to finance the project.

Wilmot Gaming is an affiliate of Wilmorite Inc. and the Wilmot family, which have local real estate development experience. PGP is affiliated with M. Brent Stevens, an experienced casino developer. The gaming facility will be operated by JNB Gaming, LLC, also an affiliate of Mr. Stevens, which the Board finds has extensive and successful experience developing and managing regional casinos similar in size and scope to Lago.

The Board finds that Lago presents a complete analysis of the anticipated local impacts of its facility and provides reasonable strategies for mitigating those impacts although additional proposals to mitigate traffic in response to local concerns may be advisable. Lago has sufficiently demonstrated local support. The Board recommends that the Commission work with Lago to address those potential impacts to ensure safety and minimize inconvenience to the residents of the Tyre area. Lago commits to partner with local businesses and promote regional tourism, including impacted live entertainment venues in the area.

Lago commits to implement a workforce development program that employs the existing labor force in the Region, including the unemployed, and to establish a hiring and training program that promotes a skilled and diverse workforce. Lago intends to purchase domestically manufactured slot machines.

The Board finds that Lago proposes to establish and implement an affirmative action program that identifies specific goals for the engagement of minorities, women, persons with disabilities and veterans in order to increase the diversity of the gaming industry workforce. Lago has organized labor's support of the project through signed agreements.

The Board finds that Lago presents reasonable measures to address problem gambling, including training employees in recognizing problem gambling.

Lago proposes using sustainable development principles in construction and operation of the gaming facility.

**Regarding providing economic assistance to disadvantaged areas of the State while enhancing Upstate New York's tourism industry:** The Board considered the additional criterion it established: determining which proposals best fulfill the intent of the Act in regard to providing economic assistance to disadvantaged areas of the State while enhancing Upstate New York's tourism industry. In this regard, the Board considered several indicators of economic distress in counties in the Region, including a variety of data, such as median family income, percent of population with a bachelor's degree or higher, per capita personal income, home prices, the unemployment rate and the poverty rate. According to the New York State Division of Budget, in Seneca County the median family income is \$65,752.88; percent of population with a bachelor's degree or higher is 21.05%, median home price is \$146,590, the unemployment rate is 5.1% and the poverty rate is 12.9%. The Board concludes and finds that Seneca County had lower levels of median family income and residents with a bachelor's degree or higher below the New York state average. Additionally, median home prices were far below the New York State average

## Regarding Other Proposals in Region Five, Zone Two

### Tioga Downs Casino, Racing & Entertainment

The Tioga Application had both strengths and weaknesses in its ability to advance the objectives of the Act. The Board notes that Jeff Gural, the Applicant's principal backer, has made significant investments in the past in Tioga Downs and the Vernon Downs harness racetrack and video lottery facility, and that both facilities have contributed to the economy of the Region. The Board's mandate, however, is to identify the projects that best advance the objectives of the Act. Indeed, the Legislature specifically declined to reserve gaming licenses for operators of existing video lottery facilities, requiring them instead to compete with new development projects.

Among the Board's concerns are those with Tioga's financing plans, including the small amount of new equity investment proposed to be made, the resulting high debt-to-equity ratio, and the unfavorable terms of the proposed debt facility. Further, the Board has concerns with the proposed design of the facility, which is a partial retrofit and expansion of an existing facility.

**Regarding the objective of advancing Economic Activity and Business Development:** The Board finds the level of total proposed capital investment was \$128 million which the Board notes is more than the required minimum capital investment. The partial retrofit approach to the project would allow Tioga to open the slot machine portion of the facility within 90 days of award of license and various other amenities within 19 months.

The Board finds that the projections submitted by Tioga estimated gross gaming revenues and gaming tax revenues in 2019 of \$98 million and \$31.2 million, respectively, and a substantial recapture rate of gaming-related spending by residents travelling to out-of-state gaming facilities. Tioga anticipated creating 464 full-time and 549 part-time jobs. The Board finds that Tioga's access to an established player reward program would facilitate its ability to create a secure and robust gaming market in the Region and State. The Board finds that Tioga demonstrated experience in the development and operation of a quality gaming facility.

The Tioga proposal had certain attractive features, but also important weaknesses.

- **Financing concerns.** The Board has concerns about a number of aspects of the Applicant's capital and financing structure:
  - The total amount of the proposed equity contribution to the Tioga project is only \$5 million, resulting in debt-to-equity ratios well outside of the range customarily expected by the capital markets for a regional casino.
  - The risky nature of the proposed financing and capital structure is also indicated by the unfavorable terms of the proposed EPR loan. The interest rate on the EPR loan is 9.5%, which will increase annually starting on the third anniversary of the loan based on increases in the Consumer Price Index, provided further that no such annual increase shall exceed 1.75% per annum. In addition, 4% of all revenues above a baseline amount are payable as additional interest starting on the fourth anniversary of the loan.
  - The Board also has concerns about the only source of proposed debt financing for the project. The Applicant is relying on a commitment letter from a single lending institution—a real estate investment trust called EPR—to provide \$160 million of debt financing, which covers not only the cost of capital improvements and expansion of Tioga Downs (approximately \$92.5 million) but also the cost of refinancing existing debt (approximately \$37.5 million) and paying the gaming license fee of approximately \$35 million. EPR does not appear to have experience in providing financing to gaming facilities, which increases the risk of relying on this single institution for almost the entirety of the financing required for the proposed project. By contrast, EPR is providing financing for the *non-gaming* Adelaar project associated with Montreign—a type of development with which EPR *does* have experience.
  - These financing concerns are not allayed by Mr. Gural's guarantee of up to \$50 million of the principal amount of the EPR loan, which is a condition of the EPR loan. The guarantee is not equity or a "keep well" commitment to provide additional capital if necessary should the project require funding in the future, but would simply reduce the loss experienced by EPR in the event of financial distress.
- **Facility concerns.** The Board is also concerned with aspects of Tioga's design. Because Tioga's proposal was a partial retrofit and expansion of existing facilities, the result would be a patchwork of buildings and amenities, rather than a cohesive site design and layout. For example, the expansion calls for many of the additions to be built at the "end" of existing buildings rather than having them centrally located. This would have resulted in larger distances between amenities and missed an opportunity for synergies created by having certain features clustered together.

Although the Board noted that Tioga believed the project may open quickly, Tioga proposed several phases of development. The Board was concerned that this phased development approach would present complications in construction and operations as well as the fact that the differentiating amenities would not open until later phases. In addition, the Board observes that by industry standards Tioga's hotel was too small relative to projections for visitation and Tioga's master plan did not include plans for expanding the hotel.

**Local Impact and Siting Factors:** The Board concludes and finds, in regard to local impact and siting factors, that Tioga presented a substantially complete analysis of anticipated local impacts and reasonable strategies for mitigating those impacts. The Board finds that Tioga demonstrated substantial local support. The Board finds that Tioga committed to partner with local businesses and promote regional tourism, including with impacted live entertainment venues in the area.

**Regarding workforce enhancement factors:** The Board concludes and finds, in regard to workforce enhancement factors, that Tioga committed to implement a workforce development program that used the existing labor force in the Region, including the unemployed. The Board finds that Tioga presented reasonable measures to address problem gambling, including training employees in recognizing problem gambling. The Board finds that Tioga committed to use sustainable development principles in construction and operation of the gaming facility. The Board finds that Tioga intended to establish a hiring and training program that promotes a skilled and diverse workforce. The Board finds that Tioga listed a number of domestic slot machine manufacturers and implied that it would purchase only domestically manufactured slot machines, but did not explicitly state as much. The Board finds that Tioga committed to establish and implement an affirmative action program that identifies specific goals for the engagement of minorities, women, persons with disabilities and veterans, in order to increase the diversity of the gaming industry workforce. The Board finds that Tioga demonstrated organized labor's support of the project through signed agreements.

**Regarding providing economic assistance to disadvantaged areas of the State while enhancing Upstate New York's tourism industry:** The Board considered the additional criterion it established: Determining which proposals best fulfill the intent of the Act in regard to providing economic assistance to disadvantaged areas of the State while enhancing Upstate New York's tourism industry. In this regard, the Board considered several indicators of economic distress in counties in the region, including a variety of data, such as median family income, percent with a bachelor's degree or higher, per capita personal income, home prices, the unemployment rate and the poverty rate. According to the New York State Division of Budget, in Tioga County the median family income is \$70,272.03; percent of population with a bachelor's degree or higher is 23.7%, median home price is \$107,140, the unemployment rate is 5.8% and the poverty rate is 10.2%. The Board finds that while Tioga County could benefit from economic development, Tioga County showed a stronger economic position and comparatively fewer indicia of economic distress than Seneca County.

### Traditions Resort & Casino

The Traditions Application had both strengths and weaknesses in its ability to advance the objectives of the Act. Among the Board's concerns are that the Traditions financing plans, in particular the relatively low level of proposed equity investment, compared with Lago, and consequentially a high debt-to-equity ratio. Further, the Board is concerned with the Traditions design and whether its proposed phase two would have been realized.

**Regarding the objective of advancing Economic Activity and Business Development:** The Board finds the level of total proposed capital investment was \$228 million which the Board notes is more than the required minimum capital investment. Traditions proposed to open Phase I within 12 months of award of license. The projections submitted by Traditions estimated gross gaming revenues and gaming tax revenues in 2019 of \$139.5 million and \$41.1 million, respectively, and a substantial recapture rate of gaming-related spending by residents travelling to out-of-state gaming facilities. Traditions anticipated creating 678 full-time and 388 part-time jobs. The proposed use of an established player reward

program had the potential to help create a secure and robust gaming market in the Region and State. The Board finds that Traditions presented a gaming facility plan of a satisfactory caliber with certain amenities to be included as part of the gaming facility. The Board finds that Traditions management had no prior experience in the development and operation of a quality gaming facility.

The Traditions proposal had certain attractive features, but also important weaknesses.

- **Financing concerns.** In contrast to the proposed financing of Lago, which includes cash equity commitments of \$90 million, the total amount of the proposed equity contribution (excluding the proceeds of a sale-leaseback transaction) to the Traditions project was substantially less than Lago's as a percentage of their respective proposed total capital investments. The Board notes that none of the potential financing alternatives presented by Traditions included a significant investment of new money by the Traditions investors. In addition, the Traditions debt financing had not been fully committed but instead relied in part on highly confident letters from its proposed financing sources. This low level of proposed equity investment for Traditions resulted in debt-to-equity ratios outside of the range the Board believes is customarily expected by the capital markets for a regional casino. The Board examined various financial ratios for Traditions, which raised concerns in regard to the sustainability of the project.
- **Facility concerns.** The Board is also concerned with aspects of the Traditions design, including the lack of a center bar and the close clustering of table games. The Board was also concerned that phase two construction might have been subject to contingencies such as sufficient market demand.

**Local Impact and Siting Factors:** The Board concludes and finds, in regard to local impact and siting factors, that Traditions presented a substantially complete analysis of anticipated local impacts and reasonable strategies for mitigating those impacts. The Board finds that Traditions demonstrated substantial local and regional support. The Board finds that Traditions stated it intended to partner with local businesses and promote regional tourism, including with impacted live entertainment venues in the area.

**Regarding workforce enhancement factors:** The Board concludes and finds, in regard to workforce enhancement factors, that Traditions stated an intention to implement a workforce development program that used the existing labor force in the Region, including the unemployed. The Board finds that Traditions presented reasonable measures to address problem gambling, including training employees in recognizing problem gambling. The Board finds that Traditions intended to use sustainable development principles in construction and operation of the gaming facility. The Board finds that Traditions intended to establish a hiring and training program that promotes a skilled and diverse workforce. The Board finds that Traditions stated a general but vague intent to purchase domestically manufactured slot machines, in a manner that called into question if the majority of gaming machines would be domestically sourced. The Board finds that Traditions committed to establish and implement an affirmative action program that identifies specific goals for the engagement of minorities, women, persons with disabilities and veterans, in order to increase the diversity of the gaming industry workforce. The Board finds that Traditions demonstrated organized labor's support of the project through signed agreements.

**Regarding providing economic assistance to disadvantaged areas of the State while enhancing Upstate New York's tourism industry:** The Board considered the additional criterion it established:



determining which proposals best fulfill the intent of the Act in regard to providing economic assistance to disadvantaged areas of the State while enhancing Upstate New York's tourism industry. In this regard, the Board considered several indicators of economic distress in counties in the Region, including a variety of data, such as median family income, percent of population with a bachelor's degree or higher, per capita personal income, home prices, the unemployment rate and the poverty rate. According to the New York State Division of Budget, in Broome County the median family income is \$63,013.65; percent of population with a bachelor's degree or higher is 30.3%, median home price is \$112,570, the unemployment rate is 6% and the poverty rate is 17.3%. The Board concludes and finds that Broome County had levels of unemployment and poverty that exceed the New York State average. Additionally, Broome County had lower median home price and percentage of residents with a bachelor's degree or higher than the New York State average.

## CONCLUSION

The five members of the Gaming Facility Location Board volunteered to serve on the Board with full appreciation of the importance and gravity that comes with their decisions. Individual opinions on gambling and related issues were set aside and each member applied the statutory criteria to the best of their abilities. They have taken their role very seriously: they have traveled the State, visited locations, heard from hundreds of concerned citizens, consulted with renowned industry experts and thoroughly digested voluminous materials, all while applying their individual and collective experience and expertise to make the best choices for the host communities and other localities and regions affected and the entire State of New York.

While the majority of the Applicants have not been selected to apply for gaming facility licenses, the Board extends its gratitude to each of the Applicants for its commitment and interest in helping to foster economic development in Upstate New York.

The selected Applicants, Montreign, Rivers and Lago, have an important charge at hand. As they have throughout this process, they are expected to act and perform with the utmost integrity and accountability to the State and taxpayers. The Commission has already begun the licensing review process and intends to move promptly to issue licenses so that construction can begin, jobs can be created and the economic climate can improve. The Board congratulates the successful Applicants and wishes them the best success on their developments.

## NOTABLE MILESTONES

March 14, 2012	First passage by the State Legislature of a bill to amend the New York State constitution to allow no more than seven casinos as authorized and prescribed by the Legislature.
June 21, 2013	Second passage by the State Legislature of a bill to amend the New York State constitution to allow no more than seven casinos as authorized and prescribed by the Legislature.
July 31, 2013	The Upstate New York Gaming Economic Development Act of 2013 (Chapters 174 and 175 of the Laws of 2013) is signed into law by Governor Andrew M. Cuomo.
November 5, 2013	Voters of New York overwhelmingly approve (57 percent) an amendment of the State Constitution, allowing no more than seven casinos as authorized and prescribed by the Legislature.
January 1, 2014	The Upstate New York Gaming Economic Development Act of 2013 becomes law, authorizing up to four upstate destination casinos with at least one casino located in each of three defined regions of the State: Hudson Valley/Catskill area, Capital Region, and Eastern Southern Tier/Finger Lakes Region. One region may host two facilities. For a period of at least seven years from the issuance of the first license, no facility may be located in Putnam, Rockland or Westchester Counties, nor on Long Island or within the City of New York.
March 12, 2014	The NYS Gaming Commission appoints Gaming Facility Location Board Members Paul Francis, Stuart Rabinowitz and William Thompson.
March 24, 2014	The New York Gaming Facility Location Board selects the firm of Taft Stettinius & Hollister LLP as a statutorily mandated gaming advisory services consultant.
March 31, 2014	The Gaming Facility Location Board issues a Request for Applications (RFA) to develop and operate a gaming facility in New York State, formally opening the bidding period for commercial casino Applicants.
April 11, 2014	Commercial casino Applicants' first round of questions on the RFA are due.
April 23, 2014	Application fees of \$1 million each to help defray the costs associated with the processing of the Application and investigation of the Applicant are received from 22 entities seeking to develop and operate a gaming facility in New York State. The Gaming Facility Location Board issues answers to the first round of questions.
April 30, 2014	A mandatory Applicant conference is held in Albany for entities seeking to submit Applications to develop and operate commercial gaming facilities in New York State.

May 2, 2014	The Gaming Facility Location Board issues a written summary of the Applicant conference.
May 7, 2014	Applicants' second round of questions on the RFA are due.
May 12, 2014	The Gaming Facility Location Board determines the minimum capital investment to be expended by successful Applicants to construct their gaming facilities.
May 13, 2014	Rolling Hills Entertainment, LLC requests and receives a full refund of the application fee.
May 14, 2014	The Gaming Facility Location Board issues answers to the second round of questions.
May 16, 2014	PNK Development 33, LLC requests and receives a full refund of the application fee.
June 5, 2014	Trading Cove New York, LLC requests and receives a full refund of the application fee.
June 12, 2014	CRCR Enterprises, LLC (joint venture of Cordish Co./Penn National) requests and receives a full refund of the application fee.
June 24, 2014	Grossinger Development Corporation requests and receives a full refund of the application fee.
June 30, 2014	Applications are received from 17 entities seeking to develop and operate commercial gaming facilities in New York State.
July 7, 2014	NYS Gaming Commission appoints Gaming Facility Location Board members Dennis Glazer and Kevin Law.
July 28, 2014	NYS Gaming Commission names Kevin Law as chair of the Gaming Facility Location Board.
August 7, 2014	The Gaming Facility Location Board disqualifies an application by Florida Acquisition Corporation to develop a gaming facility within the Town of Florida, Montgomery County as its application was incomplete and did not conform to RFA requirements.
August 28, 2014	The Board issues an application fee refund of \$991,216 to Florida Acquisition Corporation.
September 8-9, 2014	Applicant public presentations are held in Albany to afford each remaining Applicant an opportunity to provide the Gaming Facility Location Board with an overview of the contents of its Application, explain any particularly complex information and highlight any specific areas it desires.

September 22–24, 2014	Public comment events are held in Albany, Poughkeepsie and Ithaca to provide the Board with the opportunity to hear public sentiment, support and concerns in regard to commercial gaming facility proposals, and to receive input from potentially impacted communities.
October 20, 2014	The Gaming Facility Location Board meets to discuss the financial viability of each Applicant.
November 10, 2014	The Gaming Facility Location Board meets to discuss the financial viability of each Applicant.
November 21, 2014	The Gaming Facility Location Board meets to discuss the financial viability of each Applicant.
December 9, 2014	The Gaming Facility Location Board meets to discuss the financial viability of each Applicant.
December 17, 2014	The Gaming Facility Location Board unanimously approves its selections for three entities to apply for commercial gaming facility licenses in New York State.

## THE NEW YORK GAMING FACILITY LOCATION BOARD

The Upstate New York Gaming Economic Development Act provides that “the New York State Gaming Commission shall establish a separate board to be known as the New York state gaming facility location board to perform designated functions under article thirteen of this chapter.” (PML Section 109-a.)

Under the Act, the members of the Board must possess ten or more years of responsible experience in fiscal matters, plus significant service:

- As an accountant, economist or financial analyst experienced in finance or economics
- In an academic field relating to finance or economics
- In the field of commercial real estate
- As an executive with fiduciary responsibilities in charge of a large organization or foundation

Board Members must be residents of New York State and cannot be elected officials. Additionally, they cannot:

- Have a close familial or business relationship to a person that holds a license under the PML
- Have any direct or indirect financial interest, ownership, or management, including holding any stocks, bonds, or other similar financial interests in any gaming activities, including horse racing, lottery or gambling
- Receive or share in, directly or indirectly, the receipts or proceeds of any gaming activities, including horse racing, lottery or gambling
- Have a beneficial interest in any contract for the manufacture or sale of gaming devices, the conduct of any gaming activity, or the provision of any independent consulting services in connection with any licensed establishment

The duties and authority of the Board include, without limitation, issuing the RFA for commercial casino Applicants; assisting the Commission in prescribing the form of the application; developing criteria, in addition to those outlined in the Act, to assess which applications provide the highest and best value to the State, the zone and the region in which a gaming facility is to be located; determining a gaming facility license fee to be paid by an Applicant; and determining, with the assistance of the Commission, the sources and total amount of an Applicant’s proposed capitalization to develop, construct, maintain and operate a proposed gaming facility license under the Act.

In addition, the Gaming Commission determined that Gaming Facility Location Board Members should reside outside of the eligible casino Regions.

## GAMING FACILITY LOCATION BOARD MEMBERS

### Kevin Law, Chair



Kevin Law became President and CEO of the Long Island Association, one of the most respected business organizations in New York State, in September 2010. His efforts are focused on economic development and creating a better business climate on Long Island. Law also serves as Co-Chair of the Long Island Regional Economic Development Council.

Previously, Law led the Long Island Power Authority (LIPA), the 2nd largest public utility in the country with over 1.1 million customers. His leadership of the \$10 billion company brought developments in energy efficiency and renewable energy by launching the largest energy efficiency program for any public utility in the country, by procuring the largest solar energy project in New York State and by introducing “smart meters” to the region.

Previously, Law served as Chief Deputy County Executive for Suffolk County, where he had oversight of all county departments consisting of 12,000 employees and a \$2.7 billion budget. Prior to his tenure in Suffolk County, he was the Managing Partner of the Long Island office of Nixon Peabody LLP and a member of the firm’s Energy and Environment Practice Group. Before joining Nixon Peabody, Law was the Director of Real Estate for the Suffolk County Department of Law, Assistant Suffolk County Executive for Planning, Housing and Environmental Affairs and legislative assistant for the New York State Assembly’s Sub-Committee on the Long Island Economy.

In 2009, Law was appointed as Chairman of the Stony Brook University Council. He also sits on the Boards of the Advanced Energy Research Technology Center, Energeia, the Association of Council Members and College Trustees, and the North Shore LIJ Care Connect Insurance Co. Inc. He is also the Chairman of the Long Island Housing Partnership and Chairman of Accelerate Long Island, a consortium of Long Island’s top research institutions collaborating on converting world class research into start-up companies.

Earlier in his career, Law served as a Trustee to the Long Island Chapter of the Nature Conservancy and Suffolk County Community College. He was also formerly a member of the Board of Ethics for the Town of Smithtown.

Law received an Associate of Arts from Suffolk County Community College; a Bachelor of Arts from SUNY Stony Brook University; a Master of Science from the Graduate School of Urban Affairs and Planning at CUNY Hunter College; a Juris Doctor from St. John’s University School of Law; and most recently completed a Leadership Program at the John F. Kennedy School of Government at Harvard University.

## Paul Francis



Paul Francis is a business executive with more than 25 years of private sector experience and has served as a senior policy advisor and appointee under three consecutive New York State governors.

He currently serves as a Distinguished Senior Fellow of the Guarini Center on Environmental and Land Use Law at NYU Law School. Francis came to public service in 2007 as Budget Director for Gov. Eliot Spitzer after serving for two years as a policy adviser to the Spitzer campaign. In 2008, Spitzer made him Director of State Operations, overseeing all state agencies. He kept that post under Gov. David Paterson until stepping down at the conclusion of the 2008 session for the role of Chief Operating Officer for Bloomberg L.P.'s Financial Products Division.

In December 2010, Governor Andrew Cuomo named Francis the State Director of Agency Redesign and Efficiency, a new post, and installed him as Chairman of the Spending and Government Efficiency Commission (SAGE). Francis retired from state employment in 2013.

Francis's private jobs have included chief financial officer at Ann Taylor and Priceline.com. Francis is the founder of venture capital firm Cedar Street Group and also served as managing director at Merrill Lynch. He graduated from Yale College and New York University School of Law and worked for Skadden Arps Slate Meagher & Flom. He resides in Westchester County.

## Dennis E. Glazer



Dennis E. Glazer is a retired partner at the international law firm of Davis Polk & Wardwell LLP, where he served as Co-Head of the Litigation Department. During his legal career, Glazer advised a diverse group of public corporations, privately held companies, financial institutions in matters relating to significant business issues and disputes including corporate governance matters, stockholder derivative demands and litigation, internal investigations, shareholder litigation and administrative and criminal investigations.

Glazer has been active and holds or has recently held leadership positions in several not-for-profit health care organizations in Westchester County, including serving as the Chairman of the Board of Governors of Lawrence Hospital Center and as Chairman of Stellaris Health Network. Previously, he served as Chairman of the Strategic Planning Committee of the Bronxville School and Chairman of the Non-Partisan Committee for the Selection of Bronxville School Trustees. He currently serves as a Trustee of NewYork – Presbyterian Hospital.

Glazer has served as Executive Secretary of the Program and Planning Committee of the Second Circuit Judicial Conference and on the Second Circuit Courts Committee of the Federal Bar Council. He clerked for the Honorable George C. Pratt, U.S. District Court, Eastern District of New York and the U.S. Court of Appeals, Second Circuit. He graduated from Hofstra University and holds a J.D. from St. John's University School of Law.



## Stuart Rabinowitz



Stuart Rabinowitz is the eighth president of Hofstra University, selected by the Board of Trustees in December 2000. Prior to his appointment, he served as dean of the Hofstra University School of Law from September 1989 through June 2001. He joined the faculty of the Law School in 1972.

President Rabinowitz has held positions with a number of government and community organizations, including the Judicial Advisory Council of the State of New York Unified Court System, County of Nassau. He currently serves as a member of the board of directors for the Long Island Association and as co-vice chair of the Long Island Regional Economic Development Council. He has also served as a trustee of the Commission on Independent Colleges and Universities and on the board of directors of the Long Island Technology Network.

He is a former member of the Nassau County Blue Ribbon Financial Review Panel, former chair of the Nassau County Local Advisory Board and a member of the Nassau County Commission on Government Revision, which was charged with drafting a new charter and a new form of government for the County.

President Rabinowitz received a juris doctor, magna cum laude, from Columbia University School of Law, where he was a member of the board of editors of the Columbia Law Review and a Harlan Fiske Stone Scholar. He graduated from the City College of New York with honors, and is a member of Phi Beta Kappa and the American Law Institute.

## William C. Thompson, Jr.



William C. Thompson, Jr. served as the Comptroller for the City of New York from January 2002 to December 2009, where he was custodian and investment advisor to the \$100 billion-plus New York City Pension Funds. In this role, Thompson invested hundreds of millions of dollars in affordable housing and commercial real estate in New York City.

During his tenure, Thompson also worked with leaders of the financial services industry to reform the operations of the New York Stock Exchange and spearheaded the City's innovative Banking Development District program.

Mr. Thompson also served as a Senior Vice President in Public Finance in the mid-1990s. He joined Siebert Brandford Shank & Company, L.L.C., the largest minority- and women-owned municipal bond underwriter in the country in 2010.

Prior to his work as Comptroller, he had served as Brooklyn Deputy Borough President and as a Member and five-term President of the New York City Board of Education. Thompson is from the Bedford-Stuyvesant neighborhood of Brooklyn, attended Midwood High School in Brooklyn and graduated from Tufts University in 1974. He resides in Harlem.

## GAMING ADVISORY SERVICES CONSULTANT AND STATE AGENCY ASSISTANCE

The selection of a consultant to provide the Gaming Facility Location Board members with analysis of the gaming industry and assist with the comprehensive review and evaluation of the Applications of 2013 was mandated by the Upstate New York Gaming Economic Development Act.

The New York State Gaming Commission issued a Request for Proposals for the consultant in November 2013. The proposal put forth by Taft, Stettinius & Hollister LLP was selected over four other timely proposals received.

Taft Stettinius & Hollister LLP has subcontracted with several entities to assist in the project, including financial advisory firm Christiansen Capital Advisors, investment bank Houlihan Lokey and gaming facility consultant Macomber International, Inc.

**Taft Stettinius & Hollister LLP (Taft)** is a national law firm with more than 400 attorneys and maintains relevant core practice groups in the areas of gaming law, corporate finance, government contracts and real estate development, among others. The firm has extensive experience in drafting requests for applications and protocols for casino development projects, including evaluating the legal, suitability, financial and local government and community impact aspects of the applications received and preparing analysis and conclusions on the siting process. The firm has worked with the states of Colorado, Louisiana, Michigan and Missouri and the cities of Chicago, Detroit and Springfield, Massachusetts on gaming matters.

**Christiansen Capital Advisors** has advised governments, investors, casino companies, law firms and the media concerning the gaming industry since 1988. The company has particular expertise conducting and evaluating revenue feasibility studies for the gaming industry. Christiansen Capital Advisors also advises industry and regulatory clients with respect to financial viability, market studies and revenue/cost projections.

**Houlihan Lokey Capital, Inc. (Houlihan)** is an international investment bank with expertise in mergers and acquisitions (M&A), capital markets, financial restructuring, valuation and strategic consulting. The firm serves corporations, institutions and governments worldwide with offices in the United States, Europe and Asia-Pacific. Houlihan is ranked as the number one M&A advisor for U.S. transactions under \$5 billion, the number one global restructuring advisor and the number one M&A fairness opinion advisor for U.S. transactions over the past 10 years, all according to Thomson Reuters.

**Macomber International, Inc. (Macomber)** is an international consulting company that provides custom development, finance/funding, operations, marketing and other services to publicly and privately owned companies and governments. Macomber has expertise in the development, layout and operation of casino projects.

In addition to using the services and expertise of the statutorily mandated gaming advisory services consultant, the Board engaged the expertise and resources of Gaming Commission staff and multiple state agencies and authorities to aid in the analysis of sections of the Applications. These include:

- Department of Agriculture and Markets
- Department of Environmental Conservation
- Department of Labor
- Department of State
- Department of Tax and Finance
- Department of Transportation
- Division of Budget
- Division of Criminal Justice Services
- Division of State Police
- Division of Veterans' Affairs
- Dormitory Authority of the State of New York
- Empire State Development
- Environmental Facilities Corporation
- New York Power Authority
- New York State Homes and Community Renewal
- New York State Liquor Authority
- Office of Alcoholism and Substance Abuse Services
- Office of General Services

## APPLICATION MATERIALS RECEIVED

On June 30, 2014, The Gaming Facility Location Board received application material from 17 entities seeking to develop and operate commercial gaming facilities in New York State. As required by the RFA, Applicants delivered voluminous material to the Gaming Commission's headquarters in Schenectady. Among the materials each Applicant was required to submit were:

- Twenty identical hard copies of its Application including copies of all executed Attachments
- Ten electronic copies of its Application, including copies of all executed Attachments, in PDF format submitted via 10 separate USB flash drives
- Ten additional USB flash drives or sets of USB flash drives containing interactive electronic versions of each revenue, construction, employment, financial, traffic, infrastructure or similar model, forecast, projection or table presented in an Application so the Board and the Board's representatives could analyze and tie the calculations and formulas used to produce such model, projection, forecast or table
- Two sets of high-quality files of each such image, rendering or schematic suitable for large-format printing and audio-visual display and two sets of medium-quality files of each such image, rendering or schematic suitable for printing and web publication
- For content that Applicants intended to be exempt from disclosure under the FOIL, the Applicant was required to also submit:
  - A letter enumerating the specific grounds in the FOIL that support treatment of the material as exempt from disclosure
  - Two identical hard copies of the REDACTED Application
  - Two electronic copies of the REDACTED Application be submitted via two separate USB flash drives
- Two hard copies of each Background Information Form (as defined in the RFA)
- Two electronic copies of each Background Information Form in PDF format submitted via two separate USB flash drives

In total, the Board received and reviewed more than 150,000 pages of material.

The Board promptly began distributing the various copies to the members of the Board, its consultant and its subcontractors, the New York State Police (for background investigations), Commission Staff, and applicable agencies and authorities for their collective review, evaluation and consideration.

## PUBLIC DISCLOSURE OF APPLICATION MATERIALS

The Board treated Applications as public records and has made them available to the public on the Gaming Commission's Web site with applicable exemptions pursuant to the FOIL.

Typically, applications and proposals submitted via state procurement processes (which this selection process was not) are not considered public until after an award is granted. The Board believes that the public had a right to see the contents of Applications before the issuance of awards and therefore elected to post Application materials as soon as practicable after receipt.

The FOIL provides for certain exemptions from public disclosure including, among others, an exemption from disclosure for trade secrets or information the disclosure of which would cause substantial injury to the competitive position of a commercial enterprise. This exemption applies both during and after the evaluation process. The FOIL also provides an exemption for records that are "specifically exempted from disclosure by state or federal statute." PML Section 1313(2), provides an exemption from disclosure under the FOIL for "trade secrets, competitively sensitive or other proprietary information provided in the course of an application for a gaming license, the disclosure of which would place the Applicant at a competitive disadvantage." See also Section 87(2)(d) of the New York Public Officers Law.

Any Application submitted that contained confidential information was required to be marked conspicuously on the outside as containing confidential information, and each page upon which confidential information appeared was required to be marked conspicuously as containing confidential information.

The first review of Applicants' redactions was completed in October 2014, with additional non-redacted Application information being made available online.

The Board determined to apply the FOIL carefully to all elements of the Application materials, as opposed to either accepting or denying Applicants' claims of confidentiality outright, thus avoiding possibly lengthy legal challenges. This was achieved via detailed consideration of numerous aspects of the Applications and considerable discussion with industry consultants and the respective Applicants. The end result established a high level of transparency while acknowledging legitimate Applicant concerns.

All determinations concerning whether Applications and/or related documents submitted in response to the RFA are subject to disclosure under the FOIL were made by the Board or the Commission, as applicable, in their sole discretion.

# APPLICANT PRESENTATIONS

On September 8 and 9, 2014, each of the 16 Applicants (other than Florida Acquisition Corp., whose Application was deemed non-responsive) made an informational introductory presentation of its Application to the Board. The presentation was intended to afford the Applicant an opportunity to provide the Board with an overview of the contents of the Application, explain any particularly complex information, and highlight any specific areas it desired. The Board had the opportunity to ask Applicants questions during and after their presentations.

Each Applicant presented for 45 minutes, leaving 15 minutes for questions by the Board, employing a specific schedule established by Region:

## September 8, 2014

### Eastern Southern Tier Region

9:00 a.m. to 10:00 a.m.

10:05 a.m. to 11:05 a.m.

11:10 a.m. to 12:10 p.m.

Traditions Resort & Casino

Tioga Downs Casino, Racing & Entertainment

Lago Resort & Casino

### Capital Region

1:15 p.m. to 2:15 p.m.

2:20 p.m. to 3:20 p.m.

3:25 p.m. to 4:25 p.m.

4:30 p.m. to 5:30 p.m.

Capital View Casino & Resort

Hard Rock Rensselaer

Howe Caverns Resort & Casino

Rivers Casino & Resort at Mohawk Harbor

## September 9, 2014

### Catskills/Hudson Valley

8:00 a.m. to 9:00 a.m.

9:05 a.m. to 10:05 a.m.

10:10 a.m. to 11:10 p.m.

12:15 p.m. to 1:15 p.m.

1:20 p.m. to 2:20 p.m.

2:25 p.m. to 3:25 p.m.

3:30 p.m. to 4:30 p.m.

4:35 p.m. to 5:35 p.m.

5:40 p.m. to 6:40 p.m.

Mohegan Sun at The Concord

The Grand Hudson Resort & Casino

Hudson Valley Casino & Resort

Nevele Resort, Casino & Spa

Montreign Resort Casino

Resorts World Hudson Valley

The Live! Hotel and Casino New York

Caesars New York

Sterling Forest Resort

## PUBLIC COMMENTS

The Gaming Facility Location Board received more than 12,000 pieces of unique communications relating to the siting of casinos, with identifiable duplicates eliminated.

These communications came in the form of emails, written correspondence, post cards, petitions, social media, organized campaigns, etc. sent to the Board via the Gaming Commission, individual Gaming Commissioners, individual Gaming Facility Location Board Members and correspondence to the Executive Chamber. All such communications were preserved and catalogued for the Gaming Facility Location Board's review and consideration.

The below analysis represents a simplified tabulation of the unique comments received. Where identifiable, duplicative or redundant submissions by individuals or organizations were eliminated in order to create a more accurate accounting of public sentiment:

The Caesars project was the subject of more than 1,300 comments of which 97 percent indicated opposition while three percent indicated support.

The Capital View project was the subject of more than 1,400 comments of which 94 percent indicated opposition and six percent indicated support.

The Grand Hudson project was the subject of two comments indicating opposition and 14 indicating support.

The Hard Rock project was the subject of four comments indicating opposition and 18 indicating support.

The Howe Caverns project was the subject of more than 650 comments of which two percent indicated opposition and 98 percent indicated support.

The Hudson Valley Casino and Resort project was the subject of more than 650 comments, the overwhelming majority consisting of an out-of-state post-card drive coordinated by a national labor advocacy organization protesting Rush Street Gaming as an employer.

The Lago project was the subject of more than 300 comments of which 68 percent indicated opposition and 32 percent indicated support.

The Live! project was the subject of four comments indicating opposition and 30 indicating support.

The Mohegan Sun project was the subject of 79 comments of which 56 indicated opposition and 23 indicated support.

The Montreign project was the subject of 85 comments of which 57 indicated opposition and 28 indicated support.

The Nevele was the subject of more than 1,700 comments with all but one all indicating support.

The Rivers project was the subject of more than 750 comments, with the overwhelming majority consisting of an out-of-state post-card drive coordinated by a national labor advocacy organization protesting Rush Street Gaming as an employer.

The Resorts World Hudson Valley project was the subject of more than 450 comments of which 99 percent indicated opposition and one percent indicated support.

The Sterling Forest project was the subject of more than 3,400 comments of which 95 percent indicated opposition and five percent indicated support.

The Tioga Downs project was the subject of 395 comments with all but one indicating support.

The Traditions project was the subject of more than 1,100 comments of which three percent indicated opposition and 97 indicated in support.

The Board received more than 200 general comments regarding the siting of casinos in Sullivan County and the Catskills, with six percent indicating opposition and 94 percent indicating support.

The Board received more than 40 general comments regarding the siting of casinos in Orange County, with 89 percent indicating opposition and 11 percent indicating support.

Additionally, the Board received more than two dozen general comments regarding the siting of casinos in New York State, with three quarters indicating opposition and one quarter indicating support.



## PUBLIC COMMENT EVENTS

The Board convened three 12-hour public comment events, one in each eligible Region, to provide the Board with the opportunity to hear from concerned members of the communities involved and to have the opportunity to address questions and concerns about the proposal by Applicants to build gaming facilities in the Region, including the scope and quality of the gaming area and amenities, the integration of the gaming facility into the host municipality and nearby municipalities and the extent of required mitigation plans. At these Webcast sessions, the Board received input from members of the public from impacted communities. The Board purposefully selected locations and venues in counties and municipalities where no Applicants had proposed projects. The public comment events were held:

September 22, 2014 at the Albany Holiday Inn Turf on Wolf Road, Albany, N.Y.

September 23, 2014 at the Grandview, Poughkeepsie, N.Y.

September 24, 2014 at The Hotel Ithaca, Ithaca, N.Y.

These events were free and open to the public. These events were well-attended, and thousands of New Yorkers came to express their views. Some did so orally by speaking from the podium while others wore shirts expressing their support or opposition to a specific proposal. In addition, the public submitted written materials to the Board before, after and during the public comment events. Representatives from the Applicants in each Region were required to attend the public comment event for that Region. Representatives of the host municipalities, representatives of nearby municipalities and representatives of any impacted live entertainment venue also attended the public comment events.

To ensure fairness, individual comment segments were limited to five minutes each. To accommodate members of the public with scheduling, the first five time slots per hour were available for speaking time reservations on a first-come, first-served basis. The balance of each hour was filled the day of each public comment event on a first-come, first-served basis.

In addition to oral statements, the Board accepted written submissions at each event and for seven days following the event.

The Board heard more than 400 individual speakers at the three public comment events.

Approximately 30 percent of the total project-specific comments voiced opposition to a project, while approximately 70 percent indicated support for a project.

The Caesars project was the subject of more than a dozen comments with nearly three quarters indicating support.

The Capital View project was the subject of more than 50 comments with approximately four out of every five comments indicating opposition.

The Grand Hudson project was the subject of more than a dozen comments all indicating support.

The Hard Rock project was subject of a dozen comments overwhelmingly indicating support.

The Howe Caverns project was the subject of more than 30 comments all in support. It should be noted that the collective supporters were very enthusiastic in demonstrating their preference at the event.

The Hudson Valley Casino and Resort project was the subject of 10 comments with the overwhelming majority indicating support.

The Lago project was the subject of more than five dozen comments with approximately 40 percent indicating opposition and 60 percent indicating support.

The Live! project was the subject of six comments of which two indicated opposition and four indicated support.

The Mohegan Sun project was the subject of three specific comments all in support. The project was also mentioned in nearly 30 supporting comments regarding the general siting of casinos in Sullivan County (along with Montreign).

The Montreign project was not the subject of any specific comment. However, the project was mentioned in nearly 30 supporting comments regarding the general siting of casinos in Sullivan County (along with Mohegan Sun).

The Nevele was the subject of a dozen supportive comments.

The Rivers project was the subject of more than 40 comments with approximately four out of every five comments indicating support.

The Resorts World Hudson Valley project was the subject of five specific comments all indicating support.

The Sterling Forest project was the subject of more than 30 comments of which the overwhelming majority was in opposition.

The Tioga Downs project was the subject of more than two dozen comments overwhelmingly indicating support.

The Traditions project was the subject of approximately three dozen specific comments overwhelmingly indicating support.

The Board heard nearly 30 general, non-specific comments overwhelmingly supporting the siting of casinos in Sullivan County and seven general, non-specific comments overwhelmingly opposing the siting of casinos in Orange County.

Additionally, the Board heard three comments generally opposing the siting of casinos in New York State.

The Board found many of the comments helpful to its deliberations. The Board expresses its appreciation to those who took the time and trouble to attend the public comment sessions, particularly those who spoke and submitted written comments.

## ISSUANCE OF LICENSES

Upon these recommendations, the Board understands that the Commission will undertake its licensing process for the selected Applicants. If the Commission finds a selected Applicant suitable for licensing, the Commission will issue a commercial gaming facility license, including any terms and conditions to the license that the Commission may require.

# APPENDICES

Summary of Each Applicant

Disqualification of Florida Acquisition Corporation

Request for Applications to Develop and Operate a Gaming Facility in New York State

First Round of Questions and Answers – April 23, 2014

Advance Questions and Answers – April 30, 2014

Guidance Document – Application Fee Refund – April 30, 2014

Applicant Conference Questions and Answers – May 2, 2014

Guidance Document – Minimum Capital Investment – May 12, 2014

Request for Applications Addendum – MWBE – May 12, 2014

Second Round of Questions and Answers – May 14, 2014

Guidance Document – SEQRA – May 19, 2014

Guidance Document – Resolutions of Support – May 20, 2014

Guidance Document – Additional Questions and Answers – May 20, 2014

Resolutions of Support – Questions and Answers Revisions – June 10, 2014

Joint Guidance Document – Lobbying – June 16, 2014

Regulatory White Paper – June 16, 2014

Additional Questions and Answers – June 16, 2014

Document Production Clarification – June 19, 2014

Guidance Document – SEQRA – June 20, 2014

Additional Questions and Answers – June 24, 2014

Guidance Document – Fingerprinting – June 26, 2014

Additional Questions and Answers – June 27, 2014

Protocol for Applicant Presentations – August 13, 2014

Protocol for Public Comment Events – August 21, 2014

Guidance Document – Applicant Presentation FAQ – August 28, 2014

Guidance Document – Public Comment Event – September 17, 2014

The Upstate Gaming and Economic Development Act of 2013

Constitutional Amendment to Permit Casinos

## SUMMARY OF EACH APPLICANT

The following summaries were prepared by staff, based on the Applications and input from Board experts and various State agencies that reviewed and commented upon aspects of the Applications within their areas of expertise.

Applicants are listed in alphabetical order by project name within each region chronologically as defined by the Upstate Gaming and Economic Development Act. Logos from each Applicant are used for ease of navigation only and were taken from each Applicant's project Web site.

### Region 1: Catskill/Hudson Valley

Caesars New York

The Grand Hudson Resort & Casino

Hudson Valley Casino & Resort

The Live! Hotel and Casino New York

Mohegan Sun at The Concord

Montreign Resort Casino

Nevele Resort, Casino & Spa

Resorts World Hudson Valley

Sterling Forest Resort

### Region 2: Capital Region

Capital View Casino & Resort

Hard Rock Rensselaer

Howe Caverns Resort & Casino

Rivers Casino & Resort at Mohawk Harbor

### Region 5: Eastern Southern Tier/Finger Lakes Region

Lago Resort & Casino

Tioga Downs Casino, Racing & Entertainment

Traditions Resort & Casino



**Caesars Entertainment proposed to develop Caesars New York (“Caesars”) in the Village and Town of Woodbury in Orange County. According to Caesars, the resort would have resided on a 115-acre site with approximately 300 hotel rooms, suites and villas, with a casino hosting 2,560 slot machines, 190 table games and 50 poker tables. The facility would have included multi-use entertainment and event spaces, be the East Coast home of the World Series of Poker and include a luxury spa, pool, fitness center and restaurants and dining options featuring notable chefs.**

### **ECONOMIC ACTIVITY AND BUSINESS DEVELOPMENT**

#### **Realizing maximum capital investment exclusive of land acquisition and infrastructure improvements. (§ 1320(1)(a))**

The Caesars projected capital investment was \$880 million. The Caesars total capital investment less excluded capital investment was proposed to be \$545 million. There was no prior capital investment.

#### **Maximizing revenues received by the state and localities. (§ 1320(1)(b))**

Caesars did not propose a supplemental tax payment or increased license fee.

Caesars projected the fiscal impact to the State in the range of \$75-\$136 million in year one and \$192-\$373 million in year five. Caesars projected the fiscal impact to the Catskills/Hudson Valley in the range of \$71-\$127 million in year one and \$186-\$359 million in year five. Board experts noted that these revenues may not be achieved if financial projections were not met or exceeded.

Caesars estimated that the direct, indirect and induced economic impact from the project’s operation in 2018 would be \$465.1 million to the State, \$418.9 million to the region and \$464.1 million to the host county/municipality. Board experts noted that these results may not be achieved if the Caesars financial projections were not met or exceeded. The Board also noted that Caesars did not provide an estimate for the economic impact of the facility’s construction.

#### **Providing the highest number of quality jobs in the gaming facility. (§ 1320(1)(c))**

Caesars estimated to support 2,129 full-time and 703 part-time jobs.

Caesars committed to using New York-based businesses for 100 percent of the construction phase as well as for the furniture and fixture needs. Caesars made a commitment to local hiring and sourcing in a Memorandum of Understanding with building trades, a host community agreement and a labor peace agreement.

Caesars anticipated total construction worker hours of 3,039,502.

**Building a gaming facility of the highest caliber with a variety of quality amenities to be included as part of the gaming facility. (§ 1320(1)(d))**

Caesars proposed a casino and hotel resort located on a 115-acre site bordered to the west by New York State Route 17M and New York State Route 17 located to the north of the site. The Metro-North Harriman Station and Interstate 87 are located just east of the site.

Caesars proposed a four-star, Caesars-branded resort comprising the following:

- 138,130-square-foot casino with designated high-limit areas;
- 300-room hotel with a fitness center, salon, spa and pool;
- Flexible convention, entertainment and meeting space with pre-function, back of house and kitchen areas;
- Seven restaurants;
- Six bars/lounges; and
- An outdoor seasonal amphitheater and festival lawn.

Caesars explained that the casino, hotel and parking would be located to achieve several goals, including to:

- Minimize impact on natural features of the site;
- Achieve views from I-87 traveling north;
- Maximize views from guest rooms to the Harriman State Park to the east and the farmlands to the south and west; and
- Allow guests to access the site through walking and jogging trails that provide appreciation of the natural wetland vegetation.

Caesars anticipated that the property would open with all proposed facilities and services completed. State agency review noted that some of the site may be undevelopable due to the presence of wetlands.

Caesars proposed a single-level, 138,130-square-foot casino providing the following mix of games:

- Slots—2,560 (including 100 high-limit slots);
- Table games—190 tables (including 16 high-limit tables, 16 “specialty” tables and five “private” tables); and
- Poker tables—50 “World Series of Poker” tables.

The casino would have offered segregated high-limit areas and high-limit lounges for VIP players. Additionally, the casino would offer some luxurious private gaming lounges.

Caesars stated that differentiating factors of the proposed casino relative to existing New York casinos were:

- A higher quality level (four-star);
- The Caesars brand;
- The capabilities of the Total Rewards Program; and
- A high level of customer service (obtained from the experience of Caesars at 53 other properties).

Board experts noted that the Caesars Total Rewards Program is one of the most robust rewards programs and player databases in the industry and has been accumulated across 53 properties. The program would have given Caesars the ability to identify proactively players who deserve additional perquisites and to quickly deliver targeted and escalating levels of service.

Board experts noted concern that the implied Caesars casino utilization rate of 99 percent throughout a 24-hour gaming day was too high.

Board experts noted that the forecasted daily visitor demand was not met by the gaming capacity and that the number of gaming positions was too few for the projected demand.

Caesars proposed a single 300-room hotel tower comprising:

- 230 standard rooms (400 square feet each);
- Six suites (600 square feet each);
- 54 suites (800 square feet each);
- Eight suites (1,275 square feet each); and
- Two suites or “villas” (3,500 square feet each).

Caesars proposed that the hotel would be Caesars-branded and would be of four-star quality. The hotel would offer an indoor pool with pool bar (3,500 square feet), fitness center (4,800 square feet) and salon and spa (5,400 square feet).



For hotels of comparable quality, Caesars provided the following as examples:

- Caesars Palace Las Vegas;
- The Cromwell Las Vegas;
- Harrah's Atlantic City;
- Harrah's New Orleans;
- Ritz Carlton Westchester;
- Mondrian New York; and
- Viceroy New York.

Board experts suggested that the four-star quality would allow Caesars to serve the lower-five-star market segment while still being in reach of the upper mass market.

Board experts noted that because the hotel is located so close to the property boundary line and I-87 there would be little-to-no room to add an outdoor terrace, pool or social/entertainment/party space at its base to leverage the view even further.

Caesars noted that hotels in the area could serve Caesars overflow. The current local hotels include a Hampton Inn, Days Inn and America's Best Value Inn. Board experts noted that these three hotel chains are three-star branded (and can deteriorate to a two-star level depending upon maintenance and service) and are not suitable for overflow of guests seeking a four-star experience.

Caesars proposed 64,600 square feet of multi-purpose entertainment and meeting space including back of house, catering and support areas. This space would have provided approximately 20,000 square feet for hosting entertainment (concerts, comics, etc.), conventions, meetings, or other events, and could have been configured for one large event or several smaller events (up to nine rooms in total). Capacity of this space would have been 1,333 in a traditional banquet-style (dinner) event and 4,000 for standing-room-only events. Presumably capacity for theater-style seating (traditional for concerts) would have provided capacity somewhere in between these two numbers. Business center services would have been provided for guests through the hotel concierge and front desk.

Caesars proposed two primary entertainment venues:

- A 20,000-square-foot multi-purpose entertainment and meeting space that could have been configured into one large room to host concerts and other entertainment events. Capacity for this space was 1,333 in a banquet setting and 4,000 in a standing-room-only event. Presumably for concerts or other entertainment, theater-style seating capacity would have been between these two capacities.

- An outdoor amphitheater and festival lawn that would have been used for concerts and festivals. Capacity for this space is 4,000 (2,000 seats with capacity on the lawn of an additional 2,000).

At the indoor multi-purpose space, Caesars expected to host two to three live events per month, with an average ticket price of \$40-\$60 per event. At the outdoor amphitheater, Caesars expected to host eight to 12 shows per year.

Board experts noted that the multi-purpose space was large and could have been sectioned into smaller areas (up to as many as nine individual spaces), allowing for large, medium and small functions to take place (possibly at the same time). The pre-function space would have been large, upscale and was to have views of the outside resort landscape. The 8,000-square-foot outdoor terrace would have been adjacent to the multi-purpose space and could have been used for its own functions. The 4,000-seat outdoor amphitheater and festival lawn could have been used reliably from June to September for concerts and events.

Board experts noted that Caesars has experience and capability with all levels of entertainment and entertainers. The Caesars pro forma indicated that entertainment was intended to be a “marketing tool” and not a profit center.

Board experts noted the absence of a nightclub. For a casino catering to the upscale, sophisticated New York City and urban Northeast target markets, Board experts suggested that this seemed a significant omission.

Board experts suggested that the Caesars entertainment strategy did not appear to keep up with Caesars Palace in Las Vegas, which has a 4,000-seat Coliseum, a showroom and multiple lounges. Board experts suggested that, despite huge entertainment experience and resources available to Caesars, the proposed facility provided only compromised and seasonal entertainment venues.

Caesars proposed six restaurants and a coffee shop totaling 38,800 square feet. Caesars also proposed five bars/lounges totaling 7,600 square feet with total capacity of 190 patrons. Additionally, a player’s lounge of 3,000 square-feet (60 seats) would have been provided.

As for other amenities, Caesars proposed one retail outlet (1,500 square feet), a public art program, a salon and spa, a fitness center, a pool, outdoor hiking trails and walkways, and the outdoor amphitheater and festival lawn.

As for the quality of the non-gaming amenities, Caesars stated that it planned to develop a resort that included amenities of a “substantially higher caliber” than anything in the immediate surrounding area. Additionally, Caesars planned to highlight local and

regional products and goods and services. For example, Caesars established partnerships with local businesses including restaurants, hotels, retail and attractions.

Board experts noted that retail was limited to only one sundries shop. Presumably this was because of the close proximity of the site to the Woodbury Common Premium Outlet Mall. Board experts suggested that, even with the outlet mall, the Caesars positioning as a four-star luxury resort could have warranted some additional higher-end retail.

Board experts suggested that the facility would not have offered many recreation options outside of the casino, pool and spa. There were trails and walkways but not many other outdoor activities to position the facility as a “resort.” The development lacked any family offerings (*i.e.*, no movie theater, bowling, arcade, adventure courses, etc.) to promote family stays.

Caesars provided a detailed description of proposed internal controls that reflected current industry standards. Caesars security and surveillance standards were comparable to those at New York State video lottery facilities and were well-defined.

**Offering the highest and best value to patrons to create a secure and robust gaming market in the region and the state. (§ 1320(1)(e))**

Caesars stated that its loyalty program maintains the largest casino loyalty customer database. Since its inception in 1997, the loyalty program has registered millions of members. Today, the Caesars loyalty program tracks gaming play and hospitality spending at covered facilities. Caesars claimed that its customer-relationship management capabilities have enabled the company to drive a premium in gaming revenue per unit over its competition in the markets in which it operates. Caesars stated that its loyalty program would be used for marketing promotion and advertising of the Caesars facility. All customer data from its loyalty program is exclusive to Caesars.

Board experts suggested that Caesars possessed a competitive advantage due to its Total Rewards loyalty program, which is the largest casino customer reward/loyalty program (by number of registered patrons), with a significant number of existing, active guests in the Total Rewards database living within 200 miles of the proposed Caesars facility.

The Caesars proposed facility was not part of a formal economic plan.

**Providing a market analysis detailing the benefits of the site location of the gaming facility and the estimated recapture rate of gaming-related spending by residents travelling to an out-of-state gaming facility. (§ 1320(1)(f))**

The site for Caesars would have been easily accessible for visitors. The site was located parallel to Interstate 87 on one border and Route 17 on the other. The distance from the exit/entry would have been approximately two miles from the site. The Metro-North Harriman train station shares a site boundary and would have been served via a direct access road by Caesars shuttles, resulting in a less-than-five-minute trip to the gaming facility in most circumstances. The motor vehicle entry would have been placed at the far end of the site, providing visitors with a meandering driveway and rural/country, resort-like arrival. The casino and hotel tower would have sat at the highest point on the site. The site would have been within a 10-minute shuttle trip of the Woodbury Common Premium Outlet Mall, which claims to attract nearly 13 million visitors per year.

Caesars estimated the average recapture rate of gaming revenues from New York residents traveling to out-of-state gaming facilities for the average case at \$57 million (\$76 million for the high case; \$38 million for the low case).

**Offering the fastest time to completion of the full gaming facility. (§ 1320(1)(g))**

Caesars stated it would open the facility within 24 months of award of license and receipt of SEQRA approval. This estimate may have been unrealistic, as the schedule for completing SEQRA review may have been overly ambitious.

The Caesars proposed site was an approximately 115-acre site comprising several parcels. There are 30 acres of mapped wetlands on the site. It is not clear what the extent of wetland impacts would be, although most of the development is north of a large wetland complex and that most wetland and stream impacts could likely be avoided. The project could have required time-of-year restrictions for tree removal and/or a survey for protected species of bats. The site could have also contained habitat for the timber rattlesnake and therefore a survey could have been required. If the project would have resulted in impacts to protected species or habitat, various state environmental and other permits would have been required.

**Demonstrating the ability to fully finance the gaming facility. (§ 1320(1)(h))**

Caesars is wholly-owned by Caesars Growth Partners, which intended to finance the project through a capital contribution from cash on-hand and committed third-party institutional debt. Caesars Growth Partners is well capitalized but has a troubled credit rating due to litigation and threats of reorganization. Caesars stated the project would be funded with a combination of senior secured debt and cash equity. Caesars stated that there would have been no new public equity issued in order to fund the project. Caesars

received a commitment letter and credit facility term sheet from a large financial institution and received several highly confident letters from other large financial institutions.

Caesars Growth Partners committed to provide 100 percent of the contemplated equity investment, thus reducing the complication and time required to raise the necessary equity capital and begin construction.

**Demonstrating experience in the development and operation of a quality gaming facility. (§ 1320(1)(i))**

The Caesars group of companies owns and operates 53 properties across seven countries with nearly 70,000 employees.

Caesars asserted that it is number one or two in market share in every United States gaming market. Its properties feature more than two million square feet of casino gaming space, 1.6 million square feet of meeting space, 44,000 hotel rooms, 390 restaurants, bars and clubs and 302 retail shops.

Board experts noted that none of the Caesars recent and proposed greenfield developments was comparable in size and complexity to Caesars New York. The next largest recent or currently proposed development had total investment of about 50 percent of the total investment projected for Caesars New York and projected gross gaming revenues three years after opening (*i.e.* “stabilized”) of approximately 33 percent of those projected for Caesars New York. None of the Caesars recent and currently proposed developments featured a hotel or a similar number or diversity of food, beverage and entertainment options as this proposal. Although completed earlier and not a greenfield project, Caesars has refreshed and substantially renovated its flagship Las Vegas property, Caesars Palace, through a series of projects. Board experts suggested that the success of this refreshment and renovation indicated significant project management expertise but did not fill the gap in recent experience generating new demand for a facility of the size and complexity of Caesars New York.

Board experts noted that Caesars operations in regional gaming markets generally were under its Harrah’s and Horseshoe brands, which target a less premium market than the Caesars brand that was proposed for New York. Caesars currently operates under its premium Caesars brand only in Las Vegas and Atlantic City and therefore has limited experience marketing and operating premium-branded gaming facilities in regional markets.

Board experts noted that Caesars has demonstrated a willingness to close (rather than invest in) underperforming properties. It closed three properties in 2014, including Golden Nugget London, Harrah’s Tunica in Mississippi and Showboat Atlantic City.

## LOCAL IMPACT AND SITING FACTORS

### **Mitigating potential impacts on host and nearby municipalities which might result from the development or operation of the gaming facility. (§ 1320(2)(a))**

Caesars projected that total impacts to the host communities resulting from the casino project would be approximately \$8.8 million each year in the average case.

The Town of Woodbury (the host municipality) was expected to incur additional operational expenses of about \$4.9 million annually for its police department and general governmental services. This amount did not include capital expenses that may be necessary to upgrade communications systems to better facilitate emergency response to the resort-casino complex. The Village of Woodbury expected impacts from the proposed development to its fire department, building inspection department and to general services provided by the Village in the approximate amount of \$1.1 million annually. In addition to these operational impacts, the Village would also require additional capital spending to purchase a ladder truck capable of servicing the proposed hotel building and possibly to renovate the existing fire department to accommodate the larger vehicle.

Orange County would have experienced increased annual expenditures of about \$1.5 million for its Sheriff's Office and, to a lesser extent, 911 call center and building inspection services, according to Caesars. The State Police and Woodbury community ambulance were each projected to incur marginally higher annual expenses of less than \$200,000 for emergency medical and police services.

Initially, the agreements with the Town of Woodbury and the Village of Woodbury provide for a Caesars payment of each municipality's costs in determining the casino project's impacts and for payment of real estate taxes based upon a \$19 million minimum assessment. Caesars also would have made upfront payments of \$4 million and \$6 million to the Town and Village, respectively. Caesars additionally committed to make ongoing impact payments to the Town and Village to mitigate all increased costs for municipal services. Furthermore, Caesars committed to other support and mitigation efforts for both municipalities, including an agreement to establish an annual \$100,000 general services fund for the Village of Woodbury, as well as other utility and infrastructure development initiatives. In addition, Caesars committed \$20 million to fund Town and Village traffic improvements.

Caesars submitted studies from its engineer regarding demand and impacts on water, sewer, electricity and natural gas infrastructure. Caesars proposed to connect to the Town of Harriman water supply, which provided a letter committing to serve the project, but is required to identify and fund additional well capacity. If additional well capacity

could not be developed in the Harriman system, Caesars had a MOU with the adjoining community of Woodbury to make up the shortfall from existing, excess Woodbury supply. In addition, Caesars would have contributed funding for a new Town of Harriman supply tank, which would have helped service the flow requirements for the Caesars project and may pay to upgrade approximately 9,000 feet of Harriman water main. No reference was made for waste water.

Caesars proposed to connect to the Town of Harriman gravity sewer and, thereby, to the Orange County Sewer Treatment Plant, which is approximately 1,000 feet from the project. It appears that the Town is satisfied that adequate sewer capacity exists to transmit flows from the Caesars project. Caesars provided a letter from Orange County confirming capacity of the sewer treatment plant to treat flows from the Caesars project.

The local utility, Orange and Rockland Utilities, would have served electricity to the project by existing overhead transmission lines adjacent to the project site. Caesars presented a letter from the utility confirming capacity to service the projected load from the Caesars facility. Caesars stated that an existing, unused connection of adequate capacity is available at the local substation.

Caesars reported that, based on site investigations and habitat assessments, suitable habitat for timber rattlesnake is absent on the project site so that no impacts on the species would have been expected to occur. Caesars did not present an assessment of the projected impacts on the wetlands or any proposed mitigation.

Caesars presented a detailed analysis of the proposed exterior lighting by its lighting designer. The analysis described a design using cutoff fixtures designed to minimize light stray in an orientation generally designed to direct spillover away from the site perimeter and neighboring land uses.

Caesars stated that there is a sufficient local labor pool to meet the employment needs of the proposed casino and there is unlikely to be a significant influx of individuals and families from outside the region, due to the sheer size of the unemployed labor pool within a 45-minute drive of the facility. Thus, Caesars believed that the local market has adequate capacity and housing diversity to meet the needs of any workers moving to the area.

With respect to school population increases, Caesars suggested that any future change in total enrollment, whether casino-related or not, could be mitigated. In addition, each of the school districts in the Woodbury area would have some capacity to absorb new students, because enrollments have been declining since 2009.

**Gaining public support in the host and nearby municipalities, which may be demonstrated through the passage of local laws or public comment received by the board or gaming Applicant. (§ 1320(2)(b))**

The Caesars host community is the Town of Woodbury. Caesars provided a resolution in support of its project adopted by the Town Board of the Town of Woodbury on June 25, 2014 and by the Board of Trustees of the Village of Woodbury dated June 12, 2014.

Caesars also provided letters, emails and petitions of support from local businesses and vendors, residents, unions and trade councils, as well as MOUs with various businesses for participation in the Caesars Total Rewards loyalty program, which would have enabled customers to redeem Total Rewards credits at those local businesses.

The Caesars project was the subject of more than 1,300 comments, of which 97 percent indicated opposition while three percent indicated support. Additionally, the Board received more than 40 general comments regarding the siting of casinos in Orange County, with 89 percent indicating opposition and 11 percent indicating support. At the public comment event, Caesars was the subject of more than a dozen comments with nearly three quarters indicating support. Additionally, the Board heard seven general, non-specific comments overwhelmingly opposing the siting of casinos in Orange County.

**Operating in partnership with and promoting local hotels, restaurants and retail facilities so that patrons experience the full diversified regional tourism industry. (§ 1320(2)(c))**

Caesars stated that in addition to the events that Caesars had already sponsored, such as the Woodbury Community Day Golf Outing and the annual Woodbury Community Fireworks, Caesars had partnered with The Woodbury Chamber of Commerce to aid the Chamber in, among other things, reestablishing a walkable downtown community in Central Valley and sponsoring a local shopping guide that would be distributed at the project and on the Caesars Web site. A Caesars office also would have been located in Central Valley to experience firsthand the issues confronting the area. Caesars also would have enrolled local businesses in its Total Rewards loyalty program and encouraged employees to support and frequent local businesses. Finally, Caesars would have partnered with Woodbury Common, a premium outlet shopping mall. Caesars also intended to cross-promote within the Lower Orange County region. In addition to partnering with local businesses, including within the Total Rewards loyalty program, Caesars would have cross-promoted 10 neighboring downtown communities and join 15 local chambers of commerce.

Caesars stated it was comfortable partnering and working with small businesses and that doing so is part of the company's "DNA." A Caesars affiliate has an integrated supplier



diversity program, complete with inclusion targets for bid solicitations and by category. By using best practices, the Caesars affiliate is able to ensure inclusion in bid solicitations resulting in increased spend in operating expenses with MWBE vendors.

Caesars supplied a list of approximately 80 businesses and/or organizations with whom Caesars has entered into a MOU. The list includes such entities as Woodbury Common Outlets, Downtown Sugar Loaf, Woodbury Chamber of Commerce, Keller Williams Realty, Orange County Nursery and Stone Supply, the Greater Monroe Chamber of Commerce and others.

**Establishing a fair and reasonable partnership with live entertainment venues that may be impacted by a gaming facility under which the gaming facility actively supports the mission and the operation of the impacted entertainment venues. (§ 1320(2)(d))**

Caesars stated that it had explored potential relationships with various local live entertainment venues and The Upstate Theater Coalition for a Fair Game, but had not entered into agreements. Instead, Caesars proposed to identify an academic or arts institution (or a newly established charitable entity, if no institution could be found) that could independently and objectively administer an entertainment promotion fund established by Caesars and any other parties wishing to contribute. Caesars would have seeded the promotion fund and the monies in the fund would have been distributed by the administrator according to the actual impact the casino has upon the venue.

**WORKFORCE ENHANCEMENT FACTORS**

**Implementing a workforce development plan that utilizes the existing labor force, including the estimated number of construction jobs a proposed gaming facility would generate, the development of workforce training programs that serve the unemployed and methods for accessing employment at the gaming facility. (§ 1320(3)(a))**

Caesars stated that it supported the continuous need to grow and develop its workforce at all organizational levels. To that end, Caesars stated that it would have engaged in a local-area integrated approach to recruitment and training. Its goal was to advance employees beyond basic skills, helping them to acquire transferable knowledge that permits new and better opportunities for career advancement. This approach, Caesars asserted, increases the opportunities for both the underemployed as well as the unemployed.

Caesars stated that its affiliates operate 53 properties and employ more than 70,000 people, 75 percent of whom hold full-time positions. Caesars stated that in every area in which it operates, it is committed to providing a vibrant place to live and work. Caesars stated that local hiring is the backbone of its affiliates' team building.

**Taking additional measures to address problem gambling including, but not limited to, training of gaming employees to identify patrons exhibiting problems with gambling. (§ 1320(3)(b))**

Caesars stated that its on-site responsible gaming program would have incorporated responsible gaming messaging pursuant to State regulations and any other language approved or recommended by the Gaming Commission. This program would have included information on responsible gaming in general, information targeted towards seniors, information related to casino odds and information in regard to self-restriction options available to patrons, including denial of check cashing privileges, denial of credit extensions and removal from promotional mailing lists, as well as information on self-exclusion.

Caesars stated that it would have maintained a toll-free helpline to assist patrons requesting self-restriction or self-exclusion information, and all employees would have been trained on the importance of responsible gaming and Caesars policies and procedures. Caesars would have created a responsible gaming committee to monitor responsible gambling efforts. Caesars would have had policies to impose limitations on a patron's gambling privileges upon the occurrence of certain triggering events, including receipt of substantial, reliable written information that a patron does not engage responsibly in gaming activity (e.g., information from family, a therapist, etc.), or statements by the patron indicating that he or she does not gamble responsibly. If any patron would have been found to have used the Caesars gaming facility contrary to the terms of exclusion, the patron would have been required to forfeit winnings pursuant to State policy, or in the absence of such policy, with Caesars policy. Caesars also would have an employee self-exclusion policy, as well as an employee assistance program to further assist employees who may have responsible gaming issues.

Caesars stated that it would have used a nationwide responsible gaming information technology application that would interact with the Caesars casino management system, which Caesars would have used in connection with its efforts to identify excluded persons and prevent transactions. Caesars would have kept a responsible gaming log of comments that cause concern and any actions taken as a result of such concern. This recordkeeping would assist employees in making decisions whether or not to have a conversation with a customer in regard to responsible gambling.

Caesars stated that its customer exclusion policy would have allowed a patron to request self-restriction or self-exclusion.

Caesars stated that it would have sought to participate in New York's Responsible Play Partnership, and to that end, has entered into an agreement with the National Association of Social Workers—NYS Chapter, New York Mental Health Counselors

Association, the New York Association for Marriage and Family Therapy and the National Association for the Advancement of Psychoanalysis to explore collaboratively strategies to address problem gambling and promote responsible gaming in New York.

**Utilizing sustainable development principles including, but not limited to:**

- (1) having new and renovation construction certified under the appropriate certification category in the Leadership in Energy and Environmental Design Green Building Rating System created by the United States Green Building Council;**
- (2) efforts to mitigate vehicle trips;**
- (3) efforts to conserve water and manage storm water;**
- (4) demonstrating that electrical and HVAC equipment and appliances would be Energy Star labeled where available;**
- (5) procuring or generating on-site 10 percent of its annual electricity consumption from renewable sources; and**
- (6) developing an ongoing plan to submeter and monitor all major sources of energy consumption and undertake regular efforts to maintain and improve energy efficiency of buildings in their systems. (§ 1320(3)(c))**

The proposed Caesars development was on a vacant site located just north of the Harriman train station. Caesars stated that the site was previously approved for 1.5 million square feet of mixed-use development that was never constructed. Caesars stated that it would run shuttle buses between the train station and the Caesars development.

State agency review suggested that the traffic improvements Caesars proposed involved substantial interchange modifications and would have required tailoring to meet previous commitments made by the NYSDOT, as well as potential area stakeholder needs. Caesars stated that it was prepared to contribute at least \$20 million toward such traffic improvements, which Caesars believed was well in excess of the estimated \$8 million of expected costs.

Caesars committed to achieving a minimum silver LEED certification and would have strived to achieve a gold LEED certification for its project.

Caesars presented specifications describing high-efficiency HVAC systems meeting applicable national standards. For all applicable equipment, Caesars committed to use Energy Star-rated devices.

Caesars presented a preliminary storm water management report for its facility and also schematic designs for the proposed storm water management facilities.

Caesars committed to install solar photovoltaic electricity generation systems on top of the proposed parking garage, which Caesars projected would have generated

approximately 10 percent of its facility's annual electrical consumption from renewable energy sources

Caesars intended to implement a facility-wide automation system that included energy consumption monitoring.

**Establishing, funding and maintaining human resource hiring and training practices that promote the development of a skilled and diverse workforce and access to promotion opportunities through a workforce training program that:**

- (1) establishes transparent career paths with measurable criteria within the gaming facility that lead to increased responsibility and higher pay grades that are designed to allow employees to pursue career advancement and promotion;**
- (2) provides employee access to additional resources, such as tuition reimbursement or stipend policies, to enable employees to acquire the education or job training needed to advance career paths based on increased responsibility and pay grades; and**
- (3) establishes an on-site child day care program. (§ 1320(3)(d))**

Caesars stated that its affiliates have established practices at 53 affiliated properties with a primary focus on the development of a skilled, diverse and inclusive workforce with opportunities to grow and develop. Caesars stated that it was committed to supporting employee aspiration to learn and advance their careers, by offering training programs, reimbursement opportunities and regular performance evaluations. Caesars intended to offer a wide array of learning and development opportunities.

Caesars anticipated providing the following programs: exploring supervisory opportunities, supervisor leadership assessment program, managerial leadership assessment program, skillsoft business courses, educational assistance program and responsible gaming training. Caesars would have offered onsite programs and online courses. The educational assistance program would have provided for tuition reimbursement, matching grants and a scholarship fund. The program would have provided opportunities to further education and prepare employees to seek promotions.

**Purchasing, whenever possible, domestically manufactured slot machines. (§ 1320(3)(e))**

Caesars proposed to source domestically manufactured slot machines.

**Implementing a workforce development plan that:**

- (1) incorporates an affirmative action program of equal opportunity by which the Applicant guarantees to provide equal employment opportunities to all employees qualified for licensure in all employment categories, including persons with disabilities;**

- (2) utilizes the existing labor force in the state;**
- (3) estimates the number of construction jobs a gaming facility would generate and provides for equal employment opportunities and which includes specific goals for the utilization of minorities, women and veterans on those construction jobs;**
- (4) identifies workforce training programs offered by the gaming facility; and**
- (5) identifies the methods for accessing employment at the gaming facility. (§ 1320(3)(f))**

Caesars provided the following specific diversity goals: 10 percent MBE overall contracts goal and 14 percent construction contracts goal; and 10 percent WBE overall contracts goal and six percent construction contracts goal. Upon award of a casino license, Caesars stated it would engage a general contractor for construction and would require that contractor to demonstrate good faith efforts to comply with the above-stated goals. Caesars did not include a defined standalone EEO policy and complaint procedures and did not articulate a clear community collaboration plan.

Caesars stated it would undertake programs to attract, employ, train and advance in employment members of minorities, women, disabled persons and veterans. Its human resources department would develop all procedures for hiring, all of which would have been conducted on the basis of nondiscriminatory criteria. It also would have developed nondiscriminatory criteria for on-the-job training and promotion within the organization.

**Demonstrating that the Applicant has an agreement with organized labor, including hospitality services, and has the support of organized labor for its application, which specifies:**

- (1) the number of employees to be employed at the gaming facility, including detailed information on the pay rate and benefits for employees and contractors in the gaming facility and all infrastructure improvements related to the project; and**
- (2) detailed plans for assuring labor harmony during all phases of the construction, reconstruction, renovation, development and operation of the gaming facility. (§ 1320(3)(g))**

Caesars entered into a MOU with the Hudson Valley Building and Trades Council. The MOU specified that all construction work, within the scope of the MOU's coverage, on the casino development would have been performed pursuant to a project labor agreement (PLA) and a local collective bargaining agreement. Caesars finalized a PLA with the council and local building trades locals. This PLA along with the local union collective bargaining agreements establish terms and conditions of employment for covered employees performing work on the construction project.

Caesars entered into a labor peace agreement (LPA) with the New York Hotel & Motel Trades Council, AFL-CIO.

## GRAND HUDSON RESORT AND CASINO

**New Windsor Casino & Resort, LLC, on behalf of its members Greenetrack, Inc. and New Windsor Developers, LLC and manager Full House Resorts, Inc., proposed to develop The Grand Hudson Resort and Casino (“Grand Hudson”) in the Town of New Windsor in Orange County, adjacent to Stewart International Airport. According to Grand Hudson, the facility would have consisted of a 101,550 square foot casino that included 3,000 slot machines and 100 table games with a multi-purpose event center for conferences, trade shows and entertainment. It would have featured 350 hotel rooms and include several restaurants, bars and lounges, retail and movie entertainment capacities and outdoor amenities.**

### **ECONOMIC ACTIVITY AND BUSINESS DEVELOPMENT**

#### **Realizing maximum capital investment exclusive of land acquisition and infrastructure improvements. (§ 1320(1)(a))**

Grand Hudson’s projected capital investment was \$732 million. Grand Hudson’s total capital investment less excluded capital investment was proposed to be \$569.9 million. There had been no prior capital investment.

#### **Maximizing revenues received by the state and localities. (§ 1320(1)(b))**

Grand Hudson did not propose a supplemental tax payment or increased license fee.

Grand Hudson projected total direct tax revenues to the State in the range of \$143-173 million in year one and \$174-211 million in year five. Grand Hudson projected total direct tax revenues to New Windsor of approximately \$14.1 million in year one and approximately \$14.7 million in year five. Board experts noted that these revenues might not have been achieved if financial projections were not met or exceeded.

Grand Hudson estimated that the direct, indirect and induced economic impact from the construction of the project would be \$815.1 million to the State, \$605.6 million to the region and \$436.7 million to the host county/municipality.

Grand Hudson estimated that the 2018 average case direct, indirect and induced economic impact from the project’s operation would be \$754.1 million to the State, \$713.4 million to the region and \$692.7 million to the host county/municipality. Board experts noted that these economic impacts might not have been achieved if Grand Hudson’s financial projections were not met or exceeded.

**Providing the highest number of quality jobs in the gaming facility. (§ 1320(1)(c))**

Grand Hudson estimated to support 2,310 full-time and 269 part-time jobs.

Grand Hudson stated it was committed to using New York-based suppliers and contractors during all phases of the development. Grand Hudson stated construction labor forces would have been nearly 100 percent New York State residents and an all-union workforce per the project labor agreement.

Grand Hudson did not provide copies of any contracts, agreements or understandings evidencing confirmed plans or commitments to use New York-based subcontractors and suppliers other than as reflected in the project labor agreement during the construction phase of the project.

Grand Hudson anticipated construction total worker hours of 1,581,458.

**Building a gaming facility of the highest caliber with a variety of quality amenities to be included as part of the gaming facility. (§ 1320(1)(d))**

Grand Hudson proposed a casino and hotel resort located on a 140-acre site directly opposite Stewart International Airport at the intersection of International Boulevard and Breunig Road in the Town of New Windsor, approximately 65 miles from New York City. The project site was owned by the Town of New Windsor and would have been leased pursuant to a 99-year ground lease to Grand Hudson. The project site was the former Stewart Army Base, but is now primarily vacant land. Grand Hudson proposed a boutique casino resort designed to provide gaming, dining and entertainment options to visitors of the Hudson Valley and the Catskills.

Grand Hudson proposed a four-star, Grand Hudson-branded resort consisting of the following components:

- 101,550-square-foot casino including designated high-limit areas;
- 350-room hotel with indoor pool, outdoor pool “oasis” with event lawn, spa, fitness center and business center;
- 7,200-square-foot multi-purpose ballroom/conference center and additional meeting space;
- Nine restaurants, including a fine-dining steak and seafood option and a VIP lounge;
- Three bars/lounges;
- A small “Ultra” movie theatre;
- Flexible event center, night club and jazz and dance club; and
- Approximately five retail shops.

Overall, Grand Hudson proposed a self-contained resort that would have provided year-round attractions. Its architecture would have been largely contemporary with more of a cosmopolitan rather than rural atmosphere. Once inside, visitors would have enjoyed the amenities of a four-star hotel, including a variety of dining experiences, an indoor pool when the weather turns cold and an outdoor pool “oasis” for warmer months. Entertainment options were to have been varied, ranging from live music to sporting events to private movie screenings. It would have been a casino-centric regional entertainment facility that was designed to be appropriately sized to match the demands of this market.

Grand Hudson claimed that its casino, resort and parking would have been positioned to:

- Increase economic development of the Stewart International Airport;
- Buffer existing residential uses to the west by providing permanent open space and a hill to minimize impact on local residents;
- Use mountain lodge architecture to provide guests with an unpretentious yet luxurious resort experience, including a mix of green and occupied rooftop spaces;
- Create an easily-navigable entertainment experience and an outstanding lodging experience;
- Create a lush and beautiful landscape using native plantings with a focus on establishing a setting that displays seasonal interest that creates an integrated experience for visitors into the surrounding natural areas and a network of nature trails; and
- Provide easy overall access to the facility with simple ingress and egress directly off of Interstates 87 and 84.

The Board experts noted that because Grand Hudson was a relatively unknown casino brand in this marketplace, Grand Hudson would have had to earn its reputation by leveraging its food, beverage, entertainment and hotel amenities as marketing components. However, as proposed, the casino games’ configuration appeared to have been a work-in-progress and, perhaps, reflected putting too many gaming units on the casino floor.

Resort activities were limited to a spa/salon, a fitness center and one indoor/outdoor pool area. Grand Hudson provided no additional on-site recreation.

Grand Hudson proposed a single-level 101,550-square-foot casino, as well as a poker room and high-limit areas. Grand Hudson proposed the following mix of games:

- Slots—3,000 (plus 60-70 high-limit slots);
- Table Games—100 tables (10 high-limit tables); and
- Poker Tables—30 tables.



Grand Hudson stated that the casino would have offered a segregated high-limit area to cater to high-limit players. The high-limit area would have offered slot machines and table games. Located adjacent to the high-limit gaming area would have been The Grapevine, a VIP food and beverage venue. Additionally, VIP patrons would have had a VIP check-in lobby at the hotel and would have expedited service at the buffet.

The Casino Center Bar would have been the main interior focal point of the casino floor and was intended to create the energy for the casino. The Center Bar would have contained 20 to 30 video poker machines and also would have had comfortable interior seating.

Gaming capacity was at the upper end of the practical physical limit to serve forecasted demand on an average day under the average case (*i.e.*, 55 percent utilization rate).

The proposed casino would have been large with a range of traditional table games and niche games. The casino would have been an “interior” casino appropriately surrounded by cross-synergistic non-gaming activities, including a strategically located center bar and nearby dining and entertainment activities designed to promote cross traffic.

Board experts noted that the interior design was contemporary with some natural, resort-like visual cues, but the overall design presented a very unimaginative gaming floor. Certain areas might have been too close to each other and might not have met building code requirements.

Board experts noted that Grand Hudson had no brand awareness among VIP and high-value players and visitors. It was unclear to what extent Grand Hudson proposed to target these upper-target-market segments.

Grand Hudson’s project included a single, 350-room hotel tower comprising:

- 295 standard rooms (420 square feet each);
- 40 junior suites (630 square feet each);
- 10 standard suites (840 square feet each); and
- Five penthouse suites (1,260 square feet each) with outdoor terraces/balconies.

Grand Hudson stated that the hotel would have been Grand Hudson-branded and have been of four-star quality. The hotel would have offered an indoor pool (2,800 square feet), a 3,000-square-foot spa that would have been operated by a to-be-selected third party, a 1,500-square-foot fitness center and outdoor pool called the “Outdoor Oasis,” which would have included a waterfall area to be used for swimming, relaxing, socializing, small parties or pool events during favorable weather months. The Outdoor Oasis would have been located on the rooftop of the casino (*i.e.*, second floor), adjacent to the indoor pool so guests could swim in and out.

For hotels of comparable quality, Grand Hudson stated that its proposed four-star hotel would have been comparable to premium Marriot, Hilton and Westin hotels.

Board experts suggested that Grand Hudson's four-star rating was supported by the interior design elements. The design of the large-mass podium, hotel tower and parking structure was accompanied by interesting and attractive elements that would have projected an above-average four-star character from the exterior.

Board experts noted that the hotel had amenities necessary to be competitive at a four-star casino level. The hotel master plan included future expansion potential as appropriate to meet demand. Grand Hudson, however, provided no details as to what would have triggered this expansion.

Board experts suggested that, using industry benchmarks and a competitive analysis of hotel properties in the market, Grand Hudson's projection of five million annual hotel visitor days seemed reasonable, especially after taking into account the room-night demand generated by the casino's marketing team and the player databases that would have developed over time after operations commence.

Board experts noted that Grand Hudson's hotel did not have the benefit of its own brand awareness or customer database and would have had to attract visitors through its casino loyalty club.

It was unclear to what extent noise pollution from the nearby airport would have disturbed the hotel guests. Some hotel rooms would have had a view facing the airport.

Grand Hudson proposed a total of 20,000 square feet of meeting and ballroom space including pre-function, back of house and kitchen support. The space provided included:

- 7,200-square-foot multi-purpose ballroom that could have been used as one large space or have been divided into two smaller areas. As one large space, the ballroom would have been capable of accommodating 300 people; and
- 3,000-square-foot meeting space comprising of three separate meeting rooms (providing capacity for 40 people in each 1,000-square-foot room).

Grand Hudson proposed a 340-square-foot business center with three to four computer work stations with Internet access linked to printers. The business center would have been managed through the hotel front desk and not staffed.

Grand Hudson proposed multiple single and multi-purpose venues that would, or could, have been used for entertainment of various types including:

- 11,000-square-foot multi-purpose event center (capacity up to 800), to be used to host larger entertainment events;
- The Jazz and Dance Club (135 seats/3,800 square feet), to be used during the day as a casino bar and during the evening for nightly live entertainment;
- High Energy Night Club (400 seats/4,000 square feet), a weekend-only dance club;
- Meridian Bar (128 seats), a casino “center” bar that would have been the focal point of the casino floor;
- Ultra Movie Theater (40 seats), to have been used for ad hoc screenings of various types and, presumably, forms of video/electronic entertainment as well as small live ad hoc entertainment events; and
- Outdoor lawn amphitheater having terraced seat walls and risers with green space in between, coupled with a sloping lawn area and a raised stage.

Board experts noted that based on Grand Hudson’s pro forma, Grand Hudson appeared committed to using entertainment as a casino marketing tool. This was not uncommon for a local/regional casino that was using a constant stream of entertainment events to promote trial and repeat visitation and engender loyalty among its patrons.

Grand Hudson proposed offering nine food and beverage venues totaling 27,500 square feet. The total capacity for these restaurants would have been 1,194 seats.

Grand Hudson also proposed offering three bars/lounges totaling 10,100 square feet with total capacity of 663 patrons.

Grand Hudson also proposed five retail outlets totaling 6,100 square feet, of which three would be operated by to-be-determined vendors, one would have been a resort-themed retail shop and one would have been a sundries shop.

Grand Hudson planned to highlight local and regional products, brands and cuisine in its bars, restaurants and retail spaces. Additionally, Grand Hudson partnered with four local golf courses to provide recreational opportunities to its patrons.

Grand Hudson’s strategy was to use food as a marketing tool for the casino in order to promote trial and repeat visitation and to engender loyalty over time.

Grand Hudson did not provide a detailed description of proposed internal controls but submitted a general outline for such as well as an organization chart. Grand Hudson indicated internal controls would have been developed as part of a pre-opening plan. Grand Hudson’s description of the surveillance equipment was not compared to any standards.

**Offering the highest and best value to patrons to create a secure and robust gaming market in the region and the state. (§ 1320(1)(e))**

Full House operates five smaller casino properties in the United States:

- Rising Star Casino Resort–Rising Sun in Indiana
- Silver Slipper Casino in St. Louis
- The Grand Lodge at Hyatt Regency Lake Tahoe
- Stockman’s Casino in Nevada
- Buffalo Thunder Resort and Casino in Santa Fe

Each casino property operated an electronic player rewards program designed and tailored to meet the needs of the market it supplies.

Grand Hudson stated that the entire database of Full House would have been available to the marketing team at Grand Hudson and that the use of the database was exclusive to Full House.

Grand Hudson stated that it would have constructed a “Visit New York and the Hudson Valley” vacation program for members in its database. Based on the value of individual customers, offers might have included a room discount; a room and gaming package; and a room, food, gaming and air transportation package.

Full House Resorts did not have a player database in New York and a negligible number of Full House’s database participants appeared to reside within 100 miles of Grand Hudson.

Grand Hudson’s proposed facility was not part of a formal economic plan. However, Grand Hudson stated that it believed the project was consistent with the goals and supporting strategies of the Mid-Hudson Regional Economic Development Council Strategic Plan. Grand Hudson identified the priority goals of this plan and stated that the development would have addressed some of these goals, but did not identify the strategy to achieve said goals, nor steps for how local and regional communities would have been engaged in this process.

**Providing a market analysis detailing the benefits of the site location of the gaming facility and the estimated recapture rate of gaming-related spending by residents travelling to an out-of-state gaming facility. (§ 1320(1)(f))**

The project site was large and located along the eastern boundary of northern Orange County. Its proximity to a regional airport, two train stations and interstate highways would have enabled the facility to serve the densely-populated New York City feeder market and Connecticut, Massachusetts and other commuter markets. Board experts suggested that the location of the site adjacent to the Stewart International Airport might have detracted heavily from the resort-casino experience. While being located near an airport can be a positive, being located too close to one can be a negative when

considering the potential for noise generated from the airport, jet aircraft and the related traffic and congestion.

Grand Hudson estimated that it would have recaptured \$116.3 million of New York resident gaming spent at out-of-state facilities in 2018.

**Offering the fastest time to completion of the full gaming facility. (§ 1320(1)(g))**

Grand Hudson stated it would have opened the facility within 24 months of the award of license.

Grand Hudson stated that that the status of progress on the project would have allowed construction to start almost immediately after the issuance of a license. The Town of New Windsor issued a negative declaration for SEQRA in May 2014.

The site for the gaming facility is several parcels of land comprising a 140-acre developed, previously disturbed site on a former Army depot. There was a protected stream on site. The site was located within three miles of a known bat hibernaculum (wintering area) and an Upland Sandpiper habitat mapped in vicinity of the site.

**Demonstrating the ability to fully finance the gaming facility. (§ 1320(1)(h))**

Grand Hudson was affiliated with Michael Malik and Greenetrack, Inc. and intended to finance its project through a combination of financing arranged by an investment bank pursuant to a highly confident letter and contributions by equity investors and other financial sponsors. In a supplement to its initial application, Grand Hudson provided a debt commitment for a credit facility.

**Demonstrating experience in the development and operation of a quality gaming facility. (§ 1320(1)(i))**

Executives in Grand Hudson's parent, Greenetrack, Inc., and executives in Full House have experience in developing and operating casino developments smaller than Grand Hudson.

Board experts noted that Full House generally owns or manages smaller casinos, yet Grand Hudson was proposed to have more than 3,000 gaming positions and feature extensive hotel, food and beverage and convention facilities.

Board experts noted that Full House's strategy generally has been to acquire casino properties rather than develop them. Mr. Malik was, however, an early stage investor/developer of what became MotorCity Casino Detroit.

Board experts suggested that it was a disadvantage that Grand Hudson would not open with a regionally relevant player database.

## **LOCAL IMPACT AND SITING FACTORS**

### **Mitigating potential impacts on host and nearby municipalities which might result from the development or operation of the gaming facility. (§ 1320(2)(a))**

Grand Hudson suggested that impact in New Windsor would be minimal. Grand Hudson determined that the additional impact to local policing services would be within New Windsor's capability and would not necessitate any changes to staffing or jailing capacity. However, Grand Hudson concluded that the Vailis Gate Volunteer Fire Department would need specialized training for firefighting in high-rise buildings and, preferably, new equipment designed for these fire scenarios. In addition, the Fire Department might have needed to purchase a larger ladder truck to serve the casino hotel effectively.

EMS facilities were already at capacity in New Windsor in terms of staffing quarters and vehicle bays, even without increased demand created by the development and operation of the proposed casino complex. Based on the projected 6.25 percent increase in EMS service calls, the additional demand might have required hiring and training three more emergency medical personnel. The department would have needed to renovate and expand its existing facilities to accommodate any additional personnel or equipment necessary to service the project site.

Grand Hudson and the Town of New Windsor had agreed via a host municipality agreement that in any month the Town water usage exceeded the regular rate limit established by the New York City Water Board (which controls the aqueduct), Grand Hudson would have paid for its water usage in excess of the regular limit at the excess rate. Grand Hudson committed to make the required capital investment in upgrading the capacity of the wastewater treatment plant.

Grand Hudson stated that the project would not have been located within a floodplain and proposed no impacts to wetlands or protected habitats.

Grand Hudson had pledged \$3.1 million to the Town of New Windsor to rehabilitate a former army recruitment center into a new, modern police academy and police department. In addition, Grand Hudson had committed to pay the Town a total of \$1.5 million to cover training, equipment and any other ancillary costs the Town identified for its police, fire and ambulance/EMT services. This payment would have been split evenly among the Town's police department, fire district and emergency medical team, with each department receiving \$500,000. The funds payable to New Windsor's emergency medical team would have been used to expand its existing facilities, in addition to any other ancillary costs necessary to support local ambulance and EMT services.

Finally, Grand Hudson had agreed to make a \$1 million grant to the City of Newburgh Police Department and to support an independent civilian complaints review board for the Police Department.

Grand Hudson concluded that the impact on the housing demand would have been negligible.

Grand Hudson stated that the impact on the school districts in the area also would have been negligible. However, the memorandum of understanding between Grand Hudson and the Town of New Windsor provided some annual funding to the other two impacted school districts that would not benefit from the increased property tax revenues collected as a result of the siting of the facility. In particular, no later than 12 months after the casino would become operational, and continuing annually thereafter, Grand Hudson stated that it would pay to a foundation \$1 million for the equal benefit of the students of the Newburgh Enlarged School District and the Cornwall Central School District for scholarships, training, equipment or any other ancillary costs as each school district may identify.

**Gaining public support in the host and nearby municipalities, which may be demonstrated through the passage of local laws or public comment received by the board or gaming Applicant. (§ 1320(2)(b))**

Grand Hudson's host community is the Town of New Windsor. Grand Hudson provided a resolution in support of its project adopted by the Town Board of the Town of New Windsor on June 16, 2014. Grand Hudson also provided a host municipality agreement by and between Greenetrack, Inc. (an owner of Grand Hudson) and the Town.

As further evidence of support for its project, Grand Hudson provided a resolution in support adopted by the Town Board of the Town of Hamptonburgh and a memorandum of understanding executed by the Town of Hamptonburgh and Greenetrack, Inc., an affiliate of Grand Hudson.

Grand Hudson also provided letters of support and cooperation from public officials including the Dutchess County Executive, a City Council Representative of the City of Beacon, the Supervisor of the Town of New Windsor, the Orange County Sheriff's Office, various members of the New York State Assembly and others, various school districts including the Cornwall Central School District, organizations of higher education including Orange County Community College and various local businesses and residents. The Grand Hudson project was the subject of two comments indicating opposition and 14 indicating support. Additionally, the Board received more than 40 general comments in regard to the siting of casinos in Orange County, with 89 percent indicating opposition and 11 percent indicating support. At a public comment event held in Poughkeepsie on September 23, 2014, Grand Hudson was the subject of more than a dozen comments, all

indicating support. Additionally, the Board heard seven general, non-specific comments overwhelmingly opposing the siting of casinos in Orange County.

**Operating in partnership with and promoting local hotels, restaurants and retail facilities so that patrons experience the full diversified regional tourism industry. (§ 1320(2)(c))**

Grand Hudson stated it intended to establish a voucher program where Grand Hudson would purchase vouchers from local businesses that would have been distributed to gaming customers as part of the casino's promotional programs. Furthermore, Grand Hudson intended to develop relationships with local car, boat, ATV and recreational vehicle dealerships to display these items on the casino floor and to purchase those items, again, as part of the casino's promotional programs. Finally, Grand Hudson would have worked with area hotels to place overnight guests at those hotels when the casino-hotel room demand exceeds room supply. Grand Hudson also provided an agreement with a local hospitality group for the operation of an upscale Italian restaurant at its gaming facility.

Grand Hudson would have implemented a series of strategies to help local industries do business with the casino and develop strategies to drive tourism traffic to complement area businesses. Grand Hudson would create a program that would have allowed area businesses to promote their goods and services in Grand Hudson's local merchant brochure. Casino guests also would have been allowed to redeem loyalty program points and comp dollars at area businesses that register for Grand Hudson's local merchant program.

Grand Hudson outlined several continuing efforts on creating methods of increasing gaming facility draw to bring more patrons to the region. First, Grand Hudson planned to provide shuttle services from the two local train stations. For regional and out-of-state travelers, Grand Hudson had partnered with a bus company that would have created bus routes and excursions that would have attracted daily, multi-day and weekly travelers. Grand Hudson had arranged scenic tours to keep tourists for longer periods. Grand Hudson stated it believed its partnerships with live entertainment venues would have allowed it to attract top talent for the region. Additionally, if awarded a license, Grand Hudson would have worked with the Stewart Airport Commission and the Port Authority to expand existing service at Stewart Airport.

Grand Hudson planned to collaborate with area wineries and golf courses to create overnight vacation experiences that could have been combined with lodging and gaming at Grand Hudson's facility. Further, Grand Hudson would have developed relationships with area golf courses, ski resorts and other recreation providers where the casino could have conducted special events for invited guests. Grand Hudson also stated that it had entered into cross-marketing agreements with Dutchess County, the Cities of Hamptonburgh and Beacon, The Upstate Theater Coalition for a Fair Game and a hospitality company that would have run an Italian restaurant on the property.



**Establishing a fair and reasonable partnership with live entertainment venues that may be impacted by a gaming facility under which the gaming facility actively supports the mission and the operation of the impacted entertainment venues. (§ 1320(2)(d))**

Grand Hudson had entered into two memorandums of understanding in regard to live entertainment venues with Dutchess County and the Upstate Theater Coalition for a Fair Game. Grand Hudson and the Mid-Hudson Civic Center (including two other venues owned by the Mid-Hudson Civic Center) engaged in discussions and reached an agreement in September 2014.

**WORKFORCE ENHANCEMENT FACTORS**

**Implementing a workforce development plan that utilizes the existing labor force, including the estimated number of construction jobs a proposed gaming facility would generate, the development of workforce training programs that serve the unemployed and methods for accessing employment at the gaming facility. (§ 1320(3)(a))**

Grand Hudson stated that it intended to provide a career path for employees. It would have been the human resources department's responsibility to review employee performance and determine potential for advancement. Mentoring programs would be available, as would programs to aid in an employee's development of skills and goals.

Grand Hudson would have collaborated with local colleges to develop internship programs that would aid potential employees with on-the-job training to benefit their long-term careers.

Grand Hudson had agreed publicly to hold two to four job fairs in primarily urban areas in the region that had experienced high unemployment. Grand Hudson also stated that it believed that it had an aggressive program to address the needs of the area's unemployed.

**Taking additional measures to address problem gambling including, but not limited to, training of gaming employees to identify patrons exhibiting problems with gambling. (§ 1320(3)(b))**

Grand Hudson stated that immediately upon commencement of operations, it would have implemented a responsible gaming awareness program to address problem gambling. The goals of the program would have been to encourage responsible gaming and provided resources to assist patrons who may exhibit signs of problem gambling, including informational messaging through a pamphlet and signage initiative, employee training and education, and a voluntary self-exclusion program. Additionally, Grand Hudson would have implemented initiatives to prohibit underage gambling, including

creation of signs and posting of information to raise both employee and patron awareness of underage gambling. Grand Hudson had entered into a memorandum of understanding with the Alcoholism and Drug Abuse Council of Orange County, a not-for-profit corporation providing information, referral and outreach services in the Hudson River Valley, to collaborate with respect to problem gambling issues.

The casino would have maintained responsible gaming awareness resources at several locations, including a centralized location, which would have served as a responsible gaming awareness center, so that information was readily available to patrons seeking information on responsible gaming.

Grand Hudson would have required all gaming floor employees upon hire and periodically thereafter complete a training program in responsible gaming awareness. The training program would have been designed to help these employees understand the goals of the responsible gaming awareness program, identify and locate problem gambling support resources, recognize certain indicators of problem gambling, understand how to make diligent efforts to prevent patrons who are visibly impaired by drugs or alcohol from gambling, and follow the proper protocol when a patron seeks problem gambling support. All gaming floor employees would have been responsible for participating in training. The program would include the customer campaign, the community campaign, the underage patron campaign and the employee campaign.

Grand Hudson had pledged to support and promote research-based policies and procedures on responsible gambling, as detailed in the Code of Conduct for Responsible Gaming produced by the American Gaming Association.

Any patron could have requested placement on Grand Hudson's voluntary self-exclusion list for a period of time by completing the appropriate form.

As part of its underage patron campaign, Grand Hudson would have communicated the legal age to gamble through messaging in the casino, its online platforms, and in gambling promotions. Employees in relevant departments would have received training in procedures for dealing with underage gambling. Finally, Grand Hudson's advertising materials would not have depicted, promoted or encouraged underage gambling in any way, and would not have been targeted to underage individuals.

Grand Hudson had implemented several different processes to address problem gambling at affiliated gaming facilities, including multi-pronged approaches to increase customer and employee awareness of problem gambling issues and the various agencies that are qualified to provide intervention. This was achieved through educational materials such as posters and brochures that highlight problem gambling, as well as agencies equipped to provide counseling and treatment.

**Utilizing sustainable development principles including, but not limited to:**

- (1) having new and renovation construction certified under the appropriate certification category in the Leadership in Energy and Environmental Design Green Building Rating System created by the United States Green Building Council;**
- (2) efforts to mitigate vehicle trips;**
- (3) efforts to conserve water and manage storm water;**
- (4) demonstrating that electrical and HVAC equipment and appliances would be Energy Star labeled where available;**
- (5) procuring or generating on-site 10 percent of its annual electricity consumption from renewable sources; and**
- (6) developing an ongoing plan to submeter and monitor all major sources of energy consumption and undertake regular efforts to maintain and improve energy efficiency of buildings in their systems. (§ 1320(3)(c))**

Grand Hudson's proposed project site is located on the property formerly known as the Stewart Army Sub-post, situated north of Route 207, with Breuning Road and Stewart International Airport bordering the site to the east, the NYC Aqueduct to the west, and Reed Street and the U.S. Army Reserve property to the north. Grand Hudson's projected site was originally proposed to consist of an approximately two-million-square-foot mixed-use development to include office space, a production/warehouse facility, education facilities, corporate housing, hotels, a convention center, retail space and other compatible uses. Such proposed development, however, was never constructed.

Based on a 2002 traffic study for the original proposed mixed-use development, a number of traffic mitigation measures were constructed including a new interchange on I-84 at Route 747, an east-west connector road, new intersections and turn lanes. To accommodate the projected impact of the additional trips anticipated for Grand Hudson's project, Grand Hudson would have constructed dedicated turn lanes, installed new traffic signals, restriped turn lanes and resurfaced pavement. Grand Hudson would have funded the estimated cost of \$800,000 and complete these improvements prior to opening. Grand Hudson also would have helped fund intersection improvements on Route 207.

Grand Hudson submitted a sustainability assessment for the design and construction of the project, including a LEED checklist that identified credits that could have been incorporated into the project's design.

Grand Hudson stated that the project design would have included Energy Star-rated equipment and discussed the use of high-efficiency HVAC equipment.

Grand Hudson described systems to mitigate storm water discharge from the project site using underground storage systems in accordance with State requirements. Because the project was located on a previously developed property with existing buildings and pavements, Grand Hudson stated that the project would have been classified as a

redevelopment under applicable State regulations and would not have been required to provide runoff reduction.

Water reduction measures considered included low-flow fixtures, water efficient appliances and collecting and reusing water on-site. Grand Hudson described a rainwater harvesting system to supply water to the HVAC system.

State agency review suggested that with the exception of calculations for expected storm water discharge loads to the Town of New Windsor sewer system, Grand Hudson had not provided any detailed studies or analyses prepared by independent professionals addressing expected electric demand, fresh water demand or expected volume of discharge into the sanitary sewer system.

Grand Hudson considered a combination of onsite generation and procuring renewable energy, as it would be challenging to generate all 10 percent of the facility's annual energy consumption from renewable sources. Grand Hudson intended to implement a facility-wide automated meter system to mitigate excessive energy and water usage and energy consumption monitoring.

**Establishing, funding and maintaining human resource hiring and training practices that promote the development of a skilled and diverse workforce and access to promotion opportunities through a workforce training program that:**

- (1) establishes transparent career paths with measurable criteria within the gaming facility that lead to increased responsibility and higher pay grades that are designed to allow employees to pursue career advancement and promotion;**
- (2) provides employee access to additional resources, such as tuition reimbursement or stipend policies, to enable employees to acquire the education or job training needed to advance career paths based on increased responsibility and pay grades; and**
- (3) establishes an on-site child day care program. (§ 1320(3)(d))**

Grand Hudson and its manager collaborated to develop a comprehensive approach to recruitment, hiring, and training of the initial workforce. Grand Hudson and its facility manager created a human resource team to conduct its hiring operation in the region.

Grand Hudson stated an objective to provide a career path for employees. Grand Hudson intended for employees to have access to training that would increase skill sets required to attain a promotion. Grand Hudson anticipated establishing mentoring programs that would have identified candidates for advancement.

Grand Hudson stated that it was committed to providing employee assistance programs, such as tuition reimbursement, job training, leadership courses and more. Grand Hudson committed to provide a benefits program that included assistance programs in the area

of substance abuse and problem and compulsive behaviors. An affirmative action program also would have been established.

**Purchasing, whenever possible, domestically manufactured slot machines. (§ 1320(3)(e))**

Grand Hudson proposed to source domestically manufactured slot machines.

**Implementing a workforce development plan that:**

- (1) incorporates an affirmative action program of equal opportunity by which the Applicant guarantees to provide equal employment opportunities to all employees qualified for licensure in all employment categories, including persons with disabilities;**
- (2) utilizes the existing labor force in the state;**
- (3) estimates the number of construction jobs a gaming facility would generate and provides for equal employment opportunities and which includes specific goals for the utilization of minorities, women and veterans on those construction jobs;**
- (4) identifies workforce training programs offered by the gaming facility; and**
- (5) identifies the methods for accessing employment at the gaming facility. (§ 1320(3)(f))**

Grand Hudson proposed an affirmative action plan that included a good faith effort to increase the participation of minorities in the laborer, office clerical, sales and technician job categories and would have considered and encourage qualified women for such opportunities. On those occasions when Grand Hudson would have used temporary employment agencies, those agencies would have been encouraged to send qualified minority and female workers.

Grand Hudson did not discuss how it would have implemented an affirmative action program that identified specific goals for the engagement of minorities, women, persons with disabilities and/or veterans on pre-opening construction jobs.

**Demonstrating that the Applicant has an agreement with organized labor, including hospitality services, and has the support of organized labor for its application, which specifies:**

- (1) the number of employees to be employed at the gaming facility, including detailed information on the pay rate and benefits for employees and contractors in the gaming facility and all infrastructure improvements related to the project; and**
- (2) detailed plans for assuring labor harmony during all phases of the construction, reconstruction, renovation, development and operation of the gaming facility. (§ 1320(3)(g))**

Grand Hudson entered into a project labor agreement with the Hudson Valley Building and Construction Trades Council. The form agreement would have been used by Grand Hudson and the respective labor units for the final agreement, which would have set forth the number of individuals to be employed at the gaming facility. The agreement had set forth a plan to promote labor harmony during all phases of construction.

Grand Hudson also entered into an agreement with the New York Hotel & Motel Trades Council, AFL-CIO for the operation of the gaming facility. Grand Hudson claimed this agreement evidenced the support of organized labor for its proposal. The form agreement would have been used by Grand Hudson and the respective labor units for the final agreement, which would have set forth the number of employees to be employed at the gaming facility. The operations agreement had set forth a plan to promote labor harmony during the operations phase of the gaming facility.



**Rush Street Gaming and Saratoga Casino and Raceway (“Hudson Valley”) proposed to develop the Hudson Valley Casino & Resort in the Town of Newburgh in Orange County. According to Hudson Valley, the facility would have featured a 128,000 square-foot casino with 2,750 slot machines, 160 table games and 30 poker tables. The facility would have included a 300-room hotel with the ability to expand to 500 rooms, along with multiple dining, retail and entertainment venues and conference facilities.**

### **ECONOMIC ACTIVITY AND BUSINESS DEVELOPMENT**

#### **Realizing maximum capital investment exclusive of land acquisition and infrastructure improvements. (§ 1320(1)(a))**

Hudson Valley proposed a minimum capital investment of \$825.2 million. The total capital investment less excluded capital investment was proposed to be \$545.1 million.

#### **Maximizing revenues received by the state and localities. (§ 1320(1)(b))**

Hudson Valley did not propose a supplemental tax payment or increased license fee.

Hudson Valley projected the following direct and indirect tax revenues to New York State and host communities:

- New York State tax revenues (including gaming taxes, machine fees, sales taxes and personal income taxes) of approximately \$128.7 million in year one and \$155.2 million in year five, in the low-case scenario; \$138.4 million in year one and \$166.9 million in year five, in the average-case scenario; and \$148.1 million in year one and \$178.6 million in year five, in the high-case scenario.
- County tax revenues (including gaming taxes, real estate, sales taxes, and hotel occupancy taxes) of approximately \$13.3 million in year one and \$15.8 million in year five, in the low-case scenario; \$14.3 million in year one and \$17 million in year five, in the average-case scenario; and \$15.3 million in year one and \$18.1 million in year five, in the high-case scenario.
- Host Municipality (Town of Newburgh) tax revenues (including gaming taxes and real estate) of approximately \$17.3 million in year one and \$18.7 million in year five, in the low-case scenario; \$18.6 million in year one and \$20.1 million in year five, in the



average-case scenario; and \$20 million in year one and \$21.5 million in year five, in the high-case scenario.

Board experts noted that various tax revenues might not have been achieved if financial projections were not met or exceeded.

Hudson Valley provided a study of the overall economic impact from the construction and operation of the project. Hudson Valley estimated that the economic impact from the construction would be \$876 million to the State, \$727 million to the region and \$560 million to the host county/municipality. Hudson Valley estimated that the economic impact from the project's operation would have been \$546 million to the State, \$425 million to the region and \$333 million to the host county/municipality in the average case scenario.

**Providing the highest number of quality jobs in the gaming facility (§ 1320(1)(c))**

Hudson Valley anticipated that it would create approximately 2,412 full-time and 530 part-time jobs.

In regard to the use of New York-based subcontractors and suppliers, Hudson Valley stated that Rush Street Gaming, an owner, had an excellent reputation at buying in-state.

Hudson Valley anticipated construction total worker hours of 2,225,286.

**Building a gaming facility of the highest caliber with a variety of quality amenities to be included as part of the gaming facility. (§ 1320(1)(d))**

Hudson Valley proposed:

- 128,500-square-foot casino with designated high-limit areas;
- 300-room hotel with a fitness center, salon, spa and pool;
- Multi-purpose convention, entertainment and meeting space with pre-function, back of house and kitchen areas;
- Six restaurants;
- Three bars/lounges; and
- 5,000 square feet of retail.

Hudson Valley proposed to complete the project in a single phase of construction and had master-planned the site for certain expansion, including expansion of the hotel tower.

Board experts suggested that overall, the site was sound logistically and aesthetically at entry. However, upon arrival to the building and parking, the site transformed into a





suburban mall-type aesthetic, albeit landscaped. The aesthetic benefits of the entry road were reduced by a large surface parking lot (albeit landscaped), a large hotel tower and covered parking structure. Hudson Valley did not discuss plans for expansion, although an expansion area was shown on the Master Plan and the text stated that the building could accommodate expansion. The site appeared to be located under or, at least, very near to the takeoff/landing path of Stewart International Airport. Hudson Valley suggested that a noise abatement program would help mitigate this impact.

Hudson Valley proposed a single-level 128,500-square-foot casino floor offering the following mix of games:

- Slots: 2,750 (including 160 high-limit slots which would have included 10 electronic table games);
- Table Games: 160 tables (including 25 high-limit tables and 25 specialty gaming area tables); and
- Poker Tables: 30 tables.

The casino would have offered a segregated high-limit area featuring a small seating area and bar located adjacent to the VIP lounge. Both areas would have had access to a dedicated outdoor patio.

Board experts noted that Hudson Valley proposed a high-capacity regional/local casino. This was necessary to cater to an initial target market that was forecasted to consist largely of day-trip visitors (an estimated 91 percent of the gaming revenue).

Board experts noted that Hudson Valley anticipated approximately 14,700 visitors on an average day and the gaming capacity could serve this demand (*i.e.*, an implied 51 percent casino utilization rate).

Hudson Valley did not provide renderings of the interior casino space. However, Hudson Valley did provide pictures of other Rush Street Gaming-owned and/or managed properties, which, Board experts noted, are contemporary and comfortable, but not exceptional.

Board experts suggested that given the size of the suites and other cues, it may be inferred that Hudson Valley planned to pursue players in the lower-upper market segment, but probably not beyond. Depending upon how high up the market segment ladder Hudson Valley intended to target, other services might have been required (*e.g.*, semi-private and private gaming rooms).

Hudson Valley's proposal included a single 300-room hotel tower comprising:

- 252 standard king or queen rooms (425 square feet each);



- 24 corner suites (650 square feet each); and
- 24 double suites (850 square feet each).

The hotel would have been Hudson Valley Casino and Resort-branded and would have been of four-star quality. The hotel was offering a 24-hour fitness center and a 5,000-square-foot salon and spa. Hudson Valley would have offered a pool located on the rooftop of the hotel. The total pool area was approximately 7,200-square-foot and included a small pool bar/lounge. The pool was heated to allow for year-round use. Designs for the hotel were master-planned in order to facilitate a potential phase II expansion to include a second hotel tower providing an additional 200 rooms if demand had warranted.

Hudson Valley stated that the hotel was expected to be of comparable quality to the Fallsview Casino Resort located in Niagara Falls, Ontario.

Board experts suggested that the four-star quality would have allowed Hudson Valley to serve the lower five-star market segment tier while still being in reach of the upper mass market.

Hudson Valley proposed a total of approximately 35,000 gross square feet of multi-purpose entertainment and meeting space including back-of-house, catering and support areas. This space comprised the following:

- 30,600 square-feet of multi-purpose entertainment and meeting space, including a ready-stage component and pre-function space, as well as an outdoor terrace located adjacent to the space. Seating capacity would have been approximately 2,200 people.
- 8,600 square feet of additional meeting rooms, which, in the aggregate, have seating capacity for up to 500.

Hudson Valley stated it would have offered both self-service business services as well as a full business service program facilitated through its conference center team.

Hudson Valley's multi-purpose meeting space could have accommodated up to 2,200 people and could have been used to host entertainment performances. Hudson Valley's key entertainment venue would have been the use of its 30,600 square-foot multi-purpose entertainment and meeting space.

Hudson Valley's goal was to use entertainment on property and off-site as a competitive tourism component to grow market visitation.



Hudson Valley proposed offering six restaurants having capacity for up to 995 patrons. Hudson Valley also proposed offering three primary bars/lounges. Additionally, Hudson Valley's gaming facility would have offered a VIP player's.

As for other amenities, Hudson Valley proposed retail outlets near the casino floor totaling approximately 5,000 square feet, a salon, spa and fitness center and a year-round heated rooftop pool.

Board experts suggested that Hudson Valley would have been not so much a resort (in terms of the leisure/recreational use of the term) as it would have been a local/regional casino-hotel. Hudson Valley did not provide any on-site recreation other than a spa, pool and fitness center.

Hudson Valley provided a detailed description of internal controls that reflects current industry standards.

**Offering the highest and best value to patrons to create a secure and robust gaming market in the region and the state. (§ 1320(1)(e))**

Rush Street Gaming, LLC has an established customer loyalty program, "Rush Rewards," that was recognized as a Best Players Club in 2013 by Casino Player Magazine. The Rush Rewards program currently is offered at Rush Street's three facilities located in Pennsylvania (Philadelphia and Pittsburgh) and Illinois.

Board experts noted that Rush Rewards is a nationally recognized rewards program that incorporates cruise lines, other gaming jurisdictions and amenities outside of casino to entice play and reward players.

Hudson Valley's proposed gaming facility was not currently part of a regional or local economic plan. Hudson Valley intended to coordinate its development and operations with regional economic plans, but would not seek any public funding or assistance with the development of the proposed gaming facility.

**Providing a market analysis detailing the benefits of the site location of the gaming facility and the estimated recapture rate of gaming-related spending by residents travelling to an out-of-state gaming facility. (§ 1320(1)(f))**

Hudson Valley's casino site was elevated approximately 100 feet above Interstate 87 and approximately 40 feet over Interstate 84, providing the site with good visibility. Hudson Valley asserted that because of the site's proximity to two major intersections, it was strategically positioned to attract patronage from out-of-state visitors.



Hudson Valley estimated that in the average case in year two it would have recaptured \$55 million from New York residents currently traveling to out-of-state facilities. Roughly half would have been recaptured from various Pennsylvania casinos, most notably Sands Bethlehem. Foxwoods/Mohegan in Connecticut and Atlantic City would have yielded about \$12 million each in repatriation.

**Offering the fastest time to completion of the full gaming facility. (§ 1320(1)(g))**

Hudson Valley projected it would open its gaming facility within 23 months from the award of a license.

Hudson Valley described the project site as a 90-acre undeveloped/undisturbed site. The site contained federally regulated wetlands and two state-protected streams. If wetlands/streams were impacted, a Section 401 Water Quality Certification and Protection of Waters permit and possible mitigation measures would have been required. The site was located within five miles of a known bat hibernaculum (wintering area). The project may have required time of year restrictions for tree removal and/or a survey for protected species of bats, if habitat is present. Additionally, a survey may have been required for the Upland Sandpiper. In addition, the project was located under or close to the takeoff/landing path of Stewart International Airport. Hudson Valley suggested a noise abatement program would help to mitigate this impact.

**Demonstrating the ability to fully finance the gaming facility. (§ 1320(1)(h))**

Hudson Valley stated that it intended to finance its project through capital contributions by two financially capable members, one of which was affiliated with Neil Bluhm and the other of which was affiliated with Saratoga Casino and Raceway.

Hudson Valley was a 50 percent LLC between Newburgh Casino Associates, LLC (“Newburgh”) and Hudson Valley Gaming, LLC (“Hudson Valley Gaming”). Newburgh was majority owned 88 percent by Saratoga Harness Racing, Inc., the owner and operator of the Saratoga Casino and Raceway in Saratoga Springs. Hudson Valley Gaming, an affiliate of Rush Street Gaming, LLC (“Rush Street Gaming”) was owned 82 percent by Neil G. Bluhm and 12 percent by the Gregory A. Carlin Revocable Trust. The gaming facility would have been self-managed as Rush Street would have provided ancillary casino gaming oversight and support services.

Rush Street provided highly confident letters from six large financial institutions. With respect to Saratoga’s equity funding obligation, they provided a highly confident letter and an equity support letter from two large financial institutions.



**Demonstrating experience in the development and operation of a quality gaming facility. (§ 1320(1)(i))**

Rush Street has extensive experience in developing, financing and operating successful entertainment and gaming destinations. Neil Bluhm and Greg Carlin co-founded Rush Street in 2009, but Rush Street’s history goes back to 1996. Mr. Bluhm and Mr. Carlin had participated in the development of a casino in Ontario, Canada, and four casinos in Illinois, Pennsylvania and Mississippi.

Mr. Bluhm, Mr. Carlin and the Rush Street team possessed the full suite of knowledge, talents and experience necessary to develop, finance, open and operate a new facility, and had a proven track record in development, financing, hiring and training a team of new employees, implementing internal controls, systems and procedures at a new property, launching a new gaming facility and managing ongoing operations.

Saratoga and Rush Street were, individually, associated with separate applications for gaming facility licenses in Region Two. Board experts noted that it was questionable whether either of their moderately-sized executive teams would have been able to oversee adequately two development projects at the same time although Board experts did not have concerns with managerial and technical capacity to oversee a single project.

The labor organization, Unite Here, had criticized Rush Street Gaming over labor practices.

**LOCAL IMPACT AND SITING FACTORS**

**Mitigating potential impacts on host and nearby municipalities which might result from the development or operation of the gaming facility. (§ 1320(2)(a))**

Hudson Valley conducted a study on the incremental effect the proposed casino development in the Town of Newburgh was expected to have on local government services. The report indicated that the anticipated impact to municipal services in the host and surrounding communities would have been minimal and largely within these communities’ existing capabilities. The only likely exception to this was the increased demand for health and building inspections and related administrative services.

The report determined that the additional burden on local police was minimal and could be managed by existing resources. Similarly, the analysis suggested that the incremental burden to local fire protection services likely would have been small given the low likelihood of fire incidents at gaming facilities and mutual aid arrangements with neighboring municipalities. The study contended that the current EMS infrastructure in the area had the capacity to easily absorb the additional demand.



The most significant impact to local municipal services would have been to health and building inspections and related administrative services. The study anticipated that permitting fees and the incremental tax revenue to the Town of Newburgh would have covered some of these increased expenditures.

Hudson Valley presented preliminary assessments advising that adequate capacity existed in the water and sewer infrastructure proximate to the site to service Hudson Valley's project.

Hudson Valley reported that the local utility was able to supply the projected electricity demand.

Hudson Valley identified seven potential protected species, of which two had been observed at or near the project site, and no identified critical habitat. A site visit was conducted and it was determined that the project site did not contain suitable habitat for six of these species. The State had identified potential nesting habitat at or near the project site for the remaining species, the Upland Sandpiper, listed as threatened by the State.

Hudson Valley identified approximately nine acres of jurisdictional wetlands that had been delineated by the Army Corp of Engineers on the project site. It appeared from the preliminary storm water management report that the development of Hudson Valley's proposed facility did not directly impact the wetlands.

In order to mitigate the impacts described above and any other unanticipated impacts to the host and surrounding municipalities, Hudson Valley had entered into several agreements with local governments providing for one-time and ongoing mitigation payments. For example, Hudson Valley had committed to making separate annual payments to three local school districts in the amount of \$125,000 each. Dutchess County would have received annual contributions of \$500,000 each year and a one-time \$350,000 payment. The Cities of Middletown and Beacon, pursuant to their agreements with Hudson Valley, would have been entitled to unrestricted annual payments of \$175,000 and \$200,000, respectively.

Hudson Valley noted that based on its analysis of the workforce count and unemployment rate, the surrounding area was more than capable of supplying the majority of the proposed casino's job requirements and there was not a concern with housing availability.

Hudson Valley judged the school population impacts to be nominal and thus concluded that relevant school districts had the capacity to absorb the expected minimal increase in students.



Hudson Valley stated that based on preliminary estimates the Newburgh Enlarged School District was expected to realize an additional \$8 million in funding via real estate taxes, equating to approximately \$42,300 per expected new student.

**Gaining public support in the host and nearby municipalities, which may be demonstrated through the passage of local laws or public comment received by the board or gaming Applicant. (§ 1320(2)(b))**

Hudson Valley's host community was the Town of Newburgh. Hudson Valley provided a resolution in support of its project adopted by the Town Board of the Town of Newburgh on April 24, 2014.

As further evidence of community support for its project, Hudson Valley provided several letters of support from state and local elected officials, which included letters from the Town of Newburgh, Dutchess County and the Cities of Newburgh, Beacon and Middletown. Hudson Valley also provided letters of support from various community, religious and civic organizations, local businesses, breweries, vineyards and agriculture businesses and residents.

The Hudson Valley project was the subject of more than 650 comments with the overwhelming majority consisting of an out-of-state post-card drive coordinated by a national labor advocacy organization protesting Rush Street Gaming as an employer. Additionally, the Board received more than 40 general comments in regard to the siting of casinos in Orange County, with 89 percent indicating opposition and 11 percent indicating support.

At a public comment event held in Poughkeepsie on September 23, 2014, the Board heard 10 comments, with the overwhelming majority indicating support. Additionally, the Board heard seven general, non-specific comments overwhelmingly opposing the siting of casinos in Orange County.

**Operating in partnership with and promoting local hotels, restaurants and retail facilities so that patrons experience the full diversified regional tourism industry. (§ 1320(2)(c))**

Hudson Valley's manager stated it would have regularly engaged with area restaurants and other attractions within its other jurisdictions to reward the best customers for their loyalty.

Hudson Valley intended to partner with local hotels to offer casino packages. These casino packages, which Hudson Valley would have provided to the partner hotel free of charge, would have enhanced the hotel's booking by adding value to the consumer.



Hudson Valley also intended to work with local businesses and organizations that seek to maximize local area tourism and local business spend.

Hudson Valley illustrated this by pointing to its affiliated casinos around the country and described the amounts paid to the local businesses in the areas around those affiliated casinos. Hudson Valley would have held local vendor fairs on a regular basis that would have informed local business owners of the goods and services needed by the gaming facility.

As part of the business and branding plan, Hudson Valley stated it would have incorporated iconic elements of the region into the project and would have worked with local restaurants, farmers, craft breweries and distilleries to feature local wines, spirits and produce throughout the facility. The project would have employed cross-marketing of local agriculture and beverages at the resort and provide transportation for patrons to local wineries, orchards, farms, distilleries and craft breweries.

Hudson Valley stated its goal was to work in a synergistic fashion with the local recreation, historical and cultural attractions, as well as to participate appropriately with the local events to further tourism and tourism spend within the region. Hudson Valley would have cross-marketed local attractions on its resort website attractions page, through its loyalty rewards program, in hotel packages, on the community calendar of events at the resort, in tour packages, by distribution of materials by its hotel concierge and other means.

**Establishing a fair and reasonable partnership with live entertainment venues that may be impacted by a gaming facility under which the gaming facility actively supports the mission and the operation of the impacted entertainment venues. (§ 1320(2)(d))**

Hudson Valley made agreements with five local live entertainment venues. All of the agreements provided for discounted tickets for the venue for Hudson Valley's guests and employees, inclusion of the venue in Hudson Valley's customer loyalty program and onsite marketing. Hudson Valley would have paid an annual sponsorship fee to each venue. Hudson Valley did not reach an agreement with Upstate Theatre Coalition for a Fair Game.

**WORKFORCE ENHANCEMENT FACTORS**

**Implementing a workforce development plan that utilizes the existing labor force, including the estimated number of construction jobs a proposed gaming facility will generate, the development of workforce training programs that serve the unemployed and methods for accessing employment at the gaming facility. (§ 1320(3)(a))**





According to Hudson Valley, Rush Street Gaming (“RSG”), an affiliate of one of Hudson Valley’s owners and manager, is an experienced casino operator and has opened four properties since the beginning of the recent recession. Hudson Valley stated that, as a result, RSG was experienced in opening gaming operations in areas suffering from high unemployment and would have drawn on that experience in developing Hudson Valley’s project. RSG also would have explored programs for Hudson Valley that would have promoted hiring, training and development specifically for veterans.

RSG showed experience in successfully training workers who were unfamiliar with the casino industry, but Hudson Valley did not provide any specific elements of training programs.

**Taking additional measures to address problem gambling including, but not limited to, training of gaming employees to identify patrons exhibiting problems with gambling. (§ 1320(3)(b))**

Hudson Valley’s employees would have had access to handout cards that provided self-analysis for warning signs of a gambling problem. The cards also would have supplied patrons with a toll-free number to call for assistance regarding a gambling problem. All employees would have been instructed to give this card to patrons requesting assistance with problem and compulsive gambling. Printed materials on problem and compulsive gambling would have been available to the general public and would have been maintained throughout the casino, at the cashier cage and at the player’s club. Hudson Valley would have disseminated, through training and other means, information to its staff regarding the nature of problem and compulsive gambling, the statewide voluntary self-exclusion program and casino policies concerning the identification of, or assistance to, persons with gambling problems. Similar training and information would have been provided concerning the prevention and detection of underage gambling.

All of Hudson Valley’s employees would have been trained during new hire orientation. All front of house employees and supervisor-and-above team members would also complete a semi-annual refresher training course to maintain an understanding of the casino’s policies and procedures regarding problem, compulsive and underage gambling and information pertaining to the statewide voluntary self-exclusion program. Hudson Valley would have looked to partner with the National Association of Social Workers, New York State Chapter to review regularly problem gaming training for employees as addressed by the Responsible Play Partnership to update and refresh training and materials when necessary.

Any person who inquired about self-exclusion would have been referred to a security supervisor who would inform him or her of the statewide voluntary self-exclusion program.



Hudson Valley would have adhered to both American Gaming Association recommendations and state regulatory requirements, such as state regulations that prohibited marketing to self-excluded individuals. Hudson Valley would have measured and monitored adherence against such efforts. In addition, Hudson Valley would have partnered with the New York State Office of Alcohol and Substance Abuse Services to coordinate efforts for prevention and assistance.

**Utilizing sustainable development principles including, but not limited to:**

- (1) having new and renovation construction certified under the appropriate certification category in the Leadership in Energy and Environmental Design Green Building Rating System created by the United States Green Building Council;**
- (2) efforts to mitigate vehicle trips;**
- (3) efforts to conserve water and manage storm water;**
- (4) demonstrating that electrical and HVAC equipment and appliances will be Energy Star labeled where available;**
- (5) procuring or generating on-site 10 percent of its annual electricity consumption from renewable sources; and**
- (6) developing an ongoing plan to submeter and monitor all major sources of energy consumption and undertake regular efforts to maintain and improve energy efficiency of buildings in their systems. (§ 1320(3)(c))**

Hudson Valley's proposed development would have been located on an approximately 88-acre vacant site bordered by the New York State Thruway (I-87), I-84 and NYS Route 17K.

A traffic study recommended a widening of one roadway to provide two lanes in each direction which would have required modification to multiple intersections and a bridge over I-87. This widening would have provided a regional benefit by increasing highway capacity. Hudson Valley stated that with its recommended traffic mitigation measures, the roadway network could have accommodated Hudson Valley's proposed development. Permits from the NYS Department of Transportation would have been required before construction of these traffic improvements could commence. Hudson Valley asserted that these improvements would have been constructed concurrent with the project and were planned to be completed prior to the project's opening.

Hudson Valley stated that its objective was to obtain a higher level of LEED certification than is required.

Hudson Valley reported that high efficiency and Energy Star-rated equipment would have been specified throughout its facility.

Hudson Valley presented a preliminary environmental and site-planning report that included preliminary plans to mitigate storm water discharge from the project site using



detention ponds and, potentially, underground detention facilities in accordance with State requirements. Hudson Valley stated its intention to include low impact development measures described by the Institute for Sustainable Infrastructure as a portion of the proposed storm water management design. Hudson Valley committed to purchasing a minimum 10 percent of renewable power.

**Establishing, funding and maintaining human resource hiring and training practices that promote the development of a skilled and diverse workforce and access to promotion opportunities through a workforce training program that:**

- (1) establishes transparent career paths with measurable criteria within the gaming facility that lead to increased responsibility and higher pay grades that are designed to allow employees to pursue career advancement and promotion;**
- (2) provides employee access to additional resources, such as tuition reimbursement or stipend policies, to enable employees to acquire the education or job training needed to advance career paths based on increased responsibility and pay grades; and**
- (3) establishes an on-site child day care program. (§ 1320(3)(d))**

Hudson Valley intended to implement similar practices to those of its affiliate, Rush Street Gaming, to ensure the development of a skilled and diverse work environment. Rush Street Gaming has established programs at affiliated facilities that provided extensive training, such as new hire orientation, inspired service training and more. Hudson Valley aimed to provide similar training to its employees. In addition, Hudson Valley stated that it supported internal promotion and encouraged career development and advancement.

Hudson Valley was committed to providing its employees with additional resources to enable employees to acquire the required education and job training to advance career paths. Hudson Valley stated that Rush Street Gaming and its affiliated properties support their team members when they are in need of assistance with substance abuse and/or problem gaming. Hudson Valley anticipated providing services similar to what Rush Street Gaming provides at its other facilities, such as an employee assistance program for employees and their immediate families.

**Purchasing, whenever possible, domestically manufactured slot machines. (§ 1320(3)(e))**

Hudson Valley proposed to source domestically manufactured slot machines.

**Implementing a workforce development plan that:**

- (1) incorporates an affirmative action program of equal opportunity by which the Applicant guarantees to provide equal employment opportunities to all employees qualified for licensure in all employment categories, including persons with disabilities;**



- (2) utilizes the existing labor force in the state;**
- (3) estimates the number of construction jobs a gaming facility will generate and provides for equal employment opportunities and which includes specific goals for the utilization of minorities, women and veterans on those construction jobs;**
- (4) identifies workforce training programs offered by the gaming facility; and**
- (5) identifies the methods for accessing employment at the gaming facility. (§ 1320(3)(f))**

Hudson Valley stated that it was committed to building and nurturing a diverse work environment and would develop a diversity plan.

Hudson Valley stated that it would identify groups that contain potential candidates for employment at the project and educate them about employment opportunities it offers. Hudson Valley stated that it was its policy to employ qualified people without regard to race, color, gender, national origin, ancestry, age, citizenship status, disability, military or veteran status, marital status, religion, sexual orientation, place of birth, gender identity or expression, familial status, use of a guide or support animal because of blindness, deafness or physical disability, genetic information and any other category protected under federal, state or local law.

Hudson Valley expressed a commitment to supplier and workforce diversity, but provided no specifics as to how a plan would look. Hudson Valley had a clear EEO policy and complaint procedure.

**Demonstrating that the Applicant has an agreement with organized labor, including hospitality services, and has the support of organized labor for its application, which specifies:**

- (1) the number of employees to be employed at the gaming facility, including detailed information on the pay rate and benefits for employees and contractors in the gaming facility and all infrastructure improvements related to the project; and**
- (2) detailed plans for assuring labor harmony during all phases of the construction, reconstruction, renovation, development and operation of the gaming facility. (§ 1320(3)(g))**

Hudson Valley reported that it had the support of the Hudson Valley Building and Construction Trades Council. It had entered into a memorandum of understanding with respect to a project labor agreement for the proposed gaming facility with the Hudson Valley Building and Construction Trades Council. In addition, Hudson Valley executed a labor peace agreement with the Hotel Trades Council in October 2014.



**OCCR Enterprises, LLC, a joint venture between an affiliate of the Cordish Companies and an affiliate of Penn National Gaming, Inc., proposed to develop the Live! Hotel and Casino New York (“Live!”) in the Village of South Blooming Grove within the Town of Blooming Grove in Orange County. According to Live!, the facility would have consisted of an estimated 200,000 square foot casino with 3,200 slot machines, 190 table games and 80 poker tables. The facility would have featured a 12-story, 300+ room hotel and 80,000 square foot entertainment center including a 3,000-seat venue, dedicated various food and beverage options, and a 35,000-square-foot spa, fitness center, salon, pool and deck.**

## **ECONOMIC ACTIVITY AND BUSINESS DEVELOPMENT**

### **Realizing maximum capital investment exclusive of land acquisition and infrastructure improvements. (§ 1320(1)(a))**

Live! proposed a minimum capital investment of \$571.6 million, which included site preparation, core and shell construction, furniture, fixtures and equipment, casino program materials, hotel and parking garage construction and various soft costs. The total cost was estimated to be \$765.8 million.

### **Maximizing revenues received by the state and localities. (§ 1320(1)(b))**

Live! did not propose a supplemental tax payment or increased license fee.

Live! projected the following direct and indirect tax revenues to New York state and host communities:

- Direct New York state tax revenues (including gaming privilege taxes, corporate profits tax, sales and use taxes and personal income taxes) of approximately \$125.0 million in year one and \$152.9 million in year five, in the low-case scenario; \$157.4 million in year one and \$191.4 million in year five, in the average-case scenario; and \$189.1 million in year one and \$229.0 million in year five, in the high-case scenario.
- Indirect New York state tax revenues (including corporate profits tax, sales and use taxes and personal income taxes) from induced incremental economic activity of approximately \$8.0 million in year one and \$9.9 million in year five, in the low-case scenario; \$10.8 million in year one and \$13.3 million in year five, in the average-case scenario; and \$13.2 million in year one and \$16.1 million in year five, in the high-case scenario.

- Direct host community tax revenues (including to the Village of South Blooming Grove, the Town of Blooming Grove, the Monroe-Woodbury School District and Orange County) of \$16.7 million in year one and \$17.9 million in year five, in the low-case scenario; \$16.9 million in year one and \$18.2 million in year five, in the average-case scenario; and \$17.2 million in year one and \$18.6 million in year five, in the high-case scenario.
- Indirect host community tax revenues from induced incremental economic activity (to the same host communities) of approximately \$1.0 million in year one and \$1.1 million in year five, in the low-case scenario; \$1.6 million in year one and \$1.8 million in year five, in the average-case scenario; and \$1.9 million in year one and \$2.0 million in year five, in the high-case scenario;

Board experts noted that these projections might not have been achieved and depended upon Live! meeting or exceeding its financial projections.

Live! estimated that the direct, indirect and induced economic impact from the construction of the project would have been \$655.4 million to the State and \$604.1 million to Orange County. Live! estimated that, in the year 2018, direct, indirect and induced economic impact from the project's operation would have been \$778.0 million to the State and \$457.3 million to Orange County.

Live! presented an economic impact study that Board experts noted might not have been achieved if the Live! financial projections were not met or exceeded.

### **Providing the highest number of quality jobs in the gaming facility. (§ 1320(1)(c))**

Live! anticipated that it would create 3,264 full-time jobs and 1,444 part-time jobs.

Live! included an 18-page listing of New York subcontractors and suppliers (with 38 categories of work identified) as the start of efforts for the construction.

Live! anticipated construction total worker hours of 3,009,774.

### **Building a gaming facility of the highest caliber with a variety of quality amenities to be included as part of the gaming facility. (§ 1320(1)(d))**

Live! proposed a four-star integrated resort with a boutique hotel, casino, event venue, restaurants and conference facilities primarily consisting of the following components:

- 217,000-square-foot casino with three designated specialty areas;
- 12-story, 321-room hotel with a fitness center, spa and pool occupying the top two floors;
- Two-level, 80,000-square-foot flexible entertainment center;

- 4,400 square feet of meeting rooms plus 3,750 square feet of pre-function space and back of house and kitchen areas;
- Seven restaurants plus employee dining room; and
- Three bars/lounges.

Live! stated that the gaming facility was designed primarily for the single-day visitor whose interest was gaming but who was interested in fine food, world-class entertainment and a renowned spa experience.

Live! proposed to complete the project in a single phase of construction. The site appeared to provide for room for expansion, but Live! did not describe any particular expansion plans.

Board experts suggested that Live! would not have been a true “integrated resort.” While Live! had a broad welcoming appeal, its activities would have been dominated by gaming, food, beverage and entertainment, all indoor activities that were leisure- and entertainment-oriented but not recreational or traditional resort activities.

Live ! proposed a 217,700 square foot casino that was expected to offer the following mix of games:

- Slots—3,200 (including 100 high-limit slots)
- Table games—190 tables (including 16 high-limit tables);
- Poker tables—80 poker tables.

Live! intended to offer high-limit table and slot lounges and a specialty gaming area that incorporated 20 unique table games different from those on the general gaming floor.

Board experts suggested that the overall design of the gaming floor was good.

Live! proposed a single 12-story, 321-room hotel tower comprising:

- 273 standard rooms (464 square feet each);
- 12 stair suites (694 square feet each);
- 33 end suites (920 square feet each); and
- Three player’s suites (1,460 square feet each).

Live! stated that the hotel would be “Live!”-branded and would be of four-star quality. The hotel would have offered a 35,000-square-foot spa located on the top two floors of the hotel. The spa would have included a fitness center, salon and indoor pool with an adjacent outdoor deck providing a “whole body experience from beauty, relaxation, to fitness and outdoor rejuvenation.”

For hotels of comparable quality, Live! identified the following:

- Hard Rock Tampa;
- Hard Rock Ft. Lauderdale;
- The “M” in Las Vegas;
- Four Seasons Jackson Hole;
- Sanctuary on Camelback Back Mountain in Phoenix;
- Amangani in Jackson Hole; and
- Hotel Yountville in Napa Valley.

Board experts suggested that the four-star quality would have allowed Live! to serve the lower five-star market segment while still being in reach of the upper mass market. Board experts suggested that the hotel may not have been large enough. Moreover, at 12 stories, relative to the surrounding countryside, the hotel tower was imposing. Board experts suggested that the property was not a “true integrated resort” as Live! maintained, however it was a large regional casino-centric facility located in a rural region.

Live! proposed two areas for meeting/convention space:

- 80,000-square-foot event center that would have been “flexible” in that it could have been transformed into a 25,000 square foot exhibition or banquet space by retracting the seating on the “flat floor” portion of the first level of the center. Live! proposed that this space could have been used for exhibitions, banquets and other corporate uses with a capacity for approximately 1,660 guests. Adjacent to this convention space would have been a pre-function area of approximately 12,000 square feet.
- At the casino level, Live! would have provided two 2,200-square-foot meeting rooms that were divisible into four smaller rooms. This area would have been supported by 3,750 square feet of pre-function space. The combined capacity of these meeting rooms would have been approximately 295 guests.

Business center services would have been provided for guests through the hotel concierge and front desk. Live! did not propose a designated business center.

Board experts noted that the event center could have been transformed into a large, 25,000-square-foot convention center, however given the insufficient number of rooms to accommodate medium- to large-sized conventions/meetings it would have been difficult to actively promote to the convention and meeting market segment.

Live! proposed a two-level, 80,000-square-foot “flexible” event center (which also could have been used for meeting and convention space, as described above). The event center would have been both fixed and retractable tiered seating and have capacity



(concert-style) for 3,000 seats. The event center also would have included four VIP boxes.

Live! proposed offering seven restaurants, of which three were planned to be upscale. The capacity for these restaurants was approximately 1,300 patrons. The proposed restaurants would have included:

- Upscale Italian with an alfresco dining patio (8,130 square feet, 221 seats);
- The Steakhouse with an outdoor patio (5,220 square feet, 174 seats);
- Asian restaurant (3,990 square feet, 133 seats) and noodle bar (1,440 square feet, 48 seats);
- 24-hour café with garden patio (3,000 square feet, 254 seats);
- food court with five venues (11,250 square feet, 375 seats);
- deli (2,000 square feet, 80 seats); and
- coffee/snack bar (2,200 square feet, no seats).

Additionally, the high-limit lounges would offer food and beverage services 24/7. Live! had letters of intent with The Cheesecake Factory, Fornino, Bobby Flay Steaks and Smorgasbord, but these relationships had not yet been finalized. Live! also would have provided a 10,625-square-foot (323-seat) employee dining room for its staff.

Live! proposed offering three primary bars/lounges plus a high-limit lounge. The bar/lounge offerings would have included:

- Hotel lobby lounge surrounded on three sides by gaming and one side by the hotel (2,250 square feet, 90 seats);
- Center bar located in the center of the elliptical casino floor (2,400 square feet, 109 seats); and
- Overlook bar with an outdoor patio and fire pit (3,675 square feet, 105 seats).

Additionally, the high-limit lounge would have had a small bar with limited seating.

As for other amenities, Live! proposed one retail outlet (600 square feet), the two-level, rooftop 35,000-square-foot spa, salon, fitness center indoor pool with outdoor deck, the Event Center and 8,000 square feet of gardens. Live! also would have provided an onsite 8,500-square-foot childcare center that would have been open to the public but primarily expected to be used by casino employees.

Board experts noted that none of the restaurants seemed to have casino-facing seating or overlook areas that would act to create cross-synergies with the gaming floor. The facility did not provide any on-site recreational activities other than the casino, spa, fitness center and pool. There was a lack of family offerings to promote family stays.

Live! provided, with a few exceptions, a detailed description of internal controls that reflected current industry standards

**Offering the highest and best value to patrons to create a secure and robust gaming market in the region and the state. (§ 1320(1)(e))**

Live! stated that its rewards program would have been modeled on the program that exists at Maryland Live!, but would have run independently. The Maryland Live! loyalty program is proprietary and is owned by a Cordish affiliate. As an element of the joint ownership of Live!, the LIVE! Rewards, LIVE! Player's Club, the LIVE! trademark and other owned trademarks would have been assigned for use by Live!. Live! indicated that a significant number of rated players included in the two databases reside in the market area of the proposed casino.

Board experts suggested that while the Live! proposed program was fairly comprehensive, it did not have a New York-centric player database. Board experts noted that although statistical data was presented for Penn's database, Live! did not clearly indicate whether The Live! New York would have had access to Penn's player database.

Live! stated that while its facility was not part of a local or regional economic plan, the proposed project was consistent with Regional Economic Plans and also fell within the urban concept area under Orange County's Comprehensive Plan.

The Live! proposal would have aligned with the Comprehensive Plan of the Town of Blooming Grove, which recommended that the site in question be zoned to allow for entertainment and other commercial uses, making it viable for gaming. The proposal aligned with the County's 2014 Economic Development Strategy, which identified tourism as one of five key industries for targeted expansion. The proposal aligned with the 2011 REDC Report on the Mid-Hudson Economy, offering potential to solve infrastructure challenges addressed in the report by improving access roads and water and sewer systems. The proposal would have aligned with all of the above reports insofar as they call for specialized workforce development and training. Live! stated that in keeping with its developments in other areas, it would have partnered with local educational institutions such as SUNY Orange County Community College to provide training in finance, IT, marketing, culinary services and gaming. Live! had already established the "Angel Incubator Program – H2V2" to fund the creation and location of hi-tech industries in the Hudson Valley. Live! saw its role as being a locus for economic development for the county and region and wanted to play an active role in fostering many forms of economic growth.

**Providing a market analysis detailing the benefits of the site location of the gaming facility and the estimated recapture rate of gaming related spending by residents travelling to an out-of-state gaming facility. (§ 1320(1)(f))**

The project site was located with access to roadways, trains and other transportation. The project site was also located close to Woodbury Common Premium Outlet Mall, which claims to attract nearly 13 million visitors per year.

Live! estimated it would recapture \$362.8 million of the New York resident gaming revenue that was currently leaving the State for the expected (average-case) scenario, which Board experts suggested may be overstated.

**Offering the fastest time to completion of the full gaming facility. (§ 1320(1)(g))**

Live! stated that it would open its facility 24 months following issuance of a license.

Live!'s schedule was predicated on various project approvals, including SEQR. It was unclear how far along Live! was in the SEQR process.

Small federally regulated water bodies may be on site, but Live! indicated that they would be avoided by the project. Two species of bat habitat may be present. There is a FEMA floodplain along a creek. The existing water district did not have the capacity to serve the project and would need expansion. A federal EIS might have been needed. Live! stated that applications for special use permits, conditional use approval and filing of an EIS were underway.

**Demonstrating the ability to fully finance the gaming facility. (§ 1320(1)(h))**

Live! was indirectly owned 50 percent each by PPE Casino Resorts NY, LLC ("PPE") and NY OCCR Investment, LLC ("OCCR"), affiliates of principals of the Cordish organization and Penn National Gaming ("Penn"). The operating agreement for the intermediary holding company provided that PPE and OCCR would have provided funding for the project in equal amounts based on a capital call to the extent that market financing was not available or if such market financing was not available under acceptable terms.

**Demonstrating experience in the development and operation of a quality gaming facility. (§ 1320(1)(i))**

Penn owns or operates 19 casino facilities, four of which have integrated pari-mutuel racing facilities. Penn runs small casinos with 300 slots to integrated resorts with thousands of slots and table games. Penn currently operates more than 31,000 slots and nearly 800 table games at its various properties. Over the last 10 years, Penn managed

development projects costing more than \$3.6 billion. All projects were managed by Penn's in-house construction and development staff.

Board experts noted that Cordish is a leading international developer with broad hospitality and retail expertise. Cordish was awarded the Urban Land Institute Awards for Excellence seven times. Cordish is one of the largest and most successful operators of entertainment districts and concepts in the United States. Cordish owns and manages several Live! Entertainment districts and has partnered with Anheuser-Busch, NASCAR, Hard Rock Café and others.

## **LOCAL IMPACT AND SITING FACTORS**

### **Mitigating potential impacts on host and nearby municipalities which might result from the development or operation of the gaming facility. (§ 1320(2)(a))**

Live! concluded that the overall impact on local emergency municipal services would likely be minimal.

Live! indicated that the South Blooming Grove Fire District should anticipate incremental upfront costs associated with hiring, training and equipping additional personnel, as well as capital expenses for purchasing new vehicles. The biggest impact for local law enforcement was anticipated to be traffic-related issues. Once the casino was operating, the Town of Blooming Grove Police Department would likely need to add staff and vehicles to handle the increased demand.

Live! suggested that the local ambulance facility may be too far from the site of the proposed casino to service it effectively and proposed the construction of a second facility closer to the project site or for the existing facility to be moved closer. The upfront cost to build and staff a second EMS substation would be approximately \$110,000. It was anticipated that the Village of Blooming Grove would fund any increased costs for providing general government services from the substantial property tax revenues the Village would receive from the casino development, which Live! expected would substantially exceed these costs.

Live! proposed to petition to connect to the South Blooming Grove Consolidated Water District 1 water system, but was required to identify and fund additional well capacity (projected as two or three additional wells). At the time of Live!'s RFA response, the petition had not been made nor accepted by the district, nor had candidate sites for developing the required additional well capacity been identified. In addition, Live! would have had to develop a water storage tank to meet fire flow requirements; it was unclear whether Live! would own the proposed storage tank and have it dedicated to its facility, or whether the tank would be dedicated to the Water District and contribute to the overall operation of its water system.

Similarly, Live! proposed to petition to connect to the South Blooming Grove Consolidated Sewer District 1. While no petition had been made at the date of the RFA response, Live! stated that its facility would connect to an existing 12-inch pumped sewer of the sewer district, which itself interconnects with a pumped sewer in the Orange County Sewer District 1 system. Live! implied, but did not present any analysis, that sufficient capacity was available in the connecting sewers to accommodate the flow from the project. Live! requested that South Blooming Grove reserve up to 260,000 gallons of waste water treatment capacity at the Harriman Sewer Treatment Plant, which capacity the engineer reported was available.

Live! presented a report describing primary electric service for the project at 13.2 kV. The service would have required installation of an onsite substation to transform electricity from the utility's 69 kV transmission lines, which run across Live!'s parcel. It was not clear whether Live! had been in contact with the local utility in regard to this proposal or the proximity of its facility to the utility's transmission lines.

The developed portion of the project site was proximate to Satterly Creek, an existing, apparently perennial stream that runs across Live!'s parcel, and an unidentified pond, which was formerly dammed. It was unclear whether any related wetlands or riparian buffer would be impacted. Live! did not present any documentation of the expected impact of its facility on protected species and habitats, including these surface waters and any related wetlands or riparian buffer. Live! also did not document the expected light pollution impact of its facility.

Live! entered into a host community agreement with the Village of South Blooming Grove to mitigate direct and indirect impacts to the Village associated with the proposed gaming facility, including increased emergency services, among other things. The agreement provided for certain one-time and ongoing payments to the Village to reimburse all costs and mitigate all impacts resulting from the casino development and operation. Live! would have worked with the Village and other local municipalities to develop a detailed security and public safety plan prior to commencement of operations. To the extent such public safety plan required start-up costs including additional personnel, training or new fire, police or ambulance equipment, Live! would have funded such costs up to a maximum of \$2.25 million. Live! estimated that the increase to property tax revenues would cover any additional operating costs for public safety and emergency services.

Live! explained the potential for there to be an increased demand for housing in and around South Blooming Grove as a result of the anticipated increase in employees that the proposed casino would bring (*i.e.*, approximately 4,000 permanent jobs). Live! indicated that between 2000 and 2010 there had been an increase in housing stock. In addition Live! suggested that the demand for housing would have been dispersed through the region.

Live! assumed that the majority of new jobs at the proposed casino would likely have been filled by current area residents, and, therefore, the proposed casino would generate neither substantial population growth nor substantial numbers of new school-aged children.

Live! concluded that because the number of new employees who would have relocated to the area would be limited, any new school-aged children would similarly be spread over a large number of school districts. Live! asserted that impacted districts have available capacity within their current facilities considering the recent trend of declining enrollments.

**Gaining public support in the host and nearby municipalities, which may be demonstrated through the passage of local laws or public comment received by the board or gaming Applicant. (§ 1320(2)(b))**

Resolutions were submitted in support of the application from Orange County, the Town of Blooming Grove and Village of South Blooming Grove.

Live! also included letters indicating support by the Town Police and Patrolmen PBA and the Board of Fire Commissioners.

Live! provided letters in support of its project from various organizations such as the Blooming Grove Chamber of Commerce, SUNY Orange County Community College and other organizations and businesses.

There was no submission of support from nearby municipalities.

The Live! project was the subject of four comments indicating opposition and 30 indicating support. Additionally, the Board received more than 40 general comments regarding the siting of casinos in Orange County, with 89 percent indicating opposition and 11 percent indicating support. At a public comment event held in Poughkeepsie on September 23, 2014, Live! was the subject of six comments, two of which indicated opposition and four indicated support. Additionally, the Board heard seven general, non-specific comments overwhelmingly opposing the siting of casinos in Orange County.

**Operating in partnership with and promoting local hotels, restaurants and retail facilities so that patrons experience the full diversified regional tourism industry. (§ 1320(2)(c))**

Live! stated that it had a strong history of promoting the host communities of its affiliated gaming facilities located across the country and was working diligently to duplicate that success in Hudson Valley. To do so, Live! planned to implement the following strategies: (1) a local business partner program in which Live! would have developed customized cross-marketing plans for each business, using a redemption of loyalty program points

from the business, promotion and patron discount programs and advertising partnerships; (2) a program in which gift cards would have been used to incentivize visits and to allow patrons to purchase goods and services at nearby businesses; and (3) partnerships with local attractions, such as wineries, organic farms, entertainment venues, bed and breakfast establishments, area historical organizations and more to develop specific packages to attract visitors for unique excursions in the region. Live! stated that it had met with more than 100 businesses and organizations and had signed memoranda of understanding with a number of these businesses.

Live! also proposed what it described as a significant and unique program to attract new technology and manufacturing businesses to the Hudson Valley region and to promote job growth as well as enhancement of the tax base in the region. Modeled upon the federal government's Urban Development Action Grant Program of the 1970s and 1980s, the Live! "Angel Incubator-H2V2 Program" would have been funded yearly with a \$1.5 million contribution by Live! and administered by a board of directors comprised of representatives from New York Colleges and Universities as well as Live!. The purpose of the program would be to support new start-ups and relocation of existing businesses to the region. Any money generated by the program's investments would have been reinvested in the program.

Live! stated that it was committed to implementing a "Buy Local, Hire Local" strategy in the Hudson Valley region.

Live! provided copies of agreements with local attractions, entertainment venues, hotels, recreational outlets, nature preserves, sports facilities, restaurants and shopping facilities to market the Orange County area on a cooperative basis with the goal of increasing overall visitation for the overall benefit of the region.

In addition, Live! stated that it would have developed larger scale cross-marketing activities including partnering with the New York State Office of Parks, Recreation and Historic Preservation to develop site-specific tours throughout the region; partnering with area wineries and distilleries to create wine tours and to sell local wines at the facility; and partnering with "Taste NY" and area sustainable and organic farms in the region to develop tours of their facilities and farmers markets and to promote and purchase products from these sources for use at the Live! facility.

**Establishing a fair and reasonable partnership with live entertainment venues that may be impacted by a gaming facility under which the gaming facility actively supports the mission and the operation of the impacted entertainment venues. (§ 1320(2)(d))**

Live! did not yet have any agreements or understandings with any live entertainment venues.

## WORKFORCE ENHANCEMENT FACTORS

**Implementing a workforce development plan that utilizes the existing labor force, including the estimated number of construction jobs a proposed gaming facility will generate, the development of workforce training programs that serve the unemployed and methods for accessing employment at the gaming facility. (§ 1320(3)(a))**

Live! stated that it would work with area educational institutions as well as local community organizations, such as the Mid-Hudson Regional Economic Development Council, the New York Department of Labor, the Orange County NAACP and local social welfare agencies, to be sure that it reached potential employees who were currently under- or unemployed. Live! also committed to working with its construction vendors and labor unions to establish apprenticeship programs and would seek out already apprenticed construction workers from traditionally disadvantaged groups to allow such persons to gain experience and on-the-job training.

Together, Live!'s owners, Penn and Cordish have extensive experience in casino and/or racetrack facilities in 18 different jurisdictions and seek out job candidates who are unemployed or who are from traditionally disadvantaged groups. Live! stated that both were now committed to applying these same proactive recruiting strategies for the proposed casino.

To that end, Live! developed a structured plan for the recruitment and hiring of the unemployed and the long-term underemployed.

**Taking additional measures to address problem gambling including, but not limited to, training of gaming employees to identify patrons exhibiting problems with gambling. (§ 1320(3)(b))**

Live!'s problem gaming plan included information on Live!'s code of conduct, responsibilities and duties related to the plan, problem gambling policies and procedures, database information, underage gambling, unattended children and responsible alcohol service policies and procedures, reports and notification to the New York State Gaming Commission, and required signage, brochures and gambling help information.

Live! stated that its responsible gaming program would have been effective at the start of gaming operations, with all newly hired team members trained in orientation prior to assuming their duties. Live! would have conducted annual refresher responsible gaming training for all team members. Live! would have provided New York's Responsible Gambling Program Coordinator with a quarterly report detailing any new employees, when they completed their training, and all employees who have completed their annual refresher training, as well as the date of such training. Live! also would have trained its team members on responsible alcohol service, including annual refresher training. By



educating team members through such training, Live! would have enhanced their understanding of the impact of problem gambling and substance abuse on those at risk, and the identified connections between excessive gambling and substance abuse and socio-economic, health and community safety issues.

Live! stated that its exclusion policy would have provided that any individual who requested to be voluntarily excluded from casinos in the State would have been referred to the Gaming Commission representative on duty at the facility, who would have provided the patron with the appropriate request form. Self-excluded patrons would have been removed from all marketing and mailing lists, both physical and electronic, maintained by third parties on Live!'s behalf. The patron's check cashing privileges, rewards membership, complimentary goods and services and other similar privileges and benefits would have been restricted. The patron's player account also would have been rendered invalid. Live! planned to coordinate with local providers to facilitate assistance and treatment for those with gambling problems and would have developed plans targeted toward prevention for vulnerable populations. Live! would have collaborated with the New York Responsible Play Partnership to more fully develop plans to facilitate assistance and treatment for problem gambling.

**Utilizing sustainable development principles including, but not limited to:**

- (1) having new and renovation construction certified under the appropriate certification category in the Leadership in Energy and Environmental Design Green Building Rating System created by the United States Green Building Council;**
- (2) efforts to mitigate vehicle trips;**
- (3) efforts to conserve water and manage storm water;**
- (4) demonstrating that electrical and HVAC equipment and appliances will be Energy Star labeled where available;**
- (5) procuring or generating on-site 10 percent of its annual electricity consumption from renewable sources; and**
- (6) developing an ongoing plan to submeter and monitor all major sources of energy consumption and undertake regular efforts to maintain and improve energy efficiency of buildings in their systems. (§ 1320(3)(c))**

Live! stated that the potential traffic impacts of the proposed facility on the surrounding communities would have been limited by the project's excellent access to the adjacent regional highway system. Live! recommended a number of traffic mitigation measures, which they stated would result in adequate capacity on the roadways serving the proposed development to accommodate both project and non-project traffic efficiently. Live! estimated the cost of these mitigation measures to be \$6.25 million.

State agency review suggested that additional investment in transportation infrastructure would have been required, beyond what Live! proposed, given the scope of the proposed project. Route 17 is already currently over capacity during peak commute times

and during some weekend time periods, and traffic from this project would have exacerbated such difficulties. Live! proposed no mitigation for these conditions.

Live! stated that its project would have been designed to achieve a LEED silver certification.

Live! committed to use high-efficiency HVAC systems meeting applicable national standards and, otherwise, to use Energy Star rated equipment.

Live! presented a report from its engineer describing plans to mitigate storm water discharge from the project site using detention ponds and, potentially, underground treatment facilities, in accordance with State requirements. No schematics or plans of the proposed facilities were presented. It was unclear what runoff reduction measures were proposed to reduce runoff volume. Similarly, it was unclear whether the proposed storm water management system would have discharged storm water from the project site largely similar to the existing conditions. Finally, the engineer's report did not expressly address the flow and impact on Slatterly Creek, an existing, apparently perennial stream that runs across the parcel and appears likely to conduct the majority of the storm water discharge from the parcel.

Live! intended to employ context-sensitive site planning to minimize disturbance, the proposed collection and re-use of storm water on-site for irrigation and install native and drought-resistant plants. State agency review suggested that the proposed use of detention systems as a substantial component of storm water management at the site would not have promoted onsite storm water infiltration and may have increased temperatures of storm water discharging into local waterways. Live! did not identify total water demand and supply.

Live! planned (but did not commit) to purchase a minimum 10 percent of renewable power, which was below the percentage of renewable sources in the State's current regular energy supply.

Live! intended to implement a facility-wide automation system that included energy consumption monitoring.

**Establishing, funding and maintaining human resource hiring and training practices that promote the development of a skilled and diverse workforce and access to promotion opportunities through a workforce training program that:**

- (1) establishes transparent career paths with measurable criteria within the gaming facility that lead to increased responsibility and higher pay grades that are designed to allow employees to pursue career advancement and promotion;**
- (2) provides employee access to additional resources, such as tuition reimbursement or stipend policies, to enable employees to acquire the education**

**or job training needed to advance career paths based on increased responsibility and pay grades; and**  
**(3) establishes an on-site child day care program. (§ 1320(3)(d))**

Live! intended to establish comprehensive human resource strategies and policies to promote the development of a skilled workforce. Live! would have implemented strategies and policies similar to those established at its affiliated facilities.

In an effort to encourage development, Live! intended to partner with local educational institutions to assist with training. In addition, Live! would have provided internal training to employees, such as a mentor training program that has been successful at its other affiliated facilities. Live! also intended to provide a tuition assistance program similar to its affiliated facilities.

Live! stated that it was committed to preparing employees for promotions within the organization. Live! stated that it had established career ladders and training programs that enable employees to qualify for promotions.

**Purchasing, whenever possible, domestically manufactured slot machines. (§ 1320(3)(e))**

Live! proposed to source domestically manufactured slot machines.

**Implementing a workforce development plan that:**

- (1) incorporates an affirmative action program of equal opportunity by which the Applicant guarantees to provide equal employment opportunities to all employees qualified for licensure in all employment categories, including persons with disabilities;**
- (2) utilizes the existing labor force in the state;**
- (3) estimates the number of construction jobs a gaming facility will generate and provides for equal employment opportunities and which includes specific goals for the utilization of minorities, women and veterans on those construction jobs;**
- (4) identifies workforce training programs offered by the gaming facility; and**
- (5) identifies the methods for accessing employment at the gaming facility. (§ 1320(3)(f))**

Live! stated that it was committed to recruiting, employing, training and developing talented and personable individuals of all ages, genders, cultural and racial backgrounds, physical ability and religious beliefs. To that end, Live! attached copies of three separate employment plans it had adopted. The first was the diversity plan for the construction phase.

Live! stated that their purchasing practices plan for local and traditionally disadvantaged and diverse businesses was designed not only to provide equal opportunity to

traditionally disadvantaged groups, but also to promote the support of local businesses within the region.

Live! stated that its strategic plan to engage and recruit the diverse, under- and unemployed workforce population not only would have provided equal opportunity to individuals in traditionally disadvantaged groups, but also would have promoted a workforce that was reflective of the surrounding community.

**Demonstrating that the Applicant has an agreement with organized labor, including hospitality services, and has the support of organized labor for its application, which specifies:**

- (1) the number of employees to be employed at the gaming facility, including detailed information on the pay rate and benefits for employees and contractors in the gaming facility and all infrastructure improvements related to the project; and**
- (2) detailed plans for assuring labor harmony during all phases of the construction, reconstruction, renovation, development and operation of the gaming facility. (§ 1320(3)(g))**

Live! submitted a Memorandum of Understanding to sign a future PLA with the Hudson Valley Building and Construction Trades Council. There was a signed PLA with the Hotel Motel Trades Council.



**Concord Kiamesha LLC and Mohegan Gaming New York LLC (“Mohegan Sun”) proposed to develop Mohegan Sun at The Concord at the former Concord hotel site in the Town of Thompson in Sullivan County. According to Mohegan Sun, the project would have featured a 52,000-square-foot gaming floor with 1,800 slot machines and 50 table games. The facility would have featured a 252 room hotel, a fitness center, seven dining options, nearly 30,000 square-feet of event space, an entertainment bar and lounge on the gaming floor and a golf course.**

### **ECONOMIC ACTIVITY AND BUSINESS DEVELOPMENT**

#### **Realizing maximum capital investment exclusive of land acquisition and infrastructure improvements. (§ 1320(1)(a))**

Mohegan Sun’s projected capital investment was \$479.7 million. Mohegan Sun’s total capital investment less excluded capital investment was proposed to be \$290.87 million. Mohegan Sun requested the inclusion of \$129 million in prior capital investment, however, no portion of this prior capital investment was needed to meet the minimum capital investment.

#### **Maximizing revenues received by the state and localities. (§ 1320(1)(b))**

Mohegan Sun did not propose a supplemental tax payment or increased license fee.

Mohegan Sun projected the fiscal impact, including taxes from gaming revenues, license fees, income taxes and direct and indirect sales taxes, to the State in the range of \$72-89 million in year one and \$71-92 million in year five. Mohegan Sun projected the fiscal impact, including taxes from gaming revenues, license fees, income taxes and direct and indirect sales taxes, to the Town of Thompson in the range of \$3.3-4.3 million in year one and \$4-5.2 million in year five. Board experts noted that these revenues would not be achieved if financial projections were not met or exceeded.

Mohegan Sun estimated that the direct, indirect and induced economic impact from the construction of the project would be \$544.5 million to the State. Mohegan Sun estimates that, during the first year of operations, the direct, indirect and induced economic impact from the project’s operation would be \$253.2 million to the State. The economic impact for the region and host county/municipality was not calculated. Board experts noted these economic impacts would not be achieved if Mohegan Sun’s financial projections were not met or exceeded.

#### **Providing the highest number of quality jobs in the gaming facility. (§ 1320(1)(c))**

Mohegan Sun anticipated supporting 962 full-time and 234 part-time jobs.

Mohegan Sun stated that its construction manager would seek participation goals for New York State subcontractors and suppliers.

Mohegan Sun failed to provide copies of any contracts, agreements or understandings evidencing confirmed plans or commitments to use New York-based subcontractors and suppliers at any time during the design, construction, operation or ongoing marketing phases of the project.

Mohegan Sun failed to describe how New York-based companies would be used by the construction manager or how such companies would be identified, solicited or would learn about construction opportunities for this project.

Mohegan Sun anticipated construction total worker hours of 1,334,917.5.

**Building a gaming facility of the highest caliber with a variety of quality amenities to be included as part of the gaming facility. (§ 1320(1)(d))**

Mohegan Sun proposed what it calls a “right-sized” casino, hotel and resort complex that had been master-planned with the intent and capability of being expanded to meet additional demand when it arises. The development was proposed to be located near Kiamesha Lake on the grounds of the former Concord Resort & Golf Club, which closed in 1998. Located across the street from the project site was EPR Properties’ proposed master-planned development known as “Adelaar,” which is proposed to include homes, townhomes, retail, recreation, hotels, waterparks, golf courses and potentially additional casino gaming.

Mohegan Sun proposed a four-star, “Mohegan Sun”-branded casino and hotel resort located on a 140-acre site with the following components:

- 52,000-square-foot casino with designated high-limit areas;
- 252-room hotel with a fitness center;
- Multi-purpose convention, entertainment and meeting space with pre-function, back of house and kitchen areas;
- Four restaurants; and
- A bar and entertainment lounge, plus VIP lounge.

Mohegan Sun proposed to complete the project in a single phase of construction and had already completed substantial pre-construction and foundation work. With foundations already in the ground and other site work completed, Mohegan Sun asserted the facility would be up and running within 18 months. The project was master-

planned for future expansion so, if the demand warranted, additions could be made with limited disruption of ongoing operations. Future additions proposed included up to 500 additional hotel rooms to be added to the existing hotel podium, a second hotel tower, an expanded casino area, a new guest parking garage, a theater, a resort pool and spa, a nightclub, additional food and beverage offerings and other amenities.

Mohegan Sun presented a “single-phase” development proposal in which only certain elements of the complex would be developed initially, with a master plan to expand the facility in the future. A much more compelling, comprehensive resort-casino was shown on Mohegan Sun’s full build-out “future master plan,” but it was unclear what would trigger or drive this significant expansion, especially as regional competition increased.

Board experts noted that the Mohegan Sun brand benefited from strong brand awareness and identity in the Northeast. In addition, the re-development of the defunct Concord Resort & Golf Club could have engendered public interest and nostalgia in the project. The project site was reasonably large, with resort-like views and satisfied the fundamental requirements of a casino development. The expansion potential was significant, but it was unclear what effect ongoing, nearby construction and renovation would have on the project after operations commenced.

Mohegan Sun proposed a single-level, 52,000-square-foot casino that was expected to provide the following mix of games:

- Slots—1,800 (including 75 high-limit slots);
- Table games—50 tables; and
- Poker tables—none.

Mohegan Sun asserted that the gaming facility would have provided a new definition of the term “Urban Retreat”—a hotel and casino unlike any other on the East Coast. Mohegan Sun intended to reinterpret all of the great aspects of the former Concord resort. The facility was to be positioned as a best-value getaway, a unique and top-end experience.

Board experts noted that Mohegan Sun’s casino utilization rate was approximately 55 percent throughout a 24-hour period, which was within the industry average range of 45 percent to 55 percent.

Board experts suggested that a slightly oversized center casino bar was appropriate and would be a place where the casino party started, built and ebbed each day. The proposed performance stage and large video presence would have helped leverage the energy. Two player club desks were appropriate with this volume.

Mohegan Sun's project included a single, nine-story hotel tower providing 252 rooms. An additional 500 hotel rooms would be added to the existing hotel tower in the future if demand warranted. Of the 252 rooms:

- 231 rooms would be "standard" rooms (380 square feet each); and
- 21 rooms would be two-bay suites (760 square feet each).

The hotel would be "Mohegan Sun"-branded. The hotel would offer a 2,900-square-foot fitness center.

For hotels of comparable quality, Mohegan provided the following:

- Mohegan Sun (Uncasville, Conn.);
- Mohegan Sun at Pocono Downs (Wilkes-Barre, Pa.);
- Sands Bethlehem (Bethlehem, Pa.);
- Red Rock (Las Vegas); and
- M Resort (Las Vegas).

Mohegan Sun asserted that it would differentiate itself from its competitors because Mohegan Sun would provide personal/hands-on service, a selection of truly unique offerings and natural surroundings.

The hotel would have been operated under the Mohegan Sun brand, which is generally well known in the area. Other direct hotel-related amenities would have included a fitness center, which was admittedly larger than normal for a hotel of this size at 2,900 square feet, and would have been positioned to provide resort views.

Mohegan Sun's design book alluded to the possibility of a full build-out of 1,500 rooms, 500 of which could be added to the top of the phase one tower and presumably the balance in the second tower. Other amenities that could have made the hotel more attractive (e.g., a pool area) were shown as well in the design book, but no timetable or trigger points were shown or discussed for these expansions.

Board experts suggested that the hotel seemed small for a destination resort and, in particular, a destination resort forecasted to attract approximately 8,000 visitors per day. This represented four percent of total daily visitor count, which was low for a middle/outer-ring casino located in a resort area. Board experts noted that Mohegan Sun referred to offering an indoor/outdoor pool with a bar area, restroom facilities, three or more tennis courts and a basketball court, but none of these amenities was shown (or apparent) on the Phase 1 plan. Board experts noted that these additional amenities were shown on Mohegan Sun's master plan labelled "Potential Future Overall Master Plan," but it was unclear what would trigger this significant expansion, especially as regional



competition increases. Board experts were also concerned with the size of Mohegan Sun's hotel, 252 rooms, particularly compared to Montreign's projected 391 hotel rooms.

Board experts suggested that even though Mohegan Sun claimed it would develop a four-star hotel, many of the elements of the hotel seemed as if they were more of a four-star-minus or three-star-plus quality.

Mohegan Sun proposed a total of 29,600 square feet of meeting and convention space including:

- 25,000-square-foot multi-purpose convention, entertainment and meeting space that could accommodate up to 2,500 patrons; and
- Five modern, high-end meeting room spaces comprising approximately 4,600 square feet.

Mohegan Sun stated a full business center would be provided but provided no details of such center.

Board experts suggested that because of the high casino demand expected relative to the number of hotel rooms available, it would have been difficult to forward book meeting and convention business without threatening to turn away a more profitable casino guest.

Mohegan Sun proposed two primary entertainment venues:

- 25,000-square-foot multi-purpose convention, entertainment and meeting space that could be configured into one large room to host concerts, comedy shows, sporting events (boxing) and other entertainment events. Capacity for this space was 2,500 in a theater-style seating configuration.
- 4,000-square-foot "center" bar (located in the center of the casino) would include a stage for frequent, more intimate performances and provide 94 seats. This center bar was expected to provide live performances daily.

Mohegan Sun stated it believed it would not compete directly with Bethel Woods, which could accommodate several thousand guests at any one time. Mohegan Sun also stated that it would partner with other not-for-profit entertainment venues such as Shadowland Theater and Mid-Hudson Civic Center. Rather than competing with these venues, Mohegan Sun stated that it would provide financial assistance, sponsorship and cross-promotional ticket sales and incentives to benefit live theater and other live entertainment throughout the Region.

It was unclear how intensely management intended to use entertainment as a marketing tool, because no revenue or expenses were shown on Mohegan Sun's pro forma. The only reference was the anticipation of offering daily free entertainment at the casino

center bar and events at the multi-purpose space less frequently. In addition, there would not have been enough hotel rooms available, and long-term, forward booking of contracts with these groups would be limited by the casino marketing department until demand trends were understood fully. This would have relegated the multi-purpose space primarily to day use and casino-related entertainment events.

Mohegan Sun proposed offering four restaurants. Mohegan Sun did not provide detailed design concepts or operators for the two “shell” spaces (*i.e.*, the Steakhouse and mid-level restaurant). For bars, Mohegan Sun proposed offering a 94-seat casino center bar and 57-seat VIP lounge.

As for other amenities, Mohegan Sun proposed one retail shop (860 square feet) and one sundries shop (600 square feet).

As for the quality of the non-gaming amenities, Mohegan Sun asserted that the restaurants would exceed local quality and ambiance. Positioning of the amenities was described as a unique/mid-level experience, stylish but not pretentious and “Catskills cool.”

Board experts suggested that without implementing Mohegan Sun’s potential future overall master plan, the plan was really a local/regional casino-hotel located in a resort area, and it was not a true resort. Mohegan Sun referred to offering an indoor/outdoor pool with a bar area and restroom facilities and three or more tennis courts and a basketball court, but none of these amenities were shown (or apparent) on the phase one plan. They were shown, however, on the master plan labeled “Potential Future Overall Master Plan.” Therefore, it was assumed that these facilities would not be included in the initial construction phase.

Staff suggested that Mohegan Sun’s surveillance standards were below current NYS standards.

**Offering the highest and best value to patrons to create a secure and robust gaming market in the region and the state. (§ 1320(1)(e))**

Mohegan Sun has a player reward program called Momentum Program, which involves accepting Momentum Points. Mohegan Sun stated that because points acquired from a Mohegan Sun location were redeemable at any Mohegan Sun location, the Momentum Program would have encouraged greater visitation to the region from the very large customer base of the other Mohegan Sun properties and promote sustainable economic growth. The Momentum Program would have provided millions of dollars annually in rewards for its patrons. With the Momentum Program at Mohegan Sun, these rewards would have been used as a cash equivalent at any of its participating regional establishments. While there may have been a few exceptions, nearly any retail business that dealt in goods and services could have participated.

Board experts suggested that Mohegan Sun's Momentum Program had a large database of players. Although Mohegan Sun did not provide statistical information on local participants, the other related Mohegan Sun facilities in adjoining states likely have resulted in a significant number of program participants residing near the proposed facility for Mohegan Sun.

Board experts suggested that the Momentum Program had a history of engaging local businesses to accept Momentum Points and thereby might have stimulated the local economy.

Board experts noted that Mohegan Sun did not provide crucial details about its access to and use of the Mohegan Sun player database/loyalty program, including exclusivity or lack thereof, and whether players would be pushed to Mohegan Sun Concord or to another property.

Mohegan Sun's proposed facility was not part of a formal regional or local economic plan. However, Mohegan Sun included a letter from the Board of Directors for the Sullivan-Wawarsing Rural Economic Area Partnership supporting the project, a letter from the Chair of the Sullivan County Legislature supporting the project, an article advocating for the project written by the president and CEO of the Hudson Valley Pattern for Progress, a nonprofit research, policy and planning group that seeks regional solutions to increase the vitality of the region, and an excerpt from the 2013 Mid-Hudson Regional Council Progress Report expressing support for casino gambling. This support offered was generic in nature and did not speak to Mohegan Sun's specific plans for the site.

**Providing a market analysis detailing the benefits of the site location of the gaming facility and the estimated recapture rate of gaming-related spending by residents travelling to an out-of-state gaming facility. (§ 1320(1)(f))**

Board experts suggested that the site was well suited for a casino-hotel/resort as it was a former large, famous Catskills resort during its heyday. Furthermore, the re-opening of a resort on the former Concord site, would have sent a strong signal of the revitalization and return of the Catskills as a year-round destination and provide a strong economic boost to the Region.

Mohegan Sun stated that it believed there was an untapped population of both in-state residents and visitors from outside the Catskills Region that would choose a modern resort in the Catskills as a vacation destination over other nearby, competitive facilities due to its natural beauty and its reputation for leisure travelers. Mohegan Sun also believed that its location along Route 17 would have made it easily accessible for visitors from the New York City metropolitan area.

Mohegan Sun estimated the 2019 GGR recapture rates for gaming-related spending by New York residents traveling to out-of-state gaming facilities: \$50.3 million (high-case scenario); \$45.7 million (average case); and \$38.9 million (low case).

**Offering the fastest time to completion of the full gaming facility. (§ 1320(1)(g))**

Mohegan Sun provided a proposed timeline for design and construction of the project within 21 months from start design.

Board experts suggested that the design schedule was unrealistic (e.g., three months to reach 100 percent construction documents). If design were not completed as scheduled, Mohegan Sun would have needed to complete design while construction progressed.

The site for the gaming facility was six parcels of land comprising a 140-acre partially developed site that was the former location of the Concord Hotel and had been designated a brownfield remediation site. Approximately 60 acres of development were proposed on site. The site was bordered by Kiamesha Lake to the west. Earthwork and some construction had already been done in preparation for hotel and casino buildings. The site contained several small federally regulated wetlands, which would have been avoided. The site was located within an archeologically sensitive area and therefore could have required an archeological survey and consultation with the State Historic Preservation Office for those areas not previously disturbed.

Mohegan Sun claimed that all zoning approvals were in place, but this was based on a 2006 Environmental Findings Statement. There was SEQRA review from the Town of Thompson in 2006, but this documentation was eight years old.

**Demonstrating the ability to fully finance the gaming facility. (§ 1320(1)(h))**

Mohegan Sun was affiliated with the Mohegan Tribal Gaming Authority and the Cappelli family. Mohegan Sun intended to finance its project through committed third-party institutional debt and equity consisting of funds spent to date together with funds, evidenced by a letter of intent, to be derived from a sale and lease-back of the hotel site, a contribution to capital and the sale of preferred stock.

Board experts noted that approximately \$130 million had already been spent developing the site, with hotel and casino foundations already in place, allowing development to begin quickly.

**Demonstrating experience in the development and operation of a quality gaming facility. (§ 1320(1)(i))**

Mohegan Sun's casino manager was a subsidiary of Mohegan Sun. Mohegan Sun has owned and operated a gaming and entertainment complex known as Mohegan Sun in Uncasville, Connecticut since 1996.

Mohegan Sun has experience with commercial casino licensure and regulation in Pennsylvania, New Jersey and Massachusetts. Mohegan Sun's other properties were tribal casinos.

Board experts suggested that Mohegan Sun was a proven casino manager, most notably with successful operations at Mohegan Sun in Connecticut and Mohegan Sun at Pocono Downs in Pennsylvania. Mohegan Sun aimed to target the middle- to high-income demographic (\$75k+), which had greater spending potential.

Board experts suggested that the Mohegan Sun Momentum Program was a popular and established loyalty program with a large national and local membership. The scope of the program could have allowed Mohegan to ramp up operations quickly.

Mohegan Sun also had recent experience in operating a casino resort comparable in size and complexity to this project. Beginning in 2005, Mohegan Sun developed, owned and operated Mohegan Sun at Pocono Downs in Pennsylvania, which had a slightly larger casino and similar hotel, food and beverage, entertainment and convention operations as proposed for Mohegan Sun's project.

**LOCAL IMPACT AND SITING FACTORS****Mitigating potential impacts on host and nearby municipalities which might result from the development or operation of the gaming facility. (§ 1320(2)(a))**

Mohegan Sun concluded that the total net impact to municipal services resulting from the casino was likely to be very modest, especially in comparison to the tax revenue that would be generated to offset any such incremental expenditures.

Mohegan Sun found that demand for emergency services, primarily policing services, would be expected to increase. Mohegan Sun stated that the increase, however, was likely to be small as a result of adequate police resources in the Town of Thompson and Sullivan County and the presence of onsite security personnel at the casino. Mohegan Sun estimated that the population would have increased by one to two percent as a result of the casino, which could have led to additional costs for policing services of approximately \$200-\$300,000 each year.

Mohegan Sun stated that other emergency service demands related to ambulance and fire protection were subject to special district taxes that offset costs and could have been addressed with additional funding if required.

Mohegan Sun did not provide engineer or consultant reports substantiating the estimated impact on water, sewer and electricity infrastructure or on the environment (protected species and habitats and light pollution). Mohegan Sun stated that it would connect to the Monticello town water system using a new 16-inch main, which it asserts would provide sufficient capacity together with an existing main. Mohegan Sun stated that it would connect to the Kiamesha Lake Sewer District and provided evidence that substantial extra capacity had been reserved to process the waste water flow from Mohegan Sun's proposed facility. Mohegan Sun stated that it would connect to the local electricity utility and necessary upgrades, which were not described, would be made.

Mohegan Sun anticipated that more than 75 percent of its future employees already resided in the region. Moreover, Mohegan Sun had site-plan approval and permits pending for a 110-unit, multifamily project immediately adjacent to the proposed project site. Mohegan Sun believed that there were numerous single and multi-family residential projects in various stages of approval in close proximity to the project site.

Mohegan Sun's site was within the Monticello Central School District. Mohegan Sun's discussion with the current superintendent indicated that the district could handle approximately 300 students in its existing schools and, if necessary, reopen a closed elementary school.

Mohegan Sun believed that 1,000 permanent jobs would have been created by its casino project and stated that approximately as many as 750 positions could be filled from those currently unemployed in Sullivan County or from local residents. Those local hires would not have materially affected the district population because they already reside in the school districts. Mohegan Sun explained that the balance of the jobs would have been filled from residents from nearby areas or relocated personnel from other casinos within Mohegan Sun's portfolio. Consequently, Mohegan Sun believed that the benefit

derived by the local area from its share of the tax revenue and property tax revenue (and other incentive programs) would have offset significantly the adverse impact to schools and other community related services.

Mohegan Sun mentioned the possibility of partnering with Monticello Central School District to assist in "home and career programs for mainstream students and special education students," but did not describe this plan in detail.

**Gaining public support in the host and nearby municipalities, which may be demonstrated through the passage of local laws or public comment received by the board or gaming Applicant. (§ 1320(2)(b))**

Mohegan Sun's host community was the Town of Thompson. Mohegan Sun provided a resolution in support of its project adopted by the Town Board of the Town of Thompson on June 17, 2014. Additionally, Mohegan Sun provided resolutions adopted by the Sullivan County Association of Supervisors and the Board of Directors of the Delaware County Chamber of Commerce supporting the siting of two gaming facilities in the Catskills region. Mohegan Sun also provided letters of support of its project from the Sullivan County Community College, the Sullivan County Chamber of Commerce, the Delaware County Chamber of Commerce (which supports siting two casinos in the Catskills), Dutchess County Tourism (which supports siting two casinos in the Catskills) and various business owners and residents.

The Mohegan Sun project was the subject of 79 written comments, of which 56 indicated opposition and 23 indicated support.

Mohegan Sun was the subject of three specific comments at the September 23, 2014 public comment event, all in support. The project was also mentioned in nearly 30 supporting comments in regard to the general siting of casinos in Sullivan County (along with Montreign).

**Operating in partnership with and promoting local hotels, restaurants and retail facilities so that patrons experience the full diversified regional tourism industry. (§ 1320(2)(c))**

Mohegan Sun stated that it was uniquely dedicated to promoting local businesses in the host and surrounding communities. To achieve this, Mohegan Sun stated it would have established a Points Partnership Program where club card members could use rewards points as a cash equivalent at participating businesses, while the participating businesses would have provided discounts and special offers to club card members as well as discounts or special offers to Mohegan Sun employees. Mohegan Sun stated that it was seeking businesses to partner with for this program.

Mohegan Sun stated it was committed to buying locally, supporting the local and regional economy and creating jobs and new business opportunities outside the Mohegan Sun's facilities. Mohegan Sun noted that this philosophy had translated into more than \$500 million spent annually in goods and services from local vendors near Mohegan Sun's other casino properties. Mohegan Sun intended to replicate such local purchases at this facility. In order to do this, Mohegan Sun set up a webpage to receive contact information for local and regional suppliers. The webpage asked the prospective vendor to submit a form containing the goods and services the company was willing to provide.

Mohegan Sun stated that it had set the standard for quality in hospitality and product. Such attributes set a firm foundation for the collaboration with I Love New York, The Sullivan County Visitors Association, the Sullivan County Partnership for Economic Development, the Sullivan County International Airport and the many restaurants and retail establishments that would become partners in Mohegan Sun's Points Partnership Program. Through these partners, Mohegan Sun hoped to aid New York's tourism by extending the average length of stay, extending the tourist season, and helping to fill under-occupied weekend hotel rooms.

Mohegan Sun would have cross-marketed local businesses in a variety of ways outside of the Points Partnership Program. Mohegan Sun would have trained its guest services employees to educate them on the Sullivan County Catskills region, because those employees could be the most effective messengers for the marketing of local businesses and selling the attributes of the region. Additionally, Mohegan Sun would have used online regional marketing, direct mail, eblasts and virtual concierge kiosks to cross-promote local and regional attractions.

**Establishing a fair and reasonable partnership with live entertainment venues that may be impacted by a gaming facility under which the gaming facility actively supports the mission and the operation of the impacted entertainment venues. (§ 1320(2)(d))**

Mohegan Sun had entered into live entertainment venue agreements with two not-for-profit venues and consortiums in the region and received letters of support from two other venues.

One of the two provided agreements was between Mohegan Sun and an Actors' Equity Theater located approximately 20 miles from the proposed casino site. Due to the theater's support for Actors' Equity, an AFL-CIO member union representing approximately 49,000 actors and stage managers throughout the United States, the parties considered the Theater to be a "cultural institution in a nearby municipality" and a "live performance venue." The other agreement provided was between Mohegan Sun and Mid-Hudson Civic Center, Inc. which represented four venues in Dutchess and Orange counties.



Mohegan Sun stated that it had productive and cordial discussions with Bethel Woods, the landmark outdoor venue and neighbor to Mohegan Sun's proposed site in Sullivan County, and its consortium, the Upstate Theater Coalition for a Fair Game ("Fair Game"). Mohegan Sun and Fair Game had been unable to reach an agreement by the date of Mohegan Sun's RFA response.

## **WORKFORCE ENHANCEMENT FACTORS**

**Implementing a workforce development plan that utilizes the existing labor force, including the estimated number of construction jobs a proposed gaming facility would generate, the development of workforce training programs that serve the unemployed and methods for accessing employment at the gaming facility. (§ 1320(3)(a))**

Mohegan Sun stated its goal was to create job opportunities that allowed access to training, growth, promotion and development, particularly in a local area that had an unemployment rate of seven percent, which was higher than the State's overall unemployment rate of 6.7 percent. Mohegan Sun planned to hire, train and promote a diverse workforce.

Mohegan Sun stated that the underemployed and unemployed would be reached through accessibility and visibility. Mohegan Sun would have been active and involved in the local area it served, partnering with such organizations as CareerLink, community colleges, the NAACP, Step by Step and many others. Mohegan Sun stated that it had been honored for its efforts in outreach and support in other areas where it had employed this strategy.

In addition to in-house training, Mohegan Sun would have offered tuition reimbursement for persons who pursue educational certifications or college degrees. Mohegan Sun would also have made internship opportunities available for its employees. Mohegan Sun stated that this was a strategy it employed at its other gaming facilities in Pennsylvania and Connecticut and had proven very successful.

Mohegan Sun stated it had experience in hiring under and unemployed persons in economically distressed areas in Pennsylvania and Connecticut. As an example, at its Pennsylvania casino track, Mohegan Sun rented out a local arena and hosted a job fair that attracted approximately 8,000 job Applicants. When that casino began operations in 2006, it had 575 team members who were primarily local residents newly-trained in the gaming industry. Mohegan Sun stated that its focus at that facility, as it would be in the New York, was making its jobs accessible to local persons, hiring local persons, training them and promoting from within.

**Taking additional measures to address problem gambling including, but not limited to, training of gaming employees to identify patrons exhibiting problems with gambling. (§ 1320(3)(b))**

Mohegan Sun had developed a comprehensive compulsive and problem gambling plan for the project. The plan described 24 responsible gaming policies that Mohegan Sun would use at its facility. While this plan would form the basis for its efforts to address problem gambling, Mohegan Sun understood that it would need to continue to seek new ideas in this area. In order to encourage patrons who gamble frequently to take stock of their gambling behavior, Mohegan Sun would have placed self-assessment kiosks within the gaming facility in visible places. Mohegan Sun pledged to work with the NYS Gaming Commission and an independent health and counseling service chosen by the Commission to develop the kiosk design and live functionality and software that reflects current survey and research data. Further, Mohegan Sun would have worked with the independent health and counseling service to ensure visibility for these kiosks in the most appropriate manner.

Mohegan Sun stated that it would have created and produced brochure literature, as approved by the Commission, to describe the nature of problem gambling and gambling addictions. The description would be accompanied by information about how and where to seek help for those who perceive themselves with gambling related problems. Resources and helplines such as the HOPEline number would be included in these brochures. This literature would have been made available at highly visible locations in the casino area, including the player card promotions desk, the credit desk and the casino cashier station.

Mohegan Sun stated that all new employees would have spent one hour in classroom lecture dedicated to the issues of compulsive and problem gambling, the prohibition of underage gambling, the prohibition of gambling by intoxicated patrons and the identification and ejection of excluded and self-excluded persons.

Mohegan Sun stated that it had established a strong working relationship with the National Council on Compulsive Gaming and the state chapters where it had facilities. With guidance from the New York Council on Problem Gambling, Mohegan Sun would have determined the appropriate telephone help lines, face-to-face referrals and use of the on-site substance abuse and mental health counseling center at its resort.

Mohegan Sun would have provided complimentary space for an independent substance abuse and mental health counseling service in a manner determined by the Commission.

Mohegan Sun worked with the Connecticut Council on Compulsive Gaming to develop training for its entire staff, to help design the self-exclusion processes and accompanying documentation, to help design the informational brochures supporting awareness self-help, to voluntarily install business card size help line dispensers at highly visible

locations, to assist in the Council's membership for the National Council on Problem Gambling by paying the \$5,000 membership fee each year, and to support the Council's efforts to provide help line assistance and services to problem gamblers by providing annual funding (approximately \$350,000 in funding in the latest fiscal year and nearly \$4 million since 1996 in annual funding support).

Mohegan Sun's chief operating officer at its Connecticut property serves on the board of directors and as treasurer for the National Council on Problem Gambling. Mohegan Sun currently enjoys "gold status" membership with the National Council, contributes \$60,000 in membership dues and fees to the National Council and had participated at the national level for over a decade. Additionally, for more than a decade, Mohegan Sun had funded an academic chair at Yale University, which provides research in addictive and impulsive behaviors generally.

**Utilizing sustainable development principles including, but not limited to:**

- (1) having new and renovation construction certified under the appropriate certification category in the Leadership in Energy and Environmental Design Green Building Rating System created by the United States Green Building Council;**
- (2) efforts to mitigate vehicle trips;**
- (3) efforts to conserve water and manage storm water;**
- (4) demonstrating that electrical and HVAC equipment and appliances would be Energy Star labeled where available;**
- (5) procuring or generating on-site 10 percent of its annual electricity consumption from renewable sources; and**
- (6) developing an ongoing plan to submeter and monitor all major sources of energy consumption and undertake regular efforts to maintain and improve energy efficiency of buildings in their systems. (§ 1320(3)(c))**

Mohegan Sun's traffic impact study identified 23 roadways and intersections as requiring analysis for mitigation measures due to expected trip generation on account of the proposed project. Intersections were studied based on industry methodology and existing traffic conditions in the study area were established based on traffic counts conducted in 2011. To develop anticipated trip generation as a result of Mohegan Sun's proposed project, trip rates from a variety of full-scale tribal casinos proposed in Sullivan County were used.

Based on the traffic impact study, Mohegan Sun proposed certain roadway improvements and traffic mitigation measures, including widening Route 42 and adding a new traffic signal, widening Concord Road to accommodate turning and through traffic lanes, repaving Concord Road and installing two roundabouts and a turning lane, and repaving Kiamesha Lake Road and installing a new traffic signal.

Mohegan Sun did not intend to achieve a LEED certification for the project. It was unclear what Mohegan Sun meant by stating that its project would proceed in “the spirit of LEED,” given that the statute calls for LEED certification.

Mohegan Sun reported that Energy Star equipment would be specified throughout its facility, but provided no specifications or detailed plans of how it hoped to achieve such.

Mohegan Sun asserted that a storm water plan had been approved by the relevant authority (Town of Thompson), but did not provide a copy of the plan. Likewise, Mohegan Sun stated that it would use low-flow fixtures throughout its facility, but did not present specific plans.

Mohegan Sun committed to purchasing a minimum 10 percent of renewable power. Mohegan Sun intended to implement a facility-wide automation system that included energy consumption monitoring.

**Establishing, funding and maintaining human resource hiring and training practices that promote the development of a skilled and diverse workforce and access to promotion opportunities through a workforce training program that:**

- (1) establishes transparent career paths with measurable criteria within the gaming facility that lead to increased responsibility and higher pay grades that are designed to allow employees to pursue career advancement and promotion;**
- (2) provides employee access to additional resources, such as tuition reimbursement or stipend policies, to enable employees to acquire the education or job training needed to advance career paths based on increased responsibility and pay grades; and**
- (3) establishes an on-site child day care program. (§ 1320(3)(d))**

Mohegan Sun stated that its recruiting strategy would have created a diverse workforce and would have focused on interpersonal skills instead of technical skills. Mohegan Sun stated that it was committed to offering its employees opportunities to grow and develop within the organization. Employees would have been notified of available positions prior to external candidates. If an employee was selected for internal promotion, then various tools would be made available to help that person develop a skill set, such as educational opportunities. Mohegan Sun anticipated offering tuition reimbursement to assist the educational development of its employees.

Mohegan Sun stated that the turnover rate at its affiliated properties was significantly lower than hospitality companies throughout the Northeast. Mohegan Sun attributes its low turnover rate to the available promotion opportunities that enable employees to build careers. Mohegan Sun intended to implement similar promotion opportunities at its gaming facility.

Mohegan Sun stated that it previously received an award from Luzerne–Wyoming Counties Employment Coalition for outstanding support of employees with disabilities. Mohegan Sun intended to implement similar support systems at its gaming facility in the State as those provided at affiliated properties. In addition, employees would have been provided with free meals every day and would have had access to an onsite pharmacy, fitness center and more. Mohegan Sun’s Team Member Life Assistance Program would have provided employees with services such as legal consultations, senior care, counseling services, estate planning and travel assistance.

Finally, Mohegan Sun provided onsite child daycare programs at its affiliated facilities and intended to offer a similar program at this gaming facility.

**Purchasing, whenever possible, domestically manufactured slot machines. (§ 1320(3)(e))**

Mohegan Sun proposed to source domestically manufactured slot machines.

**Implementing a workforce development plan that:**

- (1) incorporates an affirmative action program of equal opportunity by which the Applicant guarantees to provide equal employment opportunities to all employees qualified for licensure in all employment categories, including persons with disabilities;**
- (2) utilizes the existing labor force in the state;**
- (3) estimates the number of construction jobs a gaming facility would generate and provides for equal employment opportunities and which includes specific goals for the utilization of minorities, women and veterans on those construction jobs;**
- (4) identifies workforce training programs offered by the gaming facility; and**
- (5) identifies the methods for accessing employment at the gaming facility. (§ 1320(3)(f))**

Mohegan Sun stated that, as a minority-owned and operated business, it was committed to hiring and promoting a diverse workforce and that it would have fostered a work environment that was fair and impartial to all persons. To that end, it developed a diversity plan that would have been administered by a diversity committee. The diversity committee would have been required to meet a minimum of four times per year so that it would have been active and responsive.

Under its diversity plan, Mohegan Sun’s chief financial officer would have been responsible to establish participation goals pursuant to which non-MWBE suppliers may be required to use certified MWBE businesses as part of providing their goods and services to the casino. The participation goals and objectives set by the chief financial officer would have been based on either the percentage of MWBEs in the local business area or the percentage of MWBE revenue in the local business area.

Mohegan Sun's diversity plan, while comprehensive, did not discuss participation goals for contractors during the construction phase.

Mohegan Sun, a minority-owned and operated business, submitted detailed information in regard to existing EEO, workforce diversity and supplier diversity policies and procedures and its Application spoke to active engagement and inclusion, beyond just EEO compliance.

**Demonstrating that the Applicant has an agreement with organized labor, including hospitality services, and has the support of organized labor for its application, which specifies:**

- (1) the number of employees to be employed at the gaming facility, including detailed information on the pay rate and benefits for employees and contractors in the gaming facility and all infrastructure improvements related to the project; and**
- (2) detailed plans for assuring labor harmony during all phases of the construction, reconstruction, renovation, development and operation of the gaming facility. (§ 1320(3)(g))**

Mohegan Sun had executed a project labor agreement (PLA), with the local unions affiliated with the Hudson Valley Building and Construction Trades Council (Council).

Mohegan Sun also entered into a labor peace agreement with New York Hotel & Motel Trades Council, AFL-CIO.

# MONTREIGN

**Empire Resorts, Inc. proposes to develop the Montreign Resort Casino (“Montreign”) in a planned destination resort known as Adelaar in the Town of Thompson in Sullivan County. According to Montreign, the facility would be an 18-story casino, hotel and entertainment complex featuring an 86,300 square-foot casino with 61 table games, 2,150 slot machines, 391 hotel rooms and multiple dining and entertainment options, with several meeting spaces. The facility, including Adelaar, would also feature an indoor waterpark, an “entertainment village” with dining and retail and a golf course.**

## **ECONOMIC ACTIVITY AND BUSINESS DEVELOPMENT**

### **Realizing maximum capital investment exclusive of land acquisition and infrastructure improvements. (§ 1320(1)(a))**

Montreign proposes different capital investments for its three different competitive scenarios. Montreign’s preferred scenario is no competition in the region, which is ultimately the scenario the Board has selected. In this no competition scenario, the proposed minimum capital investment is \$130 million; the proposed total capital investment is \$630 million; and the proposed total capital investment less excluded capital investment is \$452.4 million. Montreign requests the inclusion of \$178.7 million in prior capital investment; however, no portion of its prior capital investment is needed to meet the minimum capital investment.

### **Maximizing revenues received by the state and localities. (§ 1320(1)(b))**

Montreign proposes to pay an additional \$1 million license fee if it is granted a license. This supplemental payment would be in addition to the \$50 million license fee. No supplemental tax payment is proposed.

Montreign projects the following direct and indirect tax revenues to New York State and host municipalities with its preferred scenario of no competition in the region.

- Direct New York state tax revenues (including gaming privilege taxes, device fees, corporate profits tax, sales and use taxes and personal income taxes) of approximately \$80.4 million in year one and \$105.0 million in year five, in the low-case scenario; \$92.54 million in year one and \$122.4 million in year five, in the average-case scenario; and \$104.1 million in year one and \$138.5 million in year five, in the high-case scenario.
- Indirect New York state tax revenues (including corporate profits tax, sales and use taxes and personal income taxes) from induced incremental economic activity of approximately \$1.4 million in year one and \$1.7 million in year five, in the low-case scenario; \$1.3 million in year one and \$1.6 million in year five, in the average-case

scenario; and \$1.6 million in year one and \$1.9 million in year five, in the high-case scenario.

- Direct host county tax revenues of \$2.1 million in year one and \$2.5 million in year five, in the low-case scenario; \$2.5 million in year one and \$3.1 million in year five, in the average-case scenario; and \$2.76 million in year one and \$3.2 million in year five, in the high-case scenarios.
- Indirect host county tax revenues from induced incremental economic activity of approximately \$869,000 in year one and \$1.1 million in year five, in the low-case scenario; \$909,000 in year one and \$1.1 million in year five, in the average-case scenario; and \$981,000 in year one and \$1.2 million in year five, in the high-case scenario.

Montreign provides a study of the overall economic benefits of a gaming facility located in the Town of Thompson. To summarize, the study estimates that the economic impact from the construction of the project without competition would be approximately \$1.024 billion to the State, \$882.2 million to the region and \$610.1 million to Sullivan County.

The study estimates that the economic impact from the project's operation in the average-revenue case, without competition, would be \$477.3 million to the State, \$468.0 million to the region, \$460.4 million to the Sullivan County, and \$375.4 million to the host municipality.

These estimates include elements of Montreign's adjacent development of the Adelaar waterpark and other unspecified portions of said development. These elements are not presented separately. As a result, the overall estimates are higher than if they were presented for just the Montreign Resort Casino. Board experts suggest that these combined estimates may be high.

Board experts note that the economic impacts set forth in the study may not be achieved if Montreign's financial projections are not met or exceeded.

### **Providing the highest number of quality jobs in the gaming facility. (§ 1320(1)(c))**

Montreign states that it would create approximately 1,209 full-time and 96 part-time permanent jobs in the preferred scenario.

In regard to the use of New York-based subcontractors and suppliers, Montreign states that it has engaged a construction manager that brings more than 50 years of construction expertise including work at several existing New York casinos and racetracks and that the construction manager understands and supports the need to create robust community involvement in the project and has established strong working relationships throughout New York State with contracting communities. Montreign states that it has also engaged a New York State dual Certified Minority and Woman Owned Business to aid in efforts to reach out to the MBWVE contracting community and



sponsored a contractors' information fair at Monticello Casino & Raceway featuring a focused outreach to the local and regional contractor community, augmented with a targeted outreach to MBWVE contractors.

Montreign commits that 70 percent of money spent with contractors and suppliers for construction would be contracts with New York-based firms. Montreign indicates all of this spend would be in 2015.

Montreign anticipates construction total worker hours of 2,621,133 in the preferred scenario.

**Building a gaming facility of the highest caliber with a variety of quality amenities to be included as part of the gaming facility. (§ 1320(1)(d))**

Montreign proposes a resort casino located within a 1,695-acre master-planned resort and residential community commonly known as "Adelaar," which is owned and being developed by EPR Properties. Montreign would develop, own and operate the casino resort located on the project site. The project site is adjacent to The Concord Resort & Golf Club, a Catskills resort that closed in 1998.

For the "preferred" gaming facility located at Adelaar, Montreign proposes a four-star, "Montreign"-branded resort consisting of the following components:

- 86,300-square-foot casino with designated high-limit areas;
- 391-room hotel with a fitness center, salon and spa, and indoor pool;
- Multi-purpose convention, entertainment and meeting space with pre-function, back of house and kitchen areas;
- 500-seat theater with terraced seating;
- Seven restaurants; and
- Four bars/lounges (including one outdoor/seasonal venue).

The project site is ready for immediate construction (subject to routine final approvals and permits) and is located in a zoning district that permits a casino, hotel, waterpark, golf course and other amenities that are to be provided. In addition to the amenities offered by the Montreign Resort Casino, Montreign is located within Adelaar and the amenities offered by Adelaar would be within walking distance of Montreign and available to Montreign guests.

Montreign proposes to complete its Resort Casino in a single phase of construction. Board experts note that the site appears to provide for room for expansion but no detailed expansion plans are provided. As for construction of the other portions of the Adelaar development, however, Montreign states that the "Entertainment Village" would be completed within one year of opening of the Montreign Resort Casino. Significant

construction continuing on or near the Montreign Resort Casino site can be disruptive and detract guests. The Adelaar “Entertainment Village,” although compact is largely open to weather. This being said, base villages at ski resorts appear to “work” during the winter season.

Montreign proposes a single-level, 86,300-square-foot casino that is expected to offer the following mix of games:

- Slots—2,150 (including 30 high-limit slots and some electronic table games);
- Table games—61 tables (including eight high-limit tables); and
- Poker tables—none (poker would be offered on a special event basis).

The casino would offer segregated high-limit slot and table areas for VIP players and, in addition, it would offer two themed slot areas. A player’s lounge would be located within the high-limit area that would be available to “gold” and “platinum” level players and provide complimentary food and beverages.

Montreign intends to distinguish itself from its competitors based on its architectural design. Montreign plans to integrate natural materials, including wood and stone, into its design. By doing so, Montreign states that it would bring the outdoors into the facility while still maintaining an elegant and sophisticated design. Montreign states that that it would use state-of-the-art technology throughout the casino and provide superior personalized guest service. The technology would allow guests to self-check into their hotel room, issue themselves a complimentary voucher, make dinner reservations, or request their car from the valet. Montreign states that to ensure superior guest service, employees would receive guest service training and would attend regular refresher training sessions.

Board experts suggest that the casino floor configuration is more varied and interesting than generally seen. For example, (i) the casino center bar includes a stage for live entertainment, (ii) there are references to two themed slot areas, (iii) the interweaving of the high-limit and specialty areas, and the enclosed high-limit room with proximity to the cashier cage work well, and (iv) the high-limit table game room looks like it could be more attractive than is typical as players in this room would have window views of the resort-scape outside.

The Montreign Resort Casino includes an 18-story hotel tower providing 391 rooms comprised of the following:

- 289 king rooms (380 square feet each);
- 65 queen rooms (380 square feet each);
- 27 one-and-a-half bay suites (600 square feet each);
- Nine two-bay suites (820 square feet each); and

- One four-bay suite (1,800 square feet each).

The hotel would be Montreign-branded and would be of four-star quality. Penthouse guests at the hotel would be offered a higher level of service including butler service. The hotel would offer an indoor pool with an outdoor terrace, fitness center (1,100 square feet) and salon and spa (9,900 square feet).

For four-star hotels of comparable quality, Montreign proposes the following:

- The Ritz Carlton, Westchester County;
- J.W. Marriott Essex House, New York;
- Hyatt 48Lex, New York;
- Mt. Airy Casino, Mt. Pocono, Pa.;
- The Hotel Hershey, Hershey, Pa.; and
- Four Seasons Hotel, Philadelphia.

Board experts note that the four-star quality level would allow Montreign to serve the lower five-star market segment while still being in reach of the upper mass market. VIP check-in would be available to Gold and Platinum members and butler service to high end cash and comp penthouse guests and players. This is a necessary amenity for higher end players.

Board experts suggest that the spa/salon and pool area look appropriately oversized for a resort and are well laid out.

Montreign references the possibility of a second hotel at a five-star quality level although the siting of such a facility is not shown on the master plan.

The casino would be operated independently under its own name and brand. Montreign proposes the “M Centre” as its multi-purpose meeting and entertainment space. The space provides approximately 20,100 square feet<sup>1</sup> of meeting or event space with a stage configured at one end, 4,100 square feet of pre-function space and an outdoor terrace, the Firefly. Additionally, the space is supported by back of house, kitchen and other support areas. The M Centre can support up to 1,300 patrons in a traditional theater-style configuration and up to 1,000 for live sporting events such as boxing. The M Centre can be configured into seven different event rooms to host groups of varying sizes.

---

<sup>1</sup> The size of the M Centre space is listed as 20,100 square feet on the building program and as approximately 19,000 square feet in the RFA narrative relating to meeting and convention space.

In addition to the M Centre, Montreign offers a smaller flexible meeting space consisting of 6,700 square feet<sup>2</sup> and having 2,412 square feet of pre-function space and a food prep area. This room is intended for smaller meetings or to serve as a “break out” room for larger events at the M Centre. Other meeting space is located on the mezzanine level, these spaces vary in capacity from 14 persons at the boardroom to 100 persons at the largest room.

Finally, Montreign’s 12,000-square-foot, 500-seat theater can be used for further meeting space. Montreign would provide a 180-square-foot self-service business center but not a full service business center common for convention centers.

Board experts suggest that the convention/meeting capability is appropriate with the multi-purpose event center that would seat 1,300 in a theater-style configuration or 700 banquet-style.

The variety of meeting/conference space provided by Montreign (e.g., multi-purpose space, pre-function space, additional smaller meeting room space, the boardroom and the Spotlight theater) allows for hosting of a variety of meeting types.

Montreign proposes two large entertainment venues:

- M Centre—19,000-square-foot multi-purpose event space with outdoor terrace. Capacity in theater-style seating for up to 1,300 patrons or up to 1,000 patrons for sporting event (e.g., boxing).
- The Spotlight—16,800 square feet, 500-seat theater with outdoor terrace.

Montreign expects to host six to eight events per year at the M Centre and 20 to 25 events per year at The Spotlight.

In addition to these entertainment venues, a small stage would be offered at the Raine Bar (Montreign’s casino center bar), the bar in the Steakhouse and the sports bar. These stages would be available to host various types of live entertainment. At the outdoor bar, the Firefly, there would be space for a DJ, singer or guitarist.

Montreign would coordinate entertainment events so as not to compete with Bethel Woods and would also cross-market Bethel Woods events. Montreign states it does not believe it would adversely impact Bethel Woods (which is an outdoor pavilion capable of hosting thousands of people).

Board experts note that the M Centre and Stoplight Theater plus the stage at the Raine Bar (50 seats), bar at Bistecca Italian Steakhouse (180 seats), stage at Alchemy (160

---

<sup>2</sup> The size of this meeting space is listed as approximately 6,700 square feet on the building program and as 4,770 square feet in the RFA narrative relating to meeting and convention space.

seats) and Firefly outdoor terrace (80 seats) indicate a greater than usual commitment to live, DJ and electronic entertainment that is absent from most local/regional casinos.

Management appears to view entertainment as a marketing tool as it is forecasted to breakeven by not charging admission, charging lower prices and/or providing exceptional value.

Montreign proposes offering seven restaurants excluding options at the Entertainment Village located within the Adelaar development. The capacity for these restaurants is approximately 727 patrons.

Montreign also proposes offering four bars/lounges with total capacity for approximately 141 patrons and a VIP player's lounge (28 total seats) is provided for high-limit players.

As for other amenities, guests would have access to the 18-hole Monster Golf Course located adjacent to the resort and to all amenities located within Adelaar including a 200,000-square-foot "Entertainment Village" hosting retail outlets, bars, restaurants, a cinema and bowling alley, an indoor waterpark and 400-room hotel and other entertainment, a child care facility, a sporting club and residential condominiums and villas.

Adelaar, a comprehensive master-planned resort and residential community with Montreign as its centerpiece, would offer four seasons of indoor and outdoor activities, including the indoor waterpark and various outdoor recreational options (golf, skiing, zip lines, etc.). Montreign asserts that the resort is designed to be the premier casino, hotel and entertainment resort in Sullivan County and to create an experience that is complimentary to the natural beauty of the Catskills. Montreign would be the only resort in the area providing a four-star quality experience.

The Adelaar "Entertainment Village" located adjacent to the casino is proposed to have eight to 10 dining establishments that would seat another 750 diners. Board experts note that such capacity should solve any remaining shortages. Bistecca, the Italian Steakhouse offers large window views of the resort-scape (*i.e.*, Monster Golf Course) and a private dining area.

Montreign Resort Casino loyalty club points may be spent in the resort retail shops as well as in any of the Adelaar Entertainment Village plus retail shops in the local and regional area.

Board experts suggest that Montreign seems to understand how to use bars and lounges as a marketing tool and develop better than average venues to execute its strategy.

Montreign provides a detailed description of internal controls that reflect current industry standards.

**Offering the highest and best value to patrons to create a secure and robust gaming market in the region and the state. (§ 1320(1)(e))**

Board experts note that Montreign's player's club would be based on the existing MCR Players' Club program for an existing New York Lottery video lottery terminal facility with a reasonably substantial number of registered local participants. Montreign would have full access to the Players Club program and database of MCR and the Players Club program at MCR would be combined into the Montreign Me. Card reward program for a single loyalty rewards program and database.

**Providing a market analysis detailing the benefits of the site location of the gaming facility and the estimated recapture rate of gaming-related spending by residents travelling to an out-of-state gaming facility. (§ 1320(1)(f))**

Board experts suggest that guests of the Montreign Resort Casino would have a true resort experience and ambience that is unique for most urban/suburban visitors. Visitors would travel to, through and be immersed in, the famous Catskills. Additionally, the Montreign Resort Casino would be the physical center of Adelaar, at full build, a true four-season destination resort with clusters of gaming, resort recreation, family activities and other amenities.

In addition to the Montreign Resort Casino, Adelaar would provide a cluster of family entertainment, including a family-oriented 400-room hotel, an indoor waterpark and a golf course. There are multiple vehicle/pedestrian entries into Montreign Resort Casino. Board experts suggest that this is highly appreciated by customers who know where they are going. Connection of the Montreign Resort Casino to the "Entertainment Village" of Adelaar more than doubles the non-gaming activities offered and makes Montreign a true resort. There appears to be undeveloped land that can be used for expansion in the future if conditions warrant. The Catskills have been the location of destination resorts for more than 100 years. Board experts suggest that opening Montreign would send a strong signal of the revitalization and return of the Catskills as a year-round destination and provide a strong economic boost to the region.

In the no-competition model, Montreign estimates it would recapture between \$39 million and \$69 million.

**Offering the fastest time to completion of the full gaming facility. (§ 1320(1)(g))**

Montreign state that it would open its facility within 24 months of the license award.

Montreign states that project documents are complete such that bidding and award of work can occur immediately ensuring early access to project labor. Montreign states that project design is 85 percent complete and has been in design production for two years,

thus minimizing risk and providing sufficient time for document review. Moreover, Montreign notes that all funds necessary to complete construction are available and committed.

The project site is a 1,583 acre, partially developed site that is the location of the existing Monster Golf Course, residential and commercial properties. Impacts to wetlands and streams would require a Section 401 Water Quality Certification, Protection of Waters permit and Freshwater Wetland permit and mitigation measures. Special Water and Sewer Districts are proposed to be formed to serve the project. The project may require a possible modification to Village's SPDES Wastewater Permit and a possible Water Withdrawal Permit if the Village of Monticello needs to withdrawal additional water to meet demands of the project. The site is located within an archeologically sensitive area. The proposal involves impacts to a neighborhood eligible for listing on the National Register. Consultation with the State Historic Preservation Office would be required and potential consultation with Indian Nations. The project may be considered a Concentrated Animal Feeding Operation, requiring NYS Department of Environmental Conservation approval and oversight, if the racetrack proposal is advanced.

The SEQR process has been completed for the Montreign project.

#### **Demonstrating the ability to fully finance the gaming facility. (§ 1320(1)(h))**

Montreign intends to obtain equity for its project through a rights offering, backstopped by an affiliate of the Lim family of Malaysia, and the debt for its project through committed institutional third-party debt. The Lim family is a significant indirect owner of Genting, which is the operator of the New York Lottery VLT facility at Aqueduct in New York City. Genting is one of only two investment grade gaming companies.

Board experts suggest that while Montreign is newly formed, its bank references are good.

#### **Demonstrating experience in the development and operation of a quality gaming facility. (§ 1320(1)(i))**

Montreign's parent company, Empire Resorts, Inc. ("Empire") and its executive team have experience, training and expertise in developing, constructing and operating casinos and related facilities. Empire's executive team would manage Montreign. Montreign states that Joseph D'Amato, Laurette Pitts and Nanette Horner have years of experience in the gaming industry and Montreign believes that their training and expertise would be invaluable. Further, Empire, through its subsidiary, Monticello Raceway Management, Inc., owns and operates MCR on approximately 232 acres in Monticello, New York.

Executives in Empire have had sufficient experience in developing and operating gaming facilities. Empire Resorts has direct market experience from operating MCR. EPR,

Montreign's co-developer of Adelaar, is a large, NYSE-traded, well-capitalized REIT with development experience. Empire Resorts is already licensed as a sales agent of the New York Lottery to conduct VLT gaming in New York and is currently operating in compliance with the law and regulations governing New York VLT gaming operations.

Empire and its wholly owned subsidiary, MRMI, were issued and still hold several gaming-related licenses. No gaming-related license has been denied, suspended, withdrawn or revoked, and there is no pending proceeding that could lead to any of these conditions

## **LOCAL IMPACT AND SITING FACTORS**

### **Mitigating potential impacts on host and nearby municipalities which might result from the development or operation of the gaming facility. (§ 1320(2)(a))**

Montreign provides an estimate of incremental municipal costs for the Town of Thompson, Sullivan County and the State that are likely to result from the proposed gaming facility. The analysis anticipates that the Monticello Fire District and Sullivan's County Sheriff's Office would need to train and equip new employees at an upfront cost of \$520,000. In addition, the Town of Thompson should anticipate upfront expenditures of approximately \$100,000 for increased building inspections and general governmental services. Emergency medical services are provided by a private company at no cost to public agencies and would not generate additional upfront or ongoing costs to the host or surrounding communities.

After opening, the gaming facility would continue to generate incremental annual costs to local municipal departments providing fire, police, building inspections and general governmental services. Montreign projects that the gaming facility would generate an incremental increase of anywhere from \$1.1 million to \$2.0 million in annual public service costs spread across the Town of Thompson, Sullivan County and the State. The largest ongoing impact is to police protection services, which are estimated at \$640,000 annually, although no category of public services has ongoing cost impacts exceeding \$200,000. Montreign estimated that the fiscal revenue generated by the gaming facility would exceed its increased costs of public services.

Montreign would connect to the Town of Thompson water system, which ultimately is supplied by the Village of Monticello water treatment facility. Montreign has a water supply agreement with Monticello to supply the facility with its projected water demand. The Kiamesha Lake Sewage Treatment Plant has existing excess capacity sufficient to treat flows from Montreign's project and initial phases of Adelaar. Montreign's facility would be served by primary electric service from the local utility, which has indicated the ability to service the project from existing substations.

Montreign believes there would be minimal impact to vegetation and wildlife in the area. The only threatened/endangered/special concern species observed within the project



site is the red-shouldered hawk. While development of the project would remove certain habitats potentially used by this species, given the amount of similar habitat in the surrounding area, Montreign states it anticipates no significant impact to the population as is documented in the EIS. Montreign presented comprehensive studies delineating wetlands, and it appears that wetlands would be minimally impacted by the proposed project.

Montreign states that its report supports its expectation that the tax and fee revenue generated by the proposed gaming facility would offset additional demand for emergency municipal services resulting from the casino development and ongoing operations.

State agency experts suggest that Montreign provides a sophisticated analysis of the project site needs and a responsible mitigation plan and program to meet those needs. Provided that none of the special permits discussed above are required, Montreign has substantially all approvals and permits in place and most of its design completed and as such the project is shovel-ready.

Montreign assessed the likely impact on the housing stock in the Town of Thompson and nearby municipalities resulting from the new jobs created by the opening of the proposed casino. Montreign found a surplus of housing in the Town of Thompson and nearby municipalities and states that there are 3,300 planned residential units in the Town of Thompson and the nearby municipalities.

Accordingly, Montreign concludes that there would not be any adverse impacts on the local housing stock associated with this anticipated population growth under any scenario. Therefore, Montreign states that because no adverse impacts are expected there are no contracts, agreements or other understandings evidencing any mitigation commitment.

Montreign assessed the likely impact on school populations in the Town of Thompson and nearby municipalities due to the opening of the proposed casino and concludes that the affected school districts are anticipated to experience minimal impact from the growth in school population as a result of the jobs added by the project.

**Gaining public support in the host and nearby municipalities, which may be demonstrated through the passage of local laws or public comment received by the board or gaming Applicant. (§ 1320(2)(b))**

Montreign's host community is the Town of Thompson. Montreign provides a resolution in support of its project adopted by the Town Board of the Town of Thompson on April 1, 2014. Additionally, Montreign provides resolutions adopted by Sullivan County and the Towns of Bethel, Callicoon, Delaware, Highland, Mamakating, Rockland and Thompson supporting the siting of two gaming facilities in Sullivan County in order to provide

economic stimulus to Sullivan County. Montreign also provides letters of support for its project from various officials of the Towns of Fallsburgh, Forestburgh and Thompson, representatives of the Sullivan County Chamber of Commerce, the Sullivan County Legislature, the Sullivan County Visitors Association, the Delaware County Chamber of Commerce (which supports siting two casinos in the Catskills), the Pike County (Pennsylvania) Chamber of Commerce, as well as other community tourism agencies, entertainment venues, educational institutions, local businesses and residents and non-profit and charitable organizations.

Montreign was the subject of 85 written comments, of which 57 indicated opposition and 28 indicated support. Additionally, the Board received more than 200 general comments in regard to the siting of casinos in Sullivan County and the Catskills, with six percent indicating opposition and 94 percent indicating support.

At the September 23, 2014 public comment event, Montreign was not the subject of any specific comment. However, the project was mentioned in nearly 30 supporting comments in regard to the general siting of casinos in Sullivan County (along with Mohegan Sun).

**Operating in partnership with and promoting local hotels, restaurants and retail facilities so that patrons experience the full diversified regional tourism industry. (§ 1320(2)(c))**

Montreign would implement a cross-marketing program with local retail, entertainment, recreational and hospitality providers where guests can use their loyalty rewards program membership to purchase goods and services from these local establishments. Montreign would also sell packages to certain venues, which would likely include theater tickets, ski lift tickets, regional recreational amenities and shopping packages. Additionally, Montreign would enter into an agreement with a local hotel to provide lodging to Montreign's guests when Montreign's hotel is at capacity.

Montreign, through Empire, has previously contracted with local business owners for the provision of goods and services and in 2013 procured \$16.9 million out of \$26.5 million from local businesses. Montreign stated it has and it would continue to aggressively pursue additional vendors in Sullivan and Orange counties. Montreign notes that all purchasing decisions are made by employees who are located in the State.

Montreign states that it has also engaged in recent community outreach, which includes meetings with local meat, poultry and beverage vendors to determine if the products offered could be used in the existing restaurant. Montreign states that it has also met with a representative of the Hudson Valley Economic Development Company to seek ways to collaborate on expanding the economic and job benefits to local food and beverage purveyors. Additionally, Montreign states that it has had ongoing meetings with a food vendor about how the vendor could incorporate the Pride of New York into the

purchasing system. Finally, Montreign held a local vendor fair in May 2014 to introduce more regional vendors to the products, brands, cuisine, and services that Montreign would need to purchase. A contractor's fair was held in June 2014 to ensure information about Montreign's procurement needs was communicated.

Montreign states that it intends to engage in cross-marketing, and would negotiate agreements, with other local and regional attractions in an effort to bring more patrons to the region. Montreign has entered into, and states that it would continue to explore, agreements with local and regional entities for cross-marketing purposes. Montreign would offer its loyalty rewards program to eligible hospitality businesses, restaurants, entertainment venues and retail establishments from the region. The goal of these relationships would be to create an experience for Montreign's guest that is amplified because of increased choices and opportunities and is distinguishable from other Applicants' attempts to do the same as it strikes an appropriate balance between on-site, off-site and near-site activities. Montreign would offer packages that would provide overnight stays and tickets to the various area attractions along with an interactive kiosk that would include a guide to area attractions for Montreign's guests.

Montreign states that it would also support the local area ski resorts and "Trout Town U.S.A" located in Roscoe, known as the "Ultimate Fly Fishing Town". Overnight packages, including tickets to various area attractions, would be offered. Finally, Montreign would provide an interactive kiosk that would include a guide to area attractions along with information about those attractions.

**Establishing a fair and reasonable partnership with live entertainment venues that may be impacted by a gaming facility under which the gaming facility actively supports the mission and the operation of the impacted entertainment venues. (§ 1320(2)(d))**

Montreign has entered into a memorandum of understanding with The Upstate Theater Coalition for a Fair Game on behalf of the two entertainment venues near Montreign's site. The terms of the agreement require that Montreign allow loyalty rewards points to be used for purchasing tickets for events at these two venues. Montreign would establish joint marketing agreements, including agreements to cover items such as programming, sponsorships, ticketing kiosks, lodging package programs and related items. The venues maintain a right of first refusal in booking acts under the agreement. Finally, Montreign agrees to pay Fair Game an annual sum. Montreign has also entered into a support agreement with Shadowland Artists, Inc.

**WORKFORCE ENHANCEMENT FACTORS**

**Implementing a workforce development plan that utilizes the existing labor force, including the estimated number of construction jobs a proposed gaming facility would**

**generate, the development of workforce training programs that serve the unemployed and methods for accessing employment at the gaming facility. (§ 1320(3)(a))**

Montreign states that its parent, Empire, has a history of providing on-the-job training with respect to regional and local demographic groups with high unemployment, gained from operating a racino in Monticello in Sullivan County. Empire was recognized as one of the largest employers in Sullivan County, which was ranked 47 out of 62 counties for high unemployment. Montreign states that Empire has had successful experience at Monticello with hiring the unemployed and underemployed within a geographic region that has suffered high unemployment.

Montreign commits to creating its own training programs, and would establish, fund and maintain human resource hiring and training practices that would promote the development of a skilled and diverse workforce and serve the unemployed in the region. It would also hold job fairs and would work with the NYS Department of Labor to help reduce and eliminate barriers to employment within the targeted groups.

**Taking additional measures to address problem gambling including, but not limited to, training of gaming employees to identify patrons exhibiting problems with gambling. (§ 1320(3)(b))**

Montreign's Compulsive and Problem Gambling Plan ("CPG Plan") inventories and describes the on-site resources that would be available to those affected by gambling-related problems, including, for example, employees trained to identify patrons and employees with suspected or known compulsive and problem gambling behavior, on-site information and printed materials appropriate for distribution to such persons to educate and inform them about compulsive and problem gambling and the availability of community, public and private treatment programs and appropriate on-site signage with respect to such programs. The CPG Plan also includes procedures for the exclusion of self-identified problem gamblers who request that they be prohibited from entering facilities throughout the State's various gaming venues.

The CPG Plan includes a description of signs, alerts and other information that would be available in the proposed gaming facility to identify resources available for those affected by gambling related problems, including the New York State Office of Alcoholism and Substance Abuse Services HOPEline.

The use of particular advertisements would be discontinued as expeditiously as possible upon receipt of written notice from the Commission that the Commission has determined that the use of the particular advertisement in, or with respect to, New York could adversely impact the public or the integrity of gaming. Advertisements would not contain false or misleading information, use a font, type size, location, lighting, illustration, graphic depiction or color obscuring any material fact or the gambling assistance

message, or fail to disclose any material conditions or limiting factors associated with the advertisement.

As set forth in the CPG Plan, Montreign would use initial and ongoing training to help employees identify those who may have gambling-related problems, or self-identify, and assist them to obtain help for those problems. Montreign states, however, that problem gambling is a hidden addiction and, unlike drug and alcohol addiction, problem gambling has few outward signs.

Montreign would educate all employees in regard to compulsive and problem gambling, the prohibition of underage gambling, the prohibition of gambling by intoxicated patrons and the identification and ejection of excluded and self-excluded persons. All employees would be trained in accordance with the employee training program developed by the New York Council on Problem Gambling. All employees, as specified in the CPG Plan, would also be trained in intervention procedures.

Montreign would coordinate with the Recovery Center in Monticello in order to facilitate assistance and treatment for those with gambling-related problems. As set forth in the CPG Plan, Montreign would coordinate with the New York State Office of Alcoholism and Substance Abuse Services for HOPEline services and treatment referrals. Currently, there are no Gamblers Anonymous or GAM-ANON meetings in the Sullivan County area.

Montreign would, however, support prevention programs established by the National Council on Problem Gambling, the New York Council on Problem Gambling and others.

The metrics that Montreign would use to determine the effects of the processes proposed to address problem gambling, and the relative effectiveness of the processes in place include the number of individuals on the self-exclusion list, the number of individuals carded as suspected of being underage, the number of identified self-exclusion and exclusion violators and whether all employees have received training.

**Utilizing sustainable development principles including, but not limited to:**

- (1) having new and renovation construction certified under the appropriate certification category in the Leadership in Energy and Environmental Design Green Building Rating System created by the United States Green Building Council;**
- (2) efforts to mitigate vehicle trips;**
- (3) efforts to conserve water and manage storm water;**
- (4) demonstrating that electrical and HVAC equipment and appliances would be Energy Star labeled where available;**
- (5) procuring or generating on-site 10 percent of its annual electricity consumption from renewable sources; and**

**(6) developing an ongoing plan to submeter and monitor all major sources of energy consumption and undertake regular efforts to maintain and improve energy efficiency of buildings in their systems. (§ 1320(3)(c))**

Montreign's traffic mitigation proposal is based on a detailed traffic impact study performed as part of its comprehensive development plan for the Adelaar development project, which served as a partial basis for the Town of Thompson approving the site plan for the project. Montreign states that trip generation estimates were developed and intersection infrastructure improvements to maintain certain levels of service were identified.

Montreign has agreed with the town that Montreign would fund the cost of local roadway resurfacing up to the amount of \$1.1 million. The estimated total cost of all traffic mitigation measures including road resurfacing is \$7.7 million, which amount would be shared 25 percent by Montreign and 75 percent by the fee owner of the project site. State agency experts note a strength of the Application that Montreign's consultant team has been working with NYSDOT Region 9 for several years to develop a comprehensive design to mitigate traffic impacts to the area.

Montreign intends to achieve "certified" status or better under the LEED rating system for the project. State agency experts note Montreign's submission is a well-organized presentation of information, demonstrating a command of what is necessary to meet the LEED requirement.

Montreign would specify the use of Energy Star equipment throughout the project. HVAC and lighting systems selections would qualify for government energy-efficiency incentives. Montreign provides a preliminary design outline on the high-efficiency equipment details proposed for the facility, which State agency experts note to be an adequate summation of the plan for energy efficient equipment.

Montreign presents a Storm Water Pollution Prevention Plan for its facility, which would mitigate storm water discharge from the project site using detention ponds in accordance with State requirements. In addition, Montreign plans to use green infrastructure practices designed to reduce runoff volume.

Montreign states that it would use low-flow fixtures and other equipment designed to reduce water use. Montreign has also directed its design team to move away from water intensive uses such as water features and fountains. State agency experts suggest that the proposed stormwater plans incorporate green infrastructure techniques that will reduce impact to the project site, which is a greenfield development.

Montreign is exploring possible energy alternatives for the facility, including procuring and generating on-site, in order to procure over 10 percent of its consumption from

renewable sources. Montreign intends to implement a facility-wide automated system that includes energy consumption monitoring.

**Establishing, funding and maintaining human resource hiring and training practices that promote the development of a skilled and diverse workforce and access to promotion opportunities through a workforce training program that:**

- (1) establishes transparent career paths with measurable criteria within the gaming facility that lead to increased responsibility and higher pay grades that are designed to allow employees to pursue career advancement and promotion;**
- (2) provides employee access to additional resources, such as tuition reimbursement or stipend policies, to enable employees to acquire the education or job training needed to advance career paths based on increased responsibility and pay grades; and**
- (3) establishes an on-site child day care program. (§ 1320(3)(d))**

Montreign is committed to establishing practices that promote the development and access to promotion opportunities through a workforce training program. Montreign's affiliate, Monticello Raceway Management, Inc. ("MRMI"), has established a human resources hiring and training program that promotes the development of a skilled and diverse workforce. Montreign has committed to implement and expand on MRMI's successful program. Montreign has developed the Human Resources Road Map, a recruitment strategy that focuses on the local market first and then expands to the regional labor pool. Montreign intends to provide employees transparent career paths with measurable criteria that allow employees to pursue career advancements.

Montreign states that it would establish a tuition reimbursement policy to enable employees to learn and grow. The tuition reimbursement policy provides for up to \$1,500 per annum and \$750 per semester in reimbursable expenses to eligible employees for qualified courses. Montreign also anticipates offering in-house training programs to prepare employees for career opportunities and advancement.

Montreign would offer an onsite child daycare program to eligible employees. Montreign also commits to provide health care coverage and an Employee Assistance Program ("EAP") to ensure its employees' well-being. EAP would offer assistance for a variety of issues, including problem gambling, mental and emotional problems, substance abuse, family problems and more.

**Purchasing, whenever possible, domestically manufactured slot machines. (§ 1320(3)(e))**

Montreign states that it would make every effort to purchase, wherever possible, domestically manufactured slot machines for its casino.

**Implementing a workforce development plan that:**

- (1) incorporates an affirmative action program of equal opportunity by which the Applicant guarantees to provide equal employment opportunities to all employees qualified for licensure in all employment categories, including persons with disabilities;**
- (2) utilizes the existing labor force in the state;**
- (3) estimates the number of construction jobs a gaming facility would generate and provides for equal employment opportunities and which includes specific goals for the utilization of minorities, women and veterans on those construction jobs;**
- (4) identifies workforce training programs offered by the gaming facility; and**
- (5) identifies the methods for accessing employment at the gaming facility. (§ 1320(3)(f))**

For construction jobs, Montreign has set a participation goal for local minorities, women, disabled persons and veterans of 20 percent. Montreign's participation goal for service and professional jobs for members of the foregoing classes is 30 percent. Montreign states that these are initial benchmark figures and are subject to adjustment as the project evolves and specific needs are established.

**Demonstrating that the Applicant has an agreement with organized labor, including hospitality services, and has the support of organized labor for its application, which specifies:**

- (1) the number of employees to be employed at the gaming facility, including detailed information on the pay rate and benefits for employees and contractors in the gaming facility and all infrastructure improvements related to the project; and**
- (2) detailed plans for assuring labor harmony during all phases of the construction, reconstruction, renovation, development and operation of the gaming facility. (§ 1320(3)(g))**

Montreign, through its construction manager, has executed a work agreement, project labor agreement (PLA), with the local unions affiliated with the Hudson Valley Building and Construction Trades Council.

Empire operates Monticello Casino and Raceway in Sullivan County, New York. Approximately one-third of Empire's workforce are members of the New York Hotel & Motel Trades Council, AFL-CIO ("NYHMTTC") and operate pursuant to collective bargaining agreements with Empire. Empire has entered into a neutrality agreement/labor peace agreement with the NYHMTTC.

The neutrality/labor peace agreement provides for a process by which employees employed in the hotel-casino operations would have the opportunity to select union representation through a non-adversarial card check process. By entering into the neutrality/labor peace agreement, Empire and the NYHMTTC wish to ensure that employees in the NYHMTTC have the opportunity to express their desire as to whether or



not they would like to be represented for purposes of collective bargaining in an atmosphere free from intimidation, restraint, coercion or discrimination. The parties also entered into such agreement because they wish to resolve any disputes related to any organizing drive and representational issues quickly and amicably, without resort to litigation or proceedings before the National Labor Relations Board, courts or other governmental agencies.



**Nevele-R, LLC by Nevele Resort Casino & Spa (“Nevele”) proposed to open the Nevele Resort, Casino and Spa in the Town of Wawarsing and outside the Village of Ellenville in Ulster County. According to Nevele, the project sought to redevelop the former Nevele Grande Resort and Country Club at the 300,200 square foot site. It would have featured 2,000 slot machines, 80 table games and poker, with the resort featuring 446 hotel rooms, a spa and fitness center, banquet and meeting rooms, a night club and several restaurants. The exterior would have featured an ice arena, swimming pool, tennis courts, skiing, horseback riding, zip lines and an 18-hole golf course.**

**ECONOMIC ACTIVITY AND BUSINESS DEVELOPMENT**

**Realizing maximum capital investment exclusive of land acquisition and infrastructure improvements. (§ 1320(1)(a))**

Nevele proposed a minimum capital investment of \$639.4 million. The total capital investment less excluded capital investment was proposed to be \$465.1 million. Nevele requested the inclusion of \$7 million in prior capital investment; however, no portion of its prior capital investment was needed to meet the minimum capital investment.

**Maximizing revenues received by the state and localities. (§ 1320(1)(b))**

Nevele did not propose a supplemental tax payment or additional license fee.

Nevele did not propose a supplemental tax payment or increased license fee. Nevele projected the following direct and indirect tax revenues to New York State and host municipalities.

- Direct New York state tax revenues (including gaming privilege taxes, device fees, corporate profits tax, sales and use taxes and personal income taxes) of approximately \$112.7 million in year one and \$123.1 million in year five, in the low-case and average-case scenarios; and \$118.3 million in year one and \$129.2 million in year five, in the high-case scenario.
- Direct host city and county tax revenues of \$5.9 million in year one and year five, in the low- and average-case scenarios; and \$6.2 million in year one and year five, in the high-case scenario.

Board experts noted that various tax revenues may not be achieved if Nevele did not meet or exceed its financial projections.

Nevele estimated that average case direct, indirect and induced economic impact from the construction of the project would be \$430.6 million to the State and \$154.3 million to the region. Nevele estimated that the direct, indirect and induced economic impact from the project's operation would be \$526.9 million to the State and \$473.9 million to the region annually. Board experts noted that the impacts set forth in the analysis would not be achieved if Nevele's financial projections were not met or exceeded.

**Providing the highest number of quality jobs in the gaming facility. (§ 1320(1)(c))**

Nevele proposed to provide 1,638 full-time and 712 part-time jobs when fully operational.

Nevele stated that it intended to use New York-based Tishman Construction to build the project and 100 percent of the hard costs of construction would channel through Tishman. Nevele stated it anticipated 80 to 90 percent of that amount would be spent with New York-based subcontractors.

Nevele had agreements with 14 Upstate New York firms, two of which were identified as women-owned businesses. Nevele stated it anticipated 80 percent of the architectural and engineering service fees would be spent with these companies. Nevele stated that it would have conducted subcontractor outreach to ensure Upstate New York, regional and local specialty subcontractors, vendors and suppliers would be represented in the construction.

Nevele stated that it estimated that 80 to 90 percent of spend on operational goods and services would be in New York State. Nevele indicated it would have actively recruited local business owners through a series of vendor fairs and in conjunction with local chambers of commerce and other interested organizations.

Nevele anticipated construction total worker hours of 1,979,482.

**Building a gaming facility of the highest caliber with a variety of quality amenities to be included as part of the gaming facility. (§ 1320(1)(d))**

The Nevele project site was a casino and hotel resort to be located on the site of the former Nevele Grande Resort and Country Club, which operated for more than 100 years until its closure in 2009. Development of Nevele would have included the adaptive reuse of several existing structures and facilities and demolition of on-site structures to accommodate construction of planned new facilities. Physical development (with the exception of the existing golf course) was largely confined to the 40-acre area that centers on the existing hotel structures.

Nevele expected to restore the historic Nevele site to its former prominence as the anchor property for the eastern Catskills resort region.

Nevele proposed a resort comprising the following:

- 83,100-square-foot casino with designated high-limit areas;
- Three hotel towers for a total of 446 rooms and providing rooms of three-star and four-star quality and suites of five-star quality (expected to be branded as a Westin);
- Multi-purpose convention and entertainment space;
- Spa and fitness center;
- 14 food outlets;
- Five bars/lounges and a nightclub;
- 18-hole golf course;
- Covered ice skating rink;
- Ski slopes;
- Tennis and basketball courts; and
- Equestrian center.

There was no phasing of construction proposed. Nevele intended to open with all proposed facilities and services. Board experts suggested that Nevele would have been a true resort. Nevele's resort golf course, natural lake, newly constructed hotel tower and casino and heavily landscaped grounds would have provided a true sense of arrival. Two acres of landscaping on the roof of the casino would buffer the otherwise non-resort-like aspects of the podium buildings to the resort guests above.

Board experts suggested that Nevele would have been of four-star quality with touches and aspirations of a four-star plus property. The location of the back of house tasks, areas, and facilities beneath the casino would have been the most efficient and flexible approach to the high-volume but ever-changing public areas. Local and regional access was to have been provided by U.S. Route 209 (north-south), which connects with several Interstate highways that connect to feeder markets to Nevele. The project site was 524 acres, but only 40 acres was occupied by the core development and 115 acres remained completely undeveloped. Therefore, presumably expansion was available on the site if conditions had warranted.

Board experts suggested that Nevele was located further away from its primary, middle and outer feeder markets than other proposed and existing casinos. While the project site was large and presumably expansion was available, no expansion plans were shown on the Master Plan indicating how Nevele would react when increasing competition would inevitably develop.

Nevele proposed a single-level, 83,100-square-foot casino that was expected to provide the following mix of games:

- Slots—1,994 (including 70 high-limit slots) plus six electronic table games;
- Table games—64 tables including seven high-limit tables; and

- Poker tables—16 poker tables.

The casino would offer segregated high-limit areas and high-limit lounges for VIP players.

Board experts suggested that Nevele would have offered large capacity for a Catskills-located casino and that this would have been necessary to cater to the forecasted largely day-trip initial target market (which market was estimated to account for 87 percent of the gaming revenue). Using industry benchmarks for the seat or position capacity of slot machines and table games, the gaming capacity was capable of serving the physical demand on an average day using the average case visitor forecast. Specifically, assuming 90 percent of the visitors gambled four hours during a visit, the utilization rate was approximately 52 percent throughout a 24-hour period, which was within the industry average range of 45 percent to 55 percent for this market. On peak days, however, this utilization rate would increase.

Board experts suggested that the casino floor layout appropriately would have provided a system of main, secondary and tertiary aisles, although following traditional space guidelines, the casino floor would have been dense.

Board experts noted that Nevele did not have an established player database to use to market its property. Furthermore, while certain members of the management team had casino experience, Board experts suggested that the team had not worked together before.

Nevele's project included three hotel towers (two of which were rehabilitated from existing Nevele structures and one to be newly constructed), providing a total of 446 rooms. The towers would have provided:

- Tower one—existing iconic round “LBJ Tower” that would have been refurbished to provide 104 three-star rooms including 103 king rooms (388 square feet each) and one king suite (1,500 square feet);
- Tower two—existing mid-rise tower that would have been refurbished to provide 78 four-star king rooms (632 square feet each); and
- Tower three—newly-constructed tower with 204 four-star king/queen rooms (448 square feet each) and 60 five-star suites (48 suites at 908 square feet each and 12 corner suites at 1,400 square feet each).

Nevele provided a letter of interest from Starwood Hotels & Resorts Worldwide, Inc. (“Starwood”) pursuant to which Starwood expressed interest in operating the hotel under its Westin flag. The Westin is Starwood's largest upscale hotel and resort brand. The hotel would have offered an indoor pool, snack bar and fitness center (total 13,500 square feet) located on the top level of the new Nevele hotel tower. The hotel would also have provided an 11,000-square-foot spa.

For its four-star rated rooms, hotels of comparable quality included the following:

- Mohegan Sun in Uncasville, Conn.;
- Grand Pequot Tower at Foxwoods in Mashantucket, Conn.;
- Borgata Hotel Casino & Spa in Atlantic City, N.J.;
- Caesars Atlantic City in Atlantic City, N.J.; and
- Golden Nugget in Atlantic City, N.J.

For its five-star rated rooms, hotels of comparable quality include the Four Seasons Hotel New York, Mandarin Oriental New York, The Peninsula New York and others.

The Westin branding would have offered access to the Starwood Preferred Guest Program, which has members residing within a 350-mile radius of Nevele. Westin is a well-recognized name.

Board experts suggested that Nevele's hotel would have been able to accommodate only approximately six percent of the forecasted visitor count and 12 percent of the forecasted revenue. However, resort-casinos, if true to their label, need more hotel rooms due to their destination intent and attraction. Nevele proposed to offer 446-rooms, which are more, but not a great deal more, than the typical minimum of more day-trip driven casinos.

Board experts suggested that the three towers would have created three levels and types of rooms within the three-and four-star quality range and also would have provided Nevele the ability to offer some interesting suite configurations among the 61 suites available, or 14 percent of the total rooms.

Nevele's proposed meeting and convention facilities included:

- 12,400 square feet of multi-purpose space (plus pre-function space) that could accommodate banquets for up to 650 people with a stage and dance floor and trade shows of up to 75 booths of 10x10. In theater configuration, it could accommodate up to 1,000 people;
- 8,600 square feet of additional meeting space (which could be configured into four 2,150 square foot meeting rooms) plus pre-function space; and
- 1,200 square feet boardroom (accommodates up to 24 people).

A 500-square-foot full-service business center would have been located at the base of the LBJ Tower on the ground level. Also, two offices would have been available for trade show hosts at the main conference center pre-function area. Additionally, staff at VIP reception would have provided assistance.

Until greater casino competition sets in, Nevele would have been a casino-dominated property using 60 percent or more of the hotel rooms on average and more on peak days for casino guests. Essentially, this would have left few hotel rooms available to hold the types of meetings and conventions that the capacity could accommodate.

Board experts noted that the meeting and convention space could have been used for short lead-time events, when hotel rooms were available, casino and other property entertainment events, and as an amenity to fill in vacant rooms during off-peak periods and when casino competition inevitably increased.

Instead of providing feature entertainment options that would have competed with other area attractions, Nevele intended to use the Shadowland Theatre as an offsite live performance venue. Nevele had executed a Memorandum of Understanding with Shadowland Theatre. Nevele also signed a Memorandum of Understanding with the Upstate Theater Coalition for a Fair Game. Nevele had no plans for large live entertainment shows with fixed seating above 600 seats. This decision was intended to support and complement impacted live entertainment venues.

Board experts noted concern that Nevele planned to defer entertainment to third-parties, giving Nevele no control over the content, scheduling or pricing of entertainment. Because players and guests would have had to leave the site to access the entertainment event, this would have resulted in losing patron time at the facility, loss of other revenue (*i.e.* dinner) and/or the guests failing to return.

Nevele proposed offering 14 food outlets including restaurants, snack bars and food courts totaling 41,100 square feet with seating capacity of 1,212 patrons. Nevele also proposed offering five bars/lounges and a nightclub.

As for other amenities, Nevele proposed retail outlets, which included a sundries shop, golf pro shop and spa shop.

For additional recreation, Nevele offered:

- 18-hole golf course with practice range (114-year-old course to be refurbished);
- 15,000-square foot covered ice skating rink with chalet (refurbished);
- Ski slopes (new ski lift);
- Nature trail (known as the “Rail Trail”);
- Eight tennis courts (refurbished);
- Equestrian Center (renovated); and
- Two outdoor basketball courts (refurbished).

Board experts noted that the restaurant facilities would have provided approximately 1,200 seats that, at standard industry benchmarks, would have allowed 117 percent of the

forecasted average case average-day visitors to have one meal (*i.e.*, 1.2 meals per person). This would have been a high fulfillment rate for a day-trip casino, but would have been appropriate to a Catskills destination resort where there are no dining options in walking distance.

Nevele stressed that the Homestead Group was expected to operate its steakhouse (branded Old Homestead) and a gourmet burger bar heralding Homestead's legacy at Nevele and leveraging Nevele's reputation. The Steakhouse would have had large windows offering a scenic view of the lake and golf course, a distinction from inward facing restaurants at most other casinos.

Board experts suggested that Nevele would have offered limited retail on-site. As with entertainment, by not having retail on-site, Nevele's retail patrons would have had to have gone offsite, with all of the attendant negatives.

Nevele claims it was unique in that it would have featured a wide variety of non-gaming activities not seen in any casino resort in the United States, from a high-quality, professionally designed golf course integrated with a new clubhouse, to tennis courts, an ice arena, a ski slope, the rail trail, spa, horseback riding, multiple bars, a nightclub and 14 food choices. Board experts suggested that the breadth of these activities would have made this a true destination resort. These amenities, complemented by the casino, would have provided a range of activities.

Nevele provided a detailed description of internal controls that reflects current industry standards, with some caveats.

**Offering the highest and best value to patrons to create a secure and robust gaming market in the region and the state. (§ 1320(1)(e))**

As a new company, Nevele had no casino or gaming player reward program. Starwood Hotels & Resorts Worldwide had provided a letter of interest regarding operating the hotel portion of the project. The letter of interest stated that the Starwood Preferred Guest ("SPG") database would have been available to Nevele for marketing, promotion and advertising purposes.

While the SPG database was not exclusive to Nevele, Nevele stated that the database of gamers resulting from the marketing efforts to the SPG database would have been exclusive to it.

Nevele had developed its own database of people who had expressed interest in the project from a variety of sources. However, Board experts noted that this database was not a player database and may not reflect gaming customers at this stage. As Nevele was a new company and did not have a player reward program, it did not have an existing database of active gaming customers.



The gaming facility was not part of a formal regional or local economic plan, but the Mid-Hudson Regional Economic Development Council (the “Council”) had been supportive of casino gaming in the region since 2012. In 2012 the Council prepared a five-year strategic plan that “encouraged the creation of a destination hotel... [w]here appropriate, the viability of casino gambling should be considered.” In the Council’s 2012 and 2013 Progress Reports, which Nevele attached for review, the Council singled out Nevele, as well as the EPT/Concord project, as projects that were of interest to the Council.

Nevele had also associated itself with Hudson Valley Pattern for Progress, the Hudson Valley Economic Development Corporation and other regional resources.

**Providing a market analysis detailing the benefits of the site location of the gaming facility and the estimated recapture rate of gaming-related spending by residents travelling to an out-of-state gaming facility. (§ 1320(1)(f))**

Nevele’s site had been the location of a destination resort for more than 100 years, which is now closed. A re-opening would have sent a strong signal of the revitalization and return of the Catskills as a year-round destination and have provided a strong economic boost to the region.

Nevele stated that the existing transportation network provided excellent connectivity to travel to the facility as existing U.S. Route 209 splits a portion of the project site along its western edge. A principal design objective of the design team was to minimize environmental impacts and maintain the existing development footprint of the site.

Nevele would have positioned its facility as a four-season getaway for outdoor activities and families, while also emphasizing the nostalgic appeal of the revitalized Catskills with a plethora of area attractions and the added bonus of casino gaming.

Nevele estimates it would recapture approximately \$52 million (in 2019) of the New York resident gaming revenue that was currently leaving the State for the expected (average-case) scenario.

**Offering the fastest time to completion of the full gaming facility. (§ 1320(1)(g))**

Nevele stated that it would have opened the facility within 24 months of received a license.

The site for the gaming facility was a 524-acre partially developed site that included an existing golf course and resort. The site contained approximately three acres of federally regulated wetlands and a State-protected stream. Because detailed site plans were not provided, impacts to wetlands and streams were unknown. If wetlands/streams were impacted, a Section 401 Water Quality Certification and Protection of Waters permit and

possible mitigation measures would be required. A State Pollutant Discharge Elimination System permit would be required for on-site wastewater discharges and a Water Withdrawal permit could have been needed depending on the volume of water required to serve the project.

The site was located within an archeologically sensitive area and therefore would have required an archeological survey and consultation with the State Historic Preservation Office for those areas not previously disturbed. The site was located within eight miles of a known bat hibernaculum (wintering area). The project may have required time-of-year restrictions for tree removal and/or a survey for protected species of bats. Additionally, surveys for Bog Turtles may be required if the project impacts sedge wetlands. If the project resulted in impacts to protected species or habitat, an Incidental Take Permit could have been required. Significant forested communities were identified on the site including Hemlock-Northern Hardwood Forest and Chestnut Oak Forest.

The schedule for completing SEQRA review may have been overly ambitious.

#### **Demonstrating the ability to fully finance the gaming facility. (§ 1320(1)(h))**

Nevele stated it intended to fund the casino project using cash common equity financing and third-party debt financing. Both debt and equity would have been raised in the marketplace pursuant to highly confident letters from two financial institutions.

#### **Demonstrating experience in the development and operation of a quality gaming facility. (§ 1320(1)(i))**

Nevele stated that it hoped to enter into a management arrangement with Starwood Hotels & Resorts Worldwide, Inc. to operate the hotel portion of the facility under the Westin brand, which was Starwood's largest upscale hotel and resort brand. With 1,800 hotels in more than 100 countries, including a number of four- or five-star properties across numerous global brands such as W and Sheraton, Nevele believed that Starwood brought a track record with industry-leading hotel management.

Nevele also stated that its parent's Chief Executive Officer, Michael Treanor, participated in the ownership and management of several smaller Las Vegas casino properties, including Plaza Casino and Hotel, the Las Vegas Club, the Western and the Gold Spike.

Nevele stated that its Chief Operating Officer, Kathi Meci, had more than 37 years of experience in operating, planning and developing some of the largest and most notable gaming properties in the world, such as Wynn Las Vegas, Wynn Macau and Parx Casino in Philadelphia.

### **LOCAL IMPACT AND SITING FACTORS**

**Mitigating potential impacts on host and nearby municipalities which might result from the development or operation of the gaming facility. (§ 1320(2)(a))**

Nevele estimated that with respect to police services, additional services would have required the sheriff's office to add four more full-time police officers and four more police vehicles. The incremental annual expense that was projected from additional staffing, vehicle purchase (amortized over their useful life) and general administrative expenses was approximately \$623,000, or an overall increase of approximately six percent.

Nevele also estimated that the Ellenville First Aid and Rescue Squad and the Ellenville Fire District would have been economically impacted by the project development. The aggregate expenses for local fire protection and EMS services were projected to increase by around \$147,000 annually. Nevele projected that non-fire-related EMS services would have increased by 14.8 percent at an additional annual cost of \$41,000. The Ellenville Fire District currently had equipment capable of serving the proposed development but would have experienced a 15 percent increase in call volume once the project was operational, mostly for traffic-related incidents. This increase would have generated incremental annual costs of approximately \$105,000.

Nevele proposed to use the existing eight-inch water service connecting the project site to the Village of Ellenville water system. Because this service accommodated the larger demand of the previous Nevele Grande Hotel, Nevele concluded that this service would have supported the projected demand of Nevele's facility.

Nevele also stated that hydrodynamic modeling was required to determine whether additional upgrades in the Village's sewer system were necessary to transmit the projected flow. Electric power to the site was currently provided by Central Hudson Gas & Electric, which had provided a letter indicating capacity to serve Nevele's facility.

Nevele had reached an agreement in principle to dedicate more than five additional miles of rail trail located through and along the Nevele property to connect the Village of Ellenville to Spring Glen. This was being offered as a public benefit and was not part of project mitigation. It would help to maintain the continuity of Ulster County's non-motorized transportation system network.

Nevele reported that only one threatened species, the timber rattlesnake, had been observed in the immediate vicinity of the project site. Similarly, the only identified potentially impacted protected habitat was hibernaculum for timber rattlesnakes. Nevele concluded, and provided a report, that it was unlikely that timber rattlesnakes would have used the project site area as the site had been disturbed and used for more than 100 years and was relatively isolated from known timber rattlesnake denning areas.

Nevele also stated that project impact, if any, to habitats comprising the project site would be minimal. To avoid any potential direct taking of two potentially impacted bat

species, Nevele proposed to limit tree cutting in their potential habitat to inactive periods. Nevele also stated that there was no impact of the project on wetlands.

To mitigate the impacts of the project during construction and operation, Nevele had entered into a community mitigation plan agreement for the collective benefit of the Town of Wawarsing, the Village of Ellenville and Ulster County. The agreement required Nevele to provide reasonably adequate security on-site and to prepare a comprehensive security plan to address the security concerns of the surrounding municipalities.

Nevele had also committed in the mitigation agreement to contribute up to \$200,000 of funding annually for the Town and Village to cover increased judicial services and to establish a local DARE drug prevention and treatment program. In addition, Nevele had agreed to contract with private parties for emergency medical services and personnel at the project site and to fund 50 percent of the cost of a replacement ladder truck for the Ellenville Fire District. These mitigation payments would be re-evaluated at set intervals based upon future impact studies to reflect the actual impacts resulting from the development and operation of the resort-casino complex.

Nevele projected that the new employment at the casino project would result in 86 new households in Ulster County and a total of 218 households in the seven-county Catskill/Hudson Valley Region.

Nevele projected that new students generated by the proposed casino would cost the school districts across the region approximately \$2.25 million. There were 66 school districts in the Catskill/Hudson Valley Region and student enrollment peaked in the 2003-04 school year and declined sharply following that peak. In particular, from 2004-2013, student enrollment declined by nearly 21,000 (11 percent). Therefore, Nevele concluded that regional schools have more than enough capacity within existing buildings to accommodate the expected increase in students.

State agency experts noted that Nevele provided a sophisticated analysis of project needs and a responsible mitigation plan and program to meet those needs.

**Gaining public support in the host and nearby municipalities, which may be demonstrated through the passage of local laws or public comment received by the board or gaming Applicant. (§ 1320(2)(b))**

Nevele's host community was the Town of Wawarsing. Nevele provided a resolution in support of its project adopted by the Town Board of the Town of Wawarsing on May 1, 2014. Additionally, Nevele provided resolutions in support of its project adopted by the Ulster County Legislature, the Town Boards of the Towns of Hurley and Shawangunk and the Village Board of the Village of Ellenville. Nevele also provided letters of support for its project from various public officials of the Counties of Dutchess and Ulster, the Town of Marbletown and the Villages of Ellenville and Walden, as well as various chambers of

commerce and business associations, community tourism agencies, educational institutions, unions and trade councils and non-profit and charitable organizations.

Nevele was the subject of more than 1,700 comments, with all but one indicating support. Additionally, the Board received more than 200 general comments regarding the siting of casinos in Sullivan County and the Catskills, with six percent indicating opposition and 94 percent indicating support.

Nevele was the subject of one dozen supportive comments at the public comment event.

**Operating in partnership with and promoting local hotels, restaurants and retail facilities so that patrons experience the full diversified regional tourism industry. (§ 1320(2)(c))**

Nevele stated that it was committed to working with local tourism offices to promote and cross-market the world-class tourism sites in the Hudson Valley region. To that end, Nevele sent a letter to the directors of the Ulster, Dutchess and Orange County Tourism Departments where Nevele made a number of commitments.

Specifically, during construction/pre-opening phase of the development, Nevele stated that it would have facilitated meetings between construction union representatives, local tourism representatives and lodging representatives to discuss overnight accommodations for workers; facilitate meetings with construction union representatives and local restaurants to provide mealtime options for workers; and provide construction union representatives a wide variety of tourism options to share with workers.

Once the resort was open, Nevele would have created an information center featuring tourism options available to guests, host monthly meetings where local business owners could meet guest services staff and describe their business and its key attractions so casino resort staff could promote these businesses, provide in-room directories that promote local businesses and tourist attractions, develop a coupon/reward system for employees and staff that wish to frequent local businesses and assist the tourism organizations in opening a satellite office.

Nevele stated that it approached the Hudson Valley Economic Development Corporation (“HVEDC”) and proposed a coordinated “buy local” program. Nevele proposed that the HVEDC coordinate an online purchasing system to give regional businesses visibility on Nevele’s forward purchasing needs, which would have helped maximize local sourcing of goods and services for Nevele. Nevele stated that the HVEDC agreed in principle to such agreement.

Nevele stated that it had reached out to five local lodging establishments in order to encourage construction workers to stay at their establishments. Similarly, Nevele sent letters to six local eateries in order to feed the thousands of construction workers who

would be on premises during the build-out phase of the development. Finally, Nevele had engaged a local dry cleaner to launder staff uniforms.

**Establishing a fair and reasonable partnership with live entertainment venues that may be impacted by a gaming facility under which the gaming facility actively supports the mission and the operation of the impacted entertainment venues. (§ 1320(2)(d))**

Nevele stated that it had deliberately decided not to provide feature entertainment that could potentially compete with the offerings of regional live entertainment venues. Nevele instead opted to develop strategic relationships with these operators to allow casino guests the opportunity to engage in diverse entertainment experiences, while still supporting the overall established tourism sites in the region.

Nevele had entered into memorandums of understanding with Shadowland Artists, Inc. and with The Upstate Theater Coalition for a Fair Game (“Fair Game”). As part of the Fair Game agreement, Nevele had agreed that it would abandon any future plans for a fixed-seat, live entertainment venue if such plans were deemed to impact any Fair Game venues. Nevele stated that it also would have promoted events at the Fair Game venues and use its gaming loyalty program to purchase and distribute tickets to these venues.

**WORKFORCE ENHANCEMENT FACTORS**

**Implementing a workforce development plan that utilizes the existing labor force, including the estimated number of construction jobs a proposed gaming facility will generate, the development of workforce training programs that serve the unemployed and methods for accessing employment at the gaming facility. (§ 1320(3)(a))**

Nevele submitted a general strategy to provide on-the-job opportunities and training for local workers. Nevele intended to draw its workforce from the pool of unemployed and potential workers in the local area and to provide whatever training was necessary to ensure their success.

Nevele stated its management team had 15 years of experience in other jurisdictions hiring a workforce from economically distressed areas. It asserted that its team had been highly successful in recruiting, hiring and training for casino jobs where there had been no pool of industry talent from which to draw.

Nevele stated that its approach would have been to market available jobs to all persons without regard to current employment status; ensure that Nevele’s recruiters and interviewers were focused on the quality and qualifications of Applicants; partner with job placement assistance, work-based training and employer engagement programs; focus on reemploying the long-term unemployed, and assessing skills and providing training and mentoring.

**Taking additional measures to address problem gambling including, but not limited to, training of gaming employees to identify patrons exhibiting problems with gambling. (§ 1320(3)(a))**

Nevele's Responsible Gaming Resource Center ("RGRC") would have provided its guests with on-site information on safer gambling practices as well as assistance and local referrals for help with gambling-related problems. The RGRC would have been located off of the gaming floor but within close proximity, and located in a high-traffic area where all guests would be aware of its presence and have a visual line to the resources available.

Through the RGRC, guests could get connected to the State's network of problem gambling treatment agencies and other community help. The RGRC staff would know the programs in the community and how to access them. Guests would be welcome to drop by the center and pick-up valuable information. Information, assistance and referrals would be available at the RGRC through informational brochures and other interactive tools. The RGRC staff also would have been onsite to answer questions or discuss an issue related to gambling problems during peak gambling hours, seven days per week. If staff was not onsite, and guests required information about problem gambling, guests would have been able to contact the NYS Problem Gambling HOPEline.

All of Nevele's employees would have been required to complete training on responsible gambling and problem gambling. Training would have been provided upon initial hiring and refresher training would be required at least annually. All employees, whether casino floor staff, security or executive level staff members, would have played an important role in any responsible gambling program. Staff delivering problem gambling programming would be required to complete the New York Council on Problem Gambling 30-hour Problem Gambling Prevention Specialist training.

Nevele stated that it would have offered a self-exclusion program that allows patrons to ban themselves from its property and marketing programs, and which would focus on offering self-excluded patrons help and support. To promote awareness of the self-exclusion policy, Nevele would have ensured that the self-exclusion program was well advertised on-site and explained through informational cards or other take-away materials.

Nevele stated that, in partnership with Family Services New York State and Family of Woodstock, it would have worked to develop adequate prevention, outreach and education to vulnerable populations in the area. Nevele included the memorandum of understanding entered into with the Institutes for Family Health, and Family of Woodstock and Family Services, Inc.

Nevele stated that while it did not own or control any other gaming facilities, Nevele management had a track record and history of leadership in the area of problem gambling. Nevele stated that since the release of the results of the National Gambling Impact Study Commission in 1999, Nevele's management had been involved in the implementation of problem gambling programs in casinos around the United States and internationally.

Nevele stated that it was collaborating with local and regional partners to institute a problem gambling program that could serve as a model for all gaming facilities in the State. Nevele was defining the training of its employees, the on-site resources that would be available and the internal business processes needed to effectuate such a model program.

**Utilizing sustainable development principles including, but not limited to:**

- (1) having new and renovation construction certified under the appropriate certification category in the Leadership in Energy and Environmental Design Green Building Rating System created by the United States Green Building Council;**
- (2) efforts to mitigate vehicle trips;**
- (3) efforts to conserve water and manage storm water;**
- (4) demonstrating that electrical and HVAC equipment and appliances would be Energy Star labeled where available;**
- (5) procuring or generating on-site 10 percent of its annual electricity consumption from renewable sources; and**
- (6) developing an ongoing plan to submeter and monitor all major sources of energy consumption and undertake regular efforts to maintain and improve energy efficiency of buildings in their systems. (§ 1320(3)(c))**

Nevele's proposed project was located on an approximately 524-acre site that had been occupied by the Nevele Grande until 2009. Access to the project site is provided via Nevele Road, which intersects Route 209 in two locations with unsignalized intersections. One intersection is adjacent to the site on the south and the other is located to the north, just outside the Village of Ellenville. The estimated cost of traffic-related improvement was \$2.1 million and would have been constructed by Nevele as part of the development of the project. Nevele estimated these improvements would have been completed by July 2016.

In addition, Nevele stated that it would have mitigated traffic impacts within the Village of Ellenville, including providing signal timing optimization, coordinating signal timing and restriping one roadway and would have mitigated traffic volume in Sullivan County near the access points to Route 17 by constructing northbound and southbound left-turn lanes and restriping a roadway.

Nevele stated that it intended for its casino project to achieve LEED gold certification.



Nevele committed that all appliances and applicable devices be Energy Star-rated. Nevele stated that it also would have applied for its design to earn Energy Star recognition.

State agency review suggested that Nevele's storm water mitigation plan appeared to have been comprehensive, but was compromised in part by reliance on existing grey infrastructure system on site. Review suggested that Nevele focused most water conservation efforts to its golf course and could have benefitted from a plan for efficiency beyond infrastructure, such as linen reuse programs and continued assessment of water usage.

Nevele stated that it would have used low-flow fixtures throughout its facility. Nevele planned to install a solar farm on 11 acres of land, sited near one of the casino parking lots. Nevele believed this was the most direct and effective method to meet the project goals. Nevele intended to implement a facility-wide automation system that would have included energy consumption monitoring.

**Establishing, funding and maintaining human resource hiring and training practices that promote the development of a skilled and diverse workforce and access to promotion opportunities through a workforce training program that:**

- (1) establishes transparent career paths with measurable criteria within the gaming facility that lead to increased responsibility and higher pay grades that are designed to allow employees to pursue career advancement and promotion;**
- (2) provides employee access to additional resources, such as tuition reimbursement or stipend policies, to enable employees to acquire the education or job training needed to advance career paths based on increased responsibility and pay grades; and**
- (3) establishes an on-site child day care program. (§ 1320(3)(d))**

Nevele was in collaboration with local education, training and workforce partners to identify ways to maximize employment and training of local workers. Nevele anticipated providing more than 40 external training programs to prepare entry-level job seekers. In addition, Nevele would have encouraged educational development by offering a tuition reimbursement policy. The reimbursement policy would have provided for up to \$2,500 of reimbursable expenses per annum for approved accredited programs.

Nevele intended to support and assist its employees in a variety of ways. Nevele would have offered employees access to an onsite child daycare program, operated by Bright Horizons Family Solutions, LLC, a child care center contractor. The program would have offered discounted fees, payroll deduction, early care and education and more. Nevele intended to further support and assist employees through the employee assistance policy, which would provide access to professional counseling services for help with substance abuse, problem gambling, family difficulties and more.

**Purchasing, whenever possible, domestically manufactured slot machines. (§ 1320(3)(e))**

Nevele proposed to source domestically manufactured slot machines.

**Implementing a workforce development plan that:**

- (1) incorporates an affirmative action program of equal opportunity by which the Applicant guarantees to provide equal employment opportunities to all employees qualified for licensure in all employment categories, including persons with disabilities;**
- (2) utilizes the existing labor force in the state;**
- (3) estimates the number of construction jobs a gaming facility will generate and provides for equal employment opportunities and which includes specific goals for the utilization of minorities, women and veterans on those construction jobs;**
- (4) identifies workforce training programs offered by the gaming facility; and**
- (5) identifies the methods for accessing employment at the gaming facility. (§ 1320(3)(f))**

Nevele stated that it fully supported the Board's goals for ensuring that the economic benefits of its project are spread as broadly throughout the region as possible to reflect the diversity of the area. It stated that it was also committed to maintaining a workforce that reflected the diversity of the surrounding community.

In support of those statements, Nevele provided a copy of its construction prime contractor's affirmative action plan, which included a summary of that contractor's use of MWBE businesses as subcontractors on 15 separate State construction projects in the recent past. On each of those projects, the contractor either met or exceeded the MWBE participation goals established by the contracting party.

Nevele also provided a copy of its own comprehensive, 20-page affirmative action/equal employment opportunity policy. The policy stated that it was Nevele's intention to establish recruiting goals for minorities and women for each operational job category. Recruiting sources would include Hispanic, African-American, women and Native American organizations, as well as organizations that serve the disabled, veterans and seniors.

**Demonstrating that the Applicant has an agreement with organized labor, including hospitality services, and has the support of organized labor for its application, which specifies:**

- (1) the number of employees to be employed at the gaming facility, including detailed information on the pay rate and benefits for employees and contractors in the gaming facility and all infrastructure improvements related to the project; and**

**(2) detailed plans for assuring labor harmony during all phases of the construction, reconstruction, renovation, development and operation of the gaming facility. (§ 1320(3)(g))**

Nevele submitted a signed Project Labor Agreement with the Hudson Valley Building and Construction Trades Council. Nevele also submitted Labor Peace Agreement with the New York Hotel & Motel Trades Council, AFL-CIO. Nevele stated that it was committed to partnering with the State's organized labor organizations and was one of the first Applicants to enter into an agreement with the Hotel and Motel Trades Council. Nevele stated that its Application was printed in a nearby union shop. Nevele stated that it expected to continue to take this cooperative approach to labor harmony.



**Resorts World Orange County, LLC, an affiliate of Genting Americas, Inc., proposed to develop Resorts World Hudson Valley (“RW Hudson Valley”) in the Village and Town of Montgomery in Orange County. According to RW Hudson Valley, the casino would have included 194,350 square feet with 3,500 slot machines, 290 tables and 40 poker tables. The facility would have featured a hotel with 600 rooms, 19 restaurants, 10 bars, multiple retail amenities, a nightclub with indoor pool, a 20,000 square foot spa and 100,000 square feet of conference space.**

### **ECONOMIC ACTIVITY AND BUSINESS DEVELOPMENT**

#### **Realizing maximum capital investment exclusive of land acquisition and infrastructure improvements. (§ 1320(1)(a))**

RW Hudson Valley’s capital investment was \$776.5 million, accounting for excluded capital investment, and \$1.0 billion total capital investment. This proposed investment far exceeded the \$350 million requirement required by Board regulation.

#### **Maximizing revenues received by the state and localities. (§ 1320(1)(b))**

RW Hudson Valley proposed to pay a supplemental license fee of \$50 million. There was no proposed increased gaming tax payment.

RW Hudson Valley projected the following direct and indirect tax revenues to New York state and host communities:

- Direct New York state tax revenues (including gaming privilege taxes, device fees, corporate profits tax, sales and use taxes and personal income taxes) of approximately \$180.8 million in year one and \$201.5 million in year five, in the low-case scenario; \$213.6 million in year one and \$237.7 million in year five, in the average-case scenario; and \$247.4 million in year one and \$274.9 million in year five, in the high-case scenario.
- Indirect New York state tax revenues (including corporate profits tax, sales and use taxes and personal income taxes) from induced incremental economic activity of approximately \$9.4 million in year one and \$5.7 million in year five, in the low-case scenario; \$10.9 million in year one and \$6.4 million in year five, in the average-case scenario; and \$15.0 million in year one and \$8.9 million in year five, in the high-case scenario.

- Direct host community tax revenues of \$37.5 million in year one and \$40.9 million in year five, in the low-case scenario; \$25.2 million in year one and \$41.2 million in year five, in the average-case scenario; and \$25.5 million in year one and \$41.6 million in year five, in the high-case scenario.
- Indirect host community tax revenues from induced incremental economic activity of approximately \$3.3 million in year one and \$1.8 million in year five, in the low-case scenario; \$4.0 million in year one and \$2.1 million in year five, in the average-case scenario; and \$5.5 million in year one and \$3.0 million in year five, in the high-case scenario.

Board experts noted that these projections might not have been achieved and depended upon RW Hudson Valley meeting or exceeding its financial projections.

**Providing the highest number of quality jobs in the gaming facility. (§ 1320(1)(c))**

RW Hudson Valley expected to employ 2,662 full-time employees and 765 part-time employees.

RW Hudson Valley stated that it was committed to using New York-based suppliers and contractors in the construction of the project. RW Hudson Valley stated that it would have made a good faith effort to spend 70 percent of \$600 million on New York-based businesses and labor.

State agencies consulted noted that RW Hudson Valley made no representation as to the use of NY-based subcontractors and suppliers for any of the remaining phases or categories identified in the RFA, which are furniture, fixtures, and equipment furnishing and operations.

RW Hudson Valley anticipated construction total worker hours of 3,350,000.

**Building a gaming facility of the highest caliber with a variety of quality amenities to be included as part of the gaming facility. (§ 1320(1)(d))**

RW Hudson Valley proposed to develop a casino hotel resort on a 373-acre site located near the intersections of Interstate 87 and 84 and Routes 747 and 17K. The project site is located adjacent to Stewart International Airport. RW Hudson Valley stated that guests could also access the site via the Metro North to the Campbell Hall Station, where they would have been met by shuttles for a 10-minute drive to the resort.

RW Hudson Valley stated that it sought to provide a world-class gaming experience as well as a full resort experience. RW Hudson Valley proposed a four-star, “RWHV”-branded resort consisting of the following components:

- 194,350-square-foot casino with designated high-limit areas;
- 600 hotel rooms offered in two hotels with a fitness center, salon and spa, various outdoor pools and an indoor pool;
- Multi-purpose convention, entertainment and meeting space with pre-function, back of house and kitchen areas;
- 12 restaurants, a food court and a pool grill; and
- Six bars/lounges including one nightclub.

Board experts suggested that the project would have been more of a local/regional casino-hotel than a casino resort.

RW Hudson Valley proposed a 194,350-square-foot casino located on a single level. The casino was expected to offer the following mix of games:

- Slots—3,500 slots (including 122 “mass” VIP slots and 158 high-limit slots);
- Table games—250 tables (including 28 “mass” VIP, 36 high-limit tables, 62 Asian-gaming tables, 34 VIP tables); and
- Poker tables—40 tables.

The casino was proposed to offer several designated gaming areas, including the following:

- “Mass” gaming area;
- “Mass” VIP gaming area;
- High-limit slots and tables gaming area;
- Asian gaming area; and
- VIP gaming area.

RW Hudson Valley believed it would have differentiated itself from other casinos primarily on the basis of offering an “integrated resort” that would have provided amenities beyond those of a traditional casino. RW Hudson Valley stated that amenities would have been tailored to address each market segment, in order to encourage repeat visits.

Board experts suggested that the proposed gaming capacity was capable of serving the physical demand on an average day using the average case visitor forecast.

RW Hudson Valley stated that the hotel tower would have featured two hotel brands of similar-sized hotel rooms, but focused on and marketed to separate guest segments. RW Hudson Valley stated that the hotels would have offered a total of 600 rooms comprising the following room types:

- Hotel 1 (385 rooms)

- 363 standard rooms
  - 22 two-bay suites
- Hotel 2 (215 rooms)
  - 165 standard rooms
  - 50 suites (consisting of 30 two-bay, 16 three-bay and four six-bay suites)

RW Hudson Valley stated that both hotels would have been “RWHV”-branded and would be of four-star quality. RW Hudson Valley stated that the hotel resort also would have offered:

- 20,200-square-foot multi-level spa, salon and fitness center located on the second level of the hotel; and
- an indoor and outdoor pool to allow for year round swimming with the indoor pool converting to a nightclub when appropriate.

For hotels of comparable quality, RW Hudson Valley proposed the following:

- The Conrad;
- Doubletree; and
- Mandalay Bay Las Vegas.

RW Hudson Valley asserted that it would have differentiated its hotels from its competitors because it would have provided its guests with expanded amenities and consistently superlative service. Achieving this goal would have been accomplished through superior design and construction, best-in-class service as well as an aggressive marketing plan that would introduce the resort. RW Hudson Valley stated that in order to achieve design and construction superiority, it had retained a top-tier design team. RW Hudson Valley stated that it would have implemented a robust training program in order to provide exceptional service to its guests.

Board experts noted that the property would have offered 600 four-star rooms by a hotel-within-a-hotel concept that would have heightened the VIP experience without weakening the four-star hotel experience of non-VIP guests. The four-star quality would have been higher than other hotels in the Region.

Board experts suggested that due to the high forecasted hotel utilization rate and the inevitable increased competition, it would have seemed reasonable to provide for the possibility of additional hotel rooms. No such expansion plans, however are discussed in the master plan.

RW Hudson Valley proposed 57,600 square feet of multi-purpose meeting and entertainment space, which could have been configured into multiple rooms or a single large area. Capacity of this space would have been 2,000 in a banquet-style

configuration, 4,300 in a boxing configuration, 2,790 in a fashion show configuration and 1,425 in a permanent stage configuration. Pre-function space as well as back of house, storage, kitchen and pantry space would have been located adjacent to the multi-purpose space. Also available would have been two meeting rooms located near the hotel lobby totaling 5,550 square feet with a 2,950-square-foot pre-function area and an outdoor terrace.

RW Hudson Valley stated that a 1,900-square-foot business center would have been located near the multi-purpose space providing access to computers, fax machines, copiers, scanners and printers.

Board experts suggested that there would have been an insufficient number of rooms to reserve for hosting of meetings and conventions. Therefore, the meeting and convention space could have been used only for shorter lead time, smaller, more ad hoc meetings/conventions that do not require reservation of a significant number of hotel rooms far in advance.

RW Hudson Valley stated that it would have provided various entertainment venues throughout the resort. Proposed primary entertainment venues would have included:

- 57,600-square-foot multi-purpose meeting and event space (also described above under “Meeting and Convention Facilities”). This space would have offered various concerts and dance parties.
- 31,400-square-foot indoor pool night club. This facility would have been used as a pool during the day and an H2O nightclub in the evening featuring DJs and live performances. The capacity is 785 people.
- 20,000-square-foot outdoor pool. During summer months a DJ would have performed at the pool.

RW Hudson Valley stated that in addition, the facility would have featured live music and acts at its casino center bar, its conservatory-style “garden” bar, its sports bar and its pub.

RW Hudson Valley stated that its strategy was to provide its customers with a variety of entertainment and amenity choices that appeal to day trip or extended-stay visitors. It stated that it intended to offer events and entertainment to build repeat visitation from gaming guests and to build a sustainable retail business.

RW Hudson Valley stated that it would have offered 12 restaurants, a poolside grill and a food court, which combined would be capable of serving nearly 3,600 guests (and up to 4,300 guests if the indoor pool nightclub is taken into account) at one time.

RW Hudson Valley also proposed offering six bars/lounges, including a nightclub.



RW Hudson Valley stated that, additionally, a VIP player's lounge (2,000 square feet/40 seats), High Limit bar (7,000 square feet/33 seats) and Asian gaming lounge (650 square feet/16 seats) would have been provided.

RW Hudson Valley proposed 17,000 square feet of retail space (but provided no further description of the retail offerings), a salon and spa, a fitness center, multiple outdoor pools, an indoor pool that could have been converted to a nightclub and other amenities.

RW Hudson Valley stated that it also would have offered various restaurants at various price points targeted to each of its customer segments. RW Hudson Valley stated that the signature restaurant lounge (located on the top level of the hotel) and enclosed pool nightclub were intended to set RW Hudson Valley apart from its competition.

Board experts noted that RW Hudson Valley would have provided no family activities, which is more typical of a local or regional casino-hotel.

Board experts suggested that RW Hudson Valley would not have provided a true "resort" in a recreational sense.

RW Hudson Valley provided a detailed description of internal controls that reflects current industry standards.

**Offering the highest and best value to patrons to create a secure and robust gaming market in the region and the state. (§ 1320(1)(e))**

RW Hudson Valley planned to use Genting's rewards and players club programs. Resorts World New York City has a substantial database of members. Beyond this database, RW Hudson Valley asserted that Genting has a loyal pool of customers worldwide that the company has developed over its 50 years of business in Asia.

Board experts suggested that the proposed program was state-of-the-art and impressive.

**Providing a market analysis detailing the benefits of the site location of the gaming facility and the estimated recapture rate of gaming-related spending by residents travelling to an out-of-state gaming facility. (§ 1320(1)(f))**

RW Hudson Valley stated that the project would have been extremely competitive in the "convenience" casino market due to its ease of access and location in the Town of Montgomery.

RW Hudson Valley estimated the recapture rate of gaming revenues from New York residents traveling to out-of-state gaming facilities as follows for 2019: \$106.3 million in the high-case scenario, \$92.4 million in the average-case scenario and \$78.6 million in the low-case scenario.

**Offering the fastest time to completion of the full gaming facility. (§ 1320(1)(g))**

RW Hudson Valley stated that it would have opened the facility within 24 months of license award.

RW Hudson Valley described an approximately 373-acre site comprising five parcels. The site is located within an archeologically sensitive area and therefore likely would have required an archeological survey and consultation with the State Historic Preservation Office for those areas not previously disturbed. The site may contain a bat habitat.

RW Hudson Valley discussed the creation and addition of a new gaming overlay district to the town zoning regulations to be consistent with the Town of Montgomery Comprehensive Plan Amendment of 2010 and the Montgomery Community Economic Development Plan. It was unclear whether a gaming overlay district would have been consistent with those Town plans. The projected dates to obtain permits and complete SEQRA might have been overly ambitious.

**Demonstrating the ability to fully finance the gaming facility. (§ 1320(1)(h))**

RW Hudson Valley stated that Genting Malaysia Berhad (GENM) was extremely confident in its ability to successfully fund the project based on its financial strength, significant portfolio of assets and established track record of meeting its financial development obligations. RW Hudson Valley stated that GENM would have had significant financial flexibility to fund the project through free cash flow and/or fund the development of the project as a stand-alone entity through an equity contribution and project financing and notes that Resorts World Casino New York City was funded in this manner. RW Hudson Valley stated that GENM did not have any material financial commitments, obligations or guarantees that would impact materially its financial wherewithal.

**Demonstrating experience in the development and operation of a quality gaming facility. (§ 1320(1)(i))**

Founded in 1965, the Genting Group comprises five publicly traded companies with a combined market capitalization of \$40 billion. RW Hudson Valley stated that Genting has developed and operated large destination resorts, casinos, hotels and event facilities around the world, which include Resorts World Casino New York City (Queens, New York, opened in October 2011), Resorts World Sentosa (Sentosa Island, Singapore, opened in January 2010), Resorts World Manila (Manila, Philippines, opened in August 2010) and Resorts World Genting (near Kuala Lumpur, Malaysia, opened in 1971).

**LOCAL IMPACT AND SITING FACTORS**

**Mitigating potential impacts on host and nearby municipalities which might result from the development or operation of the gaming facility. (§ 1320(2)(a))**

In addition to other measures RW Hudson Valley proposed taking to mitigate infrastructure and utility impacts, RW Hudson Valley stated that it was negotiating a host community agreement with the Town of Montgomery. Pursuant to this agreement, RW Hudson Valley anticipated that it would pay for the reasonable upfront costs of additional emergency services equipment for the Town, including new police vehicles, new fire trucks and additional full-time employees necessitated by the project, up to an agreed-upon maximum.

Board experts noted that the Application included two Letters of Understanding between RW Orange County LLC and the Villages of Maybrook and Walden. These letters referred to an obligation of RW Hudson Valley to pay an annual revitalization payment of \$1 million to each village. Also included were Memorandums of Understanding between RW Hudson Valley and the Community Foundation of Orange County, Inc. (and Sullivan County), as well as with the Main Street Village Network Initiative, which obligated RW Hudson Valley to provide funding to both of these groups to further their programs for the benefit of the region.

RW Hudson Valley's parcel has no current water service or sanitary sewer service. RW Hudson Valley proposed to construct a well field on-site to supply water to its facility but presented no assessment of the feasibility of groundwater sources at the site to supply the necessary volume.

The property currently does not have electric service, but it is in the service area of Central Hudson Gas and Electric. RW Hudson Valley would have borne the cost of upgrading an existing substation and installing new transmission lines to service its facility.

RW Hudson Valley stated that potential impacts to protected habitats and species would have been more fully answered once the site-specific surveys, to help determine their presence or absence on the project site, were completed for the two rare species identified.

RW Hudson Valley assumed that the majority of new jobs generated by the proposed project would have been filled by people already living within a 30-minute drive of the proposed project site, but also noted that some new employees likely would have moved to the area and the resulting increase in demand for housing had the potential to affect market conditions within the study area. Based on the number of housing units in the study area that are available for rent or sale, RW Hudson Valley anticipated that the existing housing stock would be able to accommodate the increase in demand.

RW Hudson Valley assumed that the increase in student enrollment was not anticipated to result in adverse impacts to schools across the study area. RW Hudson Valley did not include a mitigation plan.

**Gaining public support in the host and nearby municipalities, which may be demonstrated through the passage of local laws or public comment received by the board or gaming Applicant. (§ 1320(2)(b))**

RW Hudson Valley included a resolution of support adopted by the Town Board of the Town of Montgomery. Additional resolutions supporting the Application included the Boards of Trustees of the Towns of Maybrook, Montgomery and Walden. RW Hudson Valley states that there are more than 2,000 letters of support (mostly form letters), including 1,200 from area residents, 400 from local business along with approximately 50 letters of intent from local vendors committing to provide products and services to the resort. Also included were letters of support from Dutchess County Economic Development Corporation; the Dutchess County Executive; the president of Hudson Valley Building and Construction Trades Council and the president of Laborer's International Union of N. A. Local 17.

The RW Hudson Valley project was the subject of more than 450 comments of which 99 percent indicated opposition and one percent indicated support. Additionally, the Board received more than 40 general comments regarding the siting of casinos in Orange County, with 89 percent indicating opposition and 11 percent indicating support. At the public comment event, RW Hudson Valley was the subject of five specific comments, all indicating support. Additionally, the Board heard seven general, non-specific comments overwhelmingly opposing the siting of casinos in Orange County.

**Operating in partnership with and promoting local hotels, restaurants and retail facilities so that patrons experience the full diversified regional tourism industry. (§ 1320(2)(c))**

RW Hudson Valley stated that creating a cross-promotion through advertising efforts on the property and through customer direct communication would have included many avenues and opportunities for local merchants and venues. Examples of these efforts would have included a video loop featured in the hotel and throughout the resort that would have a segment focused on local businesses, attractions and events; special displays on the property that would have featured local area offerings; links on the RW Hudson Valley website to local service providers and businesses; discount programs for RW Hudson Valley customers using local businesses would have been initiated; preferred vendor listings would have been placed in hotel room guest books; and support of local venues through direct purchases.

RW Hudson Valley provided a number of executed cross-marketing letters of intent with a diverse group of businesses. The agreements contemplated the use of loyalty reward points by casino patrons at the local businesses.

**Establishing a fair and reasonable partnership with live entertainment venues that may be impacted by a gaming facility under which the gaming facility actively supports the mission and the operation of the impacted entertainment venues. (§ 1320(2)(d))**

RW Hudson Valley stated that it would have used a video loop in the hotel rooms, advertisements at the property's events, cross-promotion of partner venues, use of the RW Hudson Valley website, co-sponsorship of events at venues and other methods to communicate with visitors in regard to events and venues. These efforts to help promote local venues would have been enhanced further by direct ticket sales through use of complimentary points, promotions and giveaways, RW Hudson Valley's sale of tickets to the venues within its onsite box office, extending property events to local venues and others.

RW Hudson Valley provided memorandums of understanding with numerous theaters and other venues. The agreements provided for cooperation in regard to cross-marketing, booking, presenting and co-presenting, discounts for casino patrons, use of loyalty rewards points at the venues and related matters. Four noteworthy agreements involved the Mid-Hudson Civic Center, Shadowland Artists, Inc., the County of Dutchess and The Upstate Theater Coalition for a Fair Game. These agreements were noteworthy because they would have involved substantial payments to the venues along with agreements to cooperate, cross-market, collaborate on booking and marketing, etc.

**WORKFORCE ENHANCEMENT FACTORS**

**Implementing a workforce development plan that utilizes the existing labor force, including the estimated number of construction jobs a proposed gaming facility will generate, the development of workforce training programs that serve the unemployed and methods for accessing employment at the gaming facility. (§ 1320(3)(a))**

RW Hudson Valley executed memorandums of understanding with several local partners, all of whom agreed to work together to create workforce development programs that would have created new career and job opportunities for the unemployed and underemployed, to foster advancement opportunities and on-the-job training. RW Hudson Valley stated that its project, through its workforce development programs, would have significant regional impact in terms of economic development and job creation. For each position created, RW Hudson Valley stated that it would have offered a multifaceted regimen of training prior to the casino opening, followed by on-the-job training with a view towards advancement. A key component of its workforce development program would have been selecting and hiring candidates who were

unemployed or underemployed. RW Hudson Valley would have partnered with the NYS Department of Labor centers and the Orange County Workforce Development System, among others, to ensure that high-quality jobs were made available to this segment of the population.

RW Hudson Valley offered the experience with its affiliate's Miami, Fla. facility. RW Hudson Valley stated that at that facility, which opened in mid-2013, its current employee force included 37 percent who were unemployed when hired. Since the opening, 16 percent of its affiliate's Miami employees have been promoted.

State agency review noted that other than working with the local career centers, RW Hudson Valley did not mention any other strategies for seeking out long-term unemployed workers. Other than a brief mention of veterans, no mention was made of seeking out demographics that traditionally have higher unemployment. Recruitment efforts may neglect to target the long-term unemployed. The Application did not mention job retention.

**Taking additional measures to address problem gambling including, but not limited to, training of gaming employees to identify patrons exhibiting problems with gambling. (§ 1320(3)(b))**

RW Hudson Valley stated that all relevant staff would complete approved responsible gambling training through the New York Council of Problem Gambling via RW Hudson Valley's human resources department. Onsite responsible gambling resources also would have included RW Hudson Valley's responsible gaming support center and RW Hudson Valley's responsible gaming ambassadors. The responsible gaming support center would have been strategically located away from the gaming floor and provide a unique array of services and resources for customers with potential gambling problems. Staffed with trained professionals, this center would have been the focal point of RW Hudson Valley's commitment to providing support for troubled gamblers. Specifically, the center would have facilitated referrals to problem gambling and financial counseling support services, ensure that assistance and referral services are conducted in strict confidence, provide information regarding self-exclusion for customers who wish to exclude themselves and to help manage RW Hudson Valley's self-exclusion program, provide strategies to assist customers in managing their gambling behaviors and provide all services free of charge during hours of operation.

RW Hudson Valley stated that it would have affixed placards providing the HOPEline number and age restrictions on all slot machines at its casino. RW Hudson Valley would have worked closely with the New York Council on Problem Gambling to market its responsible gambling messages. The messages would have been posted in a clear and visible manner throughout the casino. RW Hudson Valley would have dedicated a large portion of its web presence to the promotion and education of responsible gambling, and would display responsible gaming messages digitally throughout the property. Finally,

RW Hudson Valley would have included a responsible gaming tagline on all marketing collateral.

Prior to assuming duties, all new employees would be trained on problem gambling, the prohibition of underage gambling, the prohibition of gambling by intoxicated patrons and the identification and ejection of excluded and self-excluded patrons. All employees would have completed annual reinforcement training. Training would have been conducted and certified through the New York Council on Problem Gambling, and would have included symptoms of problem gambling, the relationship of problem gambling to other behaviors identifying the social and economic consequences of problem gambling, techniques to be used when problem gambling is suspected or identified and techniques to be used to discuss problem gambling with patrons.

A patron who enrolled in RW Hudson Valley's self-exclusion program would have been banned from RW Hudson Valley's property for a set period of time. The self-exclusion policy would have been well-advertised on-site and through portable informational materials and RW Hudson Valley's website

Through the NYS Office of Alcoholism and Substance Abuse Services, RW Hudson Valley would have recommended to problem gamblers programming for addiction services for prevention, treatment and recovery. RW Hudson Valley's responsible gambling support center would have provided listings to find problem gambling treatment programs for problem gamblers.

RW Hudson Valley's community outreach program would have engaged individuals and organizations outside of the casino environment to educate the community on problem gaming and RW Hudson Valley would have supported all responsible gambling initiatives by ensuring adequate staff training and allocation with a workable infrastructure for patrons who desire to use RW Hudson Valley's services.

**Utilizing sustainable development principles including, but not limited to:**

- (1) having new and renovation construction certified under the appropriate certification category in the Leadership in Energy and Environmental Design Green Building Rating System created by the United States Green Building Council;**
- (2) efforts to mitigate vehicle trips;**
- (3) efforts to conserve water and manage storm water;**
- (4) demonstrating that electrical and HVAC equipment and appliances will be Energy Star labeled where available;**
- (5) procuring or generating on-site 10 percent of its annual electricity consumption from renewable sources; and**

**(6) developing an ongoing plan to submeter and monitor all major sources of energy consumption and undertake regular efforts to maintain and improve energy efficiency of buildings in their systems. (§ 1320(3)(c))**

This location would have been serviced by a recently constructed interchange on Interstate 84 with sizeable roadway system improvements designed to accommodate future growth for Stewart Airport. As such, a large amount of roadway development for a facility of this type already existed at this location. This proposal expanded the 747 corridor to accommodate the additional traffic.

Casino development might have used a large amount of future capacity allocated for airport growth. Additional modest improvements may have been required at perimeter access roadway intersections that would have serviced the casino.

RW Hudson Valley planned to submit the main facility for LEED certification and aspired to a LEED certification level of gold.

The project intended to provide at least 10 percent more than the required water quality volume in an effort to treat the storm water runoff beyond what is required by the New York State Stormwater Management Design Manual.

State agency review suggested that strengths of the proposal included providing total water supply and demand, use of typical low-flow fixtures, innovative waste reclamation facility and nine points of water conservation. A weakness was insufficient detail for analysis of the proposed water reclamation facility.

RW Hudson Valley stated it would have complied with the 10 percent renewable energy requirement and described a two-part approach to meeting the requirement through purchasing renewable power from the grid and some localized photovoltaic installations.

RW Hudson Valley planned to comply with the energy consumption monitoring requirement and outlined its submetering plans for individual energy loads and discrete buildings and systems.

**Establishing, funding and maintaining human resource hiring and training practices that promote the development of a skilled and diverse workforce and access to promotion opportunities through a workforce training program that:**

- (1) establishes transparent career paths with measurable criteria within the gaming facility that lead to increased responsibility and higher pay grades that are designed to allow employees to pursue career advancement and promotion;**
- (2) provides employee access to additional resources, such as tuition reimbursement or stipend policies, to enable employees to acquire the education or job training needed to advance career paths based on increased responsibility and pay grades; and**



**(3) establishes an on-site child day care program. (§ 1320(3)(d))**

RW Hudson Valley stated that it would have established a human resources team designed to support the recruitment, development and management of a workforce from the local community and region. RW Hudson Valley stated that its affiliate has established practices that aid in the development of a skilled, motivated and diverse workforce. RW Hudson Valley anticipated implementing career development practices similar to those of its affiliate at its gaming facility. In addition, an employment program would be designed to identify qualified candidates for positions and would focus on local and regional candidates. Career centers would be located in underserved communities in the region to ensure access to information, education and training to the underemployed or unemployed.

A career program would have been developed among local partners and community colleges to address the workforce needs. The career program would have consisted of development training, certification programs, customer service training and more. RW Hudson Valley also intended to establish an on-site training department with programs similar to those offered at its affiliates' existing facilities. Additionally, RW Hudson Valley would have offered a benefits package to employees similar to those offered at its affiliated properties. Employees also would have had access to the employee assistance program, which provides counseling services, financial and legal advice, family support, relationship assistance, problem gaming support and coping and depression support.

**Purchasing, whenever possible, domestically manufactured slot machines (§ 1320(3)(e))**

RW Hudson Valley proposed to source domestically manufactured slot machines.

**Implementing a workforce development plan that:**

- (1) incorporates an affirmative action program of equal opportunity by which the Applicant guarantees to provide equal employment opportunities to all employees qualified for licensure in all employment categories, including persons with disabilities;**
- (2) utilizes the existing labor force in the state;**
- (3) estimates the number of construction jobs a gaming facility will generate and provides for equal employment opportunities and which includes specific goals for the utilization of minorities, women and veterans on those construction jobs;**
- (4) identifies workforce training programs offered by the gaming facility; and**
- (5) identifies the methods for accessing employment at the gaming facility. (§ 1320(3)(f))**

RW Hudson Valley stated that it would have adopted an affirmative action policy pursuant to which it would have taken a proactive approach to providing equal

employment opportunities to the region's minorities, veterans and persons with disabilities, both during construction and once the casino became operational.

RW Hudson Valley stated that it was committed to engaging and provided meaningful opportunities to diverse populations and business enterprises and provided statistics for its affiliated casino located in New York City, showing its 2012, 2013 and 2014 Q1 percentage of total MWBE expenses for goods and services, which are, respectively 25.7 percent, 11.4 percent and 33.9 percent, for an average of 19.7 percent. RW Hudson Valley planned to use a variety of methods to engage MWBEs and set a goal of 25 percent MWBE participation for the project.

**Demonstrating that the Applicant has an agreement with organized labor, including hospitality services, and has the support of organized labor for its application, which specifies:**

- (1) the number of employees to be employed at the gaming facility, including detailed information on the pay rate and benefits for employees and contractors in the gaming facility and all infrastructure improvements related to the project; and**
- (2) detailed plans for assuring labor harmony during all phases of the construction, reconstruction, renovation, development and operation of the gaming facility. (§ 1320(3)(g))**

RW Hudson Valley stated that it had an existing labor peace agreement and collective bargaining agreement with the Hotel Motel Trades Council through its affiliation with Resorts Worldwide in NYC. A letter from HMTTC president Peter Ward was provided and outlined the benefits workers would enjoy, such as health insurance and living wages. There was also a signed MOU and a PLA with the Hudson Valley Building and Construction Trades Council.

RW Hudson Valley demonstrated a strong, positive working relationship with Hotel Motel Trades Council. The workers at other facilities owned by Genting enjoy fully paid health insurance and livable wages. RW Hudson Valley's owners demonstrated a strong labor-management relationship through committees to solve issues.



**Resorts World Orange County, LLC, an affiliate of Genting Americas, Inc., proposed to develop Sterling Forest Resort (“Sterling Forest”) at the Renaissance Faire and Tuxedo Ridge Ski Center site in the Town of Tuxedo in Orange County. According to Sterling Forest, the casino would have included 177,995 square feet with 3,800 slot machines, 370 tables and 40 poker tables. The facility would have featured a hotel with 1,000 rooms, multiple food, beverage and entertainment venues, a spa and ski resort and fairgrounds (including the Renaissance Faire).**

## **ECONOMIC ACTIVITY AND BUSINESS DEVELOPMENT**

### **Realizing maximum capital investment exclusive of land acquisition and infrastructure improvements. (§ 1320(1)(a))**

Sterling Forest’s capital investment was \$1.233 billion, accounting for excluded capital investment, and \$1.95 billion total capital investment. This proposed investment far exceeded the \$350 million requirement required by Board regulation.

### **Maximizing revenues received by the state and localities. (§ 1320(1)(b))**

Sterling Forest agreed to pay a supplemental gaming tax of six percent on slot machine net revenues.

Sterling Forest proposed to pay a supplemental license fee of \$380 million, reduced to \$240 million if a license was granted at a location within 20 miles of Exit 16 on Interstate 87.

Sterling Forest projected the following direct and indirect tax revenues to New York State and host communities:

- Direct New York state tax revenues (including gaming privilege taxes, device fees, corporate profits tax, sales and use taxes and personal income taxes) of approximately \$214.6 million in year one and \$272.2 million in year five, in the low-case scenario; \$257.5 million in year one and \$322.0 million in year five, in the average-case scenario; and \$330.0 million in year one and \$410.4 million in year five, in the high-case scenario.
- Indirect New York state tax revenues (including corporate profits tax, sales and use taxes and personal income taxes) from induced incremental economic activity of approximately \$11.6 million in year one and \$8.9 million in year five, in the low-case

scenario; \$14.9 million in year one and \$10.7 million in year five, in the average-case scenario; and \$20.5 million in year one and \$14.8 million in year five, in the high-case scenario.

- Direct host community tax revenues of \$39.5 million in year one and \$43.5 million in year five, in the low-case scenario; \$40.0 million in year one and \$43.7 million in year five, in the average-case scenario; and \$40.6 million in year one and \$44.4 million in year five, in the high-case scenario.
- Indirect host community tax revenues from induced incremental economic activity of approximately \$3.4 million in year one and \$2.3 million in year five, in the low-case scenario; \$4.1 million in year one and \$2.8 million in year five, in the average-case scenario; and \$5.7 million in year one and \$3.8 million in year five, in the high-case scenario.

Board experts noted that these projections may not be achieved and depended upon Sterling Forest meeting or exceeding its financial projections.

### **Providing the highest number of quality jobs in the gaming facility. (§ 1320(1)(c))**

Sterling Forest expected to employ 3,129 full-time and 1,614 part-time employees by 2018.

Sterling Forest stated that it was committed to using New York-based suppliers and contractors in the construction of the project. Approximately \$1 billion would be spent on labor, material, equipment and subcontractors for the construction of the project and off-site improvements. Sterling Forest stated that it would have made a good faith effort to spend 70 percent of \$1 billion on New York-based businesses and labor.

Sterling Forest's plan provided anticipated total spend for construction but did not identify annual biddable spend for any of the requested phases (Construction and furniture, fixtures, and equipment furnishing and operations).

Sterling Forest anticipated construction total worker hours of 6,117,647.

### **Building a gaming facility of the highest caliber with a variety of quality amenities to be included as part of the gaming facility. (§ 1320(1)(d))**

Sterling Forest proposed to develop an "integrated resort" located on the 238-acre Renaissance Faire and Tuxedo Ridge Ski Center site located in the Town of Tuxedo on the southern border of Orange County. Sterling Forest stated that the property has been used for tourism purposes for more than 60 years and is surrounded by more than 21,000 acres of Sterling Forest Park. The project site is located two miles from the New York State Thruway (Interstate 87) and straddles New York State Route 17A for approximately three quarters of a mile. To access the site more readily and alleviate congestion, Sterling Forest proposed constructing a new Interchange 15B to allow for

traffic to access Route 17A (west), Route 106 (east) and Route 17 (north/south). Interchange 15B was approved by the New York Legislature in 1985 but the interchange was not built due to lack of funding and insufficient traffic. Sterling Forest proposed to provide \$25 million for construction of this interchange.

Sterling Forest proposed a five-star, “Sterling Forest”-branded resort featuring three major attractions: the Grand Hotel, Tuxedo Ridge Ski Area and the Sterling Forest Gardens and Renaissance Faire. More particularly, the resort would have comprised the following:

- 177,995-square-foot casino with designated high-limit, VIP and specialty areas;
- 1,000-room hotel with a fitness center, ESPA-operated salon and spa and pool;
- Multi-purpose convention, entertainment and meeting space with pre-function, back of house and kitchen areas;
- 12 restaurants and one food court;
- Eight bars/lounges including three nightclubs;
- World Festival Grounds (amphitheater to host events during the Renaissance Festival);
- Sterling Gardens (24 acres of gardens and walking paths);
- Garden greenhouse;
- Tuxedo Ski Village; and
- Horse stables.

Sterling Forest stated that it sought to develop a true “retreat.” Sterling Forest stated that the Grand Hotel design was inspired from the castle-like homes of Long Island’s North Shore. The Tuxedo Ski Village would have been a charming, new ski village located at the foot of the existing ski area and would have been open year round. During the winter months, activities would have included skiing, snowboarding and tobogganing. Sterling Forest stated further that during the summer months, activities would have included mountain biking, hiking and zip lining. Permanent attractions at the Sterling Forest Gardens would have included an arboretum, horse stables, hedge maze, house of imagination, croquet and bocce lawn and a grand carousel. Various themed flower gardens, a chess yard and other venues also would have been present.

Sterling Forest proposed a significant, mega resort—a nearly \$2 billion investment, 1,000 hotel rooms, five-star quality and a definite commitment to use non-gaming activities as a marketing tool (an array of dining, bar, nightclub and entertainment options). Further, Sterling Forest would have provided year-round, resort style non-gaming features: four-season recreation (e.g., snow ski and mountain biking/zip lines), Renaissance Faire, gardens and more.

Sterling Forest proposed a 177,995-square-foot casino, of which 146,189 square feet would have been located on the first floor, a VIP casino would be located on the second

floor and the Sky Casino would be located on the top floor of the hotel. The casino was expected to offer the following mix of games:

- Slots—3,606 slots (including 121 high-limit slots) plus six electronic gaming tables (194 seats);
- Table games—330 tables (including 239 “mass” tables, 18 high-limit tables, 22 Asian-gaming tables, 31 VIP tables and 20 tables in the Sky Casino reserved more exclusively for certain players); and
- Poker tables—40 tables.

The casino was proposed to offer several designated gaming areas, including the following:

- “Mass” gaming area;
- “Mass” VIP gaming area;
- High-limit slots and tables gaming area;
- Asian gaming area;
- VIP gaming area providing private gaming areas and lounges with access to a garden and deck; and
- “Sky Casino” area reserved for the more exclusive play and featuring luxurious gaming suites

The VIP gaming facilities would have had their own porte-cochere entry. The VIP guests also would have had their own elevator bank leading them to a series of hotel suites. These elevators also would have gone up to the “Sky Casino.”

Sterling Forest believed it would have differentiated itself from other casinos primarily on the basis of design and technology. Specifically, Sterling Forest believed that the design would have created a total vacation experience through the integration of the casino, ski area, Sterling Gardens, Renaissance Faire and other amenities. Sterling Forest Resort would have featured modern gaming equipment, such as ETG stadium gaming. Technology with intuitive user interfaces also would have been featured. The modern technology would have created a social experience that enhances average play time.

Sterling Forest stated that Sterling Forest Resort would have featured a six-story, 1,000-room luxury hotel designed to mimic the elegant style of the socially elite residences of Tuxedo Park during the Roaring Twenties. Sterling Forest stated that the hotel would have offered the following room types:

- 952 standard rooms;
- 16 one-bay lockout rooms;
- Four one-and-a-half bay suites;
- Six two-level presidential suites; and

- 22 garden and spa villas

Sterling Forest stated that the hotel would have been “Sterling Forest”-branded and would have been of five-star quality.

Sterling Forest stated that the hotel resort also would have offered:

- 66,000-square-foot multi-level spa and salon, which would be operated by ESPA, a premier spa operator operating spas in the Mandarin Oriental and Peninsula hotels in New York City;
- 12,000-square-foot fitness center featuring views of the pool, gardens and surrounding hillside and providing rooms for yoga, Pilates and personal instruction;
- multiple pool pavilions (four or five) to give families and adults separate areas and each would have provided food and beverage service (including “swim up” bars); and
- An indoor pool facility, which would have transformed to a nightclub after hours.

For hotels of comparable quality, Sterling Forest identified the following:

- The Peninsula, New York;
- Ritz Carlton, New York; and
- The Plaza, New York.

Sterling Forest asserted that its hotel would have differentiated itself from its competitors because it would have provided its guests with a distinctive luxury environment that would have offered expanded amenities and consistently superlative service. Sterling Forest stated that to achieve design and construction superiority, Sterling Forest retained a top-tier design team. Sterling Forest stated that it would have implemented a robust training program in order to provide exceptional service to its guests.

Board experts suggested that a multi-level 66,000-square-foot ESPA-operated spa with its own pool, entry area, lounges/relaxation and treatment rooms showed a full commitment to this amenity commensurate with the five-star positioning and aiming to attract domestic and international visitors.

Sterling Forest proposed 20,880 square feet of multi-purpose ballroom and meeting space, which could have been used as three separate spaces or one large space.

Board experts suggested that because so many rooms would have been needed to satisfy casino-generated demand, there might have been an insufficient number of rooms to reserve for hosting of meetings or conventions.

Sterling Forest’s premise was that the entire property would have been an entertainment venue. Sterling Forest stated that events would have been expanded to cover all

seasons for compelling year-round reasons to visit. Sterling Forest stated that entertainment venues it would have offered included:

- World Festival Grounds—18.5 acres. Building on the success of the Renaissance Faire, the World Festival Grounds would have been used year round to host displays, retail shopping and workshops. The Fairground Amphitheater (40,000 square feet/2,500 capacity) would have hosted events during the Renaissance Festival and music festivals, cultural events, dance troupes and other entertainment.
- Sterling Gardens—24 acres. The Gardens would have offered walking paths and discovery areas. The Gardens would have been used to host weddings, garden events (gardening demonstrations, fresh cooking demonstrations, etc.) and other events.
- Garden Greenhouse—8,000 square foot, 350 capacity, located in the Sterling Champion Rose Garden and expected to be used to host guest lecturers, workshops and special limited-time displays.
- Garden amphitheater—29,500 square feet with 2,500 capacity, to be used for orchestras, magicians and variety arts more suited for a smaller venue. Smaller events might have been offered here including wine festivals, Oktoberfests and others.
- Tuxedo Ski Village—101 acres. Sterling Forest proposed a complete revitalization of the existing ski resort so that it can be used year round. The “new” Village would have included bars, restaurants and boutiques. Additionally, new slopes, snowboarding pikes and rails and a toboggan run would have been added along with outdoor fire pits and a new ski lodge. During spring, summer and fall months the Village would have hosted “Adventure World,” an outdoor zip line and adventure course.
- Horse stables—Guests could have rented horses for a trail ride.
- Sky Club—16,570 square feet, 1,105 capacity, located on the top level of the hotel, this nightclub would have featured DJs and other performances. VIP areas and bottle service would have been provided.
- H2O Club—15,555 square feet, 750 capacity. At night, the indoor pool area would have transformed into a nightclub with feature performers and theme nights.
- Private dining/nightclub—2,025 square feet, 135 capacity. This restaurant would have been used for private events and functions and would also offer fine dining.

In addition to the above, Sterling Forest stated that it would have featured live music and acts at its casino center bar.

Sterling Forest’s goal was to enhance the overall entertainment value for the residents in the region. Sterling Forest stated that this would have been accomplished through the events offered onsite and by using venues in the region to offer a diverse selection of attractions and entertainment. Currently, the Spartan Race and Mighty High Music Festival are hosted in the area. Sterling Forest stated that Sterling Forest Resort did not



intend to compete with the existing entertainment venues, but instead it sought to complement them by providing a larger pool of entertainment seekers.

Sterling Forest proposed offering 12 restaurants and a food court (with five restaurant outlets), serving more than 1,700 guests at one time.

Sterling Forest also proposed offering eight bars/lounges, including three nightclubs.

Sterling Forest proposed 4,200 square feet of retail, the Tuxedo Ski Village and ski slopes, the Sterling Gardens, the World Festival Gardens, the Sterling Greenhouse, the horse stables, a salon and spa, fitness center, multiple outdoor pools and other amenities.

Board experts suggested that a variety of recreation, fair/festival, garden, and other four-season outdoor activities leveraged through a full schedule of outdoor events and entertainment would have been a “plus,” and if successful, would have given Sterling Forest high visibility among its many competitors.

Sterling Forest provided a detailed description of internal controls that reflected current industry standards.

**Offering the highest and best value to patrons to create a secure and robust gaming market in the region and the state. (§ 1320(1)(e))**

Sterling Forest planned to use Genting’s rewards and players club programs. Resorts World New York City has a substantial database of members. Beyond this database, Sterling Forest asserted that Genting has a loyal pool of customers worldwide that the company has developed over its 50 years of business in Asia.

Staff suggested that the proposed program is state-of-the-art and impressive.

Sterling Forest demonstrated an understanding of local and county economic needs and described concrete steps to address regional and local concerns. Sterling Forest committed to funding privately the creation of Exit 15B off of the Thruway, therein addressing a specific concern outlined in the Town Plan. Though the statement did not mention the REDC Plan, Sterling Forest’s plan was in accordance with the regional goals to strengthen tourism, create jobs and explore the viability of casino gambling where appropriate. A strength of the proposal was the establishment of year-round entertainment to attract visitors to the Tuxedo Ridge Ski Center, among other destinations, during “Shoulder Season.” Other County benefits would have included doubling the number of tourists to the County, adding several thousand well-compensated employees to the region, cross-promoting local restaurants and stores and other efforts to support local businesses and using local vendors. Sterling Forest did not

address unintended consequences of its approach, such as how Sterling Forest would have supported the local community and infrastructure, beyond financing access roads.

**Providing a market analysis detailing the benefits of the site location of the gaming facility and the estimated recapture rate of gaming-related spending by residents travelling to an out-of-state gaming facility. (§ 1320(1)(f))**

By positioning Sterling Forest in Tuxedo, Sterling Forest believed that it had selected a site with a sustainable market advantage to any casino in the Northeast market. Sterling Forest's resort was located to target the surrounding regional markets of northern New Jersey and western Connecticut in addition to the existing New York market.

The project site was proximate to New York City ("NYC") and key feeder markets to the south, west and north of NYC. Proximity to NYC was also important because Sterling Forest intended to capture a share of the domestic and international visitors, particularly Asian visitors who would or could have been induced to visit because of NYC's reputation. However, Board experts noted, to date no casino in the northeastern United States has succeeded in generating gross gaming revenue from international visitors, particularly Asian visitors, in amounts remotely approaching Sterling Forest's projections.

Sterling Forest estimated the recapture rate of gaming revenues from New York residents traveling to out-of-state gaming facilities by year three as follows: \$282.1 million in the high case scenario, \$205.4 million in the average-case scenario and \$168.0 million in the low-case scenario.

**Offering the fastest time to completion of the full gaming facility. (§ 1320(1)(g))**

Sterling Forest stated it would have opened the facility within 23 months of receiving a license.

Sterling Forest stated that it would have been prepared to commence construction within 30 days of issuance of a license. A condition precedent to the start of construction would be the issuance of a building permit by the Town of Tuxedo. To mitigate any delay, Sterling Forest stated that it would have the plans reviewed by the Town of Tuxedo as they were developed and prior to the issuance of a license.

Sterling Forest described an approximately 240-acre site comprising five parcels. There appear to be 12 acres of State and federally regulated wetlands and streams. Because detailed site plans were not provided, impacts to wetlands and streams were unknown. If wetlands or streams were to have been impacted, a Section 401 Water Quality Certification and Freshwater Wetland permit and possible mitigation measures would have been required. The site is located within an archeologically sensitive area and therefore likely would have required an archeological survey and consultation with the State Historic Preservation Office for those areas not previously disturbed. The site is

located within two miles of a known bat wintering area. The project might have required time-of-year restrictions for tree removal and/or a survey for protected species of bats. The site may also contain habitat for the timber rattlesnake and therefore a survey might have been required. If the project had resulted in impacts to protected species or habitat, an Incidental Take Permit might have been required.

The Town of Tuxedo issued a Positive Declaration in July 2013, which required the preparation of an Environmental Impact Statement for the SEQRA process. A Final Scoping Document was issued on August 18, 2014. Sterling Forest stated that it anticipated that SEQRA review would be completed by March 2015.

### **Demonstrating the ability to fully finance the gaming facility. (§ 1320(1)(h))**

Sterling Forest stated that Genting Malaysia Berhad (“GENM”) was extremely confident in its ability to successfully fund the project based on its financial strength, significant portfolio of assets and established track record of meeting its financial development obligations. Sterling Forest stated that GENM has significant financial flexibility to fund the project through free cash flow and/or fund the development of the project as a stand-alone entity through an equity contribution and project financing and notes that Resorts World Casino New York City was funded in this manner. Sterling Forest stated that GENM did not have any material financial commitments, obligations or guarantees that would materially impact its financial wherewithal.

### **Demonstrating experience in the development and operation of a quality gaming facility. (§ 1320(1)(i))**

Founded in 1965, the Genting Group comprises five publicly traded companies with a combined market capitalization of \$40 billion. Sterling Forest stated that it has developed and operated large destination resorts, casinos, hotels and event facilities around the world, which include Resorts World Casino New York City (Queens, New York, opened in October 2011), Resorts World Sentosa (Sentosa Island, Singapore, opened in January 2010), Resorts World Manila (Manila, Philippines, opened in August 2010) and Resorts World Genting (near Kuala Lumpur, Malaysia, opened in 1971).

## **LOCAL IMPACT AND SITING FACTORS**

### **Mitigating potential impacts on host and nearby municipalities which might result from the development or operation of the gaming facility. (§ 1320(2)(a))**

Sterling Forest presented a study that analyzed the costs to the host municipality, nearby municipalities and the State from the proposed gaming facility, including the incremental effect on local government services. The report did not limit the analysis only to municipal services such as fire, police protection, emergency medical and general government services, but, instead, the study presented an estimate of the aggregate

increased costs to local municipalities for all government services, including costs for road maintenance and school district expenses, among others.

Sterling Forest entered into a host community agreement with the Town of Tuxedo, pursuant to which Sterling Forest would have provided certain support payments to the Town, including payments for increased costs of emergency services that would have been required as a result of the impacts caused by the project development.

The host community agreement expressly stated that the Town's support for and approval of the project was conditioned upon Sterling Forest funding construction of the proposed interchange at Exit 15B on the New York Thruway. Additionally, the loss of municipal parking as a result of the development and construction of the project was expected to create extensive traffic and safety problems for the Town and, therefore, the Town's support for and approval of the project was also conditioned upon Sterling Forest designing and building a structured parking garage.

Sterling Forest's facility was a reconstruction of, and addition of a hotel and casino to, an existing ski area and the New York Renaissance Faire. Consequently, the site has existing water, sewer and electricity service. Sterling Forest planned to make upgrades to all of these systems.

Sterling Forest reported that the proposed project would have resulted in the placement of clean fill and structures in portions of the water bodies, wetlands and stream channels on the site and that Indian Kill Creek and associated wetlands might have been affected by the project. Sterling Forest reported that, based on site investigations and habitat assessments, suitable habitat for the majority of these species was absent within the proposed development areas so that the potentially impacted species were not expected to occur there. For those species with potential habitat, Sterling Forest had initiated site-specific surveys in consultation with the New York State Department of Environmental Conservation and the United States Fish and Wildlife Service.

Sterling Forest presented a report that concluded that Sterling Forest's proposed lighting plan was designed to avoid any significant light pollution with a minimum amount of lighting limited to illuminating circulation areas only for safety and security and cutoff fixtures to minimize stray light.

Based on the number of housing units in the study area that are currently available for rent or sale, Sterling Forest anticipated that the existing housing stock would have been able to accommodate the increase in demand. Sterling Forest concluded that the increase in student enrollment was not anticipated to result in adverse impacts to schools across the study area. The projection evenly spread the school enrollment increase across the region and did not account for the possibility that the host school district would have a large portion of the enrollment increase.

**Gaining public support in the host and nearby municipalities, which may be demonstrated through the passage of local laws or public comment received by the board or gaming Applicant. (§ 1320(2)(b))**

Sterling Forest included a resolution of support duly adopted by the Town Board of the Town of Tuxedo. An additional Town Board resolution of support was included, along with a host community agreement.

Additional resolutions of support were included from the following legislative bodies: Village Board of Trustees of Tuxedo Park; Village Board of Trustees of Village of Greenwood Lake; Town Board of the Town Stoney Creek; and the Common Council of the City of Port Jarvis.

More than 400 letters of support were included from residents and business, as well as letters from the following: the Chambers of Commerce of Tuxedo, Greenwood Lake, and Orange County; Dutchess County Economic Development Corporation; Dutchess County Executive; Orange County Executive; Town of Deerpark Supervisor; and Town of Warwick Supervisor; President of Hudson Valley Building and Construction Trades Council; President of Laborer's International Union of N. A. Local 17; and the Tuxedo Union Free School District's Board of Education.

The Sterling Forest project was the subject of more than 3,400 comments of which 95 percent indicated opposition and five percent indicated support. Additionally, the Board received more than 40 general comments regarding the siting of casinos in Orange County, with 89 percent indicating opposition and 11 percent indicating support. At the public comment event, Sterling Forest was the subject of more than 30 comments, of which the overwhelming majority was in opposition. Additionally, the Board heard seven general, non-specific comments overwhelmingly opposing the siting of casinos in Orange County.

**Operating in partnership with and promoting local hotels, restaurants and retail facilities so that patrons experience the full diversified regional tourism industry. (§ 1320(2)(c))**

Sterling Forest stated that creating a cross-promotion through advertising efforts on the property and through customer direct communication would have included many avenues and opportunities for local merchants and venues. Examples of these efforts would include a video loop featured in the hotel and throughout the resort that would have had a segment focused on local businesses, attractions and events; special displays on the property that would have featured local area offerings; links on the Sterling Forest website to local service providers and businesses; discount programs for Sterling Forest customers using local businesses would have been initiated; preferred vendor listings would be placed in hotel room guest books; and support of local venues through direct purchases.

Sterling Forest provided a number of executed cross-marketing letters of intent with a diverse group of businesses. The agreements contemplated the use of loyalty reward points by casino patrons at the local businesses.

**Establishing a fair and reasonable partnership with live entertainment venues that may be impacted by a gaming facility under which the gaming facility actively supports the mission and the operation of the impacted entertainment venues. (§ 1320(2)(d))**

Sterling Forest stated that it would have used a video loop in the hotel rooms, advertisements at the property's events, cross-promotion of partner venues, use of the Sterling Forest website, co-sponsorship of events at venues and other methods to communicate with visitors in regard to events and venues. These efforts to help promote local venues would have been enhanced privately by direct ticket sales through use of complimentary points, promotions and giveaways, Sterling Forest's sale of tickets to the venues within its onsite box office, extending property events to local venues and others.

Sterling Forest provided memoranda of understanding with numerous theaters and other venues. The agreements provided for cooperation in regard to cross-marketing, booking, presenting and co-presenting, discounts for casino patrons, use of loyalty rewards points at the venues and related matters. Four noteworthy agreements involved the Mid-Hudson Civic Center, Shadowland Artists, Inc., the County of Dutchess and The Upstate Theater Coalition for a Fair Game. These agreements were noteworthy because they would have involved substantial payments to the venues along with agreements to cooperate, cross-market, collaborate on booking and marketing, etc.

**WORKFORCE ENHANCEMENT FACTORS**

**Implementing a workforce development plan that utilizes the existing labor force, including the estimated number of construction jobs a proposed gaming facility will generate, the development of workforce training programs that serve the unemployed and methods for accessing employment at the gaming facility. (§ 1320(3)(a))**

Sterling Forest executed memorandums of understanding with several local partners, all of whom agreed to work together to create workforce development programs that would have created new career and job opportunities for the unemployed and underemployed, to foster advancement opportunities and on-the-job training. Sterling Forest stated that its project, through its workforce development programs, would have significant regional impact in terms of economic development and job creation. For each position created, Sterling Forest would have offered a multifaceted regimen of training prior to the casino opening, followed by on-the-job training with a view towards advancement. A key component of its workforce development program would have been selecting and hiring candidates who were unemployed or underemployed. Sterling Forest would have

partnered with the NYS Department of Labor centers and the Orange County Workforce Development System, among others, to ensure that high-quality jobs were made available to this segment of the population.

Sterling Forest offered the experience with its affiliate's Miami, Fla. facility. Sterling Forest stated that at that facility, which opened in mid-2013, its current employee force included 37 percent who were unemployed when hired. Since the opening, 16 percent of its affiliate's Miami employees have been promoted.

Other than working with the local career centers, Sterling Forest did not mention any other strategies for seeking out long-term unemployed workers. Other than a brief mention of veterans, no mention was made of seeking out demographics that traditionally have higher unemployment. Recruitment efforts may have neglected to target the long-term unemployed. The Application did not mention job retention.

**Taking additional measures to address problem gambling including, but not limited to, training of gaming employees to identify patrons exhibiting problems with gambling. (§ 1320(3)(b))**

Sterling Forest stated that all relevant staff would complete approved responsible gambling training through the New York Council of Problem Gambling via Sterling Forest's human resources department. On-site responsible gambling resources also would have included Sterling Forest's responsible gaming support center and Sterling Forest's responsible gaming ambassadors. The responsible gaming support center would have been strategically located away from the gaming floor and provide a unique array of services and resources for customers with potential gambling problems. Staffed with trained professionals, this center would have been the focal point of Sterling Forest's commitment to providing support for troubled gamblers. Specifically, the center would have facilitated referrals to problem gambling and financial counseling support services, ensure that assistance and referral services are conducted in strict confidence, provide information regarding self-exclusion for customers who wish to exclude themselves and to help manage Sterling Forest's self-exclusion program, provide strategies to assist customers in managing their gambling behaviors and provide all services free of charge during hours of operation.

Sterling Forest stated that it would have affixed placards providing the HOPEline number and age restrictions on all slot machines at its casino. Sterling Forest would have worked closely with the New York Council on Problem Gambling to market its responsible gambling messages. The messages would have been posted in a clear and visible manner throughout the casino. Sterling Forest would have dedicated a large portion of its web presence to the promotion and education of responsible gambling, and would display responsible gaming messages digitally throughout the property. Finally, Sterling Forest would have included a responsible gaming tagline on all marketing collateral.

Prior to assuming duties, all new employees would be trained on problem gambling, the prohibition of underage gambling, the prohibition of gambling by intoxicated patrons and the identification and ejection of excluded and self-excluded patrons. All employees would have been required to complete annual reinforcement training. Training would have been conducted and certified through the New York Council on Problem Gambling, and would have included symptoms of problem gambling, the relationship of problem gambling to other behaviors identifying the social and economic consequences of problem gambling, techniques to be used when problem gambling is suspected or identified and techniques to be used to discuss problem gambling with patrons.

A patron who enrolled in Sterling Forest's self-exclusion program would have been banned from Sterling Forest's property for a set period of time. The self-exclusion policy would have been well-advertised on-site and through portable informational materials and Sterling Forest's website.

Through the NYS Office of Alcoholism and Substance Abuse Services, Sterling Forest would have recommended to problem gamblers programming for addiction services for prevention, treatment and recovery. Sterling Forest's responsible gambling support center would have provided listings to find problem gambling treatment programs for problem gamblers.

Sterling Forest's community outreach program would have engaged individuals and organizations outside of the casino environment to educate the community on problem gaming and Sterling Forest would have supported all responsible gambling initiatives by ensuring adequate staff training and allocation with a workable infrastructure for patrons who desire to use Sterling Forest's services.

**Utilizing sustainable development principles including, but not limited to:**

- (1) having new and renovation construction certified under the appropriate certification category in the Leadership in Energy and Environmental Design Green Building Rating System created by the United States Green Building Council;**
- (2) efforts to mitigate vehicle trips;**
- (3) efforts to conserve water and manage storm water;**
- (4) demonstrating that electrical and HVAC equipment and appliances will be Energy Star labeled where available;**
- (5) procuring or generating on-site 10 percent of its annual electricity consumption from renewable sources; and**
- (6) developing an ongoing plan to submeter and monitor all major sources of energy consumption and undertake regular efforts to maintain and improve energy efficiency of buildings in their systems. (§ 1320(3)(c))**

Sterling Forest proposed to mitigate traffic impact on Route 17 with the construction of a new interchange 15B that would connect Thruway I-87 to Route 17a. This interchange would have been constructed at the expense of Sterling Forest, estimated to be \$25



million. Sterling Forest also would have assumed long-term maintenance obligations for the interchange. Sterling Forest asserted that the New York State Legislature amended the State Highway Law in 1985 to authorize the design and construction of a new interchange in this general location.

Additional proposed highway improvements and mitigations included an improvement for the intersection of Route 17 and Route 17a to allow for the addition of traffic from the new interchange. Sterling Forest also committed to construct and bear the cost of intersection improvements at Route 17/17a related to construction of the interchange.

Sterling Forest also proposed several transportation improvements and mitigations at its facility located on NYS Route 17a that are unrelated to the interchange. These site-based improvements had an approximate two-mile separation from the proposed interchange.

State agency review suggested that there was a risk to the plan if the Thruway interchange could not be built, for whatever reasons; there was no alternative presented. Such review suggested that Sterling Forest's schedule to design and construct the interchange (to begin construction in June 2015 and complete by November 2016) might have been aggressive.

Right-of-way acquisitions from Harriman State Park lands might have been needed to complete the Exit 15B interchange. These lands may be under Palisades Interstate Park Commission (PIPC)'s jurisdiction. PIPC rejected granting an easement for the Sterling Forest proposal. Sterling Forest contested the PIPC's position and submitted an analysis arguing that any PIPC resolution should not affect the ability to make the proposed road improvement.

Sterling Forest stated that it sought Gold certification in the Leadership in Environmental and Energy Design (LEED) program.

Sterling Forest stated that the heating, ventilation and air conditioning equipment for this project would have consisted of a chilled and heated four-pipe water pumped system.

Sterling Forest did not present a study of existing storm water conditions or plans for mitigating storm water discharge or reducing runoff in accordance with State requirements. For the casino and hotel area, Sterling Forest stated an intention, when a storm water management system is designed, to treat at least 10 percent more than the required water quality volume in an effort to exceed State requirements.

State agency review suggested that strengths include providing total water supply and demand, use of typical low-flow fixtures, innovative waste reclamation facility and nine points of water conservation.

**Establishing, funding and maintaining human resource hiring and training practices that promote the development of a skilled and diverse workforce and access to promotion opportunities through a workforce training program that:**

- (1) establishes transparent career paths with measurable criteria within the gaming facility that lead to increased responsibility and higher pay grades that are designed to allow employees to pursue career advancement and promotion;**
- (2) provides employee access to additional resources, such as tuition reimbursement or stipend policies, to enable employees to acquire the education or job training needed to advance career paths based on increased responsibility and pay grades; and**
- (3) establishes an on-site child day care program. (§ 1320(3)(d))**

Sterling Forest stated that it intended to establish a human resources team designed to support the recruitment, development and management of a workforce from the local community and region. Sterling Forest stated that its affiliate has established practices that aid in the development of a skilled, motivated and diverse workforce. Sterling Forest anticipated implementing career development practices similar to those of its affiliate at its gaming facility. In addition, an employment program would be designed to identify qualified candidates for positions and would focus on local and regional candidates. Career centers would be located in underserved communities in the region to ensure access to information, education and training to the underemployed or unemployed.

A career program would have been developed among local partners and community colleges to address the workforce needs. The career program would have consisted of development training, certification programs, customer service training and more. Sterling Forest also intended to establish an on-site training department with programs similar to those offered at its affiliates' existing facilities.

Additionally, Sterling Forest would have offered a benefits package to employees similar to those offered at its affiliated properties. Employees also would have had access to the employee assistance program, which would have provided counseling services, financial and legal advice, family support, relationship assistance, problem gaming support and coping and depression support.

**Purchasing, whenever possible, domestically manufactured slot machines. (§ 1320(3)(e))**

Sterling Forest proposed to source domestically manufactured slot machines.

**Implementing a workforce development plan that:**

- (1) incorporates an affirmative action program of equal opportunity by which the Applicant guarantees to provide equal employment opportunities to all employees qualified for licensure in all employment categories, including persons with disabilities;**

- (2) utilizes the existing labor force in the state;**
- (3) estimates the number of construction jobs a gaming facility will generate and provides for equal employment opportunities and which includes specific goals for the utilization of minorities, women and veterans on those construction jobs;**
- (4) identifies workforce training programs offered by the gaming facility; and**
- (5) identifies the methods for accessing employment at the gaming facility. (§ 1320(3)(f))**

Sterling Forest stated that it would have adopted an affirmative action policy pursuant to which it would have taken a proactive approach to providing equal employment opportunities to the region's minorities, veterans and persons with disabilities, both during construction and once the casino became operational.

Sterling Forest stated that it was committed to engaging and providing meaningful opportunities to diverse populations and business enterprises and provided statistics for its affiliated casino located in New York City, showing its 2012, 2013 and 2014 Q1 percentage of total MWBE expenses for goods and services, which are, respectively 25.7 percent, 11.4 percent and 33.9 percent, for an overall average of 19.7 percent. Sterling Forest planned to use a variety of methods to engage MWBEs and has set a goal of 25 percent MWBE participation for the project.

Sterling Forest cited a past record of progress and success in equal opportunity and affirmative action.

**Demonstrating that the Applicant has an agreement with organized labor, including hospitality services, and has the support of organized labor for its application, which specifies:**

- (1) the number of employees to be employed at the gaming facility, including detailed information on the pay rate and benefits for employees and contractors in the gaming facility and all infrastructure improvements related to the project; and**
- (2) detailed plans for assuring labor harmony during all phases of the construction, reconstruction, renovation, development and operation of the gaming facility. (§ 1320(3)(g))**

Sterling Forest stated that it had an existing labor peace agreement and collective bargaining agreement with the Hotel Motel Trades Council through its affiliation with Resorts Worldwide in NYC. A letter from HMTC president Peter Ward was provided and outlined the benefits workers would enjoy, such as health insurance and living wages. There was also a signed MOU and a PLA with the Hudson Valley Building and Construction Trades Council.

Sterling Forest demonstrated a strong, positive working relationship with Hotel Motel Trades Council. The workers at other facilities owned by Sterling Forest enjoy fully paid

health insurance and livable wages. Sterling Forest had demonstrated a strong labor-management relationship through committees to solve issues.



Churchill Downs, Inc. and Saratoga Harness Racing, Inc. jointly proposed to develop Capital View Casino & Resort (“Capital View”) in the Town of East Greenbush in Rensselaer County. According to Capital View, the 269,600 square-foot project would have included a 100-room hotel and a 60,000 square-foot casino featuring 1,506 slot machines and 56 table games. The facility would have included a high-end steakhouse with multiple casual dining options throughout and multiple bars, a 500-seat special events center and retail space.

## **ECONOMIC ACTIVITY AND BUSINESS DEVELOPMENT**

### **Realizing maximum capital investment exclusive of land acquisition and infrastructure improvements. (§ 1320(1)(a))**

Capital View proposed a minimum capital investment of \$324.6 million. The total capital investment less excluded capital investment was proposed to be \$204.8 million. Capital View requested the inclusion of \$58 million in prior capital investment it made at Saratoga Casino and Raceway since 2004; however, no portion of its prior capital investment was needed to meet the minimum capital investment.

### **Maximizing revenues received by the state and localities. (§ 1320(1)(b))**

Capital View did not propose a supplemental tax payment or increased license fee.

Capital View projected the following direct and indirect tax revenues to New York State and host communities:

- Direct New York state tax revenues (including gaming privilege taxes, device fees, corporate profits tax, sales and use taxes and personal income taxes) of approximately \$78.9 million in year one and \$87 million in year five, in the low-case scenario; \$82.6 million in year one and \$91.1 million in year five, in the average-case scenario; and \$86.3 million in year one and \$95.2 million in year five, in the high-case scenario.
- Indirect New York state tax revenues (including corporate profits tax, sales and use taxes and personal income taxes) from induced incremental economic activity of approximately \$3.4 million in year one and \$3.9 million in year five, in the low-case scenario; \$3.4 million in year one and \$4.0 million in year five, in the average-case scenario; and \$3.5 million in year one and \$4.1 million in year five, in the high-case scenario.

- Direct host county tax revenues of \$4.4 million in year one and \$4.7 million in year five, in the low-case, average-case and high-case scenarios.
- Indirect host county tax revenues from induced incremental economic activity of approximately \$410 thousand in year one and \$490 thousand in year five, in the low-case scenario; \$430 thousand in year one and \$520 thousand in year five, in the average-case scenario; and \$460 thousand in year one and \$550 thousand in year five, in the high-case scenario;

Board experts noted that these projections might not be achieved and depended upon Capital View meeting or exceeding its financial projections. Board experts also noted that Capital View provided variances in the gaming tax between pro forma financial information and projected tax revenue to the State due to the inaccurate calculation of supplemental tax.

Capital View presented a study of the proposed gaming facility's economic incremental benefit to Rensselaer County, the Capital Zone and the rest of the State of New York. Capital View did not provide a complete copy of the study but rather only an executive summary. As such, the estimated economic impact of construction or operations could not be confirmed.

**Providing the highest number of quality jobs in the gaming facility. (§ 1320(1)(c))**

Capital View expected to employ 769 full-time and 256 part-time employees.

In regard to the use of New York-based subcontractors and suppliers, Capital View proposed to spend millions in 2015 on New York-based subcontractors and suppliers, however they failed to identify an annual biddable spend throughout the life of the project. Capital View identified 19 categories of construction work for which New York-based subcontractors and suppliers would be used, in whole or in part, however there was no indication that Capital View intended to engage New York-based companies to assist in the initial design phases of the project or during the operational phase of the project.

Capital View anticipated construction total worker hours of 578,760.

**Building a gaming facility of the highest caliber with a variety of quality amenities to be included as part of the gaming facility. (§ 1320(1)(d))**

The Capital View project site consisted of 184 acres east of Route 4, north of Mannix Road and south/west of Best Road. The western edge of the property borders Route 4. To the north, east and south of the project site are primarily undeveloped properties consisting of sparse residential/agricultural land. The project anticipated using approximately 156 acres of the total project site.

Capital View proposed a three-star-plus, “Capital View”-branded resort comprising the following:

- 60,000-square-foot casino with designated high-limit areas;
- 100-room hotel with a fitness center, salon and spa;
- 6,000 square feet of multi-purpose meeting and small entertainment space;
- Four restaurants including its signature restaurant, a steakhouse to be operated by Capital District restaurateur Angelo Mazzone; and
- Three bars/lounges including the Capital View Lounge, a penthouse lounge with a wraparound terrace located atop the hotel.

Capital View proposed to develop the gaming facility and hotel atop Thompson Hill in order to minimize the impact to the surrounding environment. Ponds would have been created to mitigate the effects of storm water and to enhance the landscape. The master plan for the land was inspired by traditional Dutch planning, landscapes and spectacular gardens for which the Netherlands was renowned. In addition, the project would have included a garden from which vegetables and herb crops would have been raised for use by the facility’s restaurants. Capital View stated that the project site would have afforded room for some future expansion, but no expansion plans were provided.

Capital View proposed a single-level 60,000-square-foot casino (including 4,000-square-foot VIP gaming area) that was expected to offer the following mix of games:

- Slots—1,506 (including 58 high-limit slots);
- Table games—56 tables (including eight high-limit tables); and
- Poker tables—none.

Capital View proposed to offer a segregated high-limit area to cater to high-limit players. Located adjacent to the high-limit gaming area would have been a members-only VIP lounge that would have offered a cocktail bar, soft seating area, cocktail tables, a host desk and large screen televisions. Additionally, patrons in the VIP lounge would have had access to a private, secure outdoor terrace. VIP customers also would have had an expedited service line at the hotel.

Capital View stated that it would have stood fundamentally apart from, and superior to, competing casinos because it was the “home team”; its partner Saratoga Harness Racing, Inc., owner of Saratoga Casino and Raceway, has a track record of successful local gaming industry experience and that, therefore, Capital View would have had access to a database of a significant number of known gamers from the Capital Region. Capital View’s owners have experience operating a casino in this market and additionally have experience operating casinos in many other states.

Board experts noted that, generally, the proposed number of gaming positions fits into the proposed casino space. Using industry benchmarks for the seat or position capacity of slot machines and table games, the gaming capacity was capable of serving the physical demand on an average day under Capital View’s average case visitor forecast.

Board experts noted that non-gaming amenities were appropriately alternated around the perimeter of the casino to create synergy with gaming and vice versa. Board experts noted that Capital View’s design did not take full advantage of potential views, especially given the stated commitment to landscape the project site heavily.

Capital View proposed a single, “three-star-plus” 100-room hotel tower comprising:

- 72 standard rooms (425 square feet each);
- 10 handicap accessible rooms (860 square feet each);
- 10 corner suites (650 square feet each);
- Five double suites (850 square feet each); and
- One Governor’s suite (1,200 square feet).

Capital View stated that the hotel would be “Capital View”-branded. The second floor of the hotel would have featured a salon and spa (5,200 square feet) and a fitness center (700 square feet).

Capital View proposed its distinctive design and resort-style amenities would have been a differentiating factor for its hotel over its competitors. The hotel would have provided three-star-plus service and have had décor and ambience of a resort, thus making it a destination stay, a place where a regional resident could have the experience of an upscale vacation without the accompanying travel. It would also be distinguished by its flagship restaurant, a steakhouse operated by Capital District restaurateur Angelo Mazzone. Capital View stated that hotels of comparable quality include The W Hotel and Affinia.

Board experts suggested that the hotel floor plan was typical and satisfactory. Board experts suggested that the hotel may have been too small for the forecasted visitor demand.



Capital View proposed to construct a 6,000-square-foot special events hall that would have created a convenient, versatile venue for meeting, entertainment and casino-related events. The hall would have accommodated up to 500 people for concerts and 270 people for banquet seating configurations. The hall could have been sub-divided into multiple small room arrangements. Capital View expected the hall to serve as a venue for VIP events, Super Bowl parties and promotional/giveaway events for gaming patrons. The hall also would have been suitable for weddings, concerts and comedy acts.

Board experts suggested that based upon the high use of the hotel rooms by casino patrons, there would not have been enough available hotel rooms available to book a large convention, meeting or exhibition. As such, the special events hall would have been used for short lead time events, smaller rather than larger functions, day use and casino or casino-related entertainment events. Capital View's pro forma did not show any convention revenue.

Capital View proposed offering two primary entertainment venues:

- 6,000-square-foot special events hall.
- 4,200-square-foot casino "center" bar with an elevated entertainment platform would be used to hold various live performances from individual acts to small groups. Capacity at the bar would have been 120 people.

Capital View made the intentional decision to limit its live entertainment space so as not to compete with nearby live entertainment venues. Capital View entered into memorandums of understanding and letters of intent with various impacted live entertainment venues in the Capital Region.

The agreements varied based upon the individual venue and addressed a wide range of items including, in some cases, capital funding, long-term sponsorships, cross-marketing campaigns and Capital View's production of events at their venues. The financial contributions in each were intended to ensure that the arts remain a vital component of the community.

Board experts suggested that Capital View, based on its pro forma, proposed a reasonably aggressive use of entertainment as a marketing tool. It was unclear how this would be achieved given the limited use of the special events hall.

Capital View proposed four restaurants, including its signature steakhouse to be operated by Capital District restaurateur Angelo Mazzone. The capacity for these restaurants was stated to have been 330 patrons. Capital View also proposed three bars/lounges. In addition to the bars, the casino would have offered the VIP lounge (22 seats). As for other amenities, Capital View proposed a small retail outlet (500 square

feet), outdoor walking trails through gardens, ponds and wetlands, a salon and spa and a fitness center.

Capital View asserted that the casino, hotel rooms and amenities would have surpassed those of other hotels and restaurants in the region because of its Dutch Colonial design inspiration. Capital View stated that the steakhouse to be operated by Mazzone Hospitality would have been a destination restaurant for the entire region.

Board experts found that with respect to non-gaming amenities, Capital View's dining venues (330 seats) were capable of serving 38 percent of the forecasted daily visitors one meal on an average day under the average case and 29 percent of visitors on a peak day under the average case.

The Capital View Lounge, located atop the hotel, would have provided views of downtown Albany. Board experts noted that this single venue could have done more to differentiate Capital View than any of the other food and beverage outlets.

Capital View believed that the steakhouse to be operated by Mazzone Hospitality was a differentiating factor of its project. However, the proposed steakhouse would have been located only 10 minutes away from the downtown Albany steak restaurant operated by the same restaurateur.

Capital View did not provide any recreational or relaxation activities. Overall, Board experts noted that Capital View would have been not so much a resort (in terms of the leisure/recreational use of the term) as it would have been a local and regional casino-hotel.

Capital View provided a detailed description of internal controls that reflected current industry standards.

**Offering the highest and best value to patrons to create a secure and robust gaming market in the region and the state. (§ 1320(1)(e))**

Capital View stated that each of the properties associated with the owners and manager focused the majority of its marketing efforts and resources on its player loyalty program and that Capital View would open with the same dedicated focus. According to Capital View, its complete turn-key player database and loyalty programs ranked with the top gaming firms in the country and were rooted in their committed focus toward aggressive player acquisition and club enrollment.

Capital View stated that the substantial and existing database at Saratoga Casino and Raceway would have been used to help launch the facility, providing players the ability to earn rewards and benefits at both Saratoga Casino and Raceway as well as at Capital View. These joint marketing efforts would have allowed players to seamlessly move

between the properties rather than finding themselves in the middle of a wasteful and unproductive competitive marketing struggle.

Board experts noted that while Capital View stated it would have used Saratoga's existing database/loyalty programs (which currently contain a significant number of active players), Capital View did not address exclusivity or provide information in regard to the terms and conditions that would have governed Capital view's access to/use of Saratoga's player database/loyalty program. In particular, Capital View did not explain how it would address the different effective tax rates between Capital View and Saratoga Casino and Raceway.

Capital View's facility is not part of a regional or local economic plan. Capital View stated that it intended to coordinate its development and operations with regional economic plans, but would not seek any public funding or assistance with the proposed gaming facility.

**Providing a market analysis detailing the benefits of the site location of the gaming facility and the estimated recapture rate of gaming-related spending by residents travelling to an out-of-state gaming facility. (§ 1320(1)(f))**

Board experts suggested that a strength of the proposal was that the project site was within a 10-minute drive of downtown Albany and near the Rensselaer train station. Visitors would have been greeted by a heavily landscaped 184-acre project site. Capital View stated it would have used its partnership with Saratoga Casino and Raceway to encourage visitation between the two properties. Capital View believed this two-stop strategy would have driven the greatest possible tourist demand for players, in particular those from Vermont, New Hampshire, Massachusetts, Connecticut and New Jersey. Capital View also claimed that jobs anticipated being lost at Saratoga Casino and Raceway would have been relocated, in all possible cases, to the new operations at Capital View.

Board experts noted that Capital View's analysis of compatibility with adjoining areas did not address the adjacent residential area. Board experts noted that Capital View stated the proposed facility would have been compatible with the commercial corridor, but noted further that the site was former farmland. Given this, the proposed use may have required a zoning and/or planning decision from the local municipality or county. Capital View noted the proposed development of the former farmland location would result in community revitalization, but there had been public opposition to the site.

Capital View estimated the recapture rate of gaming revenues from New York residents traveling to out-of-state gaming facilities at \$129.1 million.

**Offering the fastest time to completion of the full gaming facility. (§ 1320(1)(g))**

Capital View stated that it would open the facility within 19 months of a license award.

State agencies assisting noted that the proposed schedule, including a proposed opening on June 20, 2016, was aggressive and heavily dependent upon labor availability.

The site for the gaming facility was a 184-acre undeveloped/undisturbed site. The site contained federally regulated wetlands and streams. If wetlands/streams were impacted, a Section 401 Water Quality Certification permit and possible mitigation measures would have been required. If an extension were proposed to the existing sewer district, it was important to note that the Town of East Greenbush had a sewer moratorium on new connections. A Water Withdrawal permit might have been necessary depending on the volume of water required to serve the project. The site was located within an archeologically sensitive area and therefore would likely have required an archeological survey and consultation with the State Historic Preservation Office. The project might have also required time-of-year restrictions for tree removal and/or a survey for protected species of bats. If the project would result in impacts to protected species or habitat, an Incidental Take Permit also might have been required. The site was located within an Agricultural District. The State Environmental Quality Review Act (SEQRA) status was unknown.

Capital View proposed rezoning the project site. State agency experts noted that the proposed rezoning would establish the specific requirements for use and area parameters, as well as mitigation fees. It appeared that the SEQRA analysis would have addressed the rezoning, as well as the site plan/subdivision approvals. It also appeared that anticipated timeframes for some approvals (particularly SEQRA) were underestimated.

**Demonstrating the ability to fully finance the gaming facility. (§ 1320(1)(h))**

Capital View was owned 50 percent by Greenbush Casino Associates, LLC and 50 percent by MVGR, LLC (collectively, the “Owners”). Capital View stated that Churchill Downs Incorporated (“Churchill”) (the parent of MVGR), and Saratoga Harness Racing, Inc. (“Saratoga”) had the ability to provide financing for the project.

According to Capital View, all costs associated with the project either had been or would be funded, as applicable, through a combination of equity provided by the Owners and third-party project financing provided by one of the banks from which it had obtained a

commitment letter related to such financing. Capital View asserted that, should the Board approve its Application, all subsequent costs incurred (*i.e.*, license fee, capital investment deposit, costs associated with construction and initial operations) would have been funded in part by Capital View's equity (through additional capital contributions made by the Owners), with the balance to be financed by one of the banks from whom it had received a commitment letter related to financing for the project.

Capital View presented debt commitment letters from three financial institutions.

With respect to senior debt, Capital View proposed to obtain third-party debt financing from one of the banks from which it had obtained a commitment letter. With respect to equity, Churchill anticipated that it would have had sufficient cash available from operations and available borrowing capacity to fund its share of required equity for the project. Saratoga submitted a letter from a bank stating that the bank was highly confident that debt financing could be arranged for Saratoga to allow it to fund its share of required equity for the project. Saratoga also submitted an equity support letter from an investment bank to fund Saratoga's share of its required equity for the project.

**Demonstrating experience in the development and operation of a quality gaming facility. (§ 1320(1)(i))**

Capital View stated that Churchill Downs is a diversified provider of pari-mutuel horseracing, casino gaming, entertainment and the country's premier source of online account wagering on horseracing events. Churchill Downs has conducted thoroughbred racing continuously since 1875 at its namesake track in Louisville, Ky., which was internationally known as the home of the Kentucky Derby. Churchill Downs offers gaming products through its casinos in Mississippi, its slot and video poker operations in Louisiana, its slot and poker operations in Florida, its slot and table games operations in Maine and its video lottery terminal joint venture facility in Ohio.

Board experts suggested that Churchill Downs was an experienced owner/operator of pari-mutuel horseracing and casino gaming facilities in numerous domestic jurisdictions. Churchill Downs (and/or its subsidiaries) has undergone pari-mutuel betting and casino gaming licensing in multiple domestic jurisdictions in which it conducts pari-mutuel betting and casino gaming and has experience complying with the regulations governing these activities.

As an agent of the New York Lottery, Saratoga operates New York Lottery VLTs at its racetrack in Saratoga Springs. It is licensed by the State of New York to conduct pari-mutuel betting and operate VLTs and has experience complying with New York law and regulations governing these activities. Board experts suggested that by virtue of its New York Lottery video gaming operations, Saratoga Casino and Raceway has experience in gaming operations in the Albany/Saratoga Springs market and an understanding of the local clientele for gaming. An affiliate of Saratoga Harness Racing, Inc. holds a gaming

license in Colorado. Neither Saratoga Harness Racing, Inc. nor any of its affiliates have ever had a gaming-related license denied, suspended, withdrawn or revoked.

## **LOCAL IMPACT AND SITING FACTORS**

### **Mitigating potential impacts on host and nearby municipalities which might result from the development or operation of the gaming facility. (§ 1320(2)(a))**

Capital View stated that it was committed to assuming, in full, the costs associated with mitigating the impacts of the casino development. Capital View anticipated that these costs during the development phase would be approximately \$24 million, which had been allocated in Capital View's construction budget. Capital View included in its construction budget \$18 million for "offsite work," including projected mitigation expenses related to traffic and roadway infrastructure; water demand; supply and infrastructure capacity; and electricity demand and infrastructure capacity. The remaining \$6 million would have been allocated to mitigating impacts on the host municipality through onsite work related to storm water discharge and management, protected habitats and species and light pollution, among other things.

State agency review suggested that no support exists, such as from independent experts or cost analyses, for many of the impact costs mentioned. There was discussion on the proposed project and its impact on neighboring communities, but Capital View did not discuss some of the requested topics and did not support its conclusions with documentation (e.g. did not mention fire protection systems).

Capital View concluded, based on a comparative analysis of public services impacts on similarly-situated communities resulting from previous casino developments, that the Town of East Greenbush should be prepared to increase staffing by roughly 10 percent to accommodate additional demand from the casino. In addition, there might have been a need for special training to deal with unique issues related to law enforcement in casinos. The Town of East Greenbush likely also would have needed to build a new holding cell and purchase an additional patrol vehicle. The police department might have experienced an increase in expenses by approximately \$220,000 annually as a result of additional personnel, training, equipment and other capital expenditures, such as upgraded communication systems and holding cells.

Capital View reported discussion with the Town of East Greenbush in regard to available water and sewer infrastructure capacity for the project. The project would have been served by an adjacent 30-inch water main and eight-inch gravity sewer. The Town of East Greenbush was expanding the capacity of its waste water treatment facility, to be completed in 2015. Capital View stated that sufficient water and sewer capacity would be available to accommodate the project with modest investments that Capital View would have funded. Capital View's project lies within a Generic Environmental Impact Statement

study area for which impact fees have been established, and Capital View would have paid the required impact fee (estimated at \$1.6 million).

Capital View would have installed direct primary electric service from National Grid's electric substation approximately one mile away. Capital View conducted a preliminary review of the vegetative features of the project site and proposes an offsite interchange modification at I-90 Exit 9. Capital View identified small impacts on an existing forested wetland area and three potential, isolated (potentially non-jurisdictional) wetlands that Capital View's project would have impacted. Additional wetland and stream impacts would have occurred in connection with the I-90 interchange project.

Capital View queried government agency data in regard to protected species known to frequent the surrounding area and identified the northern long-eared bat, which was proposed for listing as a federal endangered species. Capital View stated that there would have been no impact to critical habitats, as reported no observations of the species at the project site or immediate vicinity were reported. Capital View observed that the impacted portions of the project site and I-90 interchange project were fragmented and/or edge habitats for this species and, therefore, anticipated no, or at most minor, impact on the species' primary habitat.

Capital View did not document the expected light pollution impact of the proposed facility.

Citing the longstanding problematic issue of housing affordability in the State as well as in the region, Capital View assessed whether its project would have aggravated the housing affordability issue, as was the case with the two casino destination resorts in southeastern Connecticut. Capital View notes that more than 99 percent of the anticipated hires would have been made locally and the only hires outside of the region would consist of the casino's top management team.

**Gaining public support in the host and nearby municipalities, which may be demonstrated through the passage of local laws or public comment received by the board or gaming Applicant. (§ 1320(2)(b))**

Capital View's host community was the Town of East Greenbush. Capital View provided a resolution in support of its project adopted by the Town of East Greenbush on June 12, 2014. Both the Town and Capital View were in litigation brought by a group of residents of East Greenbush alleging improprieties with the Town's process on the vote and other issues.

Capital View stated that since the RFA was released, it undertook an extensive outreach initiative in Region Two, holding several meetings with individuals, local government officials and groups throughout the region and conducting three public presentations (May 19, 2014, May 21, 2014 and June 4, 2014) concerning its project. Capital View also

stated that it launched an internet and social media presence that prioritizes daily interaction with stakeholders, including responding to inquiries from local residents and media outlets to ensure transparency and the availability of facts about the project in real time.

Capital View provided copies of resolutions supporting its project from Saratoga County, the Towns of Pittstown, Petersburg, Poestenkill and Grafton and the City of Troy. Capital View provides letters of support from the Rensselaer County Executive and Schodack Central School District. Capital View also provides letters of support from several chambers of commerce and local businesses located in Albany and Rensselaer Counties, as well as local residents and trade councils.

The Board was aware, by correspondence and at the public comment event held in Albany on September 22, that there was a well-organized and community-driven grass roots opposition to the project.

The Board received more than 11,000 pieces of unique communications relating to the siting of casinos, when identifiable duplicates were culled. Of these, more than 10,000 were project-specific.

These communications came in the form of emails, written correspondence, post cards, petitions, social media, etc. sent to the Board via the Gaming Commission, individual Gaming Commissioners, individual Gaming Facility Location Board Members and correspondence to the State Executive Chamber. All such communications were preserved and catalogued for the Gaming Facility Location Board's review and consideration.

The Capital View project was the subject of more than 1,400 comments, of which 94 percent were in opposition and six percent were in support.

At the public comment event, Capital View was the subject of more than 50 comments with approximately four out of every five comments indicating opposition.

**Operating in partnership with and promoting local hotels, restaurants and retail facilities so that patrons experience the full diversified regional tourism industry. (§ 1320(2)(c))**

Capital View stated that “strong local partnerships are the key to a thriving casino that lifts up an entire community and spurs growth throughout the region.” To that end, Capital View partnered with local businesses and attractions to create “fun books” that would have been provided to every new member of Capital View’s loyalty club. Capital View also partnered with other local businesses and hotels to create “stay and play” packages to encourage guests to play at the casino while visiting other businesses and attractions in the community.



Capital View’s loyalty program would have been the cornerstone of the community partnership program, allowing members to exchange loyalty points for gift cards at local businesses and attractions. Cross promotion also would have occurred through on-site promotions, a knowledgeable concierge service and transportation services to and from local and regional attractions and by featuring local products in Capital View’s restaurants.

Finally, Capital View and a semi-regional hospitality company indicate that they developed a partnership where, during the construction of Capital View’s facility, Capital View would have referred consultants and contractors to two local hotels owned by the hospitality company.

Capital View stated that its affiliates were firmly rooted in their communities and would source as many products and services as possible from the community, region and State. As an example of this principle in practice, Capital View pointed to one of its affiliated casinos and noted that it had purchased 76.8 percent of all goods and services from New York companies. For its own property, Capital View intended to hold vendor fairs to inform local businesses of Capital View’s needs and to continue using the vendors with whom Capital View had already developed relationships.

Additionally, Capital View also noted it had a partnership with a hospitality company that owns restaurants in the region, which would have operated Capital View’s signature steakhouse with a focus on locally-grown and sourced products.

Capital View noted that it was working with a loyalty program that already had an extensive database of active players from its affiliate, Saratoga Harness Racing. Additionally, Capital View proposed that it was the only bidder that would not have actively and aggressively cannibalized racino customers, as Capital View instead would have cross-marketed and shared database opportunities that were exclusive to its own bid.

Capital View’s “Capital Partner” program would have been expanded under its proposal. The program would have allowed guests to redeem loyalty point for gift cards to partner facilities.

Capital View stated that it developed cross-marketing platforms that would have benefited local partners by increasing their visibility and customer base while increasing casino visits and gaming revenue. Capital View had engaged in substantial discussions with the local businesses, arts community and existing regional tourist attractions. Capital View stated that relationships and cross-marketing plans have been formed with restaurants, hotels, live entertainment venues, racinos and the Rensselaer County Chamber of Commerce. Methods of cross-marketing would include the “Capital Partners

Program,” onsite promotional visibility for local establishments and a knowledgeable concierge service.

**Establishing a fair and reasonable partnership with live entertainment venues that may be impacted by a gaming facility under which the gaming facility actively supports the mission and the operation of the impacted entertainment venues. (§ 1320(2)(d))**

Capital View entered into agreements with a number of local live entertainment venues and had pending agreements with two additional venues. For example, Capital View reached an agreement with the Albany Times-Union Center, The Palace, Park Playhouse, Albany Symphony Orchestra, and Albany Institute of Art and History. Capital View would have paid a specified amount to a capital campaign for the venue, place a key member of Capital View’s team on the capital campaign committee and pay an annual sponsorship fee. Additionally, the parties would have engaged in cross-promotion where Capital View would have made discounted tickets to the venue available to guests and employees, market the venue and its events to Capital View’s loyalty program members and market the venue in and around the property and on Capital View’s website. The agreement also would have covered booking arrangements for artists, offsite events hosted by the venue and other matters.

**WORKFORCE ENHANCEMENT FACTORS**

**Implementing a workforce development plan that utilizes the existing labor force, including the estimated number of construction jobs a proposed gaming facility would generate, the development of workforce training programs that serve the unemployed and methods for accessing employment at the gaming facility. (§ 1320(3)(a))**

Capital View sought to fill 30 percent of its front-line hourly positions in partnership with the New York State Career Center, including the Career Center in Albany. It also would have used the NYS Department of Labor, Division of Employment and Workforce Solutions to post jobs, source candidates, match skills, interview and offer jobs.

Capital View also committed to developing partnerships with various training professionals, such as the Hudson Valley Community College and its Workforce Development Institute and Schenectady Community College’s casino program, to assist in developing and implementing new programs to aid in the training and improvement of a worker’s ability to carry out entry-level tasks and responsibilities.

Capital View detailed the historical experience of Churchill Downs Incorporated, the parent of MVGR (a 50-percent owner of, and the manager of, Capital View), in hiring the unemployed at its casinos located in Oxford, Maine and Mason, Ohio, both of which Capital View claimed were highly successful programs in providing training, screening, and hiring programs for the unemployed. The program Capital View proposed for this

project includes filling entry-level positions with qualified Applicants, including those who have experienced a period of unemployment. Capital View would have used competency-based screening tools to recruit and select employees.

Capital View also detailed the hiring experience of its women and minority-owned professional design and construction firm partner, which partner would have driven its MWBE efforts during construction. Capital View's partner had significant experience in the local area. That experience, Capital View stated, would have given its team an advantage, as it was familiar with the community and its key stakeholders and it understood what was required to meet its goals for the project.

**Taking additional measures to address problem gambling including, but not limited to, training of gaming employees to identify patrons exhibiting problems with gambling. (§ 1320(3)(b))**

Capital View collaborated with the New York Gaming Association and the New York Council on Problem Gambling to develop a problem gambling plan that would have used a variety of onsite resources. Capital View would have provided up-to-date and readily available information on problem gambling pursuant to the New York Council on Problem Gambling's recommendations, including conspicuously placed responsible gambling signage featuring the 24-hour HOPEline number throughout the casino, as well as brochures and other literature on responsible and problem gambling and the self-exclusion program available at multiple highly-trafficked areas of the casino. A responsible gambling message would have been included in all electronic and print communication and marketing, and Capital View would have hosted outreach efforts on responsible gambling when possible. Additionally, all employees would have been required to undergo orientation reinforcing Capital View's commitment to responsible gambling, including New York State Gaming Commission-approved training on responsible gambling and problem gambling. Employees would have been evaluated to measure employees' increase in ability to provide assistance.

Capital View stated that it would have offered a self-exclusion program, which would have been based on an assistance model. Informational brochures would have been available and employees would have been trained to assist patrons with registration. During the ban period, an excluded individual would have been removed from all marketing systems and players club membership. Capital View's self-exclusion program would have been well-advertised at the gaming facility, information would have been available in brochure format at the facility, on Capital View's website, and employees would have been trained to assist patrons with registration.

Capital View was furthering the development of a corporate social responsibility committee tasked with interfacing with community leaders and local providers to better understand the community and opportunities for collaboration. Capital View stated that it was actively seeking opportunities to participate in forums and conferences organized by

the Responsible Play Partnership, the New York State Gaming Commission, the Office of Alcohol and Substance Abuse Services and the New York Council on Problem Gambling. Capital View also planned to use the New York Responsible Gambling Hub in an effort to communicate regularly with New York Gaming Association member facilities and staff and stay up to date by accessing the Hub's news directory.

Capital View proposed to develop a relationship with the NYS Family and Children's Services and the Hudson Mohawk Recovery Center, among others, to benefit local patrons who seek assistance for a gambling problem. Capital View also planned to develop prevention programs geared towards more vulnerable populations.

Capital View stated that its affiliates, at existing gaming facilities, have implemented a number of processes to address problem gambling and adhere to State law, rules, regulations and recommendations and actively take advantage of advances in technology, advertising support, strict self-exclusion policies and employee training to raise awareness and enforcement of problem gambling initiatives.

In accordance with the American Gaming Association Code of Conduct, Capital View pledged to promote responsible gaming, advertise responsibly, prevent underage gambling and unattended minors in casinos, support and promote research-based policies on responsible gambling, and provide adequate oversight and review at each property to ensure compliance with all problem and responsible gambling regulation. Capital View also pledged to educate new employees about responsible gaming, proper identification of potential signs of trouble and to provide periodic refresher training to promote understanding of responsible gambling and the related policies and procedures.

**Utilizing sustainable development principles including, but not limited to:**

- (1) having new and renovation construction certified under the appropriate certification category in the Leadership in Energy and Environmental Design Green Building Rating System created by the United States Green Building Council;**
- (2) efforts to mitigate vehicle trips;**
- (3) efforts to conserve water and manage storm water;**
- (4) demonstrating that electrical and HVAC equipment and appliances would be Energy Star labeled where available;**
- (5) procuring or generating on-site 10 percent of its annual electricity consumption from renewable sources; and**
- (6) developing an ongoing plan to submeter and monitor all major sources of energy consumption and undertake regular efforts to maintain and improve energy efficiency of buildings in their systems. (§ 1320(3)(c))**

Capital View proposed significant traffic mitigation measures, including the addition of a lane to an existing roadway, adding an additional turn lane at one intersection, adding a new on-ramp, optimizing signal timings, signaling one intersection and modifying one

turn lane. Capital View estimated the construction costs of these improvements at \$9.25 million. Capital View anticipated that a highway work permit would have been obtained for this work in Fall 2015, with construction to be completed by Fall 2017. All construction costs would have been funded by Capital View. State agency experts noted that the proposed mitigation measures were extensive.

Capital View asserts that its casino project would have been a LEED certified facility and State agency experts noted Capital View engaged in a thorough and well-organized presentation of information of what was necessary to meet the LEED requirement.

Capital View reported that Energy Star equipment would be specified throughout its facility, as well as HVAC and lighting systems that would qualify for government energy efficiency incentives.

Capital View included preliminary schematic plans to mitigate storm water discharge from the project site using detention ponds in accordance with State requirements. In addition, Capital View planned to use green infrastructure practices (e.g., bioretention, vegetated swales, green roofs and porous pavement) designed to reduce runoff volume, but did not detail those plans. State agency experts noted that the project would have been developed on an undeveloped green field site, which would have reduced open space in the area and might have impacted existing natural resources at the site.

Capital View stated that it would have used low-flow fixtures throughout its facility, but did not present specific plans or specifications.

Capital View reported no plans or commitments for on-site renewable energy production or special purchase of renewable energy. State agency review suggested that Capital View might have purchased renewable energy credits to ensure that it procured the sufficient portion of renewable energy, but likely would do so at a cost premium generally associated with such a transaction.

**Establishing, funding and maintaining human resource hiring and training practices that promote the development of a skilled and diverse workforce and access to promotion opportunities through a workforce training program that:**

- (1) establishes transparent career paths with measurable criteria within the gaming facility that lead to increased responsibility and higher pay grades that are designed to allow employees to pursue career advancement and promotion;**
- (2) provides employee access to additional resources, such as tuition reimbursement or stipend policies, to enable employees to acquire the education or job training needed to advance career paths based on increased responsibility and pay grades; and**

**(3) establishes an on-site child day care program. (§ 1320(3)(d))**

Capital View stated that it was committed to source a skilled and diverse workforce during the construction and opening of its gaming facility. Capital View anticipated working with State and local agencies to develop partnership strategies and workforce solutions that ensured the employment of the unemployed, veterans, females and minorities. Prior to the opening of its gaming facility, Capital View would have partnered with McKissack & McKissack to ensure that minority- and women-owned business enterprises would have been used during the construction phase. Capital View also would have worked with the NYS Department of Labor Career Central to access candidates and ensure diversity. Capital View proposed to create a transparent path to promotional opportunities. First, job ladders consisting of two steps would have been built into front-line job descriptions. Upon completion of the two steps, employees may have entered the supervisor development program. The supervisor development program would have been a partnership between Capital View and the Hudson Valley Community College and would have prepared employees for supervisory positions. Capital View stated Riverwalk Casino in Mississippi developed a similar program successfully. In addition, management development programs would have been offered to qualified employees.

Furthermore, Capital View would have offered a tuition reimbursement program that would provide up to \$4,000 in reimbursable expenses per annum for approved training and education. Employees also would have had access to more than 1,000 online learning courses and a designated space for classroom training with computer access.

Capital View stated that it would have provided an employee assistance program that would provide access to professionals who may have assisted employees dealing with substance abuse and/or problem gaming, domestic violence or mental health issues.

**Purchasing, whenever possible, domestically manufactured slot machines. (§ 1320(3)(e))**

Capital View proposed to source domestically manufactured slot machines.

**Implementing a workforce development plan that:**

- (1) incorporates an affirmative action program of equal opportunity by which the Applicant guarantees to provide equal employment opportunities to all employees qualified for licensure in all employment categories, including persons with disabilities;**
- (2) utilizes the existing labor force in the state;**
- (3) estimates the number of construction jobs a gaming facility would generate and provides for equal employment opportunities and which includes specific goals for the utilization of minorities, women and veterans on those construction jobs;**

**(4) identifies workforce training programs offered by the gaming facility; and  
(5) identifies the methods for accessing employment at the gaming facility. (§  
1320(3)(f))**

Capital View stated it would have partnered with a prominent women/minority-owned professional design and construction firm to drive its affirmative action plan during construction and the pre-opening hiring of its employees for both the casino and the hotel. The plan included an equal opportunity community outreach and workforce program that would have monitored, assist and engaged certified local women- and minority-business enterprises to provide meaningful contracting opportunities. Capital View also would have customized and implemented an equal opportunity program that focused on employment opportunities for minorities, women, veterans, people with disabilities and local labor force professions to meet participation goals and to increase diversity within the gaming industry workforce.

Capital View suggested participation goals for procurement of goods/services and labor of 15-17 percent MBE and five to eight percent WBE for construction contracting opportunities and 10 percent EEO construction workforce participation. Capital View stated it would have strived to fill 30 percent of its front-line jobs with persons who have been sourced through the NYS Department of Labor Career Center and would have filled 20 percent of its pre-opening front-line workforce with minorities and 40 percent with females.

**Demonstrating that the Applicant has an agreement with organized labor, including hospitality services, and has the support of organized labor for its application, which specifies:**

- (1) the number of employees to be employed at the gaming facility, including detailed information on the pay rate and benefits for employees and contractors in the gaming facility and all infrastructure improvements related to the project; and  
(2) detailed plans for assuring labor harmony during all phases of the construction, reconstruction, renovation, development and operation of the gaming facility. (§  
1320(3)(g))**

Capital View signed a labor peace agreement and a project labor agreement for construction of the casino project with the Greater Capital Region Building and Construction Trades Council, AFL-CIO, together with its affiliated local union members identified in their respective collective bargaining agreements. Additionally, Saratoga Casino and Raceway, an owner of Capital View, had a current labor agreement with the New York Hotel and Motel Trades Council, AFL-CIO.

To establish labor harmony during the construction and operation of the casino and hotel, Capital View stated it would have established a joint labor and management safety committee to monitor the safety of all workers involved with the development, construction and operation of the casino and hotel. Capital View also would have

established an employee relations committee to ensure workplace issues were addressed and resolved in a timely manner.





**NYS Funding, LLC, on behalf of Och-Ziff Real Estate and Seminole Hard Rock Entertainment and Global Gaming Consulting proposed to develop the Hard Rock Hotel & Casino (“Hard Rock”) on the Hudson River at DeLaet’s Landing site in the Town of Rensselaer in Rensselaer County. According to Hard Rock, the project would have included 1,500 slot machines, 50 table games and an off-track betting outlet. The hotel would have featured 100 rooms, an indoor/outdoor pool overlooking a Hudson River boardwalk, a spa, fitness center and meeting space. A Hard Rock Café restaurant, stage, steakhouse and a casual dining venue and bar, plus a retail outlet also would have been included.**

#### **ECONOMIC ACTIVITY AND BUSINESS DEVELOPMENT**

##### **Realizing maximum capital investment exclusive of land acquisition and infrastructure improvements. (§ 1320(1)(a))**

Hard Rock’s proposed minimum capital investment was \$135 million. Hard Rock’s total capital investment was proposed to be \$280 million. Hard Rock’s total capital investment less excluded capital investment was \$187.4 million.

##### **Maximizing revenues received by the state and localities. (§ 1320(1)(b))**

Hard Rock did not propose a supplemental tax payment or additional license fee.

Hard Rock projected the following direct and indirect tax revenues to New York State and host communities:

- New York State tax revenues (including gaming taxes, machine fees, sales taxes and personal income taxes) of approximately \$105.1 million in year one and \$116.7 million in year five, in the low case scenario; \$113.5 million in year one and \$125.9 million in year five, in the average case scenario; and \$120.6 million in year one and \$133.8 million in year five, in the high case scenario.
- Rensselaer County tax revenues (including gaming taxes, real estate, sales taxes and hotel occupancy taxes) of approximately \$2.2 million in year one and remaining flat through year five, in the low case scenario; \$2.2 million in year one and remaining flat through year five, in the average case scenario; and \$2.3 million in year one and remaining flat through year five, in the high case scenario.



- Host Municipality (City of Rensselaer) tax revenues (including gaming taxes, real estate, sales taxes and hotel occupancy taxes) of approximately \$1.9 million in year one and remaining flat through year five, in the low, average and high case scenario.

Hard Rock estimated that the direct, indirect and induced economic impact from the construction of the project, which was expected to occur over a two-year period, would have been \$230.9 million to the State and \$186.0 million to the region.

Hard Rock estimated that the direct, indirect and induced economic impact from the project's operation for the first operating year (year three) would have been \$307.6 million to the State and \$390.4 million to the region.

Hard Rock provided an economic impact analysis of the project on the economies of the State of New York and the region. Board experts noted that the economic impacts set forth in the analysis might not have been achieved if Hard Rock failed to meet or exceed its financial projections.

**Providing the highest number of quality jobs in the gaming facility. (§ 1320(1)(c))**

Hard Rock expected to employ 889 full-time and 179 part-time employees.

Board experts noted that Hard Rock failed to quantify the value of the project overall or any New York-based participation in any of the requested categories of construction, furniture, fixtures and equipment furnishing or operations.

Hard Rock anticipated construction total worker hours of 517,362.

**Building a gaming facility of the highest caliber with a variety of quality amenities to be included as part of the gaming facility. (§ 1320(1)(d))**

Hard Rock proposed:

- 56,200 square feet of gaming space
- 100-room hotel with fitness center, salon, spa and pool;
- Four restaurants;
- Two bars/lounges; and,
- 800 square feet of retail.

The project site includes 24 acres on the Hudson River overlooking downtown Albany, approximately 0.5 miles from the connecting Dunn Memorial Bridge and close to the Amtrak Rail Station. The project site was master-planned to maximize views of and over the Hudson River. Amenities were designed to take advantage of the waterfront views. For example, two restaurants would have faced the river, both with outdoor dining; an outdoor gaming area would have been situated on the riverfront patio; there would have



been a pool with deck and cabanas; and one side of the hotel tower would have overlooked the river providing scenic views.

Hard Rock proposed 56,200 square feet of gaming space (including a 53,000-square-foot casino floor plus an outdoor, covered smoking area) providing the following mix of games:

- Slots—1,500 (including 50 high-limit slots, 25 outdoor slots and 10 high-limit outdoor slots);
- Table games—50 tables (including eight high-limit tables); and
- Poker tables—none.

The gaming facility would have included a 2,000-square-foot Off-Track Betting pari-mutuel operation. The venue would have been operated by Capital OTB. The casino would have offered a segregated high-limit area to cater to high-limit players. The high-limit area would have offered slots and table games.

Physically, the proposed gaming positions fit into the space provided and would have given approximately 30 square feet per position. Using industry benchmarks for the seat or position capacity of slot machines and table games, the gaming capacity would have been capable of serving the physical demand on an average day under the average case visitor forecast.

There did not appear to be a separate VIP vehicle drop-off, valet and hotel check-in area.

Hard Rock Hotel included a single, 100-room hotel tower comprising:

- 86 standard rooms (400 square feet each);
- 12 two-bay suites (800 square feet each); and
- Two premier suites (1,200 square feet each)

The hotel would have been “Hard Rock”-branded. The hotel would have offered the Rock Spa (2,500 square feet) and the Body Rock fitness center (1,000 square feet) and an indoor/outdoor pool (4,000 square feet) overlooking the Hudson River.

For hotels of comparable quality, Hard Rock proposed the following:

- Hard Rock Hotel and Casino Biloxi, Miss.;
- Seminole Hard Rock Hotel and Casino Hollywood, Fla.; and
- Seminole Hard Rock Hotel and Casino Tampa, Fla.

The quality level of the hotel that Hard Rock proposed was unclear, as Hard Rock did not specifically reference a “star” quality level. Hard Rock’s programming and renderings,



however, look like it would have been a four-star hotel, commensurate with other Hard Rock hotels associated with casinos.

Hard Rock suggested that the hotel was designed to complement the casino but not to compete with downtown Albany's existing 19 hotels. The hotel program would have allowed Hard Rock to benefit from the existing hotel capacity in the market, while introducing a differentiated product to the market. Hard Rock believed that providing a high-end boutique hotel for gaming and regional transient customers would have been a positive addition to the area.

The hotel would have offered 14 suites (800 square feet to 1,200 square feet). Board experts noted that the largest suites located on the upper levels of the hotel did not face the river.

Hard Rock proposed to build approximately 1,000 square feet of dedicated meeting space. Board experts suggested that this was not significant. Given this lack of substantial meeting space, Hard Rock intended to work with local meeting and convention venues, particularly those located in downtown Albany, to establish a beneficial relationship for the hosting of such events.

Additionally, Hard Rock would have built a 400-square-foot business center located adjacent to this meeting space.

The Hard Rock brand is known worldwide for its rock and roll entertainment, its extensive memorabilia collection and the encouragement of up-and-coming artists. Hard Rock, however, was not contemplating building a dedicated entertainment venue. Board experts noted concern with the lack of a formal and larger entertainment at the gaming facility, especially because Hard Rock had a long-standing tradition in entertainment.

Board experts noted that the Hard Rock Café located within the gaming facility would have included a raised stage with state-of-the-art lighting and audio/visual systems and would have been used to host live performances. The Hard Rock Café would have been located behind the casino's center bar and would have provided direct access to the river walk along the Hudson River. Hard Rock referred to the stage located in the Hard Rock Café as the location for live bands and entertainment, up to and including dedicating the entire Hard Rock Café to a show, act, entertainer, or event via the flexible seating that was embedded into its design. The casino center bar shared a boundary with the Hard Rock Café, thereby allowing patrons at the center bar to be able to "participate" in such entertainment events as well.

Hard Rock proposed four restaurants, including its famed Hard Rock Café, some of which would have provided outdoor dining along the Hudson Riverfront. The capacity for these restaurants was stated to have been 745 dining patrons (excluding outdoor dining and assuming build-out of the specialty restaurant).



The specialty restaurant was presented as a restaurant that may be managed by a third-party; however, Board experts noted, that Hard Rock did not provide any details concerning who would have operated the specialty restaurant.

Board experts noted that non-gaming amenities were appropriately alternated around the perimeter of the casino to create synergy with the gaming and vice versa.

As for other amenities, Hard Rock proposed one retail outlet (800 square feet) and construction of a 12-foot-wide river walk from Broadway Street along the edge of Quackenderry Creek and extending along the Hudson River to the north end of Hard Rock's project site.

It was unclear who would have managed the day-to-day operations and marketing of this gaming facility. Given the ownership chart, it was clear that Och-Ziff was driving the funding through multiple equity vehicles. Additionally, there were various exhibits that referenced Global Gaming Consulting as a gaming advisor to the project. Global Gaming Consulting was linked to the Chickasaw Nation. Seminole Hard Rock Entertainment would have licensed certain of its intellectual property to Hard Rock, including its brand name and customer database, but did not appear to be managing the gaming operations. It did appear, however, that many of the proposed potential management team members were from Hard Rock or the Chickasaw Nation and that Seminole Hard Rock Entertainment would have provided pre-development consulting services to Hard Rock.

Hard Rock submitted a brief description of internal controls and indicated that it would have used a third-party consultant to develop a full set of internal controls.

**Offering the highest and best value to patrons to create a secure and robust gaming market in the region and the state. (§ 1320(1)(e))**

Hard Rock stated that there were customers residing within 200 miles of the proposed casino site who have visited Hard Rock properties and would have been included in the player database. Hard Rock had licensed access to the national and international Hard Rock player databases. Hard Rock did not provide any information in regard to the terms and conditions that would have governed access to and use of the Hard Rock player's database and loyalty program.

Hard Rock asserted that its player reward program significantly enhanced the value of a player's membership compared to the rest of the industry and stated that its program would have provided the proposed casino with a marketing advantage. Hard Rock asserted that its efforts also would have focused on appealing to the non-gaming segments that enjoy a resort and the Hard Rock brand for entertainment, dining and an escape from everyday life.



**Providing a market analysis detailing the benefits of the site location of the gaming facility and the estimated recapture rate of gaming-related spending by residents travelling to an out-of-state gaming facility. (§ 1320(1)(f))**

Hard Rock was proposed to be located across the Hudson River from central, downtown Albany, near the Amtrak train station, which Board experts noted would have provided easy access to travelers arriving by train. Board experts noted that given its urban location, the hotel appropriately proposed to place a large focus on group business (including corporate retreats, reunions, and other events). Board experts suggested that this would have allowed Hard Rock to potentially capture non-gaming revenue.

Hard Rock estimated that by 2019, the recapture figures would have been approximately \$37.5 million in the high, medium or low-case scenarios. Of this number, \$34.3 million was expected to come from New York residents currently traveling to Connecticut casinos.

**Offering the fastest time to completion of the full gaming facility. (§ 1320(1)(g))**

Hard Rock stated it would have opened the facility within 13 months of receiving the license award.

Board experts noted Hard Rock's schedule for construction was adequately detailed, but that a 12-month construction duration would have been very aggressive and highly dependent upon labor availability. Bidding on design documents also posed risk and may have resulted in cost overruns or schedule delays.

The site for the gaming facility is a 24 acre previously developed/disturbed site which was the previous location of Rensselaer City High School. The site was proposed for mixed use development as "DeLaet's Landing." The Hudson River is located adjacent to the site and therefore the site would have been located within a Federal Emergency Management Agency Floodplain/Floodway area. The site was located within an archeologically sensitive area and consultation with the State Historic Preservation Office had been completed. The site was within the NYS Department of State Coastal Area and Rensselaer Local Waterfront Revitalization Area.

Hard Rock asserted that no zoning approvals were required and the 2009 SEQRA Findings Statement concluded that "no further SEQRA compliance would be required if a subsequent proposed action at the site would be carried out in conformance with the conditions, thresholds, and mitigations established in the FGEIS or Findings Statement."

**Demonstrating the ability to fully finance the gaming facility. (§ 1320(1)(h))**



Hard Rock was a newly formed entity and would have derived all funds from its general partner, OZRE Fund III (the “Fund”), an affiliate of the Och-Ziff Real Estate Funds. Hard Rock stated that it had the ability to provide all funds required for the development of the gaming facility without any third-party debt or equity financing, other than potential short-term borrowing under a credit facility. Hard Rock stated it intended to develop the gaming facility without the use of third-party financing.

Hard Rock had included reference letters for Och-Ziff Real Estate, which Board experts suggested were strong.

**Demonstrating experience in the development and operation of a quality gaming facility. (§ 1320(1)(i))**

Och-Ziff and Global Gaming Solutions have significant gaming experience. Hard Rock stated that its consultant and its affiliates collectively operate 22 casinos throughout Oklahoma and Texas, featuring more than 18,000 slot machines and 180 table games.

Hard Rock further noted that Global Gaming Consulting, LLC is a commercial gaming business of the Chickasaw Nation. The latter owns WinStar World Casino and Resort, and Riverwind Casino. Hard Rock International owns 181 venues in 55 countries, including nine casinos.

**LOCAL IMPACT AND SITING FACTORS**

**Mitigating potential impacts on host and nearby municipalities which might result from the development or operation of the gaming facility. (§ 1320(2)(a))**

Hard Rock’s analysis of expenses associated with the project focused primarily on expenses incurred by the City, rather than the State or County. With certain exceptions, the City’s expenses change as a function of the overall size of the City. Hard Rock projected that the City would have incurred more than \$42.6 million in expenses through year 20 on an inflation-adjusted basis. Annually, the City was estimated to incur an average of \$2.4 million in expenses. By comparison, Hard Rock projected the City would have generated an average of almost \$9.2 million in revenue each year from the project. The majority of these expenses would have been attributable to costs for additional police, fire and emergency medical services and equipment, which would have accounted for about \$719,000 annually. Most of the balance of these expenses was related to increases in the City’s water supply and school district costs.

Hard Rock stated that so long as it implements certain mitigation measures and follows applicable development and design guidelines, there would have been little to no adverse impacts resulting from the project in a variety of areas, including topography, soils, geology, storm water management, project runoff, traffic and sewer, water and solid waste systems.



State experts noted that while Hard Rock indicated that fire protection services, police protection services and emergency medical services would not have been adversely impacted, nothing was provided to substantiate this claim.

State experts noted that Hard Rock did not address the requested systems such as waste water and lacked the detail requested for mechanical spaces and sizes.

State experts suggested that that Hard Rock offered few real mitigation techniques. Instead, Hard Rock repeatedly stated that any issues caused by the construction and operation of the casino would be less than a previously approved project. Hard Rock did not present any traffic or socioeconomic studies.

Hard Rock stated that the creation of 960 jobs at the proposed project was anticipated to generate approximately 183 new households in the Rensselaer County. Of these employees, Hard Rock estimated that 54 percent would have earned more than the minimum income to purchase a home at the median sales price in Rensselaer County. An additional 56 households were anticipated to be created in Rensselaer County as a result of indirect jobs generated by the project. Thus, Hard Rock concluded that the combination of affordable housing and good wages might have encouraged new employees to invest in the local housing stock, which might have spurred efforts to bring vacant housing back onto the market and created a positive impact on property values.

There were 71 school districts in the region. Hard Rock stated that the 12 school districts of Rensselaer County likely would have been impacted by the project more than school districts in the rest of the region. In the 10-year period between the 2003-04 and 2012-13 school years, student enrollment declined by approximately 13,800 (nine percent). Therefore, Hard Rock anticipated that the regional schools would have more than enough capacity within existing buildings to accommodate the expected increase in students associated with the project.

Hard Rock examined the impact of the gaming facility not just in Rensselaer City School District, but also in other school districts within the county. No mitigation plans were presented because Hard Rock concluded that area school districts would have had sufficient capacity to accommodate increased enrollment.

**Gaining public support in the host and nearby municipalities, which may be demonstrated through the passage of local laws or public comment received by the board or gaming Applicant. (§ 1320(2)(b))**

Hard Rock's host community was the City of Rensselaer. Hard Rock provided a resolution in support of its project adopted by the City of Rensselaer's Common Council on June 4, 2014.





Hard Rock also provided resolutions of support from the Counties of Clinton, Essex, Franklin, Herkimer, Madison, St. Lawrence, Greene, Columbia, Cortland and Washington. These resolutions supported the project given the involvement of Capital District Regional Off-Track Betting Corporation (“Capital OTB”), as each such County was a participating member in Capital OTB.<sup>3</sup> The resolutions approved locating the casino at a site known as the E23 development site located in the City of Albany. Subsequent to adoption of the resolutions, Hard Rock selected its current project site in the City of Rensselaer. For each county, however, letters were provided to reflect support of the project at Hard Rock’s current project site in Rensselaer. In addition to the county resolutions, Hard Rock provided letters of support from various public officials and local businesses and residents.

The Hard Rock project was subject of four comments indicating opposition and 18 indicating support.

At the public comment event, Hard Rock was the subject of one dozen comments, overwhelmingly indicating support.

**Operating in partnership with and promoting local hotels, restaurants and retail facilities so that patrons experience the full diversified regional tourism industry. (§ 1320(2)(c))**

Hard Rock created a business alliance that includes tens of local businesses including restaurants, retail stores, banks and service providers. These businesses would have been promoted at the gaming facility through multiple means including signs and placards. Hard Rock intended to use these local businesses and other local suppliers for operations of the gaming facility. Additionally, Hard Rock would have worked to create a network of local businesses for the purpose of identifying specific capabilities, products, services and resources.

It was contemplated that Capital OTB would have been a partner with Flaum Management Company Inc. in the acquisition of the project site and also would have operated a pari-mutuel wagering outlet at the gaming facility. Capital OTB is a public benefit corporation and Hard Rock believed that the addition of Capital OTB would have increased visitation, especially during the peak of thoroughbred and harness racing seasons. Additionally, Capital OTB believed that its operations at the gaming facility would have led to increased profits for the company, which would in turn, as a result of its status as a public benefit corporation, have led to increased revenues for local communities.

---

<sup>3</sup> Capital OTB is a public benefit corporation that provides wagering on horse racing and lottery products with all profits distributed to local governments and the horse racing industry. Capital OTB is a partner in the acquisition of the project site and would have operated a pari-mutuel wagering branch at Hard Rock’s gaming facility.



**Establishing a fair and reasonable partnership with live entertainment venues that may be impacted by a gaming facility under which the gaming facility actively supports the mission and the operation of the impacted entertainment venues. (§ 1320(2)(d))**

Hard Rock's proposal contained no dedicated entertainment space, such as a showroom. Hard Rock entered into a memorandum of understanding with The Upstate Theater Coalition for a Fair Game, which represents major live entertainment venues in the region.

**WORKFORCE ENHANCEMENT FACTORS**

**Implementing a workforce development plan that utilizes the existing labor force, including the estimated number of construction jobs a proposed gaming facility will generate, the development of workforce training programs that serve the unemployed and methods for accessing employment at the gaming facility. (§ 1320(3)(a))**

Hard Rock stated it would provide on-the-job and other training opportunities to regional and local demographic groups with high unemployment. To do so, Hard Rock would have formed partnerships with organizations that would assist it in recruiting, pre-screening and placing job Applicants. Hard Rock offered that its parent company, an affiliate of the Seminole Tribe of Florida, had a strong history of creating jobs in areas of high unemployment and would have counseled Hard Rock on measures it might have taken to create jobs in the New York local area.

**Taking additional measures to address problem gambling including, but not limited to, training of gaming employees to identify patrons exhibiting problems with gambling. (§ 1320(3)(b))**

Hard Rock stated that it would have created a culture of employee awareness and education in order to ensure onsite resources for problem gambling were available to guests suspected of problem gambling behavior. The policy would have been to offer assistance and provide related materials to educate guests and employees of symptoms that can be associated with problem gambling and provide access points for professional help, readily available for addressing gambling problems. The onsite resources that would have been available to guests include signage posted in highly-trafficked areas, trained personnel to assist guests with helpline, self-exclusion and problem gambling resource information and published information in regard to the self-exclusion request process, self-assessment questions designed to help determine if problem gambling behavior exists, information on support services, including the New York State Office of Alcoholism and Substance Abuse and HOPEline (1-877-HOPENY), "Know the ODD\$.org" describing additional support services and treatment centers, and other local treatment resources and support.



Hard Rock's intervention procedures included requiring customer service manager and security officer presence for interaction with a guest, obtaining assistance of security and surveillance for an independent determination for appropriate intervention and offering a responsible gambling pamphlet.

Hard Rock proposed to offer assistance and provide information and training in order to make employees, guests and young people aware of problem gambling signs and symptoms, as well as identify available professional resources. Hard Rock would have incorporated problem gambling training into the orientation process for new employees, and would have required periodic refresher training for the duration of employment. Hard Rock's programs would have included review of the gaming facility's problem gaming policy, the social impact of problem gambling, regulatory training requirements, facts about problem gambling, characteristics of problem gambling, underage gambling, types of gamblers and problem gamblers, facts about pathological and compulsive gamblers, the potential social cost of problem gamblers, characteristics and warning signs associated with problem gamblers, identifying problem gambling behavior, intervention procedures, treatment and recovery and resources for help.

Hard Rock proposed partnering with local advocacy groups to provide assistance, as well as promoting nationwide advocacy groups such as Gamblers Anonymous, the National Center for Responsible Gaming and the National Council on Problem Gambling. Hard Rock intended to work actively with local support and treatment centers to provide a variety of resources for both treatment and prevention. Hard Rock also stated it intended to implement policies and programs similar to those of its advisor, Global Gaming Consulting, LLC.

**Utilizing sustainable development principles including, but not limited to:**

- (1) having new and renovation construction certified under the appropriate certification category in the Leadership in Energy and Environmental Design Green Building Rating System created by the United States Green Building Council;**
- (2) efforts to mitigate vehicle trips;**
- (3) efforts to conserve water and manage storm water;**
- (4) demonstrating that electrical and HVAC equipment and appliances would be Energy Star labeled where available;**
- (5) procuring or generating on-site 10 percent of its annual electricity consumption from renewable sources; and**
- (6) developing an ongoing plan to submeter and monitor all major sources of energy consumption and undertake regular efforts to maintain and improve energy efficiency of buildings in their systems. (§ 1320(3)(c))**

Hard Rock concluded that its proposed project would have generated approximately 15 percent less peak hour traffic than that identified in a prior EIS for the site. The traffic study recommended that Hard Rock complete the traffic mitigation measures identified in a prior EIS. These additional measures would have included reconstructing the site



driveway and access, retiming of traffic signals, development of shuttle services, coordinating with the local transit authority and working with the NYS Department of Transportation the City of Rensselaer to enhance and promote the use of the riverfront.

Hard Rock stated that its casino project was designed to achieve a LEED certification. State agency experts noted that Hard Rock had a well-organized presentation of information, demonstrating a command of what was necessary to meet the LEED requirement.

Hard Rock committed to use high-efficiency HVAC systems meeting applicable national standards and, otherwise, to use Energy Star-rated equipment.

Hard Rock reported that the storm water management system for its facility would have differed from the design for a previous project, but would be consistent with the same design principles: incorporation of green infrastructure practices and compliance with New York State requirements for discharge and treatment of storm water. Hard Rock did not present specific plans. State agency experts noted that the onsite storm water management system would have been designed according to applicable standards. State agency experts noted no adverse effects would result to the Hudson River or the Quackenderry Creek and green infrastructure practices would have been used for runoff reduction and water quality treatment.

Hard Rock stated that it would have used low-flow fixtures throughout its facility. Hard Rock planned to use native and adaptive landscaping.

Hard Rock committed to purchasing a minimum 10 percent of renewable power. It appears this commitment was below the percentage of renewable sources in the State's current regular energy supply.

Hard Rock proposed implementing a facility-wide automation system that included energy consumption monitoring.

**Establishing, funding and maintaining human resource hiring and training practices that promote the development of a skilled and diverse workforce and access to promotion opportunities through a workforce training program that:**

- (1) establishes transparent career paths with measurable criteria within the gaming facility that lead to increased responsibility and higher pay grades that are designed to allow employees to pursue career advancement and promotion;**
- (2) provides employee access to additional resources, such as tuition reimbursement or stipend policies, to enable employees to acquire the education or job training needed to advance career paths based on increased responsibility and pay grades; and**
- (3) establishes an on-site child day care program. (§ 1320(3)(d))**



Hard Rock stated that it intended to employ and advance a highly skilled and diverse workforce by implementing a four-part human resources strategy. Recruitment would have focused primarily on community outreach and would include job fairs targeting areas with high unemployment rates. Hard Rock anticipated partnering with local government agencies, local trade schools and other community-based organizations during its recruitment process.

State experts suggested that Hard Rock's submission stated general goals with regard to both supplier and workforce diversity, but provided little specifics as to how these programs would have been implemented, managed and monitored for compliance and effectiveness.

**Purchasing, whenever possible, domestically manufactured slot machines. (§ 1320(3)(e))**

Hard Rock proposed to source domestically manufactured slot machines.

**Implementing a workforce development plan that:**

- (1) incorporates an affirmative action program of equal opportunity by which the Applicant guarantees to provide equal employment opportunities to all employees qualified for licensure in all employment categories, including persons with disabilities;**
- (2) utilizes the existing labor force in the state;**
- (3) estimates the number of construction jobs a gaming facility would generate and provides for equal employment opportunities and which includes specific goals for the utilization of minorities, women and veterans on those construction jobs;**
- (4) identifies workforce training programs offered by the gaming facility; and**
- (5) identifies the methods for accessing employment at the gaming facility. (§ 1320(3)(f))**

Hard Rock stated that it would have provided equal employment opportunities without regard to race, color, religion, sex, national origin, age, disability, marital status, veteran status, sexual orientation, genetic information, or any other protected characteristic under the law. This policy would have applied to initial hiring, placement, promotion, transfer, demotion, reduction of workforce, termination, rates of pay and compensation, selection for training and other employment-related issues.

Hard Rock stated that it would have worked actively to increase the participation and employment of qualified MWBEs, particularly those that were based in the Capital Region and have been certified by Empire State Development's Division of Minority and Women's Business Development. Hard Rock would have set participation goals and would monitor performance to achieve those goals. State experts suggested that Hard Rock did not indicate with specifics how it would have implemented the MWBE program.



**Demonstrating that the Applicant has an agreement with organized labor, including hospitality services, and has the support of organized labor for its application, which specifies:**

- (1) the number of employees to be employed at the gaming facility, including detailed information on the pay rate and benefits for employees and contractors in the gaming facility and all infrastructure improvements related to the project; and**
- (2) detailed plans for assuring labor harmony during all phases of the construction, reconstruction, renovation, development and operation of the gaming facility. (§ 1320(3)(g))**

Hard Rock had the support of the New York Hotel and Motel Trades Council, AFL-CIO, which represents gaming and hospitality industry workers in the State and, directly through its contemplated general contractor, Turner Construction Company, with the Greater Capital Region Building and Construction Trades Council, AFL-CIO, which represents construction workers in the Capital Region.



Howe Caverns Resort and Casino, LLC, Michael J. Malik, Sr. and Full House Resorts, Inc. proposed the development of Howe Caverns Resort & Casino (“Howe Caverns”) in Howes Cave in Cobleskill in Schoharie County. According to Howe Caverns, the proposal would have included a casino and hotel with 1,500-1,610 slot machines and 50 table games with a 254 room hotel, four restaurants, convention and banquet facilities, a pool and spa. The project also would have included a separate 55,000 square-foot indoor waterpark and 250 room hotel, plus a 1.25 acre seasonal waterpark, an arcade, game and entertainment park and one restaurant.

#### **ECONOMIC ACTIVITY AND BUSINESS DEVELOPMENT**

##### **Realizing maximum capital investment exclusive of land acquisition and infrastructure improvements. (§ 1320(1)(a))**

Howe Caverns proposed a minimum capital investment of \$358.0 million. The total capital investment less excluded capital investment for Howe Caverns was proposed to be \$330 million. Howe Caverns requested the inclusion of \$4.8 million in prior capital investment; however, no portion of its prior capital investment was needed to meet the minimum capital investment.

##### **Maximizing revenues received by the state and localities. (§ 1320(1)(b))**

Howe Caverns did not propose a supplemental tax payment or increased license fee.

Howe Caverns projected direct statutory gaming privilege fees and gaming device fees to the State in the range of \$41-55 million in year one and \$48-65 million in year five. Howe Caverns projected direct host community tax revenues from induced incremental economic activity of \$1 million in year one.

State agency experts suggested that Howe Caverns explained anticipated tax revenue to the State inadequately and that the Howe Caverns projections were, in some respects, flawed. There was no explanation of how anticipated property tax revenue to localities was determined. Sales and use tax projections appeared unrealistic. No narrative was provided in regard to gaming revenue taxes. Howe Caverns did not complete the template with a breakdown of taxes Applicants were required to include with their proposals. Corporate tax revenue was overstated because an incorrect tax rate was used. The variance between the high and low cases of tax revenues appeared high.

Howe Caverns provided an economic impact analysis of the project to the host and nearby municipalities, sub-region and entire State. Board experts noted that the economic impacts set forth in the report may not be achieved if the Howe Caverns financial projections were not met or exceeded. Howe Caverns did not provide a methodology or description of what was excluded. Furthermore, Board experts suggested that this was a not a reasonable estimate. Although it was not clear what revenue figure Howe Caverns used to input into the operations model, gross revenue or sales were not adjusted to account for cannibalized spending from other New York venues, displaced spending on casino gaming from other activities or food and beverage substitution from other suppliers in the market; thus greatly overstating the economic impact of the facility's operation, irrespective of the multiplier.

**Providing the highest number of quality jobs in the gaming facility. (§ 1320(1)(c))**

Howe Caverns expected to employ 804 full-time-equivalents.

In regard to the use of New York-based subcontractors and suppliers, State agency experts noted that Howe Caverns did not identify an annual biddable spend throughout the life of the project. Although 14 companies were listed to participate in the development, there was no information about how and when these companies would be used, how much each was anticipated to be paid and what percentage of the overall annual biddable spend would be awarded to New York-based companies. Howe Caverns did not provide any contracts, agreements or understandings evidencing confirmed plans or commitments to use New York-based subcontractors and suppliers at any time during the design, construction, operation or ongoing marketing phases of the project.

Howe Caverns anticipated construction total worker hours of 753,778.

**Building a gaming facility of the highest caliber with a variety of quality amenities to be included as part of the gaming facility. (§ 1320(1)(d))**

The Howe Caverns project site consisted of 110 acres of the 330-acre existing Howe Caverns site. The project site comprised two parcels, the northern portion of which was the proposed site of the casino, hotel, restaurants, bars and entertainment facilities and the southern portion of which was proposed to be the site of an indoor/outdoor waterpark and an additional hotel. Howe Caverns stated that it intended for these two areas to be connected by indoor, covered and/or fully outdoor walkways, but the plans for this connectivity had not yet been completed and were not fully depicted.

Howe Caverns proposed a "Howe Caverns"-branded resort consisting of the following components:



- 60,040-square-foot casino including high-limit areas;
- Two hotels: a 254-room casino hotel and a 250-room waterpark-hotel;
- Multi-purpose convention and meeting space with pre-function, back of house and kitchen areas;
- Two spas, one in each hotel;
- Four restaurants at the casino-hotel and one restaurant at the waterpark-hotel;
- Four bars/lounges; and
- Two to three retail outlets.

In addition to the above amenities, Howe Caverns Resort would have been close to the existing Howe Caverns attractions and, therefore, these existing attractions would have been available to the resort's patrons. Howe Caverns stated that the project site was large enough to provide space for future additions and expansion if demand had warranted. Howe Caverns suggested (very preliminarily) the possibility of a bowling alley, movie theater or an educational demonstration theater to be used for the purpose of educating children and adults about dinosaurs, fossils and other geological history.

Board experts suggested that the existing tourist attraction at Howe Caverns, the resort experience proposed, the proposed water park and family entertainment options and the significant room for future expansion presented interesting opportunities, but concluded that compatibility with family-oriented uses was questionable. Board experts suggested that the majority of the gaming-centric, day-trip visitors forecasted to comprise approximately 88 percent of the daily visitor count were not likely to have patronized most of the proposed amenities and, if they had, there would have been questions about connectivity and weather protection among the amenities proposed.

Howe Caverns proposed a single-level, 64,040 square-foot casino floor (located on the second level of the entryway atrium) offering the following mix of games:

- Slots—1,544 slots<sup>4</sup> (including 44 high-limit slots);
- Table Games—40 tables (including six high-limit tables); and
- Poker Tables—10 tables.

A section of the gaming floor (approximately 3,700 square feet) proposal was segregated to offer high-limit tables and slots. The high-limit room included a 900 square-foot lounge. Additionally, Howe Caverns proposed a preferred restaurant and entertainment seating for its VIP guests and a VIP check-in line at the hotel.

---

<sup>4</sup> Note: the Howe Caverns RFA response provides inconsistencies regarding the number of slot machines to be provided (ranging from 1,500 to 1,610). Additionally, the Howe Caverns feasibility study provides additional slot machine counts.

Howe Caverns stated that it would have differentiated its casino from its competitors by committing to make its patrons feel safe and comfortable, maintaining a high employee-to-patron ratio and providing a visible security presence. Howe Caverns stated that the resort staff would have focused on providing personal face-to-face interaction. Howe Caverns stated that it would also establish and maintain a sophisticated lighting and sound system that changes on a continual basis to “refresh” the look of the casino.

Board experts suggested that the design and layout of the proposed gaming floor was very basic. In general, the design and configuration of the gaming activities and space were adequate, but the count area was most likely too small and there were no players clubs. The casino design/configuration was predictable and lacked any factor that might create an impressive visual impact.

The project included two hotels (the casino-hotel and the waterpark-hotel), providing a total of 504 rooms. The hotels would have been as follows:

- Casino Hotel—254 rooms including:
  - 225 standard rooms;
  - 18 two-bay suites;
  - Nine three-bay suites; and
  - Two super suites (2,400–3,200 square feet) located on the top floor of the hotel tower.
  
- Waterpark Hotel—250 rooms including:
  - 140 queen standard rooms (400-450 square feet);
  - 20 king standard rooms (400-450 square feet); and
  - 90 suites (500-700 square feet).

The casino-hotel was expected to be managed and operated by the casino manager, Full House Resorts. Howe Caverns noted, however, that Full House Resorts, at some of its other resorts, has teamed with a third-party hotel operator such as Hilton or Hyatt.

For hotels of comparable quality, Howe Caverns referred to other resorts operated by Full House Resorts including:

- Rising Star Casino Resort (Rising Sun, Ind.);
- Buffalo Thunder Casino (Santa Fe, N.M.); and
- Grand Lodge Casino (Lake Tahoe, Nev.).

Howe Caverns asserted that the hotel would have been differentiated from competitors because the hotel would have been part of a true destination—a casino and a waterpark—and would have been located adjacent to the existing Howe Caverns Attractions.

Board experts suggested that the casino-hotel appeared to be small for the forecasted demand, particularly considering the potential needs for complimentary rooms to reward loyalty club members. Presumably, the waterpark-hotel could have alleviated hotel overflow. Board experts suggested, however, that casino players do not generally want to stay in a hotel that is detached from the casino. The quality level of the casino-hotel was uncertain. It was estimated that the casino-hotel would be at least a three-star “plus” hotel and more likely a four-star or four-star “minus” hotel.

Board experts suggested that the average daily rate figures were low, given the total projected revenue for the casino-hotel and the percentage of hotel revenue being discounted or “comped” was low.

Board experts suggested that the limited dining options in the proposal and the lack of plans to provide an on-site entertainment venue were weaknesses of the Howe Caverns proposal.

Board experts noted concern that the lack of a national gaming brand or gaming rewards/player loyalty program might have resulted in a relatively slow ramp-up period.

Howe Caverns proposed the following meeting/convention spaces:

- 14,400-square-foot multi-purpose room (which could have been divided into four rooms) with 5,400 square feet of pre-function space;
- 7,190 square feet of meeting space comprising three meeting rooms with 2,985 square feet of pre-function space; and
- 600 square-foot boardroom.

Howe Caverns anticipated only modest meeting/convention activities, but as its brand became more known, Howe Caverns expected to further pursue meetings/conventions.

Howe Caverns’ plans did not provide an internal entertainment venue, as Howe Caverns stated that it did not desire to compete with existing local entertainment venues. The future expansion plans mention an educational demonstration theater with approximately 200 seats for the purpose of educating children and adults about dinosaurs, fossils and other geological history. Howe Caverns noted it had entered into a memorandum of understanding with Upstate Theaters for a Fair Game (“Fair Game”) to provide entertainment opportunities to Howe Caverns patrons. Additionally, Howe Caverns noted that it had had discussions with nearby Proctor’s Theater in regard to the joint promotion of live entertainment, cross promotion of acts and ticket sales.

Board experts suggested that Howe Caverns may have missed opportunities to provide entertainment options. Entertainment and casino gaming are intertwined and particularly

useful as a marketing tool to motivate repeat business and engender loyalty among loyalty club members. Moreover, there were probably ways to practice collaborative and no-conflict scheduling by using local and regional entertainment on-site. In addition, there might have been opportunities to cross-market with these local/regional entertainment venues for the benefit of all parties. Board experts suggested that in a competitive environment, a gaming company such as Howe Caverns would put itself at a disadvantage with no or reduced entertainment if its competitors offer a full entertainment schedule.

At the casino-hotel, Howe Caverns proposed four restaurants and four bars. Additionally, a high-limit lounge (900 square feet/33 seats) was proposed adjacent to the high-limit area of the casino. Howe Caverns proposed that the casino-hotel offer one retail outlet, a spa (7,050 square feet) and a pool and whirlpool.

At the waterpark-hotel and facilities, Howe Caverns proposed a multi-functional restaurant with a buffet, a small lounge, a sports bar and a family sit-down area all operated out of the same kitchen. Howe Caverns proposed that the waterpark-hotel also offer a spa (4,000 square feet), two retail outlets and the indoor/outdoor waterslides.

Howe Caverns asserted that it would have delivered quality that was “somewhat higher” than same-sized casinos. Howe Caverns planned to position itself as a destination resort and noted that it would have had to offer high quality, but also stated that it would have needed to “value engineer and seek more efficient paths to achieve the same end.”

Board experts suggested that the broad array of recreational, leisure and tourist activities were interesting, but was concerned as to whether family-oriented activities would provide synergy with casino activities.

Board experts suggested that while the Howe Caverns atrium might have been the best use of space, the atrium occupied “prime” space that could have offered great resort views to additional casino players and tourists either by extending the casino to a windowed edge and/or placing other non-gaming activities there.

**Offering the highest and best value to patrons to create a secure and robust gaming market in the region and the state. (§ 1320(1)(e))**

Howe Caverns stated that Full House builds and maintains player databases and loyalty programs for all of the facilities it owns, operates and manages. Howe Caverns did not provide information on the issue of exclusivity of Full House’s player databases and loyalty programs and no user statistics were provided. Also, no data on rated players were provided.

Board experts noted that it appeared that Howe Caverns had no access to an existing rewards/loyalty program or player database, which was a significant disadvantage. Howe Caverns provided no specific information on how the database and program would have been used to market, promote and advertise the gaming facility. There was very limited tie-in to other properties and little differentiation for Howe Caverns versus its competition.

Board experts noted that the gaming facility was not presented to or coordinated with the Mohawk Valley Regional Economic Development Council and was not part of a regional or local economic plan, and that Howe Caverns failed to explain whether the proposed project aligned with local and regional economic development goals.

**Providing a market analysis detailing the benefits of the site location of the gaming facility and the estimated recapture rate of gaming-related spending by residents travelling to an out-of-state gaming facility. (§ 1320(1)(f))**

Howe Caverns would have been located on the same site as the current Howe Caverns, which offers a variety of tours of a cave system over 150 feet below ground. The cavern is a local tourist attraction and has an above-ground lodge, motel and “High Adventure” park with zip lines, ropes course and other outdoor activities.

Howe Caverns estimated that by year three (first year of stabilization), \$7.9 million of gaming-related spending by New York residents traveling to out-of-state casinos would have been recaptured in the low-case scenario; \$10.2 million would have been recaptured in the average-case scenario; and \$12.2 million would have been recaptured in the high-case scenario.

**Offering the fastest time to completion of the full gaming facility. (§ 1320(1)(g))**

Howe Caverns stated that it would open on November 1, 2016.

State agency experts suggested that the Howe Caverns proposal, while addressing primarily local approvals, did not adequately address State approvals that might have been required, which might have affected the timetable for construction. The site was located within an archeologically sensitive area and therefore likely would have required an archeological survey and consultation with the State Historic Preservation Office for those areas not previously disturbed. Because the site is located within 0.5 miles of a known bat hibernaculum (wintering area), the project might have required time-of-year restrictions for tree removal and/or a survey for protected species of bats. If the project would have resulted in impacts to protected species or habitat, an Incidental Take Permit may have been required. The project was within a Planned Development District, which received a Negative Declaration in 2010, and it was not clear if further SEQRA review was required. The status of SEQRA review was unknown.

**Demonstrating the ability to fully finance the gaming facility. (§ 1320(1)(h))**

Howe Caverns expected to employ a “Project LLC” structure in carrying out financing, development and ongoing management and operations. Howe Caverns stated that one of its principle owners and other succeeding ownership interests would provide all required completion guarantees to assure construction of the project on time and within budget.

Howe Caverns stated that it intended to fund the casino project using equity financing and third-party debt financing consisting of senior secured and possibly mezzanine or high-yield debt. Howe Caverns stated initially that it was too early to obtain any information as to specific financing commitments or a crystalized picture of the precise capital stock. In a supplement to its initial Application, Howe Caverns provided a commitment for a credit facility. The financial ability of this lender to satisfy its commitment could not be verified. Howe Caverns stated that it had engaged in substantive dialogue with a number of sources of capital that have a track record of providing debt and equity financing to similar projects and business initiatives, which sources range from private equity to conventional debt

**Demonstrating experience in the development and operation of a quality gaming facility. (§ 1320(1)(i))**

Howe Caverns proposed that Full House Resorts would manage the casino.

Full House acquired the Rising Star Casino Resort in Rising Sun, Ind., Stockman’s Casino in Fallon, Nev., Silver Slipper Casino in Bay St. Louis, Miss. and Hyatt Regency Resort at Lake Tahoe. Full House currently manages the Buffalo Thunder Casino in Santa Fe, N.M. As part of a joint venture, Full House participated in developing the FireKeepers Casino in Battle Creek, Mich. In 2012, Full House ceased participating in managing FireKeepers.

Michael J. Malik, Sr., an owner of the Howe Caverns, has experience with casino projects. Mr. Malik had an interest in Motor City Casino in Detroit, but has no current ownership, operating or management interests in the gaming industry. Mr. Malik also has an ownership interest in the “New Windsor” entities, which also applied for a New York license, in Region One.

Board experts suggested that Full House was experienced in generally smaller casino and hotel operations. However, Board experts noted that Full House did not have operational experience with casino projects comparable in size and complexity to Howe Caverns. Board experts noted that the general strategy of Full House had been to acquire casino properties, rather than develop them, which raised concerns about the proposed manager’s ability to operate the facility.

Board experts noted that Full House Resorts announced on October 22, 2014 it was pursuing a sale process. Recent reports indicated that management that had been in place at the time of the application had been replaced.

## **LOCAL IMPACT AND SITING FACTORS**

### **Mitigating potential impacts on host and nearby municipalities which might result from the development or operation of the gaming facility. (§ 1320(2)(a))**

Howe Caverns presented an evaluation of the impact on essential public services resulting from construction and operation of the proposed casino and hotel project. Howe Caverns concluded that there was not a high risk of adverse local impacts on these services.

The Howe Caverns evaluation found that local law enforcement did not have sufficient capacity at current staffing levels to provide effective police services if the proposed casino development goes forward. Howe Caverns concluded that additional police staffing, equipment and funding would have been required. The Howe Caverns evaluation of the local fire protection infrastructure found that there was sufficient personnel to provide fire protection services to the proposed casino development. With respect to emergency medical services, Howe Caverns stated that county officials expressed concern over the ability of the current emergency medical services and advanced life support resources to handle additional demands resulting from the proposed casino project. For example, current staffing levels did not allow for 24-hour coverage by on-duty paramedics.

Because the fire department likely would need to purchase a new fire truck at a cost of about \$550,000 to deal more effectively with potential fires at the casino hotel, Howe Caverns stated that it would have provided \$100,000 to the fire department to assist with purchasing the vehicle. Howe Caverns stated that additional emergency medical services and advanced life support personnel should be retained to address additional service demands from the development. Furthermore, Howe Caverns recommended additional staffing and administrative assistance be provided to deal with increased building and zoning code services, with the additional costs borne by Howe Caverns.

State agency review suggested that Howe Caverns provided a minimal analysis of impacts of the proposed project, providing various data without analysis. No impact analysis was provided of the casino facility on municipal services, schools, housing and public safety. No analysis was provided of negative impacts such as problem gambling or crime. The analysis was very limited on the discussion of project investment, tourist visitation and construction job impacts.

State agency review suggested that the Howe Caverns methodology, involving interviews with local officials, was inadequate to make a reasoned determination of the incremental effects and costs of the proposed gaming facility as compared to others.

Howe Caverns identified necessary infrastructure interconnections and evaluated the capacity of water and sewer infrastructure to accommodate the project. National Grid would provide electric service to the facility. Howe Caverns did not detail the planned connection.

Howe Caverns presented a report on protected species known to frequent the surrounding area and identified one protected species, the Eastern small-footed bat, an endangered species, and bat colony hibernacula, a significant ecological community, as having been observed on or in the immediate vicinity of the project site. In addition, two additional potentially impacted protected species, the American bald eagle and Indiana bat, had no reported observations at the project site. The project site is primarily agricultural and during a field observation, the report did not identify suitable habitat for any of these species other than Howe Caverns itself.

Howe Caverns presented a report from its engineer stating that watercourses and wetlands had been formally delineated on the project site, but the report did not detail what impact the facility would have on them.

The Howe Caverns study found the existing transportation system could have accommodated the increased traffic with some roadway and signal improvements. Howe Caverns did not address the impact of added traffic to the condition of local roads and the capacity of the local municipalities to address those needs.

Howe Caverns discussed generally measures that might be undertaken to mitigate the potential impacts on public services described above resulting from development of the proposed casino. Howe Caverns provided no firm commitments on efforts it would have taken to address these impacts, but stated that responsive measures would need to have been developed and negotiated over time.

Howe Caverns stated that it should establish a committee to develop a monitoring and evaluation program to assess impacts on social services resulting from the casino.

Howe Caverns stated that the proposed casino project was not expected to have any significant impact on the population of school-age children in the district, given that new employees needed to staff the proposed project were expected to largely come from the local population and would not cause any significant movement of the workforce from one school district to a neighboring school district. Rather, educational facilities in the district would benefit financially from the proposed casino project through an anticipated increase in tax revenue. No mitigation plans for school populations were presented



because Howe Caverns concluded that the casino development would have had little impact on school district populations. School district officials, however, hoped that Howe Caverns would consider making a sum of money available (beyond the tax revenue from the casino) to the school district.

**Gaining public support in the host and nearby municipalities, which may be demonstrated through the passage of local laws or public comment received by the board or gaming Applicant. (§ 1320(2)(b))**

A resolution of support from the Town of Cobleskill, specific to the project, was provided. A resolution in support from Schoharie County was provided, without direct reference to the Howe Caverns site.

In addition to letters of support from local, state, and federal officials, Howe Caverns included an MOU between the developer and the County IDA, which did not establish any contractual relationship. Howe Caverns also included copies of a local petition in support of the project.

Letters of support for the casino were provided from Congressman Chris Gibson, Senator James Seward, Assemblyman Pete Lopez, the Cobleskill Police, the Schoharie County Sheriff, the Regional Food Bank of Northeastern New York, the Schoharie County Chamber of Commerce, the Schoharie County ARC, five nearby towns (but not from the nearby village of Cobleskill and nearby village of Schoharie), 13 local business; and nine individuals.

A petition in support of the casino with 151 signatures was provided. The Board received more than 650 unsolicited comments, which ran more than nine-to-one in favor of the project.

At the public comment event, Howe Caverns was the subject of more than 30 comments, all in support. The collective supporters were very enthusiastic in demonstrating their preference at the event.

**Operating in partnership with and promoting local hotels, restaurants and retail facilities so that patrons experience the full diversified regional tourism industry. (§ 1320(2)(c))**

Howe Caverns signed a memorandum of understanding with the Schoharie County Industrial Development Agency wherein the parties agreed to “work cooperatively and pledge their support for the Project.” Additionally, Howe Caverns would have created a fund called the “Tourism and Jobs Investment Fund” that would assist in tourism promotion and awareness of buying and hiring within the local community. Howe

Caverns would have started the fund with \$1 million and continue to fund it with 2.5 percent of annual revenue from the casino hotel and waterpark hotel.

Howe Caverns provided a number of letters of support for its proposed gaming facility. While it appeared that many of those letters were form letters printed on a local business's letterhead, the letters came from a diverse group of businesses, some of which expressed an interest to partner with Howe Caverns for promotions.

Howe Caverns stated that through programs established within the local chambers of commerce, the funds would have been used to create public awareness that places importance on supporting local businesses. Howe Caverns asserted that this would have helped to stimulate the local economy and encourage small businesses to start or invest in their own growth. Howe Caverns stated that the fund would have helped to promote local tourist attractions such as the National Baseball Hall of Fame, Cooperstown Dreams Park, beverage trails, farmers markets, ski resorts, hiking trails, historical museums, theaters, concert venues, Glimmerglass Opera, the Herkimer Diamond Minds and a host of other regional and local attractions. Howe Caverns stated that the fund would have supported training opportunities at SUNY Cobleskill, specifically the Hotel Management and Culinary Arts programs there. Howe Caverns stated that the fund also would have supported the Casino Management program at Schenectady County Community College, as well as create a casino management program at SUNY Cobleskill. Howe Caverns stated that creating a local workforce that was highly trained and ready to work would have been essential building blocks for long-term revitalization and ongoing success of the local economy. Howe Caverns asserted that this would have created a strong economic engine that would have been the core of a successful economy.

**Establishing a fair and reasonable partnership with live entertainment venues that may be impacted by a gaming facility under which the gaming facility actively supports the mission and the operation of the impacted entertainment venues. (§ 1320(2)(d))**

Howe Caverns signed a memorandum of understanding with The Upstate Coalition for a Fair Game. The agreement provided that Howe Caverns would not operate a gaming facility with an indoor entertainment facility other than "a significant dinosaur attraction/theater." Howe Caverns would have used its loyalty program to promote events at the relevant live entertainment venues. The parties would have established joint marketing agreements covering such matters as programming sponsorships, ticketing kiosks, lodging packages, in-room promotions and ticket purchases.

**WORKFORCE ENHANCEMENT FACTORS**

**Implementing a workforce development plan that utilizes the existing labor force, including the estimated number of construction jobs a proposed gaming facility will**

**generate, the development of workforce training programs that serve the unemployed and methods for accessing employment at the gaming facility. (§ 1320(3)(a))**

Howe Caverns offered \$1 million in seed funding for casino management and related programs at institutions such as SUNY Cobleskill. Howe Caverns stated that these funds could also be used to expand existing programs that relate to casino careers, such as Hospitality Management. Howe Caverns stated that it would have embraced a policy of mandating a minimum level of minority admittance into these programs, so long as such policy complies with applicable laws.

Howe Caverns stated that, as a matter of policy, it gives priority to underemployed and unemployed candidates who can be re-trained, and it was willing to pay for such training and ongoing education for candidates who pass a standard background check and drug test.

Howe Caverns stated that it had experience in this area, providing such training and employment to persons near its affiliated Battle Creek, Mich. gaming facility following the recent recession.

State agency experts noted that these programs would have provided education that in many cases would apply to multiple industries, but noted that some jobseekers might have had difficulty paying the tuition for educational programs, might not have been able to afford pursuing education instead of working, and may see education as riskier than on-the-job training or other programs that were more closely tied to specific job openings. Howe Caverns did not provide an approach to recruit and hire veterans.

**Taking additional measures to address problem gambling including, but not limited to, training of gaming employees to identify patrons exhibiting problems with gambling. (§ 1320(3)(b))**

Howe Caverns stated that it would implement a responsible gaming awareness program to address problem gambling issues, encourage responsible gambling and provide resources to assist patrons exhibiting signs of problem gambling. Howe Caverns would have provided on-site resources to assist those affected by gambling-related problems, with the goal of developing awareness that problem gambling can be harmful. These on-site resources would have included informational messaging through a pamphlet and signage initiative, employee training and education and a voluntary self-exclusion program.

Responsible gaming awareness program signage would have included a pamphlet and signage initiative to develop awareness of the risks of problem gambling and how to locate programs providing assistance with gambling problems. The signage would have identified resources available to assist those affected by gambling related problems,

including the New York State Office of Alcoholism and Substance Abuse Services HOPEline (1-877-8-HOPENY). The signage also would have included a list of possible problem gambling indicators, outlined by OASAS, as well as information about treatment services available to problem gamblers and their families and how to access them and the voluntary self-exclusion process and how to access it.

Howe Caverns would have made available educational materials to assist patrons in understanding how gaming works, to improve awareness of potential signs of problem gambling, to discourage underage gambling, to encourage consumers to set limits, to dispel the myth about "beating the odds," and to provide consumers access to resources. Howe Caverns included in its proposal various sample educational materials.

Howe Caverns stated that it would have required all gaming-floor employees, upon hire and periodically thereafter, to participate in and complete a training program in responsible gaming awareness. The training program would have been designed to help these employees appreciate the commitment to supporting responsible gaming, understand the goals of the responsible gaming awareness program, identify and locate problem gambling support resources (available for patrons and employees alike), recognize certain accepted possible indicators of problem gambling, understand how to make diligent efforts to prevent patrons who were visibly impaired by drugs or alcohol, or both, from gambling, and follow the proper protocol when a patron seeks problem gambling support. All gaming floor employees would have been responsible for participating in the training program and for understanding the responsible gaming policies.

The proposed manager of Howe Caverns had implemented several different processes to address problem gambling at the other facilities it owns or operates. These include multi-pronged approaches to increase customer and employee awareness of problem gambling issues and the various agencies that were qualified to provide intervention. This was achieved through such educational materials as posters and brochures that highlight problem gambling as well as agencies, known for their expertise in crisis intervention, counseling and treatment.

Howe Caverns stated that there was very little published research on the effectiveness of responsible gaming programs, but employee post-training test scores demonstrate a high degree of proficiency in the material presented during employee training, with most employees scoring 90 percent or above. These data reflect that the proposed responsible gaming training program was effective in conveying this information and significantly increases employees' responsible gaming knowledge. Howe Caverns stated that it would develop a responsible gaming awareness program immediately upon commencing operation.

**Utilizing sustainable development principles including, but not limited to:**

- (1) having new and renovation construction certified under the appropriate certification category in the Leadership in Energy and Environmental Design Green Building Rating System created by the United States Green Building Council;**
- (2) efforts to mitigate vehicle trips;**
- (3) efforts to conserve water and manage storm water;**
- (4) demonstrating that electrical and HVAC equipment and appliances will be Energy Star labeled where available;**
- (5) procuring or generating on-site 10 percent of its annual electricity consumption from renewable sources; and**
- (6) developing an ongoing plan to submeter and monitor all major sources of energy consumption and undertake regular efforts to maintain and improve energy efficiency of buildings in their systems. (§ 1320(3)(c))**

A comprehensive traffic impact study was completed for a proposed recreational expansion on the Howe Caverns site in 2010. The traffic study indicated that the transportation system around the Howe Caverns site could have accommodated the proposed increase in traffic generated by the project, provided some transportation improvements were made. Howe Caverns concluded that the level of service for the intersections studied generally would have operated at an acceptable level, but recommended that certain traffic mitigation measures be instituted, including signalization improvements reconfiguration of an intersection and certain roadway upgrades. Howe Caverns estimated the cost of these improvements to be \$3.205 million and that such improvements could have been completed within 90 days prior to opening of the facility.

Howe Caverns stated that its casino project was designed to achieve a LEED certification.

Howe Caverns committed that all appliances and applicable devices would have been Energy Star-rated. Howe Caverns observed that lighting would be a major energy load in the facility and that the design would have implemented energy efficient sources (e.g., LEDs) and occupancy-sensitive controls.

Howe Caverns presented a comprehensive storm water assessment and plan prepared by its engineer. The report included schematic plans for a system to mitigate storm water discharge from the project site using detention ponds in accordance with State requirements. In addition, Howe Caverns planned to use green infrastructure practices (e.g., storm water re-use, bioretention and vegetated swales) designed to reduce runoff volume, but did not detail those plans.

Howe Caverns stated that it would use low-flow fixtures throughout its facility, but did not present specific plans or specifications. Howe Caverns stated that it planned to use

native and adaptive landscaping to limit irrigation only to feature landscaping at building entrances.

State agency review suggested that although the provided Stormwater Pollution Prevention Plan described site water quality practices including green infrastructure, specific locations or extents of the proposed drainage system were not shown, and there was no information on existing site conditions that may determine whether the site could support infiltrating practices. Therefore, there was insufficient information to determine whether green infrastructure would be used to any significant extent in the final design and the proposed project would reduce open space in the area and may impact existing natural resources at the site.

Howe Caverns stated that it would have evaluated whether on-site renewable power generation was economical and feasible. If on-site renewable generation was not practical, Howe Caverns committed to purchasing a minimum 10 percent of renewable power.

Howe Caverns intended to implement a facility-wide automation system that included energy consumption monitoring.

Howe Caverns stated that, as a minimum, each major utility (electricity, primary heating source, water and sewer) would have been metered separately to track consumption. Howe Caverns stated that the design effort would include provisions for the metering of large sub systems.

**Establishing, funding and maintaining human resource hiring and training practices that promote the development of a skilled and diverse workforce and access to promotion opportunities through a workforce training program that:**

- (1) establishes transparent career paths with measurable criteria within the gaming facility that lead to increased responsibility and higher pay grades that are designed to allow employees to pursue career advancement and promotion;**
- (2) provides employee access to additional resources, such as tuition reimbursement or stipend policies, to enable employees to acquire the education or job training needed to advance career paths based on increased responsibility and pay grades; and**
- (3) establishes an on-site child day care program. (§ 1320(3)(d))**

Howe Caverns stated that it and its manager would have collaborated to develop a comprehensive approach to hiring and training practices. It would have established a continuing training program that would have promoted the development of employee skill sets. Prior to the facility's opening, the manager would have created a staffing plan identifying hiring practices and the specific areas of training required for each position.

The manager would have established the Human Resource Team (“HRT”), which would have researched the region to understand the skill sets that were in the area and the region’s fair wage range. Howe Caverns anticipated that the HRT would establish a local presence in the region from which it can conduct its hiring. Howe Caverns stated that was had great success in recruiting from the local area at its affiliated properties.

Howe Caverns stated that it was committed to promoting career development and advancement. Employees would have had access to training that would enable them to attain the skill sets required for higher-pay-grade positions. The manager and the HRT would review periodically employee performance and the potential for advancement. Howe Caverns anticipated providing a mentoring program, similar to the one provided at its other facilities, to assist employees in their development.

Ultimately, a benefit and assistance program would have been created when there was a fully developed operational vision. Howe Caverns anticipated implementing a tuition reimbursement policy, leadership courses and gaming- and hospitality-related training. Benefit programs offered at the manager’s other gaming facilities include assistance and support for substance abuse and behavioral problems and Howe Caverns was considering providing a similar benefit program to its employees.

**Purchasing, whenever possible, domestically manufactured slot machines. (§ 1320(3)(e))**

Howe Caverns proposed to source domestically manufactured slot machines.

**Implementing a workforce development plan that:**

- (1) incorporates an affirmative action program of equal opportunity by which the Applicant guarantees to provide equal employment opportunities to all employees qualified for licensure in all employment categories, including persons with disabilities;**
- (2) utilizes the existing labor force in the state;**
- (3) estimates the number of construction jobs a gaming facility will generate and provides for equal employment opportunities and which includes specific goals for the utilization of minorities, women and veterans on those construction jobs;**
- (4) identifies workforce training programs offered by the gaming facility; and**
- (5) identifies the methods for accessing employment at the gaming facility. (§ 1320(3)(f))**

Howe Caverns stated that its contract solicitations would have set forth the degree of minority- and women-owned business enterprise participation that would be required of prime contractors. It would have required contractors to make good faith efforts to solicit minority- and women-owned business enterprises identified in the directory of such businesses provided by the Division of Minority and Women Owned Business

Development. Howe Caverns also would have required subcontractors to include provisions in their solicitations to reach participation goals set by the Division.

Howe Caverns committed to ensuring the effectiveness of its MWBE programs by monitoring contractors' advertisements for employees; ensuring that certified MWBE businesses were being solicited by contractors; determining that MWBEs that have been solicited were responding with indications of interest and with timely and competitive bid quotations; and ensuring that contractors structure the amount of work to be performed by MWBEs to increase the likelihood of participation by certified businesses.

Howe Caverns stated that it considered equal employment opportunity a fundamental principle and that it would have ensured that hiring was based upon personal capabilities without regard to race, color, gender, pregnancy, national origin, sex, sexual orientation, ancestry, age, religion, disability or any other protected characteristic as established by law.

**Demonstrating that the Applicant has an agreement with organized labor, including hospitality services, and has the support of organized labor for its application, which specifies:**

- (1) the number of employees to be employed at the gaming facility, including detailed information on the pay rate and benefits for employees and contractors in the gaming facility and all infrastructure improvements related to the project; and**
- (2) detailed plans for assuring labor harmony during all phases of the construction, reconstruction, renovation, development and operation of the gaming facility. (§ 1320(3)(g))**

Howe Caverns submitted a project labor agreement with the Greater Capital Region Building and Construction Trades Council. There was a labor peace agreement with the Hotel Motel Trades Council that the developer, but not the union, signed.

Howe Caverns and its manager entered into labor agreements with the New York Hotel & Motel Trades Council, AFL-CIO. Howe Caverns stated that comprehensive agreements with the unions representing operating personnel would ensure that the project was safe, efficient and labor-friendly from the start of construction through the delivery of world-class hospitality and customer service to its guests.





**Capital Region Gaming, LLC, on behalf of Rush Street Gaming, LLC and The Galesi Group, proposes to develop the Rivers Casino and Resort at Mohawk Harbor (“Rivers”) on the Mohawk River in the City of Schenectady in Schenectady County. According to Rivers, the facility would reside on a 60-acre waterfront location with a 51,361 square foot casino featuring 1,148 slot machines and 66 table games. It would also host a classic steakhouse and other casual and light fare restaurants, an entertainment lounge, a banquet facility and a spa. The hotel would feature 150 rooms and be in addition to a planned 124-room hotel being developed on the northern portion of the Mohawk Harbor project.**

## **ECONOMIC ACTIVITY AND BUSINESS DEVELOPMENT**

### **Realizing maximum capital investment exclusive of land acquisition and infrastructure improvements. (§ 1320(1)(a))**

The Rivers projected capital investment is \$300.1 million. The Rivers total capital investment less excluded capital investment is proposed to be \$206.5 million. There has been no prior capital investment.

### **Maximizing revenues received by the state and localities. (§ 1320(1)(b))**

Rivers does not propose a supplemental tax payment or increased license fee.

Rivers projects direct New York State tax revenues to the State from the proposed gaming facility to be in the range of \$69-86 million in year one and \$81-100 million in year five. Rivers projects direct host community tax revenues from the proposed gaming facility to be in the range of \$5.0-5.5 million in year one and \$5.6-6.0 million in year five.

Rivers estimates that the direct, indirect and induced economic impact from the construction of the project will be \$234.8 million to the State and \$ 175.7 million to Schenectady County. Rivers estimates that the direct, indirect and induced economic impact from the project’s operation in 2018 will be \$303.6 million to the State and \$229.8 million to Schenectady County.

Rivers presents an economic impact study, which Board experts note may not be achieved if the Rivers financial projections are not met or exceeded.

**Providing the highest number of quality jobs in the gaming facility. (§ 1320(1)(c))**

Rivers estimates to support 877 full-time and 193 part-time jobs.

Rivers states that it would hold vendor fairs and feature local items such as beer from a local brewery, partner with local food and beverage venues to operate some or all of the food venues, and work with local businesses to allow Rush Rewards Plus program credit dollars to be used by rewards members to buy items from such local businesses.

Board experts noted that Rivers fails to describe specifically how New York-based companies would be used during the design and construction phases of the project or how such companies would be identified, solicited or would learn about construction opportunities. However, Rivers provides a detailed listing of purchasing history from local suppliers during the operational phase of other Casinos run by Rush Sheet Gaming in 2013 and commits to similar programs for this project. Rivers has not provided copies of any contracts, agreements or understandings evidencing confirmed plans or commitments to use New York-based subcontractors and suppliers at any time during the design, construction, operation or ongoing marketing phases of the project.

Rivers anticipates construction total workers hours of 703,834.

**Building a gaming facility of the highest caliber with a variety of quality amenities to be included as part of the gaming facility. (§ 1320(1)(d))**

Rivers proposes a casino hotel resort on a 60-acre waterfront site located at Mohawk Harbor in the City of Schenectady. The Project Site is the former site of American Locomotive Company. The casino hotel resort would be located within the \$150 million Mohawk Harbor mixed-use development being completed by The Galesi Group. This mixed-use development includes residential and commercial (restaurants, bars, retail, etc.) uses, a 124-room hotel, a new harbor as well as outdoor space and public riverfront trails and spaces.

Rivers proposes a Rivers-branded casino comprising the following:

- 51,361-square-foot casino with designated high-limit areas;
- 150-room hotel with a fitness center and indoor pool expected to be flagged as an Aloft Hotel or a Four Points by Sheraton (each a brand of Starwood Hotels & Resorts Worldwide, Inc.);
- 9,000-square-foot multi-purpose meeting and convention space, with access to an outdoor, riverfront patio;
- Limited-service day spa (located at the perimeter of the casino);
- Three restaurants; and

- Three bars/lounges including the entertainment lounge, which would be sports-themed but could also be used for live entertainment.

Rivers provides all elements that are expected and fundamental for a casino operation and provides these elements in a traditional configuration. There is also room on the project site for future expansion.

Board experts note that further advantage can be taken of the gaming facility's riverfront location by making amenities river-facing. The project site affords room for some future expansion, but Rivers does not currently provide expansion plans.

Rivers proposes a single-level, 51,361-square-foot casino (including VIP gaming area) that would offer the following mix of games:

- Slots—1,148 (including 35 high-limit slots *plus* two electronic table games);
- Table games—54 tables (including four high-limit tables); and
- Poker tables—12 tables.

The casino would offer a segregated high-limit area to cater to high-limit players. The high-limit area would offer slot machines and table games. Located adjacent to the high-limit gaming area is a VIP lounge that would offer a cocktail bar with a large-screen television and soft seating area. Additionally, patrons in the high-limit gaming area and VIP lounge would have access to a private outdoor patio.

Rivers asserts that it would differentiate its casino from competitors in the following areas:

- Design and Construction. Rivers would be a first-rate facility offering great dining, entertainment and hospitality features to enhance the customer's experience. The facility would have amenities to attract gaming and non-gaming customers including small- to medium-sized business groups, private parties and entertainment customers from the immediate area and the region.
- Marketing. Rivers would conduct detailed demographic studies to develop comprehensive media and marketing plans and understand its customers. Rivers Casino would rapidly build its customer database and Rush Rewards program via targeted and strategic acquisition programs offering customers free slot play, prizes and enticing rewards.
- Operations. Rivers would hire a strong and experienced executive team that understands the company culture, as well as invests in learning the local area and integrating themselves into the community.
- Team Member Culture and Customer Satisfaction. The Rivers management team would focus on providing outstanding customer service and would be incented because a percentage of the management team's bonus would be based on

customer service and team members' satisfaction. Also, team members would be able to earn service bonuses and prizes.

Board experts suggest that the design and configuration of gaming activities and space work well. The main gaming floor is located within the rectangular podium, with various inward-facing dining, bar, lounge and entertainment options alternated around the perimeter. Board experts suggest that this design, although traditional, helps create synergy with the casino floor.

The Rivers Casino hotel would be developed by an affiliate of The Galesi Group, a real estate developer in the Capital Region. Rivers proposes that the hotel be branded as a "Four Points by Sheraton" or an "Aloft Hotel," each a brand of Starwood Hotels & Resorts Worldwide, Inc. ("Starwood"). Rivers however, does not provide a contract with Starwood.

Rivers states that it is recommending a 150-room hotel comprising the following:

- 142 standard king/queen rooms (470 to 600 square feet each); and
- Eight corner suites (675 to 750 square feet each).

The hotel would be operated independently of the casino by BBL Hospitality, a full-service hotel management company. BBL Hospitality is headquartered in Albany and currently manages hotels such as the Courtyard Marriott and Residence Inn by Marriott located in Saratoga Springs, the Hilton Garden Inns located in Albany and Troy, N.Y. and Westampton, N.J., the Four Points by Sheraton located in Charleston, W.V. and others.

The hotel is expected to provide an indoor pool and fitness center, as such amenities are required by most national brand hotels. A limited-service day spa would be offered as part of the casino and, therefore, would be available to all visitors (hotel guests and casino visitors). The day spa would be managed independently of the hotel.

Rivers believes the offering of a strong national hotel brand like Aloft Hotel or Four Points by Sheraton offers Rivers a competitive advantage, as such a hotel brand would transform and elevate the quality of the inventory of the lodging options in Schenectady and bring a new brand to a market that is currently significantly under-represented. Additionally, the strong Starwood Preferred Guest loyalty program would appeal to both leisure casino travelers, as well as the business traveler. Board experts suggest that this is important, because although the hotel is part of the larger casino development, ownership and operation of the hotel would be separate from the casino and, therefore, the hotel must be designed to be feasible on a stand-alone basis. Another differentiating factor of this hotel is that it is located on the waterfront. Currently, there is no hotel product offered in the Capital Region that is situated on water.

Board experts expressed concern that the hotel may be too small for the forecasted demand. To illustrate, if each of the forecasted 80,000 tourist visitors per year were to

stay one night in the hotel with one person per room, at 100 percent occupancy the hotel would need to have 219 rooms. The above calculation does not take into account the fact that there would be peak and off-peak periods, because many of the visitors would want to come on weekends or casino event days.

Rivers proposes to construct a 9,000-square-foot multi-purpose banquet and pre-function space with seating capacity for up to 400 people, with access to an outdoor/riverfront patio. Rivers intends to partner with a local banquet operator to ensure that the meeting facilities target consumers most closely aligned with community needs. Key uses for this space include special casino events, private event banquets/meetings, holiday parties and exhibitions.

Board experts note that this oversized multi-purpose room provides flexibility for various events (banquets, casino events, sporting events and live entertainment events) and could be a real advantage to Rivers.

Entertainment would be offered in the Rivers entertainment lounge located off the casino floor. The entertainment lounge would be 2,875 square feet and would seat up to 115 people. It is expected that the entertainment lounge would be primarily sports-themed and used as a sports bar. At the same time, however, the design of the lounge would provide for multiple configurations to allow for entertainment and special events such as live shows, local bands, DJs, comedians and parties. Additionally, entertainment may be provided at other venues on site, such as the outdoor patio located adjacent to the banquet space. Rivers submits a memorandum of understanding that has been signed with the Upstate Theater Coalition for a Fair Game.

Rivers intends to differentiate its entertainment program from the current marketplace on the basis of design, use and programming. Rivers does not believe it would compete with local and regional entertainment offerings but rather expects to complement the region. Rivers states that from a design perspective, the space would be warm and lively.

Board experts note that while Rivers suggests an intention to employ a fairly active entertainment marketing program, promotional allowances (*i.e.*, casino comps and discounts) appear to be low.

Rivers proposes three restaurants. The capacity for these restaurants is stated to be 390 patrons. The proposed restaurants include:

- Classic steakhouse (3,125 square feet/125 seats);
- The marketplace food court with multiple (three to four) outlets (3,000 square feet/150 seats); and
- Sports-themed entertainment lounge (2,875 square feet/115 seats).

Rivers also proposes three bars/lounges:

- Sports-themed entertainment lounge (2,875 square feet/115 seats);
- Bar at the classic steakhouse (10-16 seats); and
- Bar at the marketplace (10-16 seats).

As for other amenities, Rivers proposes a sundries/logo items shop and notes that casino patrons would also have access to the Mohawk Harbor development, which would provide approximately 70,000 square feet of retail space. Additionally, located on the perimeter of the casino floor is a 1,500-square-foot limited-service day spa. The resort would also feature riverfront walking and biking trails, provide access to the Mohawk Harbor for boat docking and rental, and border the Mohawk Hudson Bike-Hike Trail.

As for the quality of the amenities, Board experts note that Rush Street Gaming, LLC (an affiliate of, and advisor to Rivers) has a strong track record of developing and operating public, high-quality restaurants and other amenities in its gaming facilities that contribute to the success of the projects. Presumably, the amenities offered by Rivers would be of same or similar quality.

Rivers provided a detailed description of proposed internal controls that reflects current industry standards.

**Offering the highest and best value to patrons to create a secure and robust gaming market in the region and the state. (§ 1320(1)(e))**

Rush Street Gaming, LLC has an established customer loyalty program, “Rush Rewards,” that was recognized as a Best Players Club in 2013 by Casino Player Magazine. The Rush Rewards program currently is offered at Rush Street’s three facilities located in Pennsylvania (Philadelphia and Pittsburgh) and Illinois.

Rush Rewards is a nationally recognized rewards program that incorporates cruise lines, other gaming jurisdictions and amenities outside of casino to entice play and reward players. Board experts note, however, that Rivers does not indicate the number of database participants residing near Mohawk Harbor.

**Providing a market analysis detailing the benefits of the site location of the gaming facility and the estimated recapture rate of gaming-related spending by residents travelling to an out-of-state gaming facility. (§ 1320(1)(f))**

Board experts suggest that benefits of the site location include that patrons also may avail themselves of the amenities provided by the Mohawk Harbor mixed-use development located on the Mohawk River. The project site is also convenient to Schenectady County Airport and Albany International Airport and served by five major national airlines.

Rivers estimates the recapture rate of gaming revenues from New York residents traveling to out-of-state gaming facilities for the average case is approximately \$9,726,707 from New York.

**Offering the fastest time to completion of the full gaming facility. (§ 1320(1)(g))**

Rivers states that it would open the facility within 23 months of receiving a license award.

The site for the Rivers gaming facility is the former site of the American Locomotive Company on approximately 60 acres. This is a brownfield site located on the Mohawk River that has been undeveloped since the 1950s. Rivers has provided documentation that SEQRA has been completed.

**Demonstrating the ability to fully finance the gaming facility. (§ 1320(1)(h))**

Rivers intends to finance its project through committed equity contributions of its high-net-worth members, all of whom are affiliated with Neil Bluhm, and third-party institutional debt for which Rivers has highly confident letters. Neil Bluhm and his affiliated entities have committed to fund the entire equity commitment out of immediately available funds. Rivers has secured highly confident letters from five large financial institutions and a feasibility letter from one institution. Rush Street Gaming, Neil Bluhm and their affiliates operate casinos and other non-gaming ventures around the world and thus have significant experience accessing the capital markets.

None of the Rivers highly confident letters specifies terms for the debt financing, nor does any such letter contemplate all options of the financing package. There are strong references for Rivers financing sources. The institutional lenders have the capability to fulfill their obligations to Rivers.

**Demonstrating experience in the development and operation of a quality gaming facility. (§ 1320(1)(i))**

Rush Street is listed by Rivers as an entity that would provide oversight services for the casino. It is anticipated that prior to commencing operations, a written agreement would be entered into that is similar to what applies to other Rush Street Gaming affiliated properties.

Board experts suggest that Rush Street has a depth of experience in the development, financing and operating of entertainment and gaming destinations similar to the proposed Rivers Mohawk Harbor development. Neil Bluhm and Greg Carlin, two of Rush Street's executive officers, have collective gaming experience dating to 1996 when they partnered with Hyatt Gaming, Inc. to pursue the development of a Niagara Falls casino in Ontario. Two years later, a company affiliated with Bluhm and Carlin entered into an agreement with the Province of Ontario to develop Fallsview Casino Resort and manage

the pre-existing Casino Niagara. Fallsview Casino Resort opened in 2004 and is Canada's largest and most successful casino, according to Rivers. Bluhm and Carlin developed four additional casinos across the country: Rivers Casino in Illinois, SugarHouse and Rivers Casinos in Pennsylvania and Riverwalk Casino in Mississippi.

Rivers states that Rush Street has proven its ability to raise capital and successfully complete projects on-time and on-budget in extremely difficult financial markets by developing these four casinos since the 2008 recession. Rivers states that because all of these establishments were new facilities, the Rush Street team and its principals possess the full suite of knowledge, talents and experience necessary to develop, finance, open and operate a new facility.

The labor organization, Unite Here, has criticized Rush Street Gaming over labor practices.

## **LOCAL IMPACT AND SITING FACTORS**

### **Mitigating potential impacts on host and nearby municipalities which might result from the development or operation of the gaming facility. (§ 1320(2)(a))**

Rivers states that the City of Schenectady's municipal services infrastructure is more than sufficient to service a development the size of the proposed project. Rivers mentions the existing police protection in the City of Schenectady and indicates that the project may require additional staffing.

Overall, State agency experts note that Rivers provided brief and basic information on infrastructure capacity with respect to water supply, waste water production, storm water discharge and management, electricity demand and infrastructure. Rivers provided a draft generic environmental impact statement (EIS) substantiating the capacity of the proposed rebuilt water and sewer systems. The EIS also documents no expected impact on protected species and habitats. Rivers does not anticipate light pollution impacting the proposed facility.

State agency experts suggest that the Rivers traffic study is highly detailed including a detailed analysis of the intersections leading to the site.

Rivers estimates the proposed casino would increase housing demand by 83 units in the high case scenario or 0.12 percent of the projected number of housing units in Schenectady County in 2019. Rivers states that the income provided by casino jobs for current residents and potential new residents are expected to assist the City of Schenectady's goal of increased home ownership as well as creating opportunity for revitalizing properties.



Rivers states that given the availability of labor in the local area, it is not expected that a measurable increase in population in Schenectady would result from the project. Rather, Rivers projects that the total increase in population to Schenectady County would represent less than 0.15 percent of the projected 2019 population. In the high case scenario, the increase to Schenectady County school enrollment is estimated to be 0.13 percent. The increase in school funding that would result from the project is expected to well exceed this small increase in enrollment. Based on certain assumptions, Rivers opines that the added cost to the school district would only be approximately \$100,000 compared to the \$2 million in new funding expected from property taxes.

**Gaining public support in the host and nearby municipalities, which may be demonstrated through the passage of local laws or public comment received by the board or gaming Applicant. (§ 1320(2)(b))**

The Rivers host community is the City of Schenectady. Rivers provided a resolution in support of its project adopted by the Council of Schenectady on June 9, 2014. Additionally, Rivers provided a resolution in support of its project adopted by the Schenectady County Legislature on June 10, 2014. Rivers also provided resolutions and letters of support from the abutting East Front Neighborhood Association, Schenectady County Community College Board of Trustees, the 1,000-member Schenectady Chamber of Commerce, various downtown Schenectady business owners, Schenectady's largest employers, as well as various elected officials including the Supervisors of the Towns of Rotterdam, Glenville and Niskayuna and the Village of Scotia. Also, the Daily Gazette newspaper published an editorial strongly supporting the Rivers project.

The Rivers project was the subject of more than 750 comments, with the overwhelming majority consisting of an out-of-state post-card drive coordinated by a national labor advocacy organization protesting Rush Street Gaming as an employer.

As a public hearing, Rivers was the subject of more than 40 comments, with approximately 80 percent of comments indicating support.

**Operating in partnership with and promoting local hotels, restaurants and retail facilities so that patrons experience the full diversified regional tourism industry. (§ 1320(2)(c))**

Rush Street regularly engages with area restaurants and other attractions within its other jurisdictions to reward its best customers for their loyalty.

Rivers intends to partner with local hotels to offer casino packages. These packages, which Rivers can provide to the partner hotel free of charge, enhance the hotel's booking by adding value to the consumer. Rivers also intends to work with local businesses and organizations that seek to maximize local area tourism and local business spending. Rivers provides examples of Rush Street Gaming-affiliated properties that have partnered

with local restaurants, hotels and businesses to increase the value of the Rush Rewards program for our guests.

Rivers would hold local vendor fairs on a regular basis that would inform local business owners of the goods and services needed by the gaming facility. Rivers states it would strategically source goods and services and create a fair bid process that would give consideration to local businesses when applicable. Rivers states it would feature certain items sourced from local Capital Region businesses, such as beer from a local brewery.

Additionally, Rivers intends to partner with local restaurateurs to operate some or all of its food and beverage venues. In particular, Rivers has had discussions with the Mallozzi Group with respect to operating some venues. Rivers intends to entertain discussions with other local operators.

Rivers notes that opportunities exist to collaborate with the Mohawk Golf Club to enhance the overall getaway experience for its casino guests. Rivers would also partner with local businesses for participation in Rivers loyalty rewards program.

Rivers states that it intends to work with the Albany Convention and Visitors Bureau, the Albany visitor's center and historical and cultural attractions to further tourism and tourism spend within the region. Opportunities to work with regional attractions and tours would be explored for possible cross-promotion on the property website, within the hotel and elsewhere on the property. Tactics for cross promotion of local attractions would include entries on the resort Web site attractions page, inclusion in the Rivers loyalty program, offering hotel and tour packages, hosting community events and guest events at the resort and co-op marketing and advertising.

**Establishing a fair and reasonable partnership with live entertainment venues that may be impacted by a gaming facility under which the gaming facility actively supports the mission and the operation of the impacted entertainment venues. (§ 1320(2)(d))**

Rivers has entered into a memorandum of understanding with The Upstate Theater Coalition for a Fair Game and local area venues.

## **WORKFORCE ENHANCEMENT FACTORS**

**Implementing a workforce development plan that utilizes the existing labor force, including the estimated number of construction jobs a proposed gaming facility would generate, the development of workforce training programs that serve the unemployed and methods for accessing employment at the gaming facility. (§ 1320(3)(a))**

According to Rivers, Rush Street Gaming, LLC, has opened four properties since the start of the recent recession, and in each market there were high levels of unemployment and underemployment existing prior to starting work on those properties. Rivers provides specific information regarding hiring and training the unemployed for Rivers Casino in Pittsburgh, SugarHouse Casino in Philadelphia and Rivers Casino in Des Plaines, Ill.

As to this project, Rivers states that it would explore programs that would promote hiring, training and development specifically for veterans. It is the intent of Rivers to partner with the National Association of Social Workers-New York State Chapter, to support that organization's on-going effort of improving the lives of veterans in the State.

Rivers has experience hiring workers that have barriers to employment. This includes unemployed, people with disabilities, displaced workers and those who are homeless. Rivers also has experience partnering with community organizations to find potential employees from local areas.

**Taking additional measures to address problem gambling including, but not limited to, training of gaming employees to identify patrons exhibiting problems with gambling. (§ 1320(3)(b))**

Rivers states that printed materials on problem and compulsive gambling would be available throughout the casino, at the cage and player's club. Additionally, casino employees would have access to handout cards which provide self-analysis for warning signs of a gambling problem and list a toll-free number for gambling problem assistance that would be distributed to patrons requesting assistance with problem and compulsive gambling. The casino would educate its employees about problem gambling, the voluntary self-exclusion program and casino policies concerning the identification of or assistance to persons with gambling problems. Similar training would be provided regarding prevention and detection of underage gambling.

Rivers states that all casino employees would receive problem gambling training during new hire orientation. The front of house employees, supervisors and team members would be required to complete semi-annual refresher training courses to maintain an understanding of the policies and procedures regarding problem, compulsive and underage gambling and information pertaining to the voluntary self-exclusion program. The casino would look to partner with the National Association of Social Workers, New York State Chapter to review and update regularly problem gambling training for employees as addressed by the responsible play partnership.

Rivers provides that guests who inquire about self-exclusion would be referred to a security supervisor who would inform the guest of the statewide voluntary self-exclusion program. A guest who requests to participate in the program would be referred to a representative of the program for assistance with enrollment. The statewide voluntary self-exclusion program promulgates a list of all persons who request that they be excluded from all State casinos.

The casino would also partner with the NYS Office of Alcoholism and Substance Abuse Services to ensure that all information and materials on problem and compulsive gambling are available to patrons seeking assistance.

The casino would adhere to both American Gaming Association recommendations and State regulatory requirements such as State regulations prohibiting marketing to self-excluded individuals. The casino would measure and monitor adherence against such efforts.

Rivers states that its affiliate, Rush Street Gaming, LLC, adheres to both American Gaming Association recommendations and state regulatory requirements such as state regulations prohibiting marketing to self-excluded individuals. For example, a Rivers affiliate's Illinois and Pennsylvania properties work with the applicable in-state organizations on problem gambling practices and implement a variety of responsible gaming practices.

**Utilizing sustainable development principles including, but not limited to:**

- (1) having new and renovation construction certified under the appropriate certification category in the Leadership in Energy and Environmental Design Green Building Rating System created by the United States Green Building Council;**
- (2) efforts to mitigate vehicle trips;**
- (3) efforts to conserve water and manage storm water;**
- (4) demonstrating that electrical and HVAC equipment and appliances would be Energy Star labeled where available;**
- (5) procuring or generating on-site 10 percent of its annual electricity consumption from renewable sources; and**
- (6) developing an ongoing plan to submeter and monitor all major sources of energy consumption and undertake regular efforts to maintain and improve energy efficiency of buildings in their systems. (§ 1320(3)(c))**

The potential traffic impact of Rivers project was determined by projecting future traffic volume, including the peak hour trip generation of the site and determining the operating conditions of the study area intersections after development. Additional trip generation due to the casino was estimated using data provided in information published by the Institute of Transportation Engineers, together with information based on visits to a similar casino facility owned by an affiliate of the Rivers located in Des Plaines, Ill.

Rivers concluded that several mitigation measures would be required including restriping and widening one roadway, changes in traffic signalization, relocation of site driveway, construction of an additional lane on one roadway and modifications to turn configurations. State agency experts note that the Rivers overall traffic study methodology appears to follow standard traffic engineering principals and the proposed

traffic mitigation measures appear to address the traffic impacts identified in the traffic impact study.

Rivers states that its objective is to obtain a higher level of LEED certification than is required. Rush Street Gaming, LLC, has achieved LEED gold certification at its Rivers Casino in Des Plaines, Ill., the first casino in the world to be certified as LEED gold. Rivers states that it would strive to achieve “gold” LEED certification of its casino project.

The existing combined storm-sanitary sewer system on the site is a legacy system that does not meet current standards and, during major storm events, discharges untreated, mixed storm and sewer water into the Mohawk River. As part of the Mohawk Harbor project, the existing system would be abandoned and separate sanitary and storm sewer systems installed to current standards. State agency experts note that a benefit of the Rivers proposal is that as a retrofit project, a deteriorated site in an urban center could become productive and a greenfield site will not be developed elsewhere for the project.

Rivers concludes that onsite storm water detention and infiltration is not required or advisable because the site abuts a significant waterway and has contaminated soil (infiltration of storm water through that soil could spread the contamination to ground water). Consequently, the proposed storm sewer system would treat surface runoff using hydrologic separation devices (instead of detention and infiltration ponds) and would then immediately discharge the treated storm water into the Mohawk River.

Rivers states that it would use low-flow fixtures throughout its facility. Rivers is considering using native or adaptive landscaping to reduce irrigation requirements. Rivers intends to implement a facility-wide automation system that includes energy consumption monitoring. Rivers points to its affiliated Rivers Des Plaines facility, outside Chicago, where low-flow systems were incorporated in the design and materially contributed to that facility’s LEED rating and where automation systems were implemented that includes energy consumption monitoring.

Rivers states that it would investigate securing a two-year “green power” contract and would explore whether government incentive programs would make onsite renewable power generation economical and feasible.

**Establishing, funding and maintaining human resource hiring and training practices that promote the development of a skilled and diverse workforce and access to promotion opportunities through a workforce training program that:**

- (1) establishes transparent career paths with measurable criteria within the gaming facility that lead to increased responsibility and higher pay grades that are designed to allow employees to pursue career advancement and promotion;**
- (2) provides employee access to additional resources, such as tuition reimbursement or stipend policies, to enable employees to acquire the education**

**or job training needed to advance career paths based on increased responsibility and pay grades; and**  
**(3) establishes an on-site child day care program. (§ 1320(3)(d))**

Rush Street Gaming, LLC has established practices at its affiliated properties that promote employee career development and advancement. Rivers states that these other facilities have a track record of promoting qualified internal employees before recruiting external candidates. In addition, they provide a variety of training programs to enable employees to pursue positions with higher responsibilities and higher pay grades. Career advancement and promotions are encouraged by providing internal employees with the opportunity to apply for positions three days prior to external candidates. Rivers states that it intends to establish policies similar to these at its gaming facility.

Rush Street also recognizes the importance of education and training in relation to career advancement. Rush Street provides employees with continuous training and a tuition reimbursement policy that provides employees up to \$5,000 in reimbursable expenses per annum for all approved training. Rush Street's tuition reimbursement policies have enabled employees at its other facilities to pursue promotions. Rivers intends to establish policies similar to these at its gaming facility.

Rivers states that Rush Street is committed to supporting its team members when they are in need of assistance to help deal with substance abuse and/or problem gaming and Rivers anticipates providing similar services, including an employee assistance program for all team members and their immediate families.

**Purchasing, whenever possible, domestically manufactured slot machines. (§ 1320(3)(e))**

Rivers proposes to source domestically manufactured slot machines.

**Implementing a workforce development plan that:**

- (1) incorporates an affirmative action program of equal opportunity by which the Applicant guarantees to provide equal employment opportunities to all employees qualified for licensure in all employment categories, including persons with disabilities;**
- (2) utilizes the existing labor force in the state;**
- (3) estimates the number of construction jobs a gaming facility would generate and provides for equal employment opportunities and which includes specific goals for the utilization of minorities, women and veterans on those construction jobs;**
- (4) identifies workforce training programs offered by the gaming facility; and**

**(5) identifies the methods for accessing employment at the gaming facility. (§ 1320(3)(f))**

Rivers states that it is committed to building and nurturing a diverse work environment, is committed to equal employment opportunity and participation by a diverse workforce and would establish a diversity plan. Rivers states that its hiring policy is to employ qualified people without regard to race, color, gender, national origin, ancestry, age, citizenship status, disability, military or veteran status, marital status, religion, sexual orientation, place of birth, gender identity or expression, familial status, use of a guide or support animal because of blindness, deafness or physical disability, genetic information and any other category protected by federal, State or local law.

Rivers provides a copy of the diversity plan for Rush Street Gaming's Rivers Casino in Des Plaines, Ill.

**Demonstrating that the Applicant has an agreement with organized labor, including hospitality services, and has the support of organized labor for its application, which specifies:**

- (1) the number of employees to be employed at the gaming facility, including detailed information on the pay rate and benefits for employees and contractors in the gaming facility and all infrastructure improvements related to the project; and**
- (2) detailed plans for assuring labor harmony during all phases of the construction, reconstruction, renovation, development and operation of the gaming facility. (§ 1320(3)(g))**

Rivers has the support of the Greater Capital Region Building and Construction Trades Council, AFL-CIO, and has executed a project labor agreement. A memorandum of understanding has been executed with the Greater Capital Region Building and Construction Trades Council for the construction of the facility. Rivers has also negotiated a labor peace agreement with the New York Hotel and Motel Trades Council, AFL-CIO, and has the support of the Council.



**Wilmorite, Inc. proposes to develop the Lago Resort & Casino (“Lago”) in the Town of Tyre in Seneca County. According to Lago, the casino will include 2,000 slot machines and 85 table games. The facility will include 207 hotel rooms, multiple restaurants and lounge amenities featuring local fare, a 10,000 square-foot spa and a 40,000 square-foot pool area.**

## **ECONOMIC ACTIVITY AND BUSINESS DEVELOPMENT**

### **Realizing maximum capital investment exclusive of land acquisition and infrastructure improvements. (§ 1320(1)(a))**

Lago proposes a total capital investment of \$425 million. Lago’s total capital investment less excluded capital investment is proposed to be \$303.3 million.

### **Maximizing revenues received by the state and localities. (§ 1320(1)(b))**

Lago does not propose to pay a supplemental tax or additional license fee.

Lago projects the following direct and indirect tax revenues to New York State and host municipalities:

- Direct New York state tax revenues (including gaming privilege taxes, device fees, corporate profits tax, sales and use taxes and personal income taxes) of approximately \$59.0 million in year one and \$ 76.2 million in year five, in the low-case scenario; \$67.9 million in year one and \$87.5 million in year five, in the average-case scenario; and \$74.6 million in year one and \$96.1 million in year five, in the high-case scenario.
- Indirect New York state tax revenues (including corporate profits tax, sales and use taxes and personal income taxes) from induced incremental economic activity of approximately \$2.5 million in year one and \$2.8 million in year five, in the low-case scenario; \$3.1 million in year one and \$3.5 million in year five, in the average-case scenario; and \$3.6 million in year one and \$4.1 million in year five, in the high-case scenario.
- Direct host county tax revenues of \$851.4 thousand in year one and \$1.0 million in year five, in the low-case scenario; \$912.5 thousand in year one and \$1.1 million in year five, in the average-case scenario; and \$969.9 thousand in year one and \$ 1.2 million in year five, in the high-case scenarios.



- Indirect host county tax revenues from induced incremental economic activity of approximately \$1.5 million in year one and \$1.7 million in year five, in the low-case scenario; \$1.8 million in year one and \$2.0 million in year five, in the average-case scenario; and \$2.1 million in year one and \$2.4 million in year five, in the high-case scenario.

Lago estimates that the direct, indirect and induced economic impact from the construction of the project will be \$257.3 million to the State and \$62.3 million to the region. Lago did not provide estimates of the economic impact from the project's operation. Board experts note that the economic impacts set forth in the study may not be achieved if Lago's financial projections are not met or exceeded.

### **Providing the highest number of quality jobs in the gaming facility. (§ 1320(1)(c))**

Lago anticipates that it would create approximately 1,250 to 1,500 direct jobs, but does not specify breakdown by part-time or full-time.

Lago confirmed, in a signed construction manager agreement, a commitment to use a minimum of 95 percent New York-based contractors and 90 percent New York-based suppliers. It is also requiring the construction manager to make good faith efforts to achieve 100 percent participation.

Lago states that it has created a website allowing New York-based companies to sign up to receive information about upcoming opportunities and is planning to have a gift shop within the casino for only New York-based goods. Board experts suggest that these are unique ideas evidencing a strong commitment to work with New York State companies.

Lago anticipates construction total worker hours of 2,576,450 for this project.

### **Building a gaming facility of the highest caliber with a variety of quality amenities to be included as part of the gaming facility. (§ 1320(1)(d))**

The 85-acre project site is located on the northeast intersection of the Governor Thomas E. Dewey Thruway (Interstate 90) and NYS Route 414, nearly midway between Rochester and Syracuse. Upon completing the development, there would be approximately 52 acres of open space consisting of wooded areas, wetlands and green space. The project name "Lago" is Italian for "lake," and the project's design is influenced by estate farmhouses of southern Italy.

Lago proposes a 3.5-star, "Lago"-branded resort comprising the following:

- 94,000-square-foot casino including high-limit areas;
- 207-room hotel with a fitness center, spa and outdoor pool area with a bar;

- two-level entertainment center with permanent stage that is multi-purposed and can also be used for meetings/conventions;
- four restaurants;
- two bars/lounges; and
- three retail outlets including an outlet featuring only New York and local goods.

Lago states that the casino, restaurants and parking would be open within 14 months of the awarding of a gaming license and that the hotel and spa would be open within 18 months of the license award.

Lago proposes a total gaming area of 94,000 square feet offering the following mix of games:

- Slots—2,000 slots (including 24 high-limit slots);
- Table games—85 tables (including four high-limit tables); and
- Poker tables—none.

A section of the gaming floor (2,970 square feet) would offer high-limit tables and slots. The high-limit room would include a full service bar. Additionally, Lago would provide a VIP lounge featuring hors d'oeuvres, pastries, a full service bar and direct access to the high-limit area. VIP players would also be granted VIP access to hotel check in, concierge services at the hotel and spa and priority seating at the buffet and priority reservations at the other restaurants.

Lago states that it would differentiate its resort on the basis of four key components: thoughtful design, high service standards, community partnerships and marketing mix. Board experts suggest that Lago's casino manager has a proven track record of instilling the values of quality, service and community into their management philosophy and operations.

Board experts suggest that the gaming floor plan adequately accommodates the number of units proposed fit into the space provided. Lago provides approximately 35 square feet per gaming position, which is above the standard industry benchmark of 31 square feet per position.

Lago's project includes a single, 207-room hotel tower comprising:

- 145 standard rooms (427 square feet each);
- 28 typical suite plus rooms (475 square feet each);
- 10 junior suites (627 square feet each);
- 21 two-bay suites (854 square feet each); and
- Three lanai suites (1,385 square feet each).

The hotel would be “Lago”-branded and of 3.5-star quality. The hotel would be managed by JNB Gaming, LLC, Lago’s casino manager. The hotel would provide a full-service salon and spa (nearly 10,000 square feet), a heavily landscaped outdoor pool area (40,000 square feet), including a pool bar and cabanas and a 24-hour fitness center.

For hotels of comparable quality, Lago refers to:

- Hyatt;
- Marriot;
- Hilton;
- Double Tree.

Lago asserts that its hotel would be differentiated from its competitors as a result of its thoughtful design, service standards, variety of amenities, superior customer service, community partnerships (including tourism partners, tour group sales, cross promotions with other attractions in the region, etc.), and marketing mix (a robust marketing plan and investment in player development and database).

The standard room size of 427 square feet is above three-star expectations of the market and slightly lower than four-star expectations of the market (450 square feet or more). The hotel offers 34 suites ranging from 627 square feet to 1,385 square feet. These suites should be in high demand both for those who have already earned it (through the loyalty program) as well as for those who aspire to achieve this level in the loyalty program. Board experts suggest that Lago’s hotel room rendering shows extra touches and design cues that make the rooms warm and inviting and above Lago’s self-appointed 3.5-star rating.

Board experts express concern that Lago’s hotel may be too small for the forecasted demand. Lago indicates an estimated 350,000 tourists per year would visit the facility. If each tourist wanted to stay one night, with one person per hotel room, then the hotel would need nearly 960 rooms per night. If 1.25 visitors stayed together in a room, then Lago would need nearly 760 rooms.

Lago proposes a two-level event center called The Vine. This event center would be multi-purposed and could be used for meeting space on its first level. The Vine’s first level could provide meeting space of approximately 23,474 square feet with capacity of up to 800 people. The Vine would have a small, specialty restaurant located inside. The Vine would have a permanent stage and tiered seating.

The Vine would provide significant space to hold meetings or conventions. Lago’s casino manager has developed and operated a similar venue at another property. Board experts suggest that the casino would use most or all of the hotel rooms and, therefore, there would not be a sufficient number of rooms available for booking of medium- to large-

sized conventions or meetings. Consequently, until more rooms are added, the primary use of the meeting/convention space would be for casino and property-sponsored marketing events or small, short-lead time meetings and conventions.

The Vine is based on the casino manager's operation in Dubuque, Iowa, the Mississippi Moon Bar, which hosts more than 150 nights of entertainment each year and has driven incremental visits to the casino from its outer-market area.

Lago is located more than 30 miles from the nearest entertainment venue. Lago believes The Vine would differentiate itself from competitors by providing VIP suites for players, which allows Lago to provide a level of service to guests that previously would have to travel to either Las Vegas or Atlantic City to experience. This allows Lago to reach and attract players from its outer market area as well as to keep players who would otherwise travel for a similar experience. Furthermore, the Vine would be a brand-new and state-of-the-art venue designed to provide an enhanced guest experience.

Lago's entertainment venue is designed to add to the overall destination characteristics of its gaming facility. Lago claims that the advantages of its entertainment venue include VIP suites for player development and group sales; bar seating in view of the stage; and reserved seating offered for comedy acts, dueling pianos and other shows tickets for which would be available online, making it easy for out-of-market visitors to plan a trip. Lago expects to host 160 events per year that would include comedy acts, dance club events, specialty acts and national touring acts and shows.

Lago proposes offering four restaurants and with each dining option, Lago stresses locally-sourced food and wine. Lago also proposes offering two bars/lounges and a high-limit lounge (estimated to provide 10 seats).

The dining venues would total 565 seats and would be capable of serving 44 percent of the forecasted daily visitors one meal on an average day under the average case, 34 percent on a peak day under the average case and 31 percent on a peak day under the high case. These fulfillment rates are not unusual for a local/regional casino. The Savor New York retail store next to the fast food marketplace would feature New York wine, spirits and foodstuffs, thus providing promotion of the region.

As for other amenities, Lago proposes Savor New York, a 2,500-square-foot retail outlet featuring local products, a sundries/logo shop (2,000 square feet) and a spa shop (900 square feet).

An oversized, nearly 10,000-square-foot spa would be placed in a location overlooking the 40,000-square-foot pool and pool deck. Lago's positioning of the spa and premium restaurant, each overlooking the 40,000-square-foot outdoor pool creates good views and demonstrates how to leverage the pool oasis. Hotel, spa and invited guests would be permitted to use the pool. The pool area could accommodate up to 900 people at

one time, suggesting Lago intends to also use it for small, medium and large parties, entertainment events, receptions and possibly as a day club under certain conditions.

Board experts suggest that if the market potential exists as Lago forecasts, Lago proposes a thoughtful and well-designed casino hotel development. The strategy appears to be to invest a bit more capital into the project to create a better-than-average environment that, in turn, produces better-than-expected experiences for patrons. By offering this better experience, Lago believes it can charge full or close to full prices for its non-gaming activities (and maintain higher margins). Additionally, Lago intends to provide a robust and dynamic entertainment program as a marketing initiative to drive repeat visitation.

Board experts suggest that Lago provides too few restaurants, which may result in high-repeat players not having enough variety and going elsewhere and, perhaps, too few hotel rooms. The project site is large and provides Lago space to expand if future demand conditions warrant.

Lago provides a brief description of internal controls that reflects current industry standards and indicated that a full description of internal controls would be submitted for approval prior to opening.

**Offering the highest and best value to patrons to create a secure and robust gaming market in the region and the state. (§ 1320(1)(e))**

Lago would create the Lago Resort & Casino Player's Club. Lago is a new company and currently does not have a player reward program or access to an existing player database. Lago states that it would use a management team with experience starting loyalty programs in new jurisdictions.

Lago has received support letters from local businesses and chambers of commerce, including Watkins Glen International Raceway, Hart Hotels with locations in Ithaca, Watkins Glen and the Thousand Islands area, numerous wineries and other tourist dependent businesses with agreements with many to cross-refer patrons. Lago states that the facility has been designed with a 207-room hotel despite market study information showing a greater need so as to push hotel patrons into the community and existing hotel and conference facilities.

**Providing a market analysis detailing the benefits of the site location of the gaming facility and the estimated recapture rate of gaming-related spending by residents travelling to an out-of-state gaming facility. (§ 1320(1)(f))**

Lago states that, to broaden the appeal of the region and host municipality, as well as the State of New York to in-state and out-of-state travelers, it seeks to become the centerpiece for a robust and growing tourist destination, by virtue of the new amenities it

provides in the heart of the Finger Lakes Region. The facility would market to travelers and co-promote the region in partnership with Tourism Information Centers on the New York Thruway. The project site is strategically located between the greater Syracuse and Rochester population centers and is easily accessible, as it is located just off the exit ramp of the New York Thruway. The project site, hotel and casino design and interior design are themed to mimic an Italian lake resort area. Even in this central New York location, a majority of the visitors would come from urban areas. Therefore, Lago's leisurely, resort-like atmosphere would be welcomed by its visitors.

Lago estimates that \$37 million of total gaming revenue would be contributed by recapture from out-of-state casinos.

**Offering the fastest time to completion of the full gaming facility. (§ 1320(1)(g))**

Lago states it will complete construction within 20 months of a license award.

Lago states that it would be prepared to start construction within one week of formal license award. Lago states that construction of the project does not involve the displacement or relocation of any existing businesses, tenants or services.

The project site is an 85-acre undeveloped site with state and federally regulated wetlands and streams. The site is located within an archeologically sensitive area and therefore would likely require an archeological survey and consultation with the State Historic Preservation Office. The site is located within an agricultural district.

Lago has secured the site, completed the SEQR process and has been granted a site plan approval. As such, no delays to the start of construction are anticipated.

**Demonstrating the ability to fully finance the gaming facility. (§ 1320(1)(h))**

Lago intends to fund the casino project through a combination of debt, preferred equity and common equity. Lago intends to secure vendor financing for gaming equipment. The remaining debt consists of a senior secured credit facility provided pursuant to a commitment letter from a financial institution. The equity portion of the financing would be provided pursuant to commitment letters from three financial companies.

The anticipation is that operating cash flows would cover all project debts and obligations from year two to three onward (depending on scenario). Before the project is cash flow positive, Lago anticipates using working capital and contingency to fund all obligations.

**Demonstrating experience in the development and operation of a quality gaming facility. (§ 1320(1)(i))**

Lago provides the following information in regard to operational experience:

Brent Stevens and the principals in JNB Gaming have regional casino development and operating experience and credentials, including operating in markets with more competition than the Finger Lakes region. The company Stevens headed as CEO, Peninsula Gaming, was sold to Boyd Gaming in 2012.

Lago is owned by WilPac Holdings, LLC, which is ultimately owned by Wilmorite and Peninsula Pacific/PGP Investors, LLC (“PGP”). Wilmorite is a builder, construction manager and real estate developer and has overseen several projects, including shopping centers, hotels, casinos and resorts. PGP is an investment management firm founded in 1999 and focused on providing customized capital solutions to the gaming industry and other industries.

The proposed casino manager, JNB Gaming, is owned and operated by the same individuals who partially owned and operated Peninsula Gaming, LLC (“PGL”) until its sale to Boyd Gaming. PGL developed and managed facilities in Iowa, Kansas and Louisiana.

Wilmorite and the Wilmot family have substantial real estate development experience. Furthermore, Brent Stevens, the head of JNB Gaming, has extensive experience in successfully developing and managing regional casinos similar in size and scope to Lago.

## **LOCAL IMPACT AND SITING FACTORS**

### **Mitigating potential impacts on host and nearby municipalities which might result from the development or operation of the gaming facility. (§ 1320(2)(a))**

Lago provides an assessment to identify direct and indirect impacts to, among other things, local public safety, fire protection, EMS and other municipal services.

The all-volunteer Magee Fire Department (MFD) would be the department responsible for responding to most incidents at the proposed casino. Lago states that due to the presence of onsite fire protection infrastructure and EMS personnel, MFD does not expect much to change in the overall fire or EMS operations after the casino is developed and operational. However, mutual aid plans with neighboring fire departments might need to change to provide additional assistance in large incidents at the casino. Lago would fund one quarter of MFD’s expenditures to cover the purchase and maintenance of equipment and parts resulting from increased usage and wear and tear. MFD likely would need to purchase a new ladder truck to service the six-story hotel and expand its fire station to accommodate the vehicle, along with extensive ongoing training for its volunteer personnel.

According to Lago, the Seneca County Sheriff's Office is currently understaffed by about two staff members. Local ambulance services are provided by private companies and likely would require additional staff for peak demand times. Lago states that the incremental burden on emergency communications infrastructure is within the community's current capacity, although it might be necessary to add a staff position during peak demand and upgrade emergency communications systems over time.

Lago presents estimated water and sewer infrastructure requirements of the proposed facility. Lago presents a letter from the Village of Waterloo confirming the capacity of its water treatment plant to supply the projected demand from Lago's facility.

Lago reports that the operator of the Town of Seneca Wastewater Treatment Plant has confirmed it has sufficient excess capacity to accommodate the projected flow from Lago's facility.

Lago reports that it plans to connect to the local overhead electricity transmission and natural gas distribution infrastructure operated by NYSEG.

Lago identifies federal wetlands on the project site. It appears that no direct building or grading impact is to occur on these wetlands, although the proposed storm water system may direct additional flow to them. In addition, Lago queried New York State agency data and conducted a site visit and identified no potentially impacted protected species and protected habitats other than the aforementioned wetlands.

Lago provided a Center for Governmental Research study, which analyzed the incremental costs of the proposed Gaming Facility on local government services.

Lago has agreed to absorb the incremental costs for municipal services incurred by the local municipalities resulting from the proposed casino's development and operation. To that end, Lago has entered into a host community agreement with the Town of Tyre to mitigate these impacts.

In recognition of the impact that the project would have on the preservation of farmland and natural resources, Lago would pay to the Town or another appropriate government agency \$600,000 over six years. The funds would be used for the purchase of development rights or other steps to preserve agricultural land in the Town. The agreement also indicates that Lago would take measures to restore, preserve and maintain six known burial sites at the project. The agreement also acknowledges that Lago would also have known and unknown indirect impacts and that Lago has agreed to an indirect impact fee. In 2015, the Town would receive \$750,000. From 2016 onward, the minimum fee for indirect impacts associated with the project would be guaranteed at \$2 million, increasing annually by two percent per year after 2018. The indirect impact fee would be paid by Lago in any year in which the minimum fee is not met through the gaming fee revenue received by the Town for the year.



Lago provided a Center for Governmental Research study, which analyzed the incremental costs of the proposed Gaming Facility on local government services. State agency experts note that Lago retained a well-qualified independent expert to analyze the incremental costs of the proposed Gaming Facility on local government services.

Lago presents an extremely detailed study concerning the demand for affordable housing at a proposed project near the proposed gaming facility, which was prepared by appraisers and market-study analysts with experience and knowledge of the local housing market.

Partly based on a report prepared for the Town of Tyre, Lago concludes that the potential school population impact to the municipality and to the nearby affected municipalities is neutral at worst; Lago does not contemplate mitigating actions at this time.

Lago states that the proposed casino's impact on total population, particularly in the Town of Tyre, is expected to be small.

Lago concludes that even if a modest increase in population were to occur, the net fiscal impact on local public schools is likely to be neutral, as all of the districts have experienced a loss in enrollment in recent years and thus have excess capacity. Added enrollment and the accompanying increase in per student state aid, combined with the efficiency gained from increased enrollment, may actually improve the fiscal condition of local schools.

**Gaining public support in the host and nearby municipalities, which may be demonstrated through the passage of local laws or public comment received by the board or gaming Applicant. (§ 1320(2)(b))**

Lago's host community is the Town of Tyre. Lago provides a resolution in support of its project adopted by the Town Board of the Town of Tyre on June 12, 2014. Additionally, Lago provides a resolution in support of its project adopted by the Board of Supervisors of Seneca County on March 11, 2014. Lago also provides resolutions in support of its project adopted by the Counties of Schulyer and Wayne, the Towns of Covert, Seneca Falls, Varick, Waterloo and Romulus and the Village of Interlaken, as well as letters of support from the Seneca County Chamber of Commerce and various business owners, unions and trade councils and residents.

Notwithstanding these resolutions, the Board was made aware, by correspondence and at the public comment event held in Ithaca on September 24, that there is a well-organized and community-driven grass roots opposition to the project.

The Lago project was the subject of more than 300 written comments, of which 68 percent indicated opposition and 32 percent indicated support.

Lago was the subject of more than five dozen comments at the September 24, 2014 public comment event, with approximately 40 percent indicating opposition and 60 percent indicating support. Among those participating in the public comment event were representatives of an Amish community located in Tyre. Through a spokesperson, the Amish articulated concerns about an increase in traffic posing a safety threat and the development of the gaming facility having a negative impact on their way of life.

**Operating in partnership with and promoting local hotels, restaurants and retail facilities so that patrons experience the full diversified regional tourism industry. (§ 1320(2)(c))**

Lago states that it would seek to promote local business in the host municipality and nearby municipalities through its rewards partner program. Lago had enrolled approximately 35 businesses in this program by the time its Application was submitted. Lago would promote these businesses, called “partners” by Lago, by including them in online and printed guides, allowing members to use acquired rewards points to make purchases at partner locations, featuring the partner’s products and or services in direct mail campaigns, onsite advertising, inclusion in the in-room guide or mass media advertising (when appropriate), and including a partner’s product as a prize in casino promotions.

Lago has established a “NY First” program that gives priority and advantage to local businesses and to help promote local products at the gaming facility. The program features an online enrollment form for vendors wishing to become preferred vendors and includes a section where the vendor can identify itself as a woman- or minority-owned business. Lago states that it would hold exclusive vendor fairs for these preferred vendors. A database of all preferred vendors would be referenced when procurement issues arise.

Lago has also proposed two establishments within the gaming facility, Savor NY and a gift shop called Shop New York. Savor NY would feature regional specialties such as local wines, brews, fruits, cheeses and baked goods and would be situated in a flexible high-traffic space that allows a variety of sampling, displays and live cooking demonstrations. Similarly, Shop New York would feature only products available from New York vendors.

Lago is a member/supporter of the Finger Lakes Tourism Association. This association has staffed tourism information centers at several travel plazas and interchanges along the NY Thruway system. Travelers may obtain information about destinations and attractions at these centers. Lago stated it intends to continue working with the

association by participating in tourism programs, travel trade shows, cooperative advertising schedules and other matters.

**Establishing a fair and reasonable partnership with live entertainment venues that may be impacted by a gaming facility under which the gaming facility actively supports the mission and the operation of the impacted entertainment venues. (§ 1320(2)(d))**

Lago Resort and Casino has identified six facilities in the Region that may be impacted by the proposed “THE VINE” event and entertainment center: Canandaigua Music and Art Center, Ithaca State Theatre, Landmark Theatre, Clemens Center, The Forum Theatre and Rochester Broadway and Theatre Leagues. Lago executed a memorandum of understanding with the Canandaigua Music and Art center and expects to reach an agreement with the Upstate Theater Coalition for a Fair Game, which represents the other facilities in the region.

**WORKFORCE ENHANCEMENT FACTORS**

**Implementing a workforce development plan that utilizes the existing labor force, including the estimated number of construction jobs a proposed gaming facility would generate, the development of workforce training programs that serve the unemployed and methods for accessing employment at the gaming facility. (§ 1320(3)(a))**

Lago has committed to reach and recruit local unemployed workers and to assist in long-term training. To that end, it would host job fairs and actively recruit veterans and underemployed and unemployed persons.

Lago would work with the Finger Lakes WIB to recruit jobseekers for open positions and provide on-the-job training.

Lago states that its casino manager has experience in managing five casinos in three states, where unemployed and underemployed persons in those geographic regions were recruited, hired and trained. The casino manager would draw on that experience to ensure that the project’s hiring practices are nondiscriminatory, would review screening procedures in recruiting and hiring so as not to disadvantage applicants solely based on their employment status. Lago’s casino manager also has experience collaborating with employment agencies to recruit jobseekers and in one case set up an employment center on casino property to bring Lago’s up to speed.

**Taking additional measures to address problem gambling including, but not limited to, training of gaming employees to identify patrons exhibiting problems with gambling. (§ 1320(3)(b))**

In partnership with the New York Council on Problem Gambling (NYCPG) and Seneca County Mental Health, Lago would provide certain resources to ensure that players are engaging in entertainment responsibly, including a responsible gambling resource center, responsible gambling and underage gambling policies and practices, assistance for patrons who may have problems gaming, self-exclusion programs, limiting access to money and employee training. Lago's responsible gambling resource center would focus on providing patrons with information on safe gambling practices and assistance and local referrals for help with gambling related problems through brochures and rack cards, assistance to patrons concerned about their own or someone else's gambling behavior and referrals to New York's network of problem gambling treatment agencies. Lago would pay for problem gambling treatment. Lago's operating policies would be designed to prevent underage access, including the use of ID scanners before being allowed access to the gaming floor, prominent signage with an underage gambling message, prompt removal of underage patrons and removal of guests who are visibly intoxicated or self-excluded.

Lago's self-exclusion program focuses on offering self-excluded patrons assistance. All team members would be aware of the program and able to assist patrons seeking information and certain team members would be trained to handle the process. Support options would be explained and written materials and treatment referrals provided. The patron would be removed from all marketing and player development lists and programs and flagged across all casino systems. Once the self-exclusion period expires, the patron would need to initiate a reinstatement process to be allowed in the casino and returned to all marketing lists and player development programs. Additionally, Lago would limit access to money by using a third-party check guarantee service that pre-qualifies players for a specific limit that cannot be exceeded.

Lago would collaborate with NYCPG and promote the gamblers' treatment line supported by New York State Office of Alcoholism and Substance Abuse in its signage. Information on problem gambling, self-exclusion, underage gambling, the 24-hour HOPEline and additional resources would be available to patrons onsite. The HOPEline signage would be included in all written communications, at ATMs, the cage, the players' club, on all in-house marketing, back of house and in all restrooms.

All employees of Lago would be required to complete responsible gambling and problem gambling training upon initial hiring and on an annual basis thereafter. An evaluation process would be in place that measures individual employees' increase in knowledge and readiness to provide assistance. Accordingly, the floor staff would be trained to recognize the signs of a gambling problem and prepared to help those in need of assistance. Lago's responsible gambling committee would engage the New York Council

on Problem Gambling to periodically review responsible gambling publication content and deliver team member training programs at orientation and reinforcement trainings, including the NYCPG's "Casino Employee Training on Problem and Responsible Gambling" course, and would require certification for each casino team member. A second level of training would be provided to certain floor staff in order to assist patrons who have problems with gambling. The Committee itself would also participate in problem and responsible gambling training, and information on responsible gambling awareness, including the HOPEline number, would be posted various places back of house.

Lago's responsible gambling resource center would always be open to all patrons and provide information on safer gambling practices as well as assistance, self-exclusion and local referrals for help with gambling-related problems. Patrons could seek help for themselves or others exhibiting signs of problem gambling. The center's physical space would be off the gaming floor, but within close proximity and easily located. It would have computer and televised technology, as well as a private meeting room to conduct referrals.

Seneca County Mental Health has agreed to work with the New York Council on Problem Gambling to use expertise and institutional knowledge on treatment successes and challenges. All executive level and supervisory staff would be trained in problem gambling, and behavioral health providers delivering treatment services must complete a specialized training program. Seneca County Mental Health's problem gambling services would be advertised in all of its facilities, and it would support development of additional Gamblers' Anonymous meetings in areas where treatment is provided. Lago would fund 100 percent of the cost of problem gambling related outreach and staff training.

JNB Gaming, the manager of Lago, has operated casinos in Iowa, Louisiana and Kansas, each of which had policies, procedures, training and partnerships related to responsible gaming education, self-exclusion and treatment providers, as well as a responsible gaming leadership committee consisting of the general manager, director of marketing, director of security, director of food and beverage, director of human resources and director of finance.

**Utilizing sustainable development principles including, but not limited to:**

- (1) having new and renovation construction certified under the appropriate certification category in the Leadership in Energy and Environmental Design Green Building Rating System created by the United States Green Building Council;**
- (2) efforts to mitigate vehicle trips;**
- (3) efforts to conserve water and manage storm water;**
- (4) demonstrating that electrical and HVAC equipment and appliances would be Energy Star labeled where available;**
- (5) procuring or generating on-site 10 percent of its annual electricity consumption from renewable sources; and**

**(6) developing an ongoing plan to submeter and monitor all major sources of energy consumption and undertake regular efforts to maintain and improve energy efficiency of buildings in their systems. (§ 1320(3)(c))**

Lago's proposed development would be sited on an existing 85-acre vacant parcel just north of the I-90 and the exit 41 interchange. Access to the site would be provided by a four-lane main entrance drive. Lago analyzed the existing 2013 traffic conditions as well as the projected 2016 build and no-build conditions in order to form its recommendations for traffic mitigation measures.

Lago's traffic study area included seven existing off-site intersections anticipated to be impacted by the proposed project. Additional traffic data was collected at the Turning Stone gaming facility, which Lago believes is comparable to Lago's project due to its similar rural upstate New York location. The study concluded that based on the number of comparable gaming devices, the proposed development would generate approximately 91 percent of the traffic Turning Stone currently generates.

The traffic mitigation measures Lago recommends included widening of an existing roadway, widening or replacing an existing bridge, constructing several additional turn lanes, constructing several new roadway through lanes, installing new traffic signals and certain modifications to existing travel lanes. Lago's traffic study concludes that if the recommended traffic mitigation measures are followed, the proposed development would produce no noticeable increase in delay in the existing adjacent road network and should reduce the area's current accident rates. Lago estimates that the cost of such offsite improvements is \$4,152,500 and would be completed in combination with the proposed development.

Lago states that the proposed building design elements and measures for its gaming facility would make the project eligible for a LEED silver certification.

Lago reports that Energy Star equipment would be specified throughout its facility as well as HVAC and lighting systems that would qualify for government energy-efficiency incentives.

Lago presents a preliminary storm water management plan prepared by its engineer to mitigate storm water discharge from the project site using detention ponds in accordance with State requirements. Lago states that the project would adhere to standards set forth in the NYSDEC Stormwater Management Design Manual. State agency experts suggest that Lago's proposed reuse of storm water runoff to supplement site irrigation and infiltrating practices to treat storm water runoff is notable.

Lago commits to consume approximately 15 percent renewable energy by installing a solar photovoltaic system rated at 350 kW and by entering into a purchase commitment

with a local dairy farmer's anaerobic digester (methane gas) bio-generation facility for 2.1 million kWh per year.

**Establishing, funding and maintaining human resource hiring and training practices that promote the development of a skilled and diverse workforce and access to promotion opportunities through a workforce training program that:**

- (1) establishes transparent career paths with measurable criteria within the gaming facility that lead to increased responsibility and higher pay grades that are designed to allow employees to pursue career advancement and promotion;**
- (2) provides employee access to additional resources, such as tuition reimbursement or stipend policies, to enable employees to acquire the education or job training needed to advance career paths based on increased responsibility and pay grades; and**
- (3) establishes an on-site child day care program. (§ 1320(3)(d))**

Lago states that its manager, JNB Gaming, has experience in managing casino operations in multiple jurisdictions and understands the importance of creating a positive work environment. The manager is committed to promoting the development of a skilled and diverse workforce. To ensure development, the manager would establish recruitment policies that are easily accessible and located in the host municipality, develop training programs that create skill development and support the promotion of internal employees.

Lago recognizes the impact that proper education and training has on career advancement. Lago would have training specialists administer orientation, responsible gambling training and other training programs in order to enable employees to advance within the organization. The training specialists would also serve as liaisons to community training partnerships. The manager has partnered with Finger Lakes Community College and developed a curriculum that would be offered annually to qualifying employees. The curriculum would focus on team building, communication, finance and more. Qualified employees would also have the opportunity to participate in "dealer school," where they would receive free training on the skills and regulatory responsibilities required to qualify for an entry-level dealer position.

Lago anticipates providing an onsite child daycare center for its employees. Lago has executed a memorandum of understanding with Bright Horizons Child Care, a third-party provider, to provide child care for Lago's employees.

**Purchasing, whenever possible, domestically manufactured slot machines. (§ 1320(3)(e))**

Lago proposes to source domestically manufactured slot machines.

**Implementing a workforce development plan that:**

- (1) incorporates an affirmative action program of equal opportunity by which the Applicant guarantees to provide equal employment opportunities to all employees qualified for licensure in all employment categories, including persons with disabilities;**
- (2) utilizes the existing labor force in the state;**
- (3) estimates the number of construction jobs a gaming facility would generate and provides for equal employment opportunities and which includes specific goals for the utilization of minorities, women and veterans on those construction jobs;**
- (4) identifies workforce training programs offered by the gaming facility; and**
- (5) identifies the methods for accessing employment at the gaming facility. (§ 1320(3)(f))**

Lago states that its workforce would meet participation goals for members of minority groups, as that term is defined under State law. Specifically, its workforce (*i.e.*, tradespeople, service workers, trainees and supervisory staff) would comprise 10 percent minority members, eight percent women and five percent veterans. Its overall aggregate goal for operations workforce participation is 10 percent based on applicable disparity findings for the project's reasonable geographic outreach area. To achieve its goals, Lago would provide its prime contractors with quarterly workforce census data and such other records as necessary to enable its contractors to verify and demonstrate compliance.

Lago would also develop a workforce and business diversification plan, subject to union contracts and local preferences, to recruit diverse candidates from within the geographic location of the project. Such a plan would include identification of certified MWBE firms from within the region to create opportunities for their participation in the project.

Finally, Lago would provide training, or opportunities to participate in training offered by third parties (such as the Finger Lakes Workforce Investment Board and Finger Lakes Community College), to workers to provide meaningful ways for them to succeed in their employment opportunities and to promote long-term employment within the gaming industry.

**Demonstrating that the Applicant has an agreement with organized labor, including hospitality services, and has the support of organized labor for its application, which specifies:**

- (1) the number of employees to be employed at the gaming facility, including detailed information on the pay rate and benefits for employees and contractors in the gaming facility and all infrastructure improvements related to the project; and**



**(2) detailed plans for assuring labor harmony during all phases of the construction, reconstruction, renovation, development and operation of the gaming facility. (§ 1320(3)(g))**

Lago and its construction manager have executed a project labor agreement (PLA) covering the entire project and all work associated with the project. The PLA was signed and executed on June 19, 2014 by the president of the Finger Lakes Building & Construction Trades Council. The PLA has also been approved by the New York State Building and Construction Trades Council and the North America's Building Trades Union.

Included in the PLA for Lago's project is a commitment to veterans through the Helmets to Hardhats program. Lago has also included in the PLA a minority and female development and funding program, and Lago has committed \$100,000 towards the Finger Lakes Workforce Investment Board, Inc., a non-profit that would recruit and train minority and female workers for employment on the project.

Rochester Regional Joint Board, Workers United, represents all covered employees at Finger Lakes Racetrack and Tioga Downs, as well as approximately 6,000 service workers in the Upstate region. Lago has entered into a binding labor peace agreement with Workers United.

Lago entered into a labor peace agreement with the New York Hotel & Motel Trades Council on October 9, 2014.



**Tioga Downs Racetrack, LLC proposed to expand its current facility into Tioga Downs Casino, Racing and Entertainment (“Tioga”) in the Town and Village of Nichols in Tioga County. According to Tioga, at full build out, the project would have featured 1,000 slot machines and 50 table games in addition to live harness racing. The facility would have included a 136-room hotel with three restaurants, plus additional fast food concessions, three bars/lounges, additional outdoor dining and bar facilities, indoor and outdoor pools and a mini-golf course and adventure center. It also would have included a fitness and day spa and a multi-use event facility. Tioga also would have taken over management of the nearby Tioga Country Club golf course.**

## **ECONOMIC ACTIVITY AND BUSINESS DEVELOPMENT**

### **Realizing maximum capital investment exclusive of land acquisition and infrastructure improvements. (§ 1320(1)(a))**

Tioga proposed a minimum capital investment of \$128 million. Tioga’s total capital investment less excluded capital investment was proposed to be \$116.6 million. Tioga requested the inclusion of \$44.9 million in prior capital investment; however, no portion of its prior capital investment was needed to meet the minimum capital investment.

### **Maximizing revenues received by the state and localities. (§ 1320(1)(b))**

Tioga did not propose a supplemental tax payment or increased license fee.

Tioga provided projections of the state, county and local tax revenue that would be generated by the proposed facility during the first five years of operation with high, average and low revenue scenarios. Tioga’s projections were as follows:

- Direct New York state tax revenues (including gaming privilege taxes, device fees, corporate profits tax, sales and use taxes and personal income taxes) of approximately \$40.7 million in year one and \$31.0 million in year five, in the low-case scenario; \$40.1 million in year one and \$34.0 million in year five, in the average-case scenario; and \$40.3 million in year one and \$37.8 million in year five, in the high-case scenario.
- Indirect New York state tax revenues (including corporate profits tax, sales and use taxes and personal income taxes) from induced incremental economic activity would decline approximately \$47,900 in year one and increase approximately \$149,800 in year five, in the low-case scenario; decline approximately \$47,900 in year one and

increase approximately \$209,000 in year five, in the average-case scenario; and decline approximately \$47,900 in year one and increase approximately \$225,800 in year five, in the high-case scenario.

- Direct host county tax revenues (Tioga County) of \$552,000 in year one and \$1.5 million in year five, in the low-case and average-case scenarios; and \$546,000 in year one and \$1.5 million in year five, in the high-case scenario. Direct host city tax revenues of \$166,000 in year one and \$497,000 in year five, in the low-, average and high-case scenarios.
- Indirect host community tax revenues from induced incremental economic activity (to Tioga County) would decrease approximately \$820,100 in year one and \$1.0 million in year five, in the low-case scenario; \$820,100 in year one and \$999,200 in year five, in the average-case scenario; and \$820,100 in year one and \$1.0 million in year five, in the high-case scenario.

Tioga did not provide detailed pro forma income statements showing gaming taxes and licenses for the average and high cases. Year one differences relate to the company operating as a racing video lottery facility for half of the year and a casino for the remainder of the year. Board experts noted that various tax revenues might not be achieved if Tioga did not meet or exceed its financial projections.

Tioga’s study of the project’s overall economic incremental benefit to the local region and State did not provide tables or estimates breaking out the direct, indirect and induced economic activity, which are standard features of an economic impact analysis. Without such projections, the Board experts could not estimate the economic impact of construction or operations, rendering the study nonresponsive. In addition, Board experts noted that the study assumes the expansion of Tioga to include a 137-room hotel, enlarged gaming floor, an amenity building with spa, pool, fitness center and a 274-space parking garage. The Tioga proposal, including the expansion and forecasted gross gaming revenue, did not represent entirely new revenue to the State of New York, because Tioga proposed to replace its existing VLT machines (approximately 800) with slot machines (1,000 machines). The results therefore were not comparable to those of other applicants.

**Providing the highest number of quality jobs in the gaming facility. (§ 1320(1)(c))**

Tioga anticipated that it would create 464 full-time and 549 part-time jobs.

Tioga stated that the proposed construction manager brings more than 50 years of construction expertise and has established strong working relationships throughout the State with contracting communities for a half-century. The stated goal was to maximize opportunities for local union subcontractors within a 50-mile radius of Tioga to work on the project.

Tioga anticipated construction total worker hours of 398,580.

**Building a gaming facility of the highest caliber with a variety of quality amenities to be included as part of the gaming facility. (§ 1320(1)(d))**

Tioga's project site for the gaming facility was the current location of Tioga Downs, the New York State VLT facility consisting of 145 acres with harness horseracing and simulcast wagering.

Tioga proposed a 3.5-star, "Tioga Downs"-branded resort comprising the following:

- 32,324-square-foot casino, including the existing and newly-expanded casino floor with designated high-limit areas;
- 136-room hotel with a fitness center, spa and indoor and outdoor pools;
- 6,652-square-foot flexible meeting/entertainment space with pre-function, back of house and kitchen areas;
- Three primary restaurants, plus various fast-food concession options located throughout the property;
- Five bars/lounges including outdoor terraces;
- Mini-golf and adventure center, including an 18-hole mini-golf course, rock-climbing wall and batting cages;
- Waterslide and plunge pool; and
- "Live" harness horseracing from May to September on a 5/8-mile track with a 1,225-seat grandstand.

In addition to the development on the project site, Tioga entered into an option to lease the Tioga Country Club, a golf course located approximately four miles from the project site. Tioga proposed to construct a new clubhouse at the country club.

Because Tioga proposed to convert an existing VLT facility and harness racing track into an expanded casino resort, Tioga proposed three primary phases of construction in an effort to provide minimal disruption of existing operations. The three phases were:

- Phase one—construction of a new four-level, 274-space parking garage and conversion of existing VLT machines to slot machines.
- Phase two—construction of the expanded casino floor, poker room, 136-room hotel (including spa, fitness center and indoor pool), outdoor pool, amenity building (including flexible meeting/entertainment space, P.J. Clarke's Restaurant and Bar, outdoor terrace and rooftop terrace), and waterslide and plunge pool.
- Phase three—construction of the mini-golf and adventure center, additional surface parking lot, Virgil's Real BBQ & Honky Tonk Bar, offices and the clubhouse at Tioga Country Club.

Board experts noted that it is unclear from Tioga’s application whether construction of phase three of the project was subject to any contingencies, such as sufficient market demand or other conditions. After expansion of the existing Tioga Downs facility, the project site would have been only 4.5 percent occupied, with approximately 138 acres remaining for future development if market demand warranted future expansion.

Board experts noted that because the proposal was a retrofitted expansion of existing facilities, improvements and infrastructure, this almost inevitably would have led to a patchwork of buildings and amenities, rather than a cohesive site design and layout. Accordingly, the expansion would have required many of the additions to be built at the “end” of existing buildings rather than having them centrally located. The hotel ideally would have been positioned adjacent to or on top of the casino. Entry points into the facility could have become too crowded on peak days as a result of increased visitation. On most days, the views from the terraces, swimming pool and one side of the hotel tower would have been of an empty track. Unless these areas were heavily landscaped, these views could have appeared industrial rather than of a resort style. If any further expansion were to have taken place in the future using the same development strategy, it could have continued to push the outer ends of the facility even farther, thus, increasing distances between various amenities or the facility and related parking lots.

Using industry benchmarks for the seat or position capacity of slot machines and table games, Board experts suggested that the gaming capacity would have been capable of serving the physical demand on an average day using the average case visitor forecast. Tioga may have been able to reduce the number of gaming positions provided and still be capable of serving the projected demand.

Board experts noted that it appeared that the layout segregates racing and casino. Presumably, a more seamless integration and greater overlap of the two might have proven beneficial, even if only for thematic and ambient reasons.

It did not appear that there was a separate high-limit room or segregated, limited entry area. Rather, there was only noted an area of high-limit games located on the casino floor. Board experts suggested that a larger casino center bar and a smaller bar in the simulcast area and racing lobby would have helped to circulate patrons into the casino.

Tioga proposed a total gaming area of 32,324 square feet (including its existing gaming floor of 13,756 square feet, renovated gaming floor of 4,726 square feet, gaming floor expansion of 11,442 square feet and a new poker room) offering the following mix of games:

- Slots—1,000 slots;
- Table games—38 tables; and
- Poker tables—12 tables.

Conversion of Tioga's existing VLT gaming positions to slot machines was expected to have been completed in various phases to avoid disruption of existing gaming and racing operations. Tioga expected the process of removing the existing VLTs and replacing them with slot machines to take approximately 90 days.

A section of the gaming floor would have offered high-limit tables and slots. The primary cashier cage, hotel check-in, player's club and buffet would have offered priority lines for VIP players.

Phase two of Tioga's project included construction of a single, 136-room hotel tower comprising:

- 69 king standard rooms (430 to 543 square feet each);
- 52 queen standard rooms (430 square feet each);
- Numerous handicapped accessible rooms (538 square feet each); and
- Numerous suites (755 to 869 square feet each).

The hotel would have been "Tioga Downs"-branded and of 3.5-star quality. The newly constructed hotel, together with the newly constructed amenities building, would have offered a 2,500-square-foot spa operated by AgeLess Spa, a local spa operator, a 2,384-square-foot indoor pool, a 652-square-foot fitness center, 6,652-square-feet of multi-purpose meeting/entertainment space, a restaurant (P.J. Clarke's) and an outdoor pool.

Tioga stated that there were no hotels in the region of comparable quality, but cited the Mohegan Sun Pocono Downs Hotel in Wilkes-Barre, Pa. as being comparable.

Tioga stated that to differentiate the hotel from its competition, the hotel rooms were designed to be 100 to 150 square feet larger than those offered by typical hotels in the primary competitive market. Other differentiating factors included that the hotel would have been a component of the area's only gaming and destination resort; the level of service at the hotel would have been highly guest-focused and superior to that offered by competitors in the region; and that the hotel would have offered unique and diverse amenities, including large banquet space to host large weddings, conferences and meetings.

Board experts noted that the hotel would have been located at the opposite end of the rather elongated floor plan from the casino. Board experts suggested that, ideally, the hotel should have been centrally located near the casino and other amenities. Considering a large portion of the hotel demand would have been generated by casino guests, Board experts suggested that it would have been better to position the hotel closer to the casino. The hotel is small in light of the forecasted demand. Given the projections of 228,000 annual visitors traveling greater than one hour to get to Tioga, if 100 percent of them wanted to stay one-night, then the hotel would need 624 rooms per night. Board experts suggested that either the hotel is too small or the projections for

visitation and room-night demand are inaccurate. If the hotel is too small, then guests would have been discouraged from visiting the casino at all as if they would have been unable to stay at the hotel overnight. Tioga's master plan did not include plans for expanding the hotel component.

Tioga proposed a 6,652-square-foot flexible meeting and entertainment space located in the new amenities building adjacent to the hotel. The space was proposed to operate in its entirety or be subdivided into two spaces. Capacity of this space was 410 guests in a traditional banquet-style (dinner) event and 590 guests for a concert event. The space was proposed to accommodate banquets, conventions, trade shows, weddings and a variety of entertainment.

A business center was proposed to be located across from the hotel reception desk.

Board experts suggested that based on the expected high use of hotel rooms by casino patrons, there were an insufficient number of hotel rooms proposed for booking of medium- to large-sized conventions/meetings.

Tioga stated that it has three existing entertainment venues that would remain in place including:

- Coaster's—3,600 square feet/200 capacity—an existing sports bar that offers free entertainment on weekends such as live bands, DJs, karaoke and trivia games.
- Mutuel lobby stage—6,594 square feet/500 capacity—when not used for racing, the grand lobby provides space with a stage to host a variety of entertainment acts.
- Outdoor concert venue – capacity of up to 4,594—in summer months, a mobile stage can be positioned just beyond the racetrack creating “close to stage” seating on the racetrack in addition to the elevated seats in the grandstands. This venue would have been used for hosting larger concerts.

In addition to the above, Tioga proposed five new entertainment venues:

- Flexible meeting/entertainment space of 6,652 square feet/410 to 590 capacity;
- Upper Terrace—450 capacity, outdoor entertainment venue located on the rooftop of the new amenities building expected to offer free entertainment;
- Lower Terrace—300 capacity. outdoor patio located outside of the restaurants expected to offer free entertainment and customer-themed parties/events;
- Gaming Floor Lounge Stage—1,732 square feet/100 capacity, lounge with a stage located at the perimeter of the casino floor; and
- Virgil's Real BBQ and Honky Tonk Bar—4,669 square feet/200 capacity, Virgil's Real BBQ's flagship restaurant is located in Manhattan. The nightclub was expected to host a variety of country music entertainment.

Tioga appeared willing to use entertainment as a marketing tool to promote its facility and create a competitive advantage. Tioga stated it had established a good relationship with local/regional entertainment venues and did not intend to compete based upon the type of acts or scheduling. Tioga intended to collaborate, cross-promote and allow loyalty club points to be used at these other local/regional entertainment venues.

Tioga proposed three primary restaurants, three bars/lounges, plus various food concessions and additional outdoor dining/bar spaces, including:

- Country Fair Buffet—an existing buffet restaurant overlooking the racetrack with tiered seating for optimal views of the racetrack (5,370 square feet/200 seats);
- P.J. Clarke’s—new restaurant located adjacent to the event center and would have had access to an outdoor patio (3,551 square feet/166 seats).; and
- Virgil’s Real BBQ and Honky Tonk Bar—new restaurant located in the new addition to the existing facility (4,669 square feet/200 capacity).

As for other amenities, Tioga proposed the following:

- Mini golf and adventure center—this area would have included an 18-hole mini-golf course, a 27-foot high rock climbing wall and nine batting cages;
- Waterslide—21-foot-high waterslide and plunge pool;
- Outdoor swimming pool—the private outdoor pool would have been available only to hotel guests and would have complemented the indoor pool, spa and fitness center located within the hotel;
- Harness horseracing—from May to September, Tioga Downs hosts live harness racing; and
- Tioga Country Club—Tioga would have taken over the Tioga Country Club, an 18-hole golf facility located off-site and constructed a new 5,000-square-foot clubhouse featuring a restaurant, pro-shop and snack bar.

Regardless of the restaurant seat capacity, for a high repeat, local/regional market, it might have made sense to offer one or two more dining venues to ensure casino customers would not go to another casino resort seeking other similar options. Board experts also noted that the involvement of Virgil’s Real BBQ and Honky Tonk Bar was uncertain, as Tioga provided only a non-binding letter of interest from Virgil’s Real BBQ.

Tioga provided an adequate description of internal controls that reflected current industry standards.



**Offering the highest and best value to patrons to create a secure and robust gaming market in the region and the state. (§ 1320(1)(e))**

Tioga has an existing player database and loyalty rewards program that is exclusive to Tioga Downs and contains a significant number of customers. Tioga stated that its Players Club Rewards would have been earned through casino play, measured in club points and redeemed at a fixed reinvestment rate. Tioga believed that this cumulative player rewards strategy had the strongest draw among local, frequent customers. The existing database included present and past customers who had demonstrated an interest in patronizing a casino property.

As an existing gaming facility, Tioga Downs was incorporated into the regional economic development strategic plans. Additionally, the facility was supported by the Town and Village of Nichols master plan, listed as a community asset in the New York Rising Community Reconstruction Program for Tioga and was part of the Tioga County Strategic Plan.

The County Director of Economic Development and Planning referred to Tioga Downs Racetrack long-standing commitment to the region and stated that the track's development was widely understood to be critical and would provide a positive economic impact.

**Providing a market analysis detailing the benefits of the site location of the gaming facility and the estimated recapture rate of gaming-related spending by residents travelling to an out-of-state gaming facility. (§ 1320(1)(f))**

The proposed facility was located on the existing Tioga Downs complex, with harness horseracing track and VLT facility. The project site is located near I-86 and provided good access to nearby feeder markets. Board experts suggested that developing a casino around a racetrack may create synergies for the guest's experience due to the rural, horse-farming surroundings.

Tioga projected an increase of approximately \$12.1 million of revenue in 2016 due to recapturing revenues currently being spent by New York residents in Pennsylvania.

**Offering the fastest time to completion of the full gaming facility. (§ 1320(1)(g))**

Tioga proposed the following timeline:

- Conversion of the gaming floor from VLT's to slot machines (two phases), completed in 90 days
- New event center, PJ Clarke's restaurant, conference center, completed in 13 months
- New hotel, completed in 18 months
- Waterslide, outdoor pool and bar, completed in 19 months

- New clubhouse for Tioga Country Club, completed in 12 months

Board experts noted that the schedule was adequately detailed and, while aggressive, was not unreasonable.

Due to the existing VLTs already in place, Tioga anticipated being able to convert the facility into a full casino quickly and accelerate the opening date and associated economic benefits. The existing facility would have allowed Tioga to more easily transition to opening a full casino through established marketing efforts, a well-known name within the community and pre-existing relationships with local vendors, municipalities and labor unions. Board experts noted, however, that as an expansion of Tioga's existing facility, the project could have opened quickly, but was proposed to open in phases, which presented complications in construction and operations. Moreover, Board experts noted that the majority of the differentiating amenities would not have opened until the third phase of development.

#### **Demonstrating the ability to fully finance the gaming facility. (§ 1320(1)(h))**

Tioga intended to finance its project through committed third-party debt from a financial institution and an equity contribution from its parent company.

#### **Demonstrating experience in the development and operation of a quality gaming facility. (§ 1320(1)(i))**

Tioga is owned principally by Jeff Gural, an owner of Southern Tier Acquisition II, LLC, which wholly owns Tioga. Mr. Gural has participated in multiple gaming and racing projects. Tioga intended to manage gaming operations internally, while racing operations would be managed by a third party.

Mr. Gural controls The Meadowlands harness racetrack in Northern New Jersey. The Meadowlands is being discussed publicly as a candidate for a casino in the event New Jersey authorizes gaming outside Atlantic City. A casino at The Meadowlands would compete with casinos in the Catskills/Hudson Valley region.

Tioga's parent company owns and operates the Vernon Downs Casino and Hotel, which offers 150 hotel rooms with an adjoining 767-game video lottery terminal with live entertainment. As the operator of a VLT facility in Nichols, New York and the Tioga Downs facility, Tioga had a good understanding of the area's gaming clientele and market. In addition, as the owner of the Tioga Downs player database and loyalty program, Tioga had an existing customer base for a full-service casino.

#### **LOCAL IMPACT AND SITING FACTORS**

**Mitigating potential impacts on host and nearby municipalities which might result from the development or operation of the gaming facility. (§ 1320(2)(a))**

The largest impact that was anticipated by Tioga's project would have been to the Nichols Fire Department. The Fire Department likely would have needed to purchase a new ladder truck, at a cost of up to \$1 million, to service effectively its proposed five-story hotel. Tioga had discussed with the Fire Department the possibility of providing financial assistance to purchase the new vehicle, although no formal agreement existed.

The Tioga County sheriff's office believed that it had sufficient capacity at their current level of resources to handle additional service demands resulting from the casino development. If additional resources had become necessary, the sheriff's office expected that the costs and impacts would be have been borne by Tioga through existing agreements. Tioga proposed a casino expansion and new hotel at its existing racetrack and video lottery terminal facility. Consequently, Tioga's proposed facility was already serviced by existing water, sewer and electricity services.

Tioga operates existing on-site well and septic systems to service its facility with potable water and disposal of waste water. Tioga provided reports from its engineer indicating that the existing well and septic systems had sufficient built and permitted capacity to accommodate phases one and two of Tioga's proposed expansion. Tioga also presented proposed capacity expansions to the well and septic systems required to service phase three of Tioga's proposed expansion. These expansions had not yet been approved by applicable local regulators. As Tioga's water and sewer services were accommodated entirely onsite, there was no projected impact on off-site water and sewer infrastructure.

Tioga reported that the local electric utility, NYSEG, had confirmed that the existing connection at Tioga's facility to the electricity grid provides sufficient supply to service the expanded facility.

Tioga believed that the housing market in general should have been able to absorb any potential increase of new families from outside of the area working at Tioga Downs because it was believed that many new residents would likely have chosen to live outside of Tioga County and commute in to the facility.

Tioga noted that the gaming site was to have been located within the Tioga Central School District (Tioga CSD). Tioga CSD operates three schools, all located in Tioga Center. Tioga CSD currently has approximately 1,000 students enrolled, compared to 2005 when Tioga CSD had 1,165 students enrolled. The school district had seen an even greater percentage reduction in the student count over the last decade than the local population decline. Even with an anticipated larger workforce, Tioga believed additional enrollment would have been minimal.

**Gaining public support in the host and nearby municipalities, which may be demonstrated through the passage of local laws or public comment received by the board or gaming Applicant. (§ 1320(2)(b))**

Tioga's host community was the Town of Nichols. Tioga provided a resolution in support of its project adopted by the Town of Nichols on December 10, 2013. Additionally, Tioga provided a resolution in support of its project adopted by the Tioga County Legislature and Village of Nichols on January 14, 2014 and December 16, 2013, respectively. Tioga also provided resolutions in support of its project from the Towns of Ashland, Berkshire, Big Flats, Candor, Horseheads, Montour, Newark Valley, Owego, Richford, Spencer, Tioga, Van Etten, the Villages of Addison, Burdett, Candor, Newark Valley, Owego, Spencer, Watkins Glen and Waverly, the Cities of Corning and Elmira, and the Counties of Chemung and Schulyer, as well as letters of support from various State legislators, chambers of commerce and tourism associations, economic development organizations, police, sheriff and fire departments, local businesses, labor unions and residents.

The Tioga project was the subject of 395 written comments, with all but one indicating support.

Tioga was the subject of more than two dozen comments at the September 24, 2014 public comment event, overwhelmingly indicating support.

**Operating in partnership with and promoting local hotels, restaurants and retail facilities so that patrons experience the full diversified regional tourism industry. (§ 1320(2)(c))**

Tioga stated that it had current sponsorships (through its existing video lottery facility) that ranged from mutual onsite advertising deals to ticket swaps, to creating joint tour packages. Tioga also had current relationships with goods and service providers and provided a sample list of some of the businesses with which it had relationships. These relationships included farms, sports teams, construction equipment suppliers, attorneys, vineyards, airports, banks, graphics designers, landscaping companies and others.

Tioga stated that it also maintained relationships with numerous area hotels that included cross-marketing programs, "stay and play" travel packages and multi-day off-property employee events and meetings.

Tioga stated that it would have to reengineer its current loyalty rewards program as a resort club program, offering a more diverse and relevant rewards menu that would have strengthened patron connectivity to Tioga's brand, while at the same time creating viable and sustainable economic growth to the region. As such, Tioga would have distributed a free annual book of discounts for regional businesses to its club members.

Tioga stated that it made a priority to engage local business whenever purchasing goods and services. Locational sourcing priorities favored Southern Tier businesses, followed by State business and finally Pennsylvania border counties. Further, Tioga also gave priority to minority- and woman-owned businesses. In 2013, more than 65 percent of all available operating spend dollars went to local vendors (excluding exclusive/proprietary providers); \$4.5 million went to 252 vendors within the Southern Tier for goods and services.

Tioga stated it had embraced its corporate responsibility as a regional economic driver and would seek to increase its role in driving regional tourism. Tioga outlined current and future sponsorships, partnerships, memberships, cross-marketing opportunities and other strategies and tactics that promoted regional tourism and supported local and regional businesses. These strategies and tactics were varied and diverse. Examples included sponsorship of events such as wine tastings, airshows, NASCAR races; memberships in eight chambers of commerce, numerous tourism bureaus and tradeshows; wide brochure distribution including numerous tourism and travel publications; and partnerships with local attractions.

**Establishing a fair and reasonable partnership with live entertainment venues that may be impacted by a gaming facility under which the gaming facility actively supports the mission and the operation of the impacted entertainment venues.(§ 1320(2)(d))**

Tioga entered into a memorandum of understanding with The Upstate Theater Coalition for a Fair Game. The agreement required the parties to form a booking collaboration for all events in the represented venues and Tioga's facility to coordinate calendars, work to avoid exclusivity agreements in performer contracts, and, as appropriate, alternate specific talent between facilities. Other terms required Tioga to promote events at Fair Game facilities, to use the loyalty rewards program to purchase and distribute tickets from Fair Game facilities and to make an annual payment to Fair Game. This agreement would have remained in effect for the length of the full gaming license awarded.

**WORKFORCE ENHANCEMENT FACTORS**

**Implementing a workforce development plan that utilizes the existing labor force, including the estimated number of construction jobs a proposed gaming facility will generate, the development of workforce training programs that serve the unemployed and methods for accessing employment at the gaming facility. (§ 1320(3)(a))**

Tioga asserted that it had always employed local workers and would continue to do so through local agencies, such as the Workforce Investment Board, the Board of Cooperative Educational Services, ACHIEVE, Southern Tier Independence Center, veterans agencies and the Tioga County Department of Social Services.

Tioga stated that it had matched, and would continue to match, appropriate candidates from the databases of under- and unemployed persons maintained by the above-identified agencies and to provide those persons with employment opportunities. It would also have provided pre-employment and on-the-job training for new employees, and would have continued to enhance its workforce by making training and degree programs available to its professional-level staff.

Tioga stated that it would have continued efforts and would have partnered with others who share its commitment to recruit, hire and train the unemployed. Tioga stated that it would have worked with Tioga Transportation to expand bus routes and services to accommodate scheduled work shifts to assist persons who do not have access to personal automobiles. Finally, Tioga would have worked with SUNY to provide on-site casino training schools that would have enabled it to cultivate new talent among local unemployed residents rather than recruiting or transferring workers from existing gaming facilities in the region.

**Taking additional measures to address problem gambling including, but not limited to, training of gaming employees to identify patrons exhibiting problems with gambling. (§ 1320(3)(b))**

Tioga stated that throughout its tenure as a pari-mutuel and VLT facility, its ownership and management has emphasized a culture of responsible gaming with a continuous improvement focus. In 2013, Tioga participated (as a New York Gaming Association member) in the development of the robust New York Council on Problem Gaming (NYCPG) facility evaluations and recommendations. On December 2, 2013, Tioga's management participated in onsite meetings and facilitated an audit procedure of responsible gaming practices with NYCPG staff. Tioga included the audit results and recommendations from this audit. Tioga stated that it had fully committed to achieving all criteria in the Responsible Gambling Policies, Practices and Procedures of the New York Council on Problem Gaming Summary Analysis.

Tioga stated that it would have worked actively with the New York Gaming Commission, NYCPG, OASAS and other stakeholders to ensure that responsible gaming ethics and concerns would have been kept at the forefront of its operations and employee culture.

All employees of Tioga would have received initial training during new-hire orientation and/or departmental training. Follow-up training would have occurred on an annual basis at a minimum.

Tioga included in its proposal a copy of its current self-exclusion policy and procedures. Tioga also included a copy of its current involuntary self-exclusion policy and procedures, which is very similar to its self-exclusion policy and procedures except that the security department and player development manager would have initiated the exclusion, and

the senior vice president of operations and general manager would have determined its length.

Tioga has an existing relationship with the Tioga County Council on Addiction and Substance Abuse to help facilitate local education and treatment options, and there are three active Gamblers Anonymous meetings within proximity to Tioga.

**Utilizing sustainable development principles including, but not limited to:**

- (1) having new and renovation construction certified under the appropriate certification category in the Leadership in Energy and Environmental Design Green Building Rating System created by the United States Green Building Council;**
- (2) efforts to mitigate vehicle trips;**
- (3) efforts to conserve water and manage storm water;**
- (4) demonstrating that electrical and HVAC equipment and appliances would be Energy Star labeled where available;**
- (5) procuring or generating on-site 10 percent of its annual electricity consumption from renewable sources; and**
- (6) developing an ongoing plan to submeter and monitor all major sources of energy consumption and undertake regular efforts to maintain and improve energy efficiency of buildings in their systems. (§ 1320(3)(c))**

Tioga's traffic study concluded that all intersections in the study area were considered to have acceptable operating conditions, with the possible exception of one intersection that was expected to be addressed in a State improvement project to meet interstate standards. The study indicated that the proposed expansion of Tioga's existing facility would not have warranted any improvements in the form of traffic control, geometric changes or combination of improvements.

State agency review suggested that Tioga's location could easily accommodate the additional traffic with relatively minor mitigation, given that Route 17/I-86 has excess capacity.

Tioga's proposed facility was designed to achieve a LEED silver certification. Tioga committed to use high-efficiency HVAC systems meeting applicable national standards. State agency experts noted that Tioga Down submitted a thoughtful, well presented LEED plan that addressed many, but not all, of the design elements necessary to pursue and achieve LEED Certification.

Tioga presented a comprehensive storm water assessment and plan for phases one and two of its proposed expansion. The report included schematic plans for a system to mitigate storm water discharge from the project site using detention ponds in accordance with State requirements. It appeared that phase three of the expansion would require additional planning to accommodate storm water discharge. State agency

review suggested that because Tioga's gaming facility was proposed at a previously developed site, it would have minimized disturbance of undeveloped land and taken advantage of existing infrastructure.

Tioga stated that it would have used low-flow fixtures throughout its facility but did not present specific plans. Tioga planned to use native and adaptive landscaping and the facility would not have had permanent irrigation. Tioga did not make mention of Energy Star appliances as a means of consumption reduction.

As part of its LEED strategy, Tioga planned, but did not specifically commit, to obtain 35 percent of the project's required energy from renewable sources.

**Establishing, funding and maintaining human resource hiring and training practices that promote the development of a skilled and diverse workforce and access to promotion opportunities through a workforce training program that:**

- (1) establishes transparent career paths with measurable criteria within the gaming facility that lead to increased responsibility and higher pay grades that are designed to allow employees to pursue career advancement and promotion;**
- (2) provides employee access to additional resources, such as tuition reimbursement or stipend policies, to enable employees to acquire the education or job training needed to advance career paths based on increased responsibility and pay grades; and**
- (3) establishes an on-site child day care program. (§ 1320(3)(d))**

Tioga stated that it had existing practices that provided career advancement opportunities to residents of the region through the use of both internal and external training programs. Tioga anticipated expanding educational and training opportunities with the approval of an expanded gaming license. Tioga had existing partnerships with local agencies that enabled it to provide its employees with educational and training programs. These partnerships had also helped Tioga recruit candidates to fill challenging positions. Tioga had also focused on hiring veterans.

Tioga anticipated offering a tuition reimbursement policy to encourage employees to boost job-related skills. The tuition reimbursement policy would have provided qualified employees with up to \$2,000 in reimbursable expenses per annum for tuition expenses. In addition, Tioga was to establish a scholarship for the Casino Management Program at SUNY Broome. The scholarship program would have awarded four SUNY Broome students, enrolled full-time in the Casino Management Degree Program, up to \$2,500 per annum.

Tioga stated that it was committed to offering its employees assistance for issues such as substance abuse, addiction, marital and family problems and mental health problems. Tioga planned to enhance its existing employee assistance program by offering



additional premium features like access to attorneys, substance abuse assessment services, personalized program management and more.

**Purchasing, whenever possible, domestically manufactured slot machines. (§ 1320(3)(e))**

Tioga proposed to source domestically manufactured slot machines.

**Implementing a workforce development plan that:**

- (1) incorporates an affirmative action program of equal opportunity by which the Applicant guarantees to provide equal employment opportunities to all employees qualified for licensure in all employment categories, including persons with disabilities;**
- (2) utilizes the existing labor force in the state;**
- (3) estimates the number of construction jobs a gaming facility will generate and provides for equal employment opportunities and which includes specific goals for the utilization of minorities, women and veterans on those construction jobs;**
- (4) identifies workforce training programs offered by the gaming facility; and**
- (5) identifies the methods for accessing employment at the gaming facility. (§ 1320(3)(f))**

Tioga stated that it was committed to providing equal employment opportunities to all job Applicants and employees without regard to race, color, gender, national origin, disability, status as a qualified protected veteran or any other category protected by federal, State or local law.

To that end, Tioga would have established annual placement goals that considered the percentage of minorities and women within the geographic area served by the project in its hiring practices. Tioga would also have considered the percentage of minorities and women among those promotable, transferable and trainable within its employ. Tioga stressed that its annual placement goals would not be rigid or inflexible quotas and would not set a ceiling or a floor for employment of members from particular groups. Tioga committed to making good faith efforts to attain its annual placement goals.

**Demonstrating that the Applicant has an agreement with organized labor, including hospitality services, and has the support of organized labor for its application, which specifies:**

- (1) the number of employees to be employed at the gaming facility, including detailed information on the pay rate and benefits for employees and contractors in the gaming facility and all infrastructure improvements related to the project; and**
- (2) detailed plans for assuring labor harmony during all phases of the construction, reconstruction, renovation, development and operation of the gaming facility. (§ 1320(3)(g))**

Tioga had entered into a project labor agreement with the Binghamton–Oneonta Building & Construction Trades Council (“Council”). The Council entered into this agreement on behalf of itself and its affiliated local unions (16 in total) and their members. Further, Tioga had entered into a memorandum of agreement with the Rochester Regional Joint Board, Workers United (“Workers United”). Workers United previously entered into and is a party to a collective bargaining agreement. The memorandum of agreement clarified the processes to be followed between Tioga and Workers United had Tioga been granted a gaming facility license.

Tioga also received letters and statements of support from various labor unions and union members.

Tioga stated that it was fully committed to maintaining labor harmony at both its currently operating and proposed gaming facilities. Tioga had entered into a collective bargaining agreement with the Rochester Regional Joint Board, Workers United. Tioga and Workers United had also entered into a memorandum of agreement, which clarified the processes to be followed between Tioga and Workers United had Tioga been granted a gaming facility license.



**The Walsh Family and Seneca Gaming Corporation proposed the development of the Traditions Resort & Casino (“Traditions”) in the Village of Johnson City and the Town of Union in Broome County. According to Traditions, the facility would be located on the site of the Traditions at the Glen Resort and Conference Center. The redevelopment would have included an expansion of 450,000 square feet with a 49,600 square-foot casino floor featuring 1,200 slot machines and 50 table games. The facility would have included 200 hotel rooms, restaurants, retail and multi-use space as well as an outdoor entertainment venue.**

### **ECONOMIC ACTIVITY AND BUSINESS DEVELOPMENT**

#### **Realizing maximum capital investment exclusive of land acquisition and infrastructure improvements. (§ 1320(1)(a))**

Traditions proposed a minimum capital investment of \$227.5 million. The total capital investment less excluded capital investment was proposed to be \$187.5 million for phase one and \$227.5 million for phases one and two of the project.

#### **Maximizing revenues received by the state and localities. (§ 1320(1)(b))**

Traditions did not propose a supplemental tax or license fee.

Traditions projected state, county and local tax revenue that would be generated by the proposed facility during the first five years of operation with high, average and low revenue scenarios. Traditions considered (1) gaming tax revenues, (2) dividend tax, (3) social insurance tax, (4) business tax, (5) corporate profit tax, (5) sales tax, (6) horseman fee, (7) property tax, (8) personal income tax and (9) lodging bed tax. The Traditions projections were as follows:

- Direct New York state tax revenues (including gaming privilege taxes, device fees, corporate profits tax, sales and use taxes and personal income taxes) of approximately \$40.3 million in year one and \$48.9 million in year five, in the low-case scenario; \$42.7 million in year one and \$51.3 million in year five, in the average-case scenario; and \$45.9 million in year one and \$55.2 million in year five, in the high-case scenario.
- Indirect New York state tax revenues from induced incremental economic activity (sales and use taxes) of approximately \$450,000 in year one and year five, in the low-



case scenario; \$460,000 in year one and year five, in the average-case scenario; and \$470,000 in year one and year five, in the high-case scenario.

- Direct host county tax revenues of \$10.9 million in year one and \$13.4 million in year five, in the low-case scenario; \$11.6 million in year one and \$14.2 million in year five, in the average-case scenario; and \$12.5 million in year one and \$15.2 million in year five, in the high-case scenario.
- Indirect host county tax revenues from induced incremental economic activity of approximately \$450,000 in year one and year five, in the low-case scenario; \$460,000 in year one and year five, in the average-case scenario; and \$470,000 in year one and year five, in the high-case scenario.

Board experts noted that tax revenues may not have been achieved if Traditions did not meet or exceed its financial projections.

Traditions provided an economic impact analysis that estimated the direct, indirect and induced economic impact from the construction of the project would be \$192.4 million to the State and \$172.4 million to Broome County. Traditions also estimated that the direct, indirect and induced economic impact from the project's operation in 2015-2016 would have been \$139.3 million to the State and \$128.4 million to Broome County.

**Providing the highest number of quality jobs in the gaming facility. (§ 1320(1)(c))**

Traditions expected to employ 678 full-time and 388 part-time employees.

Traditions stated that it was committed to maximizing the use of New York subcontractors and suppliers and would leverage the established relationships Seneca Gaming Corporation (SGC) had (from building three highly successful Class III casinos and resorts in Western New York) with New York-based contractors, consultants, vendors and suppliers, not just for design and construction but throughout the operational life of the property.

Traditions estimated that 70 percent of expenditures would be with New York state contractors and suppliers or with local offices or distributors of large national companies.

Traditions anticipated construction total worker hours of 554,580.

**Building a gaming facility of the highest caliber with a variety of quality amenities to be included as part of the gaming facility. (§ 1320(1)(d))**

Traditions proposed a "Traditions"-branded resort comprising the following:

- 49,600-square-foot casino with a designated high-limit area;



- Existing boutique hotel (3.5-star) and a new four-star, 160-room hotel (to be built in phase two of construction);
- Existing conference and meeting space of approximately 14,000 square feet and a new 1,496-square-foot meeting space located on the mezzanine level of the casino;
- New casual dining restaurant including a buffet and “grab-n-go” options;
- New 8,000-square-foot sports bar;
- New outdoor concert venue for up to 15,000 people (to be built in phase two of construction);
- Existing 18-hole golf course; and
- Existing salon, spa and salt sanctuary.

The existing Traditions Resort and Conference Center includes a 41-room boutique hotel, an 18-hole championship golf course, a full-service spa and salon, a salt sanctuary and business and banquet facilities providing approximately 14,000 square feet of space. To expand this existing conference center into the Traditions Resort & Casino, Traditions proposed an approximate 450,000-square-foot expansion, including a casino, 160-room hotel, associated access drives, additional parking, bus access points, retail, restaurants and an outdoor seasonal event venue as well as offsite traffic mitigation.

Traditions proposed two phases of construction:

- Phase One: Phase one consisted of construction of an addition to the western end of the existing conference center (approximately 313,917 square feet). The addition would have included two levels of underground parking, casino, restaurants, retail, multi-purpose space and an outdoor parking lot. Also, the main access road would have been redeveloped and on-site and off-site utility upgrades would have been made.
- Phase Two: Phase two included construction of a six-level, 160-room hotel parking and an outdoor concert venue.

Traditions proposed to open each phase of the project as soon as construction was completed. Board experts suggested that it was unclear from the Traditions application, however, whether construction of phase two was subject to any contingencies, such as sufficient market demand or other conditions.

Traditions proposed a single-level, 46,100-square-foot casino and, on the mezzanine level, a 3,500-square-foot poker room that could have been expanded by an additional 1,400 square feet through taking over meeting space. The expected offering of games was:

- Slots—1,200 (including 50 high-limit slots);
- Table Games—40 tables (including eight high-limit tables); and
- Poker Tables—10 tables.



From a design perspective, Board experts noted that Traditions did not provide a casino center bar (in the midst of the casino floor) from which energy/synergy and the party could begin, build and ebb each day. Additionally, the table games were clustered together.

The existing Traditions Resort and Conference Center had a 41-room boutique hotel. The existing hotel was of 3.5-star quality and would remain in place, but would be reduced to 40 rooms. In addition to the existing boutique hotel, in phase two of its construction plans, Traditions proposed a four-star, 160-room hotel comprising:

- 140 standard rooms (390 square feet each); and
- 20 suites (665 square feet each).

Traditions stated that together, the new and existing hotels would have provided Traditions the ability to cater to a wide variety of customers. Traditions stated that the new hotel would have had a more modern feel than the historical existing rooms. The “new” Traditions hotel would have been managed by Gaming & Leisure Advisors, LLC, an affiliate of the Seneca Nation of Indians. The entire property would have had the benefit of the Seneca Casino Rewards Program.

The Traditions Resort and Conference Center has some name recognition because it is used for banquets, outings, conventions, weddings and other events. While the exterior building design is rather colonial and continues the design of the existing buildings, the interior is modern-contemporary in style. Board experts suggested that the configuration of the buildings Traditions proposed was rather complicated and could have been both confusing and inconvenient to patrons.

The existing Traditions Resort and Conference Center offers a 6,000-square-foot full-service salon and spa and a 350-square-foot fitness center and is also home to the Salt Sanctuary, the only halotherapy cave of its kind in the United States. Traditions had no plans for a pool facility.

Traditions provided a list of several comparable hotels, which included:

- Aurora Inn, Aurora, N.Y.;
- E.B. Morgan House, Aurora, N.Y.;
- The Sagamore Resort, Bolton Landing, N.Y.;
- The Mansion on Delaware Ave, Buffalo, N.Y.;
- The Tower at Turning Stone, Verona, N.Y.;
- Mount Airy Casino Resort, Mt. Pocono, Pa.; and
- The Ritz Carlton, Westchester, N.Y.



Board experts suggested that the clustering of VIP amenities and activities could have been improved.

Traditions proposed to provide approximately 16,000 square feet of meeting and convention space, including ballrooms, breakout rooms, a dining room and a multi-use room plus two outdoor tents. Traditions Resort and Conference Center would have used these facilities to host more than 60 weddings annually, plus various sized meetings and groups

Two business centers were already provided in the existing Traditions Resort and Conference Center.

The existing Traditions Resort and Conference Center offers the following variety of meeting/convention space:

- 4,385-square-foot ballroom with capacity of up to 400 people;
- 1,290-square-foot dining room with capacity of up to 100 people;
- 968-square-foot lower ballroom with capacity of up to 50 people;
- 5,400-square-foot outdoor tent with adjacent permanent kitchen and bathrooms with capacity of up to 400 people; and
- 2,400-square-foot outdoor tent with capacity of up to 150 people.

In addition to these existing facilities, Traditions proposed a 1,496-square-foot meeting space on the mezzanine level of the casino located adjacent to the poker room. Capacity of this site would be 120 people. When combined with the poker room, this space would be 4,746 square feet and could host up to 450 people.

Board experts suggested that based upon the high use of the hotel rooms by the casino, there would not be enough available hotel rooms for clients seeking to hold medium- to large-sized meetings/conferences, even with the hotel rooms to be built in phase two.

Additionally, to attract patrons to the area, Traditions had plans to establish and promote a new 12-acre outdoor concert venue and outdoor concert series that could have hosted more than 15,000 attendees.

Traditions committed to use the outdoor terrace of the sports bar for additional entertainment. Additionally, Traditions would have continued to host already-existing events in its existing tent venues. The Traditions pro forma did not forecast any entertainment revenue or expense.

The existing Traditions Resort and Conference Center serves dinner at its Tavern, a fine-dining outlet. In the expansion, Traditions proposed to construct a 10,000- square-foot casual dining restaurant with capacity for 200 people. The restaurant would also have



offered outdoor seating on its patio. Patio capacity would have been 100 people. The restaurant would have included a buffet as well as grab-and-go options of pre-made sandwiches and pastries. Additionally, Traditions would have offered an 8,000-square-foot sports bar located on the main gaming floor. This bar would have included a small performance stage and would have served barbeque food. Capacity in the sports bar would have been 200 people. Also, Traditions proposed a 24-seat VIP lounge.

Board experts suggested that the Traditions dining design was logical, given the other dining outlets available at the Traditions Resort and Conference Center, the flexibility between the proposed two venues and the long narrow footprint of the casino. Future expansion might have resulted in the need for additional dining venues. For bar options, Traditions listed only the 200-seat sports bar, which also had an outdoor patio capable of providing an additional 100 seats. The Traditions high-limit lounge (24 seats) and the casual dining restaurant would have also served drinks.

Concerning recreation, Traditions proposed one “new” retail outlet (1,184 square feet) located on the mezzanine level of the casino. The absence of a pool could have disappointed visitors and Traditions did not have the ability to use a pool for social functions, parties and/or as a daytime “club” (which has become popular in other gaming jurisdictions). Additionally, a 350-square-foot fitness center is in operation at the existing Traditions Resort and Conference Center. Traditions also mentioned its 18-hole championship golf course and clubhouse and the 200-acre natural preserve for hiking having six miles of paved walking trails.

Traditions provided a full description of internal controls that reflected current industry standards.

**Offering the highest and best value to patrons to create a secure and robust gaming market in the region and the state. (§ 1320(1)(e))**

Traditions stated that it would use Seneca Players Club loyalty program (“SPC”) and database. SPC has been in casino operations in western New York for more than 11 years and maintains a large member database. A large percentage of database participants reside in areas outside New York State, with many customers residing in Canada.

Traditions noted that the Seneca Players Club, established in 2005, was recognized with “Best of Gaming” awards in 2013 as chosen by readers of Casino Player magazine, including Best Comps in the Native Northeast region. Overall, SPC’s properties were awarded with 31 “Best of Gaming” distinctions further cementing the Seneca Brand as a premier entertainment designation in the Northeast.

The goals and objectives of the Southern Tier Strategic Economic Development Plan: 2011-2016 appeared to have been closely aligned to the offerings Traditions discussed in its application.





**Providing a market analysis detailing the benefits of the site location of the gaming facility and the estimated recapture rate of gaming-related spending by residents travelling to an out-of-state gaming facility. (§ 1320(1)(f))**

Traditions estimated that its facility would recapture \$38.3 million in revenue from out-of-state venues in 2019 in the average case; \$39.1 million in the high case and \$37.5 million in the low case.

**Offering the fastest time to completion of the full gaming facility. (§ 1320(1)(g))**

Traditions stated that it would complete Phase I of the development within 12 months following license award.

Traditions proposed a phased project: phase one would be a proposed investment of \$187.5 million, which included the casino floor, sports bar, 24-hour café, two large outdoor terraces, meeting room, poker room, retail space, back of house space, administration space, mechanical rooms and a two-story parking garage. Phase two (projected to begin in 2016) would have been a proposed investment of \$40 million for 160 additional hotel rooms.

State agency experts suggested that the construction schedule and timeline were aggressive, but reasonable.

The Traditions site was approximately 445 acres with a portion of the existing Traditions Resort and Conference Center and the former IBM Homestead Golf Course. The project would be approximately 132 acres, with approximately 33 acres to be disturbed, consisting of forested lands and vacant open space. The Susquehanna River is located adjacent to the site and therefore the site was located within a Federal Emergency Management Agency Floodplain area. The site contained federally regulated wetlands and streams. The Kentucky warbler, a rare but unlisted species, may have been present. The application materials indicated that two streams would have been impacted temporarily when they were removed from existing pipes and restored into open channels, activity that would have required a Section 401 Water Quality Certification from the NYS Department of Environmental Conservation. The site was located within an archeologically sensitive area and three sites were identified as potentially eligible for listing in the National Register of Historic Places.

The State Environmental Quality Review Act (SEQRA) process had been initiated.

**Demonstrating the ability to fully finance the gaming facility. (§ 1320(1)(h))**



Traditions Casino & Resort, owned by the Walsh Family, current owners and operators of Traditions at the Glen Resort and Conference Center, the site of the proposed casino. The project would have consisted of debt and equity financing.

Traditions submitted reference letters relating to William Walsh's credit worthiness. Board experts suggested that the bank references were strong.

**Demonstrating experience in the development and operation of a quality gaming facility. (§ 1320(1)(i))**

The Walsh family has experience in operating the property where Traditions gaming facility was to have been located. Traditions consisted of 41 hotel rooms, numerous banquet and event facilities inside and outside, a tavern, a restaurant, an 18-hole golf course and a full-service spa, including a halo therapy cave. The Walsh Family has experience in developing other commercial properties.

Traditions engaged Gaming & Leisure Advisors, LLC, a subsidiary of the Seneca Gaming Corporation, to manage the Traditions casino. SGC currently operates, through affiliates, three Class III tribal gaming facilities in western New York pursuant to a 2002 compact between the Seneca Nation and the State of New York: Seneca Niagara Casino and Hotel, Seneca Allegany Casino and Hotel and Seneca Buffalo Creek Casino.

Board experts suggested that SGC had successfully developed and managed casino-hotels comparable in size and amenities to the proposed Traditions gaming facility in Upstate New York for a decade. Board experts suggested that SGC was qualified to manage the proposed Traditions casino.

**LOCAL IMPACT AND SITING FACTORS**

**Mitigating potential impacts on host and nearby municipalities which might result from the development or operation of the gaming facility. (§ 1320(2)(a))**

Traditions presented a fiscal impact analysis to determine the incremental costs incurred by the host municipality, the Town of Union, resulting from the casino development. The analysis concluded that the Town's annual municipal service expenditures would increase by approximately \$430,000 as a result of the casino development. Approximately \$290,000 of this annual increase was attributable to public safety expenditures, including law enforcement, fire protection and emergency medical services. The analysis estimated that the Town's street and infrastructure expenditures would increase by \$80,000 annually. Miscellaneous other community service expenditures were expected to increase by a total of \$60,000 annually.

Traditions presented findings evaluating the capacity of water and sewer infrastructure to accommodate the Traditions project. Traditions would have upgraded the pumps that



replenished the tank and maintained the tank at 90 percent capacity. Traditions stated that the site was served by a new sewer line installed in 2013 and that project sanitary sewer discharge requirements had been reviewed and accepted by the local Joint Sewage Treatment Board and municipality. Traditions would pay to upgrade the substation and distribution line infrastructure to provide additional supply capacity. Traditions projected that more than 75 percent of the project's electricity demand would be addressed by on-site generation using a natural gas-fired combined cooling, heating and power (CCHP) and photovoltaic solar systems.

Traditions reported that the local gas utility, NYSEG, had confirmed that natural gas service to the project site was inadequate to meet projected demand of the expanded facility, presumably because the CCHP system would use significant natural gas volume. Traditions reported that NYSEG was in the process of determining what infrastructure improvements would be required to serve the facility adequately.

Traditions presented reports stating there were no known state- or federally regulated wetlands on the project site, although several potential wetlands were delineated in a study related to an earlier project. The preliminary site design was modified to avoid potential wetland features and preserve existing conditions so that additional review, determination and permitting were not required.

Traditions also queried government agency data in regard to protected species and did not identify any known potentially impacted species or critical habitats.

Based on estimates of the fiscal impacts to the Town of Union's municipal service expenditures resulting from the casino development, Traditions began discussions with local municipalities to enter into agreements mitigating these impacts. Officials with the Village of Johnson City did not believe their municipal service expenditures would increase as a result of the casino development. Accordingly, Traditions did not currently intend to enter into an agreement mitigating any impacts to Johnson City's municipal service expenditures.

Traditions committed to contribute a total of \$140,000 in annual funding to the Town of Union to mitigate impacts to the municipality's street infrastructure, culture and recreation and home and community service expenditures. In addition, Traditions planned to reach an agreement with the Endwell Volunteer Fire Department providing for \$90,000 in annual funding. This funding would have been used for operational expenditures, with \$30,000 allocated for the benefit and discretionary use of the volunteer members. The bulk of the impact mitigation payments likely would have been directed to the Broome County Sherriff's Office in the amount of \$200,000 annually to cover operational expenses. Further, Traditions proposed to develop mutually acceptable mitigation solutions for any unanticipated impacts.



In considering impact on the local housing market, Traditions considered the target market to be the Town of Union. Traditions estimated 30 net new households within the Town of Union and determined that there would be no material effect of the arrival of this amount and type of household on the housing market. Based on these findings, Traditions did not propose a mitigation plan for housing.

With respect to impacts on schools, Traditions stated that the school district expenditures of interest are those of the three school districts that are located within the Town of Union: Union-Endicott Central School District, Maine-Endwell Central School District and Johnson City Central Schools. Traditions estimated 12 net new school-aged children and a net new operating expenditure amount on the school districts of approximately \$100,000. To mitigate this direct impact on the three school districts within the Town of Union, Traditions proposed to pay up to \$100,000 per year for the first five years to the respective school district, upon request, to offset additional expenses incurred by the school district as a result of an increase in student population as a direct result of families relocating to the Town of Union for casino employment.

**Gaining public support in the host and nearby municipalities, which may be demonstrated through the passage of local laws or public comment received by the board or gaming Applicant. (§ 1320(2)(b))**

The Traditions host community is the Town of Union. Traditions provided a resolution in support of its project adopted by the Town Board of the Town of Union on June 18, 2014. Additionally, Traditions provided resolutions and/or letters of support for its casino project from the Town of Chenango, the Villages of Endicott, Hancock, Johnson City, Lisle and Windsor and the City of Binghamton. Traditions also provided resolutions and letters of support for locating “a casino” (presumably the Traditions casino) within Broome County from the Towns of Binghamton, Colchester, Colesville, Conklin, Fenton, Sanford, Tompkins, Vestal, Walton and Windsor, the Villages of Bainbridge, Hancock and Walton and the City of Norwich. Further, Traditions provided letters of support for its project from the Greater Binghamton Chamber of Commerce, as well as various state and local public officials, local businesses and vendors, residents and employees of the existing Traditions at the Glen Resort and Conference Center.

The Traditions project was the subject of more than 1,100 written comments, of which three percent indicated opposition and 97 indicated support.

Traditions was the subject of approximately three dozen specific comments at the September 24, 2014 public comment event, overwhelmingly indicating support.

**Operating in partnership with and promoting local hotels, restaurants and retail facilities so that patrons experience the full diversified regional tourism industry. (§ 1320(2)(c))**



Traditions stated that it would implement a player rewards point program in cooperation with local businesses. Players at the resort would have been able to accumulate player reward points redeemable for products and services at nearby businesses. Traditions would have purchased store credit or gift cards from these businesses on a regular basis to replenish such awards. Traditions stated that numerous local businesses had already registered interest in participating in this program.

To further promote consumer traffic to local businesses, Traditions had established cross-marketing and promotion agreements with numerous local attractions that would have directly associated Traditions with the primary attractions in the area, including sports venues, theaters and museums.

Traditions provided nearly 100 vendor agreements from potential local vendors that have expressed a willingness to partner with Traditions. Seventeen of these agreements were from business that are certified WBE/MBE.

To maximize the influx of tourism to the proposed gaming facility, as well as the project's local economic impact, Traditions would have partnered with local sports venues, local wineries, the Greater Binghamton Chamber of Commerce and the Regional Economic Development Council. Traditions had also provided memoranda of understanding with a talent booking agency, local museums, a local zoo, a child day care provider and so on. These memoranda generally included reciprocal advertising of the parties' businesses, on-property ticket sales, sponsorships, joint marketing efforts, etc. In some cases, such as for those memoranda dealing with sport teams, Traditions agreed to purchase a portion of the house to be used as comps, packaged with overnight stays, contest giveaways and the like.

**Establishing a fair and reasonable partnership with live entertainment venues that may be impacted by a gaming facility under which the gaming facility actively supports the mission and the operation of the impacted entertainment venues. (§ 1320(2)(d))**

Traditions provided agreements with a number of live entertainment venues that provided for continuation of existing sponsorship agreements, inclusion of the venue's brochure at the Traditions local tourism and attractions booth, onsite ticket sales for venues, the pre-purchase by Traditions of gift certificates/tickets for redemption by player's club members, signs or placards at each other's facilities, social media cross marketing and the venue's permitted use of the Traditions facility for shows or rehearsals, when available.

Traditions had also entered into a memorandum of understanding with The Upstate Theater Coalition for a Fair Game. As part of this agreement, the parties would have collaborated on booking acts in all Fair Game and Traditions venues. The collaboration would have allowed the parties to coordinate calendars, guarantee that there were not



exclusivity provisions in talent contracts and to alternate specific talent between Traditions venue and Fair Game venues, as appropriate. Additionally, Traditions would have promoted Fair Game events using its player rewards program.

## **WORKFORCE ENHANCEMENT FACTORS**

### **Implementing a workforce development plan that utilizes the existing labor force, including the estimated number of construction jobs a proposed gaming facility would generate, the development of workforce training programs that serve the unemployed and methods for accessing employment at the gaming facility. (§ 1320(3)(a))**

Traditions stated that it would have established a training and development team, the goals of which would have been to assess, design, develop and implement training courses that would provide candidates with the skills necessary to enter the gaming workforce and enjoy a successful career. The training would have included a dealer school, a slot technician program, a management training program and a security officer step-increase program.

In establishing these training programs, Traditions would have partnered with local groups such as the Broome-Tioga Workforce New York, NYS Department of Labor Consolidated Workforce Funding program, SUNY Broome Casino Management Program and others.

Traditions stated that it would employ the comprehensive approach to hiring the unemployed that its casino manager executed when opening its Seneca Buffalo Creek casino in August 2013. That approach was to collaborate with community groups and the DOL employment office, to hold regular job fairs and to advertise employment opportunities prior to opening and on a routine basis thereafter.

### **Taking additional measures to address problem gambling including, but not limited to, training of gaming employees to identify patrons exhibiting problems with gambling. (§ 1320(3)(b))**

The Traditions casino manager proposed to extend, enhance and adapt the current responsible gaming program in effect at its other properties to the new gaming facility, subject to the State's statutory requirements, responsible gaming plan approvals issued by the NYSGC and any unique characteristics of the new gaming facility operation. The program's focus would have included preventing underage gambling, implementing a self-exclusion program, providing responsible gambling specific information and messaging, applying rigorous advertising and promotion standards, providing resources on informed decision making, assisting patrons who may have problems with gambling, limiting access to money, training employees and addressing problem gambling at the community level.



Traditions would have had an on-site Responsible Gambling Resource Center (the “RGRC”), which would have provided patrons with safer gambling practices, making informed gambling decisions, and assistance and local referrals to patrons seeking help with gambling-related problems for themselves or others. The RGRC physical space would be located off the gaming floor but within close proximity in a highly trafficked area where all patrons would be aware of it. The RGRC would offer brochures and resource kits to inform patrons of problem gambling signs, real chances of winning or losing, myths and facts, ways to keep gambling safe and the New York State Council on Problem Gambling’s “Know the Odds” resource kit. Traditions included prototypes of the printed information to be made available at the RGRC. Additionally, Traditions would have established a responsible gambling committee chaired by an executive and including the property general manager and representatives from human resources, legal, marketing, slots and table games. The committee would have been responsible for oversight and monitoring of the program and would meet at least quarterly to review the program, review its effectiveness and discuss any necessary improvements.

Specific procedures governing the Traditions self-exclusion program would have been adopted and implemented in accordance with State law and the NYS Gaming Commission’s regulations. The Traditions casino manager had self-exclusion policies, procedures and systems in place at its western New York facilities, which it committed to extend and adapt for this gaming facility.

As part of the Traditions casino manager’s existing responsible gaming program, employees were trained in problem gaming and the appropriate measures to follow when a problem gambler is identified. Traditions proposed to adapt and expand its manager’s program to the new facility and to the needs of the host community, including an employee training program crafted in consultation with the New York Council on Problem Gambling. The proposed Traditions employee training policy would have had a company-wide training policy and a departmental training policy. The company-wide training policy would have required all casino-related employees to undergo responsible and problem gambling training upon initial hiring, followed by annual refresher training.

Seneca Gaming Corporation, parent of the proposed manager for the gaming facility, operates, through its subsidiaries, three gaming facilities in western New York. Seneca conducts a responsible gaming program at each of its properties, consisting of employee training, a voluntary exclusion program, credit limitations, responsible gaming information, an employee assistance program designed to prevent gambling problems among employees, an unattended minor policy involving training on how employees are to address unattended minors, exclusion of minors from the casino and responsible alcoholic beverage service.

**Utilizing sustainable development principles including, but not limited to:**



- (1) having new and renovation construction certified under the appropriate certification category in the Leadership in Energy and Environmental Design Green Building Rating System created by the United States Green Building Council;**
- (2) efforts to mitigate vehicle trips;**
- (3) efforts to conserve water and manage storm water;**
- (4) demonstrating that electrical and HVAC equipment and appliances would be Energy Star labeled where available;**
- (5) procuring or generating on-site 10 percent of its annual electricity consumption from renewable sources; and**
- (6) developing an ongoing plan to submeter and monitor all major sources of energy consumption and undertake regular efforts to maintain and improve energy efficiency of buildings in their systems. (§ 1320(3)(c))**

The Traditions proposed casino project was an expansion of the existing Traditions Resort and Conference Center. Traditions provided a traffic impact study related to the build-out of all phases of the Traditions project. Based on the traffic impact study and with input from the working group, Traditions would have had to relocate an existing site access road that would have enhanced safety by having a dedicated turn lane, entry storage lane and a realignment of the access road with the existing slip ramp. Traditions also would have installed several new traffic signals, constructed several additional traffic lanes and optimized signal timing and control. Traditions also would have designed and constructed on-site circulation to eliminate the potential for casino traffic to cut through adjacent residential neighborhoods. Traditions estimated that the cost of these traffic mitigation features would have been approximately \$680,000 and would have been completed by July 2015.

The Traditions proposed gaming facility was designed to be a LEED certified facility.

Traditions reported that high-efficiency and Energy Star-rated equipment would have been specified throughout its facility. In particular, Traditions observed that the proposed natural-gas fired combined cooling, heating and power system would have been a highly efficient system. Further, the lighting plans called for extensive use of low-energy LED fixtures, and Traditions planned to use gaming machines featuring low-energy LED lighting.

Traditions specified low-flow fixtures throughout its facility. Further, Traditions planned to use native and adaptive landscaping so that regularly timed, automatic irrigation would not have been required.

Traditions committed to purchasing wind-generated electricity so that a minimum 10 percent of electricity demand would have been served by renewable power. It appeared that this commitment was below the percentage of renewable sources in the State's current regular energy supply.





Traditions stated that it committed to implement a facility-wide automation system that included energy consumption monitoring.

**Establishing, funding and maintaining human resource hiring and training practices that promote the development of a skilled and diverse workforce and access to promotion opportunities through a workforce training program that:**

- (1) establishes transparent career paths with measurable criteria within the gaming facility that lead to increased responsibility and higher pay grades that are designed to allow employees to pursue career advancement and promotion;**
- (2) provides employee access to additional resources, such as tuition reimbursement or stipend policies, to enable employees to acquire the education or job training needed to advance career paths based on increased responsibility and pay grades; and**
- (3) establishes an on-site child day care program. (§ 1320(3)(d))**

The Traditions proposed casino manager is a subsidiary of Seneca Gaming Corporation (“SGC”). SGC claims to have developed successful recruiting strategies at its affiliated properties. Traditions stated that it committed to apply SGC’s recruiting strategies. Community outreach would have been a central part of the recruiting process

SGC had developed career guidance practices and numerous programs to assist employees in their career development and advancement. Traditions proposed to establish similar practices and programs as those developed by SGC. For example, Traditions would have offered its employees the opportunity to shadow and/or cross-train in other departments in order to introduce them to a broad range of career opportunities.

Traditions stated that it was committed to its employees’ educational and professional development. A proposed tuition reimbursement program would have assisted employees in achieving the education required for career advancement. Traditions would also have provided an executive leadership development program, which upon completion would have qualified the employee for a promotion. In addition, employees would have had access to the employee assistance program, sunshine fund (employees in need of support), team-member discounts, free health screenings and free meals in the team dining room. State agency experts noted that Traditions articulated achievable career paths with components of recruitment, training and career advancement opportunities.

Finally, Traditions would have provided its qualifying employees with employee benefits and an onsite child daycare program.

**Purchasing, whenever possible, domestically manufactured slot machines. (§ 1320(3)(e))**



Traditions stated that it would not base purchasing decisions on whether the slot machines were manufactured in the United States or abroad and noted that almost all slot manufacturers, domestic or foreign, fabricate their products in the United States, even if the company may be based outside the United States.

**Implementing a workforce development plan that:**

- (1) incorporates an affirmative action program of equal opportunity by which the Applicant guarantees to provide equal employment opportunities to all employees qualified for licensure in all employment categories, including persons with disabilities;**
- (2) utilizes the existing labor force in the state;**
- (3) estimates the number of construction jobs a gaming facility will generate and provides for equal employment opportunities and which includes specific goals for the utilization of minorities, women and veterans on those construction jobs;**
- (4) identifies workforce training programs offered by the gaming facility; and**
- (5) identifies the methods for accessing employment at the gaming facility. (§ 1320(3)(f))**

Traditions proposed a three-part program, each part of which was specific to an operational phase of the project: operations workforce employment; construction; and post-opening purchasing of goods and services. The Traditions casino manager was committed to employing persons for the casino's operations workforce in accordance with the 2010 census demographic statistics for the local area. As a result, the employment goals for the operations workforce were 4.0 percent African American; 3.0 percent Hispanic; 3.0 percent Asian; 0.8 percent Pacific Islander; and 0.2 percent Native American. The goal for women workers was 40 percent. The manager also would have sought to maximize participation of veterans and disabled persons based on their availability, qualifications and reasonable accommodations that need to be made.

Traditions stated goals also would have been in place for the construction and the post-opening phases of the project, but did not provide percentage for various groups' participation in those phases.

**Demonstrating that the Applicant has an agreement with organized labor, including hospitality services, and has the support of organized labor for its application, which specifies:**

- (1) the number of employees to be employed at the gaming facility, including detailed information on the pay rate and benefits for employees and contractors in the gaming facility and all infrastructure improvements related to the project; and**
- (2) detailed plans for assuring labor harmony during all phases of the construction, reconstruction, renovation, development and operation of the gaming facility. (§ 1320(3)(g))**



Traditions established a project labor agreement (PLA) with the following unions: Binghamton Oneonta Building Trades Council, composed of the International Brotherhood of Boilermakers Local Lodge 5; Zone 1971 United Union of Roofers, Waterproofers and Allied Workers Local 203; International Union of Elevator Constructors Local No. 62; Sheet Metal, Air, Rail and Transportation Local Union No. 112; Bricklayers and Allied Craft Workers Local No. 3; Laborers International Union of North America, Local Union 785; International Association of Bridge, Structural Ornamental and Reinforcing Iron Workers Local No. 60; United Associations of Journeymen and Apprentices of the Plumbing and Pipefitting Industry Local No. 112; Northeast Regional Council of Carpenters, United Brotherhood of Carpenters and Joiners of America 277; Painters District Council No. 4; Painters District Council No. 4 Glaziers and Glass Workers Binghamton Area; International Brotherhood of Electrical Workers, Local Union No. 325; International Association of Heat and Frost Insulators and Allied Workers Local 30; Road Sprinkler Fitters Local Union No. 669, Columbia Maryland of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada; and International Brotherhood of Teamsters Local No. 529.

Traditions executed a labor peace agreement with the Hotel & Trades Council on October 21, 2014. This agreement would have ensured labor harmony at the project.

**DISQUALIFICATION OF FLORIDA ACQUISITION CORPORATION**

## DISQUALIFICATION OF FLORIDA ACQUISITION CORPORATION

On August 7, 2014, the Gaming Facility Location Board disqualified the Application submitted by Florida Acquisition Corporation and returned their Application Fee based upon the failure of the Applicant to file their RFA response in the manner required and their objective failure to respond to the provisions of the RFA.

Florida Acquisition Corporation had sought to develop a Region 2 Gaming Facility to be located within the Town of Florida, Montgomery County. By letter of June 20, 2014, Montgomery County officials requested the Board authorize deferral of payment on \$25 million of the required \$50 million licensing fee and extension by 60 days of the Application deadline so Florida Acquisition Corporation could complete its RFA response. County officials requested the same through various media outlets covering the Application process.

Staff surveyed Board members and then issued a written press response stating: "It is simply not feasible or fair to alter any provision of the RFA or make concessions at the request of a bidder. To do so would create an unfair bidding process for every other potential bidder and invalidate the RFA."

Florida Acquisition Corporation acknowledged in its Executive Summary it required finding a savings or deferral of \$25 million against the \$50 million License Fee. It also acknowledged the fee reduction sought was not acceptable to the Board or the Commission.

### Incomplete Physical Filing

The RFA, at Section IV, B., Official Submission required application materials be provided no later than June 30, 2014 at 4:00 p.m. Eastern Daylight Time. The RFA filing requirements are replicated below with Florida Acquisition Corporation's accompanying responsiveness:

<b>RFA Filing Requirement</b>	<b>Florida Acquisition Corporation's Accompanying Response</b>
Twenty identical hard copies of its Application including copies of all executed Attachments	Two copies were received
Ten electronic copies of its Application, including copies of all executed Attachments, in PDF format submitted via ten separate USB flash drives	Two copies were received
Ten additional USB flash drives or sets of USB flash drives containing interactive electronic versions (e.g., in Microsoft Excel	The submitted Application was nonresponsive to this requirement.

<p>or other file formats commonly used for the production of such material) of each revenue, construction, employment, financial, traffic, infrastructure or similar model, forecast, projection or table presented in an Application so as to enable the Board and the Board's representatives to analyze and tie the calculations and formulas used to produce such model, projection, forecast or table</p>	
<p>Two sets of high-quality files of each such image, rendering or schematic suitable for large-format printing and audio-visual display and two sets of medium-quality files of each such image, rendering or schematic suitable for printing and web publication</p>	<p>The submitted Application was nonresponsive to this requirement</p>
<p>For applications seeking to include information that is exempt from disclosure under the FOIL:</p> <ul style="list-style-type: none"> <li>• A letter enumerating the specific grounds in the FOIL that support treatment of the material as exempt from disclosure</li> <li>• Two identical hard copies of the REDACTED Application</li> <li>• Two electronic copies of the REDACTED Application via two separate USB flash drives</li> </ul>	<p>The submitted Application was nonresponsive to this permissive requirement.</p>
<p>An originally executed copy of the Affirmation (Attachment 1 of the RFA) executed by the Applicant</p>	<p>A responsive document was received.</p>
<p>An originally executed Addendum Acknowledgement Form (Attachment 2 of the RFA) executed by the Applicant for each addendum issued</p>	<p>The submitted Application was nonresponsive to this requirement.</p>
<p>An original executed copy of the Waiver (Attachment 3 of the RFA) executed in counterparts by each of the Applicant, the Manager and any direct or indirect owner of the Applicant and the Manager (excluding any equity holders of any publicly-held company)</p>	<p>The submitted Application was nonresponsive to this requirement.</p>

Two hard copies of each Background Information Form	The submitted Application was nonresponsive to this requirement.
Two electronic copies of each Background Information Form in PDF format submitted via two separate USB flash drives	The submitted Application was nonresponsive to this requirement.

In addition, RFA Section III. H., Overview, required each Applicant and its respective Related Parties to submit with its Application a variety of materials necessary for the conduct of an Applicant background. These RFA filing requirements are replicated below with Florida Acquisition Corporation’s accompanying responsiveness:

<b>RFA Filing Requirement</b>	<b>Florida Acquisition Corporation’s Accompanying Response</b>
<p>A complete and accurate Gaming Facility License Application Form for each of:</p> <ul style="list-style-type: none"> <li>• The Applicant</li> <li>• Any direct and indirect parent entity of the Applicant including any holding company</li> <li>• Any Manager</li> <li>• Any entity having a beneficial or proprietary interest of five percent or more in an Applicant or a Manager</li> <li>• Any other entity that may designated by the Commission</li> </ul>	<p>The submitted Application was nonresponsive to this requirement.</p>
<p>A complete and accurate Multi Jurisdictional Personal History Disclosure Form and New York Supplemental Form for each natural person who is:</p> <ul style="list-style-type: none"> <li>• A director, manager, general partner or person holding an equivalent position with the Applicant, a Manager or any direct or indirect parent entity of the Applicant</li> <li>• A Casino Key Employee</li> <li>• A person having beneficial or proprietary interest of five percent or more of an Applicant or a Manager</li> <li>• As designated by the Commission</li> </ul>	<p>The submitted Application was nonresponsive to this requirement.</p>

Incomplete Responses

While Florida Acquisition Corporation did submit a document as its response to the RFA, in numerous locations the response is qualified with the following language: *“Florida Acquisition Corp., Clairvest Group, Inc. and Great Canadian Gaming Corporation will complete this section of the RFA within 60 days of the date at which the New York Gaming Facility Location Board or the New York State Gaming Commission agree with the Applicant on the solution for the challenge of the License Fee ...”*

At a functional level, inclusion of this language de facto suggested an incomplete response. This language appears in association with the following Required Exhibits:

Exhibit VI.E.	Table of Ownership
Exhibit VI.F.	Organizational Chart
Exhibit VI.G.	Names, Addresses and Experience of Directors and Officers
Exhibit VI.P.	Organizational Documents
Exhibit VIII.A.2	Applicant Minimum Capital Investment
Exhibit VIII.A.3	Market/Revenue Study
Exhibit VIII.A.4	Pro-Forma Financial Information
Exhibit VIII.A.5	Pro-Forma Financial Information
Exhibit VIII.A.6	Capital and Financing Structure
Exhibit VIII.A.8	Documentation of Financial Suitability and Responsibility
Exhibit VIII.A.9	U.S. Securities and Exchange Commission Filings; Notices and Report to Financing Sources and Equity Holders
Exhibit VIII.A.10	Legal Actions
Exhibit VIII.A.12	Breach of Contract
Exhibit VIII.A.13	Tax Audit
Exhibit VIII.A.14.b	Licenses in Other Jurisdictions, Description of Any Disciplinary Action
Exhibit VIII.A.15.a	Proof of Advancing Objectives
Exhibit VIII.A.16	Additional Financial Commitments
Exhibit VIII.B.1	Market Analysis
Exhibit VIII.B.2	Player Database and Loyalty Program
Exhibit VIII.B.3	Studies and Reports
Exhibit VIII.B.4	Projected Tax Revenues to the State
Exhibit VIII.B.5	Regional Economic Plan Coordination
Exhibit VIII.B.6	New York State Subcontractors and Suppliers
Exhibit VIII.B.7	Employees
Exhibit VIII.B.8	Competitive Environment
Exhibit VIII.B.9	Marketing Plans
Exhibit VIII.C.1.b	Description of Land, Assessed Value of Land
Exhibit VIII.C.1.c	Description of Land, Description of Land
Exhibit VIII.C.1.d	Description of Land, Description of Project Site
Exhibit VIII.C.1.e	Description of Land, Geological or Structural Defect in Project Site
Exhibit VIII.C.1.f	Description of Land, Phase I or Phase II Environmental Reports



Exhibit VIII.C.2	Ownership of Land
Exhibit VIII.C.3	Zoning
Exhibit VIII.C.4	Master Plan and Building Program
Exhibit VIII.C.5	Designs and Layouts
Exhibit VIII.C.6	Casino
Exhibit VIII.C.7	Hotel
Exhibit VIII.C.8	Meeting and Convention Facilities
Exhibit VIII.C.9	Entertainment Venues
Exhibit VIII.C.10	Non-Gaming Amenities
Exhibit VIII.C.11	Quality of Amenities
Exhibit VIII.C.12	Hours of Operation
Exhibit VIII.C.13	Back of House
Exhibit VIII.C.14	Parking and Transportation Infrastructure
Exhibit VIII.C.15	Dock and Loading
Exhibit VIII.C.16	Physical Plant and Mechanical Systems
Exhibit VIII.C.17	Infrastructure Requirements
Exhibit VIII.C.18	Project Firms
Exhibit VIII.C.19	Construction Budget
Exhibit VIII.C.20	Timeline for Construction
Exhibit VIII.C.21	Construction Jobs
Exhibit VIII.C.22	Gaming Equipment Vendors
Exhibit VIII.D.1	Internal Controls and Security Systems
Exhibit IX.A.1.b	Assessment of Local Support, Other Evidence of Local Support
Exhibit IX.A.2	Local Impacts and Costs
Exhibit IX.A.3	Mitigation of Impact to Host Municipality and Nearby
Municipalities	
Exhibit IX.A.4	Housing
Exhibit IX.A.5	School Population
Exhibit IX.B.1	Local Business Promotion
Exhibit IX.B.2	Partnerships with Live Entertainment Venues
Exhibit IX.B.3	Local Business Owners
Exhibit IX.B.4	Local Agreements
Exhibit IX.B.5	Cross Marketing
Exhibit X.A.1.	On-Site Resources for Problem Gambling
Exhibit X.A.2	Problem Gambling Signage
Exhibit X.A.3	Identification of Problem Gambling
Exhibit X.A.4	Self-Exclusion Policies
Exhibit X.A.5	Treatment and Prevention
Exhibit X.B.1	Human Resources Practices
Exhibit X.B.2	Affirmative Action Plan
Exhibit X.B.3	Job Opportunities and Training for Unemployed
Exhibit X.B.4	Experience with Hiring Unemployed
Exhibit X.B.5	Organized Labor Contracts
Exhibit X.C.1	Traffic Mitigation

Exhibit X.C.2	LEED Certification
Exhibit X.C.3	Energy Efficient Equipment
Exhibit X.C.4	Storm Water
Exhibit X.C.5	Water Conservation
Exhibit X.C.6	Renewable Energy
Exhibit X.C.7	Energy Consumption Monitoring
Exhibit X.C.8	Domestic Slot Machines

Therefore, the Gaming Facility Location Board disqualified the application submitted by Florida Acquisition Corporation and returned the remaining portion of their Application Fee based on the Applicant's failure to file a completed Request For Application response in the manner and within the timeframe required.

**REQUEST FOR APPLICATIONS TO DEVELOP AND OPERATE A GAMING FACILITY IN NEW  
YORK STATE**



**REQUEST FOR APPLICATIONS  
TO DEVELOP AND OPERATE  
A GAMING FACILITY  
IN NEW YORK STATE**

March 31, 2014

<b>TABLE OF CONTENTS</b>
--------------------------

<b>I.</b>	<b>INITIAL REQUIREMENT OF LOCAL SUPPORT</b>	<b>7</b>
-----------	---	----------

<b>II.</b>	<b>DEFINITIONS</b>	<b>8</b>
------------	--------------------	----------

<b>III.</b>	<b>OVERVIEW</b>	<b>11</b>
-------------	-----------------	-----------

	A.	INTRODUCTION	11
	B.	SCHEDULE	12
	C.	PROCUREMENT LOBBYING RESTRICTIONS	12
	D.	REGISTRATION OF LOBBYISTS	13
	E.	PERMISSIBLE CONTACTS	13
	F.	QUESTIONS AND INQUIRIES	14
	G.	MANDATORY APPLICANT CONFERENCE	14
	H.	BACKGROUND INVESTIGATION	14
	I.	CONTINUING DUTY TO UPDATE APPLICATION	16
	J.	NON-COLLUSIVE BIDDING REQUIREMENT	16
	K.	PUBLIC NOTIFICATION/NEWS RELEASES	16
	L.	CLARIFICATION PROCESS	16
	M.	STATE'S RESERVED AUTHORITY	17
	N.	WAIVER, RELEASE, COVENANT NOT TO SUE AND INDEMNIFICATION	17
	O.	APPLICANT/LICENSEE DIFFERENTIATION	17
	P.	HEADINGS/SECTIONS OF THIS RFA	18

<b>IV.</b>	<b>APPLICATION INSTRUCTIONS</b>	<b>19</b>
------------	---------------------------------	-----------

	A.	GENERAL	19
	B.	OFFICIAL SUBMISSION	19
	C.	APPLICATION FORMAT	21
	D.	PUBLIC PRESENTATIONS	22
	E.	PUBLIC HEARING	22
	F.	PUBLIC DISCLOSURE OF APPLICATION MATERIALS	23
	G.	GAMING REGULATIONS	23
	H.	INCURRED EXPENSES AND ECONOMY OF PREPARATION	24

<b>V.</b>	<b>EXECUTIVE SUMMARY</b>	<b>25</b>
-----------	--------------------------	-----------

<b>VI.</b>	<b>APPLICANT INFORMATION</b>	<b>26</b>
------------	------------------------------	-----------

	A.	NAME OF APPLICANT	26
	B.	CONTACT PERSON	26
	C.	LOCATION OF THE PRINCIPAL PLACE OF BUSINESS OF THE APPLICANT	26
	D.	TYPE OF BUSINESS FORMATION	26
	E.	TABLE OF OWNERSHIP	26
	F.	ORGANIZATIONAL CHART	26
	G.	NAMES, ADDRESSES AND EXPERIENCE OF DIRECTORS AND OFFICERS	27
	H.	NAMES, ADDRESSES AND OWNERSHIP AND OTHER INTERESTS	27
	I.	NAMES AND ADDRESSES OF PROMOTERS, SPONSORS AND OTHERS	27
	J.	REGION AND HOST MUNICIPALITIES	27
	K.	CONFLICTS OF INTEREST	27
	L.	PUBLIC OFFICIALS	28
	M.	APPLICATION FEE	28
	N.	CONTRACTS WITH STATE OF NEW YORK	28
	O.	CASINO MANAGER	28
	P.	ORGANIZATIONAL DOCUMENTS	29

<b>VII.</b>	<b>EVALUATION CRITERIA AND SELECTION PROCESS</b>	<b>30</b>
-------------	--	-----------

	A.	ECONOMIC ACTIVITY AND BUSINESS DEVELOPMENT FACTORS	30
	B.	LOCAL IMPACT AND SITING FACTORS	31
	C.	WORKFORCE ENHANCEMENT FACTORS	31

<b>VIII.</b>	<b>ECONOMIC ACTIVITY AND BUSINESS DEVELOPMENT</b>	<b>34</b>
--------------	---	-----------

	A.	FINANCE AND CAPITAL STRUCTURE	34
		1. CAPITAL INVESTMENT	34
		2. APPLICANT MINIMUM CAPITAL INVESTMENT	35
		3. MARKET/REVENUE STUDY	36
		4. PRO-FORMA FINANCIAL INFORMATION	36
		5. BUSINESS PLAN	37
		6. CAPITAL AND FINANCING STRUCTURE	37
		7. FINANCIAL STATEMENTS AND AUDIT REPORT	38
		8. DOCUMENTATION OF FINANCIAL SUITABILITY AND RESPONSIBILITY	38
		9. U.S. SECURITIES AND EXCHANGE COMMISSION FILINGS; NOTICES AND REPORTS TO FINANCING SOURCES AND EQUITY HOLDERS	39
		10. LEGAL ACTIONS	39
		11. BANKRUPTCY OR OTHER INSOLVENCY MATTERS	40
		12. BREACH OF CONTRACT	40
		13. TAX AUDIT	40

		14.	LICENSES IN OTHER JURISDICTIONS	40
		15.	PROOF OF ADVANCING OBJECTIVES	40
		16.	ADDITIONAL FINANCIAL COMMITMENTS	41

	B.	ECONOMICS		41
		1.	MARKET ANALYSIS	42
		2.	PLAYER DATABASE AND LOYALTY PROGRAM	42
		3.	STUDIES AND REPORTS	42
		4.	PROJECTED TAX REVENUE TO THE STATE	43
		5.	REGIONAL ECONOMIC PLAN COORDINATION	43
		6.	NEW YORK STATE SUBCONTRACTORS AND SUPPLIERS	43
		7.	EMPLOYEES	44
		8.	COMPETITIVE ENVIRONMENT	44
		9.	MARKETING PLANS	44
		10.	SUPPLEMENTAL TAX PAYMENT	44
		11.	LICENSING FEE	45

	C.	LAND, CONSTRUCTION AND DESIGN OF PHYSICAL PLANT		46
		1.	DESCRIPTION OF LAND	46
		2.	OWNERSHIP OF LAND	47
		3.	ZONING	47
		4.	MASTER PLAN AND BUILDING PROGRAM	48
		5.	DESIGNS AND LAYOUT	48
		6.	CASINO	50
		7.	HOTEL	51
		8.	MEETING AND CONVENTION FACILITIES	51
		9.	ENTERTAINMENT VENUES	52
		10.	NON-GAMING AMENITIES	52
		11.	QUALITY OF AMENITIES	53
		12.	HOURS OF OPERATION	53
		13.	BACK OF HOUSE	53
		14.	PARKING AND TRANSPORTATION INFRASTRUCTURE	53
		15.	DOCK AND LOADING	53
		16.	PHYSICAL PLANT AND MECHANICAL SYSTEMS	54
		17.	INFRASTRUCTURE REQUIREMENTS	54
		18.	PROJECT FIRMS	55
		19.	CONSTRUCTION BUDGET	55
		20.	TIMELINE FOR CONSTRUCTION	55
		21.	CONSTRUCTION JOBS	56
		22.	GAMING EQUIPMENT VENDORS	56

	D.	INTERNAL CONTROLS AND SECURITY SYSTEMS		56
		1.	INTERNAL CONTROLS AND SECURITY SYSTEMS	56

<b>IX.</b>	<b>LOCAL IMPACT AND SITING FACTORS</b>	<b>58</b>
------------	--	-----------

	<b>A.</b>	<b>ASSESSMENT OF LOCAL SUPPORT AND MITIGATION OF LOCAL IMPACT</b>	<b>58</b>
		1. ASSESSMENT OF LOCAL SUPPORT	58
		2. LOCAL IMPACTS AND COSTS	58
		3. MITIGATION OF IMPACT TO HOST MUNICIPALITY AND NEARBY MUNICIPALITIES	59
		4. HOUSING	59
		5. SCHOOL POPULATION	59

	<b>B.</b>	<b>REGIONAL TOURISM AND ATTRACTIONS</b>	<b>60</b>
		1. LOCAL BUSINESS PROMOTION	60
		2. PARTNERSHIPS WITH LIVE ENTERTAINMENT VENUES	60
		3. LOCAL BUSINESS OWNERS	60
		4. LOCAL AGREEMENTS	60
		5. CROSS MARKETING	61

<b>X.</b>	<b>WORKFORCE ENHANCEMENT FACTORS</b>	<b>62</b>
-----------	--------------------------------------	-----------

	<b>A.</b>	<b>MEASURES TO ADDRESS PROBLEM GAMBLING</b>	<b>62</b>
		1. ON-SITE RESOURCES FOR PROBLEM GAMBLING	62
		2. PROBLEM GAMBLING SIGNAGE	62
		3. IDENTIFICATION OF PROBLEM GAMBLING	62
		4. SELF-EXCLUSION POLICIES	62
		5. TREATMENT AND PREVENTION	62
		6. HISTORICAL EFFORTS AGAINST PROBLEM GAMBLING	63

	<b>B.</b>	<b>WORKFORCE DEVELOPMENT</b>	<b>63</b>
		1. HUMAN RESOURCE PRACTICES	63
		2. AFFIRMATIVE ACTION PLAN	63
		3. JOB OPPORTUNITIES AND TRAINING FOR UNEMPLOYED	63
		4. EXPERIENCE WITH HIRING UNEMPLOYED	64
		5. ORGANIZED LABOR CONTRACTS	64
		6. LABOR HARMONY	64

	<b>C.</b>	<b>SUSTAINABILITY AND RESOURCE MANAGEMENT</b>	<b>64</b>
		1. TRAFFIC MITIGATION	64
		2. LEED CERTIFICATION	65
		3. ENERGY EFFICIENT EQUIPMENT	65
		4. STORM WATER	65
		5. WATER CONSERVATION	65
		6. RENEWABLE ENERGY	65



	7.	ENERGY CONSUMPTION MONITORING	65
	8.	DOMESTIC SLOT MACHINES	65

<b>XI.</b>	<b>POST-LICENSURE RESPONSIBILITIES</b>	<b>66</b>
------------	--	-----------

	A.	DEPOSIT TEN (10) PERCENT OF TOTAL INVESTMENT	66
	B.	PAY LICENSING FEE	66
	C.	BEGIN GAMING OPERATIONS WITHIN TWO (2) YEARS	67
	D.	ESTABLISH INDIVIDUAL QUALIFICATIONS AND THOSE OF EACH PERSON REQUIRED TO BE QUALIFIED	67
	E.	OBTAIN AND MAINTAIN CASINO KEY EMPLOYEE LICENSES	67
	F.	REGISTER GAMING EMPLOYEES	67
	G.	LICENSE VENDOR ENTERPRISES	67
	H.	LICENSE AND REPORT ON JUNKET OPERATORS	68
	I.	OBTAIN OPERATION CERTIFICATE	68
	J.	MAINTAIN RECORD OF AGREEMENTS	68
	K.	ENTER LABOR PEACE AGREEMENT	68
	L.	PAY ANNUAL MACHINE AND TABLE FEES	68
	M.	PAY REGULATORY INVESTIGATORY FEE	68
	N.	PAY ADDITIONAL REGULATORY COSTS	68
	O.	PAY TAX ON GAMING REVENUES BASED ON ZONE AND REGION	68
	P.	RETAIN UNCLAIMED FUNDS AND DEPOSIT IN THE COMMERCIAL GAMING REVENUE FUND	69
	Q.	PAY RACING INDUSTRY SUPPORT PAYMENTS	69
	R.	CONFIRMATORY AFFIDAVIT	70
	S.	ISSUANCE OF LICENSES	70

<b>XII.</b>	<b>LIST OF REQUIRED EXHIBITS</b>	<b>71</b>
-------------	----------------------------------	-----------

<b>XIII.</b>	<b>ATTACHMENTS</b>	
--------------	--------------------	--

	1.	AFFIRMATION	76
	2.	ADDENDUM ACKNOWLEDGEMENT FORM	77
	3.	WAIVER, RELEASE, COVENANT NOT TO SUE AND INDEMNIFICATION	78

Dear Applicant:

New York Governor Andrew M. Cuomo has made reviving Upstate New York's long-stagnant economy a priority of his administration.

In 2012, recognizing the importance and potential that expanded gaming could bring to the residents and business of New York State, Governor Cuomo proposed an amendment to the State constitution to permit casino gaming. The constitutional amendment process—passage of legislation by two consecutive legislatures followed by a public referendum—culminated in November 2013, when voters approved the constitutional amendment.

On July 30, 2013, Governor Cuomo signed into law The Upstate New York Gaming Economic Development Act of 2013, which outlined the process and criteria for siting no more than four destination gaming resorts to create jobs, reduce unemployment in disadvantaged areas of the State, enhance the State's tourism industry and generate substantial revenue for public education and taxpayer relief. In order to fully capitalize on the beneficial aspects of legalized gambling, the legislature determined that Upstate New York is where the jobs and economic development are most needed. The law established the eligible Regions of the State where such gaming resorts could be sited, while respecting boundaries established with Native American Tribes that have exclusivity over gaming rights in various parts of the State. The purpose of the law's siting criteria was to provide the highest impact and best value to the State and to those localities where a gaming resort is to be located.

The Act provides for the Gaming Commission to award up to four Gaming Facility licenses within three Regions of the State: Hudson Valley/Catskill area, Capital Region, and Eastern Southern Tier.

The Act establishes clear and competitive criteria by which Applicants will put forth their best proposals to be evaluated and recommended for licensure by an independent Gaming Facility Location Board. This Request for Applications is the first step of the competitive process.

New York State is removing the barriers and red tape that, for too long, inhibited doing business in the State. This Request for Applications was designed in that spirit. The Request for Applications clearly enumerates the required components in a format that is responsive to the spirit and the letter of the law.

On behalf of the State of New York, we thank you for your interest in bringing world-class destination gaming resorts to Upstate New York, helping to create economic growth across the State, and in providing the maximum beneficial impact to those localities in Upstate New York that need the jobs, revenues, and development.

#### **New York State Gaming Facility Location Board**

Paul Francis  
Stuart Rabinowitz  
William C. Thompson, Jr.

## **I. INITIAL REQUIREMENT OF LOCAL SUPPORT**

As a condition of filing an Application, each Applicant must submit to the Board a resolution passed by the local legislative body of its Host Municipality supporting the Application. For purposes of this requirement, local support means a post-November 5, 2013 resolution passed by the local legislative body of the Host Municipality supporting the Application.

For purposes of this requirement, the Host Municipality of a Project Site located in a city is the city. The Host Municipality of a Project Site located in a town, outside a village, is the town. The Host Municipality of a Project Site located in a village is the village and the town in which the Project Site is located.

An Applicant's demonstration of local support in fulfillment of this initial requirement is only a component part of the twenty (20) percent Local Impact and Siting Factors criteria to be used by the Board in evaluating Applications. In weighing local support and opposition under this criteria, the Board will consider public statements and declarations, letters or resolutions from the Host Municipality, nearby local governments, private organizations, community, religious and civic groups, charitable organizations, entertainment venues, chambers of commerce, local businesses, labor organizations, etc.

## II. DEFINITIONS

Unless otherwise defined herein, the following terms have the following meanings:

**“Affiliate”** means with respect to a particular person or entity, any person or entity that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, such person or entity.

**“Applicant”** means an entity or person submitting this Application. As used in this RFA, Applicant shall also mean any prospective Applicant, as the context may require.

**“Applicant Party”** means each of: (i) the Applicant; (ii) the Manager; (iii) any person or entity that has a direct or indirect ownership interest in the Applicant or the Manager equal to or greater than five (5) percent; and (iv) any Casino Key Employee.

**“Application”** means a completed response to this RFA or an application for a Gaming Facility License, as the context may require.

**“Board”** means the New York State Gaming Facility Location Board.

**“Casino Key Employee”** means any person employed (or to be employed) by a Licensee, or holding or intermediary company of a Licensee, and involved in the operation of a licensed Gaming Facility in a supervisory capacity and empowered to make discretionary decisions that regulate Gaming Facility operations; or any other employee so designated by the Commission for reasons consistent with the policies of PML Article 13.

**“Close Associate”** means a person who, or entity that, holds a relevant financial interest in, or is entitled to exercise power in, the business of an Applicant or Licensee and, by virtue of that interest or power, is able to exercise significant influence over the management or operation of a Gaming Facility or business licensed under PML Article 13.

**“Commission”** means the New York State Gaming Commission.

**“Effective Date”** means January 1, 2014, the effective date of the Upstate New York Gaming Economic Development Act of 2013.

**“Financing Source”** means each of: (i) the Applicant; (ii) the Manager, if applicable; and (iii) any person or entity that will provide, or is expected to provide, any equity, debt, credit support or credit enhancement for the proposed Gaming Facility.

**“FOIL”** means the New York Freedom of Information Law, Sections 84-90 of the New York Public Officers Law.

**“Gaming Facility”** means the premises approved under a License which includes the gaming area and any other non-gaming structure related to the gaming area and may include, without limitation, hotels, restaurants or other amenities.

**“Host Municipality”** means each town, village or city in the territorial boundaries of which any portion of the Project Site described in an Application is located. For Project Sites located in a village, the host municipality includes both the village and the town in which the Project Site is located.

**“Immediate Family Member”** means a person’s spouse, parents, grandparents, children, grandchildren, siblings, uncles, aunts, nephews, nieces, fathers-in-law, daughters-in-law, sons-in-law, sisters-in-law, brothers-in-law, and mothers-in-law whether by the whole or half blood, marriage, adoption or natural relationship.

**“License”** means a license to operate a Gaming Facility in the State or an occupational license to be qualified under a requirement of Article 13 of the PML, as the context may require.

**“Manager”** means any entity engaged or to be engaged by an Applicant to operate and manage the casino of the Gaming Facility.

**“PML”** means the New York Racing, Pari-Mutuel Wagering and Breeding Law.

**“Project Site”** means the site upon which the Gaming Facility will be constructed.

**“Public Official”** means a person who: (i) is authorized to perform an official function and is paid by a governmental entity; (ii) is elected or appointed to office to discharge a public duty for a governmental entity; or (iii) with or without compensation, is appointed in writing by a public official to act in an advisory capacity to a governmental entity concerning a contract or purchase to be made by the entity. The term does not include a person appointed to an honorary advisory or honorary military position.

**“Region”** means each of Region One, Region Two and Region Five of Zone Two of the State of New York established by to PML Section 1310.

**“Region One”** means the region comprised of the following counties of the State: Counties of Columbia, Delaware, Dutchess, Greene, Orange, Sullivan and Ulster.

**“Region Two”** means the region comprised of the following counties of the State: Counties of Albany, Fulton, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie and Washington.

**“Region Five”** means the region comprised of the following counties of the State: Counties of Broome, Chemung (east of State Route 14), Schuyler (east of State Route 14), Seneca, Tioga, Tompkins and Wayne (east of State Route 14).

**“Restricted Period”** means the period of time beginning with the public release of this RFA through (i) such time as the Board selects an Applicant or Applicants other than the Applicant to proceed to Commission consideration of suitability for a License to operate a Gaming Facility in the Region in which an Applicant has sought such a License or (ii) the final decision of the Commission on the suitability of the Applicant for a License, if the Board selects the Applicant to proceed to Commission consideration of suitability for a License, as the case may be.

**“RFA”** means this Request for Applications to Develop and Operate a Gaming Facility in New York State.

**“State”** means the State of New York.

Any other terms used throughout this RFA that are not otherwise defined in this RFA shall have the meaning ascribed to such terms as provided in PML Section 1301.

## III. OVERVIEW

### A. INTRODUCTION

Chapter 174 of the Laws of 2013, known as the Upstate New York Gaming Economic Development Act of 2013, as amended by Chapter 175 of the Laws of 2013 (collectively, the “Act”), sets forth, among other things, statutory requirements for casino gaming in New York State.

The Act authorizes four Upstate destination gaming resorts to enhance tourism development. The Act amends the PML by adding a new Article 13, which became effective January 1, 2014 and which authorizes casino gaming. Article 13 provides for the Commission to award up to four Licenses within three Regions of the State: Hudson Valley/Catskill Region, Capital Region and Eastern Southern Tier Region (including portions of the Finger Lakes region).

PML Section 109-a provides that, “the commission shall establish a separate board to be known as the New York state gaming facility location board to perform designated functions under article thirteen of this chapter.” The duties and authority of the Board include, without limitation, issuing this RFA for Licenses; assisting the Commission in prescribing the form of the Application; developing criteria, in addition to those outlined in the Act, to assess which Applications provide the highest and best value to the State, the Zone and the Region in which a Gaming Facility is to be located; determining a Gaming Facility license fee to be paid by an Applicant; and determining, with the assistance of the Commission, the sources and total amount of an Applicant’s proposed capitalization to develop, construct, maintain and operate a proposed Gaming Facility license under the Act.

The Board, on behalf of the State, issues this RFA to solicit Applications from Applicants seeking a License to develop and operate a Gaming Facility in the State. The Commission shall undertake the licensing process after the Board recommends Applicants for licensure.

The Board is the only entity authorized to clarify, modify, amend, alter or withdraw any of the provisions of this RFA. The Board may, in its discretion, designate staff, consultants or other agents to communicate to Applicants and to the public any clarifications, modifications, amendments, alterations or withdrawals of any of the provisions of this RFA.

In this RFA, the Board sets forth requirements and an evaluation approach in conformance with State statutes and State regulations. The contents of this RFA, any modifications thereof made by the Board, and the respective Application and any changes thereto approved by the State will become obligations of the Licensee if a License is issued. Failure of the successful Applicant to accept these obligations may result in denial or revocation of a License.

Each Applicant will be required to pay to the Commission an Application fee of \$1 million to help defray the costs associated with the processing of the Application and investigation of the Applicant; provided, however, that if the costs of processing, investigation and related costs exceed the initial Application fee, the Applicant shall pay the additional amount to the Commission within 30 days after notification of insufficient fees or the Application shall be rejected and further provided that should the costs of such investigation not exceed the fee remitted, any unexpended portion shall be returned to the Applicant, all as required by PML Section 1316.8.

An individual, entity, consortium or other party evincing interest becomes an Applicant upon payment of the \$1 million Application fee. Such Application fee must be paid on or before **April 23, 2014**. Wire instructions are available upon request from the New York State Gaming Commission Finance Office. Please contact Frank Roddy at (518) 388-3354 or [Frank.Roddy@gaming.ny.gov](mailto:Frank.Roddy@gaming.ny.gov) for such instructions.

If an Applicant pays the \$1 million fee and does not complete and submit its Application on or before June 30, 2014, the Commission will return the fee *less* any reasonable costs the Commission will have already incurred related to processing, including overhead and administrative expenses.

The term of an initial License granted by the Commission after selection for recommendation by the Board will be ten (10) years, as set forth in PML Section 1311.1. The Commission shall determine the term of any renewal of a License.

## **B. SCHEDULE**

The following dates are established for informational and planning purposes. The Board reserves the unilateral right to make adjustments to this schedule.

RFA Issued	March 31, 2014
Applicant's First Questions Due by 4:00 p.m. EDT	April 11, 2014
Board Responses to First Questions	April 23, 2014
Mandatory Applicant Conference	April 30, 2014
Written Summary of Applicant Conference	May 2, 2014
Applicant's Second Questions Due by 4:00 p.m. EDT	May 7, 2014
Board Responses to Second Questions	May 14, 2014
Applications Due by 4:00 p.m. EDT	June 30, 2014
Oral Presentations of Applications	on or after July 21, 2014
Selection of Gaming Facility Operator	Early fall

## **C. PROCUREMENT LOBBYING RESTRICTIONS**

As required by the Procurement Lobbying Law (Sections 139-j and 139-k of the New York State Finance Law), this RFA includes and imposes certain restrictions on communications between the Commission/Board and an Applicant during the Application process. An Applicant is restricted from making contacts during the Restricted Period with anyone at the Commission or the Board other than designees of the Commission's staff, unless the contact is permitted by the statutory exceptions set forth in Section 139-j.3.a. of the New York State Finance Law. Designated staff members are identified in the "PERMISSIBLE CONTACTS" section of this RFA. Other designees may be made in the future.

Commission employees are permitted to communicate with Applicants concerning this RFA only under circumstances described in the New York State Procurement Lobbying Law. Any Applicant causing or attempting to cause a violation of those requirements may be disqualified from further consideration for selection.



Board members and Commission members and employees are required to obtain certain information when contacted during the Restricted Period and to make a determination of the responsibility of the Applicant pursuant to Sections 139-j and 139-k. A violation can result in a determination of non-responsibility, which can result in disqualification for selection to proceed to consideration of a License award. In the event of two determinations of non-responsibility within a four-year period, an Applicant will be debarred for a period of four years from obtaining a governmental procurement award.

Further information about these requirements can be found at: [www.ogs.state.ny.gov/acpl](http://www.ogs.state.ny.gov/acpl).

The Commission reserves the right, in its sole discretion, to terminate a License in the event that the Commission determines that the certification filed by the Applicant in accordance with Section 139-k of the New York State Finance Law was intentionally false or intentionally incomplete. Upon such determination, the Commission may exercise its termination right by providing written notification to the licensee.

## **D. REGISTRATION OF LOBBYISTS**

As set forth in PML Section 1329, in addition to any other registration and reporting required by law, each lobbyist seeking to engage in lobbying activity on behalf of a client or a client's interest before the Commission shall first register with the secretary of the Commission. The secretary shall cause a registration to be available on the Commission's website within five days of submission. The applicable form for registration and instructions can be found at:

[www.gaming.ny.gov/pdf/NYSGCLobbyingRegistrationForm.docx](http://www.gaming.ny.gov/pdf/NYSGCLobbyingRegistrationForm.docx).

For purposes of this section, the terms "**lobbyist**", "**lobbying**", "**lobbying activities**" and "**client**" shall have the same meaning as New York Legislative Law Section 1-c defines those terms.

## **E. PERMISSIBLE CONTACTS**

Consistent with the public policy established by the Procurement Lobbying Law, the Supervisor of Contract Administration and the Contract Management Specialist designated below are the only points of contact with regard to matters relating to this RFA unless the Board designates additional points of contact.

**ALL COMMUNICATIONS CONCERNING THIS REQUEST FOR APPLICATION MUST BE ADDRESSED IN WRITING TO THE SUPERVISOR OF CONTRACT ADMINISTRATION OR THE CONTRACT MANAGEMENT SPECIALIST NOTED BELOW:**

**New York State Gaming Commission  
Contracts Office  
One Broadway Center  
Schenectady, NY 12301-7500**

**Gail P. Thorpe, Supervisor of Contract Administration  
[gail.thorpe@gaming.ny.gov](mailto:gail.thorpe@gaming.ny.gov)**

or

**Stacey Relation, Contract Management Specialist**  
**stacey.relation@gaming.ny.gov**

## **F. QUESTIONS AND INQUIRIES**

Questions from Applicants in regard to this RFA must be submitted via electronic mail no later than the date and time specified in the “**OVERVIEW - SCHEDULE**” section of this RFA. If questions are provided via an attachment to electronic mail, the questions must be provided in a Microsoft Word format. Neither faxed nor telephone questions will be accepted.

Applicants are cautioned that an RFA inquiry must be written in generic terms and must not contain specific information about an Application or proposed Application in an inquiry. The Board reserves the right to answer or refrain from answering questions in its discretion.

Responses to questions and any changes to the RFA resulting from such questions will be communicated via published addenda, which will be posted on the Commission’s website, [www.gaming.ny.gov](http://www.gaming.ny.gov). An Addendum Acknowledgement Form, a form of which is incorporated into this RFA only for informational purposes as Attachment 2, will be provided with each addendum. An Applicant is required to include with its Application a signed Addendum Acknowledgement Form for each addendum issued to this RFA.

Applicants are responsible for checking the Commission’s website for updated information relative to the RFA and the Application selection process. Neither the Commission nor the Board will be responsible for an Applicant’s failure to obtain updated information.

## **G. MANDATORY APPLICANT CONFERENCE**

A mandatory conference of Applicants will be held on April 30, 2014 as provided in the “**OVERVIEW - SCHEDULE**” section of this RFA. Any Applicant wishing to participate in the selection process is required to attend this conference. **Also, as provided in this RFA, payment of the \$1 million Application fee is a condition of the Applicant’s admission to the conference.**

Formal notification of the conference and details pertaining to the conference relative to the time, and location, as well as how to register to attend, will be posted on the Commission’s website, [www.gaming.ny.gov](http://www.gaming.ny.gov), following release of this RFA.

## **H. BACKGROUND INVESTIGATION**

All Applicants for a License, and all related parties in interest to the Applicant, including Affiliates, Close Associates and financial resources of the Applicant (each a “**Related Party**”), shall be subject to a thorough background investigation into the suitability of such persons and entities by the Commission or by the Commission’s designated agents. Each Applicant and Related Party must prove by clear and convincing evidence its suitability and qualifications to hold a License. In conducting the suitability investigation, pursuant to PML Section 1317 the

Commission shall consider the overall reputation of the Applicant including, without limitation: (i) the integrity, honesty, good character and reputation of the Applicant; (ii) the financial stability, integrity and background of the Applicant; (iii) the business practices and the business ability of the Applicant to establish and maintain a successful Gaming Facility; (iv) whether the Applicant has a history of compliance with gaming licensing requirements in other jurisdictions; (v) whether the Applicant, at the time of Application, is a defendant in litigation involving its business practices; (vi) the suitability of all parties in interest to the License, including Affiliates and Close Associates and the financial resources of the Applicant; and (vii) whether the Applicant is disqualified, pursuant to PML Section 1318, from receiving a License.

The Application fee shall be used to defray the costs associated with the processing of the Application and investigation of the Applicant and Related Parties and related costs. If the allocable costs of the foregoing exceed the initial application fee, then the Applicant shall pay the additional amount to the Commission within thirty (30) days after notification of insufficient funds. If payment of the additional amount is not made timely, then the Application may be rejected in the discretion of the Commission. If an additional amount is paid to the Commission for the foregoing and the costs do not exceed the amount remitted, any unexpended portion of such additional amount shall be returned to the Applicant.

To assist the Commission in conducting its suitability investigations, each Applicant and its respective Related Parties shall submit with its Application the following (collectively, the **“Background Investigation Forms”**):

1. A complete and accurate Gaming Facility License Application Form for each of: (i) the Applicant; (ii) any direct and indirect parent entity of the Applicant including any holding company; (iii) any Manager; (iv) any entity having a beneficial or proprietary interest of five (5) percent or more in an Applicant or a Manager; and (v) any other entity that may be designated by the Commission; and
2. A complete and accurate Multi Jurisdictional Personal History Disclosure Form and New York Supplemental Form for each natural person who is (i) a director, manager, general partner or person holding an equivalent position with the Applicant, a Manager or any direct or indirect parent entity of the Applicant; (ii) a Casino Key Employee; (iii) a person having beneficial or proprietary interest of five (5) percent or more of an Applicant or a Manager; or (iv) designated by the Commission.

Each of the Background Investigation Forms is available on the Commission’s website at [www.gaming.ny.gov](http://www.gaming.ny.gov). The Commission or the Board, in their sole discretion and as applicable to their respective duties under the Act, shall determine the persons and entities qualifying as the Applicant and any Related Parties including determining whether to grant temporary or permanent exemptions for particular persons or entities such as certain institutional investors, passive investors, stockholders of publicly held corporations or other circumstances.

The Board and/or the Commission may initiate investigations into the backgrounds of the Applicant and any Related Parties including, without limitation, persons or entities related to any officers, directors, members, principals, investors, owners, financing sources, subcontractors, employees, or any other individuals or entities related to the Applicant, as the Commission or the Board may deem appropriate, in the discretion of the Commission or the Board, as the case may be. Such background investigations may include fingerprint

identification by the New York State Division of Criminal Justice Services and the Federal Bureau of Investigation, and such additional investigation as may be required.

The Commission may reject an Application based upon the results of these background checks and suitability investigations. Each Applicant is advised that any Applicant or Related Party who knowingly provides false or intentionally misleading information in connection with any investigation by the Commission may cause the Application to be rejected, or a License to be canceled, revoked or suspended by the Commission, in the sole discretion of the Commission.

Applicants are obligated to establish their suitability for a License and the suitability of all Related Parties by clear and convincing evidence.

If after review of an Applicant's Application and the related Background Information Forms, the Commission determines that persons or entities are Related Parties but such persons or entities have not filed the appropriate Background Information Forms, the Commission may require that such persons or entities file such Background Information Form within a time period designated by the Commission. If the additional Background Information Forms are not timely filed, the Board or the Commission may determine to disqualify the Applicant and/or such persons or entities.

## **I. CONTINUING DUTY TO UPDATE APPLICATION**

After the submission of an Application and prior to the award of the Licenses, each Applicant has a continuing duty to disclose to the Board promptly, in writing (and electronically), any changes or updates to the information submitted in its Application or any related materials submitted in connection therewith. Upon receipt of any updated materials, the Board may, in its sole discretion, determine to accept the update as an amendment to the Application. The Board, however, is not under any requirement to accept any such information. Failure to promptly notify the Board of any changes or updates to information previously submitted in its Application may be grounds for disqualification.

## **J. NON-COLLUSIVE BIDDING REQUIREMENT**

In accordance with Section 139-d of New York State Finance Law, if a selection of an Applicant by the Board for licensure consideration by the Commission is made based upon the submission of Applications, the Applicant must warrant, under penalty of perjury, that its Application was arrived at independently and without collusion aimed at restricting competition.

## **K. PUBLIC NOTIFICATION/NEWS RELEASES**

No results of the selection process may be released without prior approval by the Board and then only to persons and entities designated by the Board.

## **L. CLARIFICATION PROCESS**

The Board, through its designees, reserves the right to contact any Applicant after the submission of its Application exclusively for the purpose of clarifying any item submitted in its Application to ensure mutual understanding. This contact may include written questions, interviews, site visits, or requests for corrective pages in the Application. Responses must be

submitted to the Board within the time specified in the request. As applicable, clarifications will be treated as addenda to an Application. Failure to comply with requests for additional information may result in rejection of the Application as noncompliant.

## **M. STATE'S RESERVED AUTHORITY**

In addition to any authority set forth elsewhere in this RFA, the Board reserves the authority to:

1. Waive any requirement of this RFA that is not prescribed by the Act, or any defects of any Application if, in the judgment of the Board, such waiver is deemed by the Board to further the policy objectives of the Act;
2. Eliminate any non-mandatory specification(s) that cannot be complied with by any of the Applicants;
3. Amend the RFA and direct Applicants to submit modifications to their Applications accordingly;
4. Change any of the scheduled dates stated in this RFA;
5. Reject any or all Applications received in response to this RFA, and reissue a modified version of this RFA;
6. Withdraw the RFA at any time, at the sole discretion of the Board;
7. Seek clarifications and revisions to Applications;
8. Use information obtained through site visits, management interviews, the State's investigation of an Applicant's qualifications, experience, ability or financial standing, any material or information submitted by the Applicant in response to the request by the Board for clarifying information in the course of evaluation and/or selection under this RFA or otherwise; and
9. Disqualify any Applicant whose conduct and/or Application fails to conform to the requirements of this RFA.

## **N. WAIVER, RELEASE, COVENANT NOT TO SUE AND INDEMNIFICATION**

As a condition to submitting an Application, each Applicant, Manager, and direct or indirect owner of an Applicant or Manager shall execute and deliver a Waiver, Release, Covenant Not to Sue and Indemnification Agreement in the form attached hereto as Attachment 3 ("Waiver"). Pursuant to the Waiver, each Applicant, Manager, and direct or indirect owners of an Applicant or Manager, on his, her or its own behalf and on behalf of its agents, servants, representatives, affiliates, parents, subsidiaries, directors, officers and employees, assigns predecessors and successors, (and their heirs, estates, executors, spouses), shall covenant and agree to release, waive, covenant not to sue or make any claim for damages, costs, fees, expenses or any relief whatsoever including, but not limited to, equitable relief, not to seek any appeal, review or reconsideration of any decision of the State, the Commission and the Board, and indemnify, defend and hold harmless the State, the Commission and the Board and their officials, agents, consultants and representatives as more specifically described in the Waiver attached to this RFA as Attachment 3.

## **O. APPLICANT/LICENSEE DIFFERENTIATION**

Throughout this RFA, the terms Applicant and Licensee may be used interchangeably in reference to the preparation and submission of the Application and any requirements preceding the award of

the final License. In describing post-License award requirements, an effort is made to use the term "Licensee."

## **P. HEADINGS/SECTIONS OF THIS RFA**

The headings used in this RFA are for convenience only and shall not affect the interpretation of any of the terms and conditions of this RFA. Further, the division of this RFA into headings, sections and items, which may roughly correspond to items required to be included in the Application as provided under the PML, is only for the convenience of Applicants and the Board. The request from or provision by Applicants of information under or in connection with any section, heading or item of this RFA shall not imply or be construed to limit the applicability of such information to such section, heading or item or any apparently corresponding provision of the PML. The Board and its representatives and designees shall have the right, in their discretion, to use or consider any information provided or disclosed anywhere in an Application or otherwise provided by an Applicant or Manager for any purpose under the PML notwithstanding the heading, section or item of this RFA to which such information may respond or its apparent relevance, or lack thereof, to any other heading, section or item.

## IV. APPLICATION INSTRUCTIONS

### A. GENERAL

This Application is divided into the following sections:

- Applicant Information
- Economic Activity and Business Development
  - Finance and Capital Structure
  - Economics
  - Land, Construction and Design of Physical Plant
  - Internal Controls and Security Systems
- Local Impact and Siting Factors
  - Assessment of Local Support and Mitigation of Local Impact
  - Regional Tourism and Attractions
- Workforce Enhancement Factors
  - Measures to Address Problem Gambling
  - Workforce Development
  - Sustainability and Resource Management

To the extent that an Applicant is a newly formed entity or to date has been a largely non-operational entity, any information required to be provided by the Applicant shall, at a minimum, be provided by the most relevant party or parties, such as the Manager, the primary controlling and/or operating entities/persons of the proposed Gaming Facility and/or its significant business units.

This RFA does not constitute an offer of any nature or kind to any Applicant or its agents. The Commission is under no obligation to issue a License to any of the Applicants. By submitting an Application, the Applicant is deemed to agree to all of the terms of the RFA and the process the RFA and the Act describes. In accordance with PML Section 1314.3, "Within any development region, if the commission is not convinced that there is an applicant that has met the eligibility criteria or the board finds that no applicant has provided substantial evidence that its proposal will provide value to the region in which the gaming facility is proposed to be located, no gaming facility license shall be awarded in that region."

**DURING THE APPLICATION PROCESS, NO APPLICANT, AGENT OF THE APPLICANT, QUALIFIER, OR OTHER ASSOCIATED INDIVIDUAL SHALL CONTACT A BOARD OR COMMISSION MEMBER DIRECTLY. PLEASE REFER TO THE "PERMISSIBLE CONTACTS" SECTION OF THIS RFA.**

### B. OFFICIAL SUBMISSION

**To apply for a License, a completed Application must be received by the Board by June 30, 2014 at 4:00 p.m. Eastern Daylight Time.** The Board shall have no obligation to accept or review an Application submitted after the established deadline.

The Applicant must submit:

1. twenty (20) identical hard copies of its Application including copies of all executed Attachments;
2. ten (10) electronic copies of its Application, including copies of all executed Attachments, in PDF format submitted via ten (10) separate USB flash drives;
3. ten (10) additional USB flash drives or sets of USB flash drives (e.g., separate flash drives may be supplied, for example, for financial materials and for engineering or traffic materials) must be submitted containing interactive electronic versions (e.g., in Microsoft Excel or other file formats commonly used for the production of such material) of each revenue, construction, employment, financial, traffic, infrastructure or similar model, forecast, projection or table presented in an Application so as to enable the Board and the Board's representatives to analyze and tie the calculations and formulas used to produce such model, projection, forecast or table. To the extent supporting tabs, worksheets or data are required to make the supplied model, projection, forecast or table functional in the supplied file format, those supporting tabs, worksheets and data must also be included. A table of contents should accompany each such additional USB flash drive clearly describing the contents of each file (or set of files) included thereon, the respective file format, and the software application used to produce such file or used to be used to open, display and interact with such file;
4. in addition to the images, renderings and schematics describing the architectural program, site, layout and other physical features of the Gaming Facility that are included in the hard and PDF copies of an Application, submit separately two (2) sets of high-quality files of each such image, rendering or schematic suitable for large-format printing and audio-visual display and two (2) sets of medium-quality files of each such image, rendering or schematic suitable for printing and web publication. Provide each set (i.e. four (4) sets total – two (2) high-quality sets and two (2) low-quality sets) on one or more USB flash drives. A table of contents should accompany each such additional USB flash drive clearly describing the contents of each file (or set of files) included thereon and the respective file format;
5. if your Application includes information that is exempt from disclosure under the FOIL (see "PUBLICLY AVAILABLE APPLICATION MATERIALS" below), then also submit:
  - a. a letter enumerating the specific grounds in the FOIL that support treatment of the material as exempt from disclosure and providing the name, address, and telephone number of the person authorized by the Applicant to respond to any inquiries by the Board concerning the confidential status of the materials;
  - b. two (2) identical hard copies of the REDACTED Application, each clearly marked "REDACTED Application"; and
  - c. two (2) electronic copies of the REDACTED Application be submitted via two (2) separate USB flash drives, each clearly labeled "REDACTED Application";
6. an originally executed copy of the Affirmation (Attachment 1 hereof) executed by the Applicant;
7. an originally executed Addendum Acknowledgement Form (in the form of Attachment 2 to this RFA) executed by the Applicant for each addendum issued to this RFA;



8. an original executed copy of the Waiver (Attachment 3 to this RFA) executed in counterparts by each of the Applicant, the Manager and any direct or indirect owner of the Applicant and the Manager (excluding any equity holders of any publicly-held company);\*
9. two (2) hard copies of each Background Information Form; and
10. two (2) electronic copies of each Background Information Form in PDF format submitted via two (2) separate USB flash drives.

## C. APPLICATION FORMAT

Each hard copy version of the Application must be submitted in three-ring binders. Each set of hard copies shall have a minimum of three sub-binders:

1. Primary Binder: Information required to be submitted under the headings, “EXECUTIVE SUMMARY” and “APPLICANT INFORMATION”, and a copy of the executed version of each form attached as an Attachment to this RFA.
2. Sub-Binder 1: Information required to be submitted under the heading “ECONOMIC ACTIVITY AND BUSINESS DEVELOPMENT” and including information under the subheadings:
  - a. “FINANCE AND CAPITAL STRUCTURE”
  - b. “ECONOMICS”
  - c. “LAND, CONSTRUCTION AND DESIGN OF PHYSICAL PLANT”
  - d. “INTERNAL CONTROLS AND SECURITY SYSTEMS”
3. Sub-Binder 2: Information required to be submitted under the heading “LOCAL IMPACT AND SITING FACTORS” and including information under the subheadings:
  - a. “ASSESSMENT OF LOCAL SUPPORT AND MITIGATION OF LOCAL IMPACT”
  - b. “REGIONAL TOURISM AND ATTRACTIONS”
4. Sub-Binder 3: Information required to be submitted under the heading “WORKFORCE ENHANCEMENT FACTORS” and including information under the subheadings:
  - a. “MEASURES TO ADDRESS PROBLEM GAMBLING”
  - b. “WORKFORCE DEVELOPMENT”
  - c. “SUSTAINABILITY AND RESOURCE MANAGEMENT”

### NOTE:

If information to be included in a particular binder cannot fit in a single binder, that section may be split between multiple binders, but more than one section may not appear in a single binder.

---

\* The Board may require that other parties also execute and deliver a Waiver in the form of Attachment 3.

Each binder must be clearly labeled with the Applicant's name, the section name, and the words "Binder # of #" if one section comprises multiple binders.

Each exhibit included within each binder shall be tabbed and the tab must clearly identify the corresponding exhibit number.

**All Applications must be submitted by private delivery service, in person delivery, or by U.S. Postal Service to:**

**Gail P. Thorpe  
Supervisor, Contract Administration  
New York State Gaming Commission  
One Broadway Center  
Schenectady, NY 12301-7500**

**Applications may NOT be submitted by email or other electronic means.**

## **D. PUBLIC PRESENTATIONS**

After the June 30, 2014 submission deadline, but no earlier than July 21, 2014, each Applicant will be required to make an informational introductory presentation of its Application to the Board. The presentation is intended to afford the Applicant an opportunity to provide the Board with an overview of the contents of the Application, explain any particularly complex information, and highlight any specific areas it desires. The Board will have the opportunity to ask Applicants questions following their presentations. Timing and scheduling of introductory presentations will depend upon the Applications received. The order of the presentations will be drawn by lot in a public manner at the direction of the Board. Additionally, prior to the presentations, the Board will post to the Commission's website the rules and procedures relating to the conduct of such presentations.

## **E. PUBLIC HEARING**

The Board expects to convene public hearings in each Region to provide the Board with the opportunity to address questions and concerns relative to the proposal of an Applicant to build a Gaming Facility, including the scope and quality of the gaming area and amenities, the integration of the Gaming Facility into the Host Municipality and nearby municipalities and the extent of required mitigation plans and receive input from members of the public from an impacted community.

The Applicants for each Region and their agents and representatives are required to attend the public hearing(s) for that Region, may make a presentation and respond to questions of the Board or public comments as directed by the Board or the Board's designee. Each Applicant must have at least one individual available who, based on actual knowledge, is prepared to respond on behalf of the Applicant to such questions or public comments that can reasonably be anticipated in regard to the contents of its Application, including the scope and quality of the proposed gaming area and amenities, the integration of the proposed Gaming Facility into the Host Municipality and nearby municipalities and the extent of required mitigation plans.

Representatives of the Host Municipalities, representatives of nearby municipalities and representatives of any impacted live entertainment venue may attend the public hearing, may make presentations and may respond to questions as directed by the Board or the Board's designee.

Others may attend the public hearing and may make a presentation at the discretion of the Board. Before the hearing, the Board will prescribe the manner in which it will receive comments from members of the public, and may take the opportunity during the hearing to read into the record any letters of support, opposition or concern from members of the public in the vicinity of the proposed Gaming Facility.

## **F. PUBLIC DISCLOSURE OF APPLICATION MATERIALS**

The Board intends to treat Applications as public records and will make them available to the public, with applicable exemptions pursuant to the FOIL.

The FOIL provides for certain exemptions from public disclosure including, among others, an exemption from disclosure for trade secrets or information the disclosure of which would cause substantial injury to the competitive position of a commercial enterprise. This exemption applies both during and after the evaluation process. The FOIL also provides an exemption for records that are "specifically exempted from disclosure by state or federal statute." PML Section 1313.2, provides an exemption from disclosure under the FOIL for "trade secrets, competitively sensitive or other proprietary information provided in the course of an application for a gaming license, the disclosure of which would place the applicant at a competitive disadvantage." See also, Section 87.2.(d) of the New York Public Officers Law

Any Application submitted that contains confidential information must be conspicuously marked on the outside as containing confidential information, and each page upon which confidential information appears must be conspicuously marked as containing confidential information. Identification of the entire Application as confidential may be deemed non-responsive and may disqualify the Applicant. If an Applicant designates any portion of an Application as confidential, the Applicant must submit copies of its Application from which the confidential information has been excised or redacted. These copies of an Application are referred to as the "REDACTED" copies as described herein under "APPLICATION INSTRUCTIONS – OFFICIAL SUBMISSION". The confidential material must be redacted or excised in such a way as to allow the public to determine the general nature of the material removed and to retain as much of the proposal as possible.

All determinations concerning whether Applications and/or related documents submitted in response to this RFA are subject to disclosure under the FOIL will be made by the Board or the Commission, as applicable, in their sole discretion.

## **G. GAMING REGULATIONS**

For the benefit of Applicants, the Commission anticipates releasing, prior to the submission deadline for Applications in response to this RFA, an outline of the approach the Commission plans to follow in establishing regulations governing commercial gaming in the State.

## **H. INCURRED EXPENSES AND ECONOMY OF PREPARATION**

Neither the Commission, the Board nor the State is responsible for any costs incurred by an Applicant in preparing and submitting an Application, responding to requests for clarification, in making an oral presentation or attending or participating in any hearing, in providing a demonstration, completing the Commission's background investigation, or in performing any other activities related to this RFA. Applications should be prepared simply and economically, providing a straightforward and concise description of how the Applicant proposes to meet the requirements of this RFA.

## **V. EXECUTIVE SUMMARY**

Each Applicant shall submit as Exhibit V of its Application, an executive summary, not to exceed four (4) pages in length, highlighting the principal terms of its Application.

## VI. APPLICANT INFORMATION

### A. NAME OF APPLICANT

Submit as Exhibit VI. A. the Applicant's and, if applicable, the Manager's, full name as it appears on its certificate of incorporation, charter, by-laws or other official document. Also include any d.b.a. or trade name.

### B. CONTACT PERSON

Submit as Exhibit VI. B. the name, title, email address and telephone number of the individual to be contacted in reference to this Application.

### C. LOCATION OF THE PRINCIPAL PLACE OF BUSINESS OF THE APPLICANT

Submit as Exhibit VI. C. the street address, city, state, zip code and telephone number for the Applicant's and, if applicable, the Manager's principal place of business. Also include the URL for any website maintained by or for the Applicant and, if applicable, the Manager.

### D. TYPE OF BUSINESS FORMATION

Submit as Exhibit VI. D. the type of business entity under which the Applicant and, if applicable, the Manager, is formed (e.g., corporation, limited liability company, partnership, etc.), the state (or other jurisdiction) of formation and the Federal Tax Identification Number. Also, attach evidence of existence or formation as an entity (e.g., a certificate of good standing) as of a date not earlier than ten (10) days prior to the submission of the Application.

### E. TABLE OF OWNERSHIP

Submit as Exhibit VI. E. a full and complete ownership chart for the Applicant and, if applicable, the Manager and their respective Affiliates including percentage ownership interests in the Applicant and the Manager by their respective direct and indirect owners illustrating the ultimate owners and real parties in interest. For a publicly held company, disclosure of owners may be limited to owners owning five (5) percent or more of the publicly held company.

### F. ORGANIZATIONAL CHART

Submit as Exhibit VI. F. an organizational chart of the Applicant and, if applicable, the Manager illustrating the organizational structure likely to be used by the Applicant or the Manager in the event that the Applicant is awarded a License. The organizational chart should include all Casino Key Employees. Further, specify which executives are anticipated to be on-site in New York and which will be based in other jurisdictions but assisting in oversight of New York operations.

## **G. NAMES, ADDRESSES AND EXPERIENCE OF DIRECTORS AND OFFICERS**

Submit as Exhibit VI. G. the name, address, and title of each director, manager or general partner of the Applicant and, if applicable, the Manager, and each officer and Casino Key Employee of the Applicant or the Manager. Also, provide resumes of all principals and known individuals who will perform executive management duties or oversight of the Applicant or the Manager.

## **H. NAMES, ADDRESSES AND OWNERSHIP AND OTHER INTERESTS**

Submit as Exhibit VI. H. the name and business address of each person or entity that has a direct or indirect ownership or other proprietary interest (financial, voting or otherwise) in the Applicant and, if applicable, the Manager. Also, include a description of all such interests. For a publicly held company, disclosure of owners may be limited to owners owning five (5) percent or more of the publicly held company.

## **I. NAMES AND ADDRESSES OF PROMOTERS, SPONSORS AND OTHERS**

Submit as Exhibit VI. I. the name and business address of all promoters, sponsors, personnel, consultants, sales agents or other entities involved in aiding or assisting the Applicant's efforts to obtain a License pursuant to this RFA.

## **J. REGION AND HOST MUNICIPALITIES**

Submit as Exhibit VI. J. the Region and the Host Municipalities in which the Gaming Facility is proposed to be located. Also provide the name, business address, email address, telephone number and fax number of the Applicant's primary contact at the Host Municipalities.

## **K. CONFLICTS OF INTEREST**

The Board desires to ensure that there is no real or perceived conflict of interest at any time during the RFA process. Submit as Exhibit VI. K. a description of any relationship or affiliation of the Applicant, the Manager or any of their respective Affiliates that currently exists or existed in the past five (5) years with any member, employee, consultant or agent of the Board or the Commission that is a conflict of interest or may be perceived as a conflict of interest during the RFA process. Further, if any such conflict should arise during the term of the RFA process, the Applicant shall notify the Board, in writing, of such conflict.

The Board shall make the final determination as to whether any activity constitutes a conflict of interest pursuant to this provision. The Board's decision shall be final and without recourse; however, the Board will not make any such decision without providing the Applicant or the Manager, as applicable, with an opportunity to present comments.

If an Applicant does not identify any direct or indirect conflict of interest, or perceived conflict of interest, the Applicant shall state that no conflict or perceived conflict of interest exists with respect to its proposal. If the Applicant identifies a conflict of interest or perceived conflict of interest, the Applicant shall disclose the conflict and the steps the Applicant will take to resolve such conflict.

## L. PUBLIC OFFICIALS

Submit as Exhibit VI. L. a list of names, titles, addresses and telephone numbers of any Public Officials or officers or employees of any governmental entity, and Immediate Family Member(s) of said Public Officials, officers or employees, who, directly or indirectly, own any financial interest in, have any beneficial interest in, are the creditors of, hold any debt instrument issued by, or hold or have an interest, direct or indirect, in any contractual or service relationship with the Applicant, the Manager or their Affiliates. Also submit a statement listing all persons and entities not listed in the immediately preceding sentence who or that have any arrangement, written or oral, to receive any compensation from anyone in connection with the Application, the RFA process or obtaining of a License from the State, describing the nature of the arrangement, the service to be provided and the amount of such compensation, whether actual or contingent.

## M. APPLICATION FEE

All Applicants are required to pay an Application fee of \$1 million to the Commission to defray the costs associated with the processing of the Application, the investigation of the Applicant and related matters. If the costs of processing, investigation and related matters exceed the initial application fee, the Applicant shall pay an additional amount to the Commission within thirty (30) days after notification of insufficient fees or the Application may be rejected.

**Payment of the Application fee is required in order to attend the mandatory applicant conference described in the “OVERVIEW” section of this RFA.** The Application fee must be paid by electronic funds transfer to an account designated by the Commission and must be received by April 23, 2014. If an Applicant pays the \$1 million fee and does not complete and submit an Application on or before June 30, 2014, the Commission will return the fee *less* any reasonable costs the Commission will have already incurred related to processing Applications, including overhead and administrative expenses.

## N. CONTRACTS WITH STATE OF NEW YORK

Submit as Exhibit VI. N. a list of any current or previous contracts that the Applicant has had with, and any current or previous licenses that the Applicant has been issued by or under, any department or agency of the State. Include the contract or license name and number and a concise explanation of the nature of the contract or license.

## O. CASINO MANAGER

If a Manager that is different from the Applicant will manage the Gaming Facility, submit as Exhibit VI. O. a description of the relationship between the Manager and the Applicant including, without limitation, a summary of the terms of any and all agreements, contracts or understandings between the Manager and the Applicant. Attach copies of any such written agreements, contracts or understandings.



## **P. ORGANIZATIONAL DOCUMENTS**

Submit as Exhibits VI. P.1. through VI. P.13., as applicable, copies of the following documents that apply to the Applicant, the Applicant's owners, any Manager or any of the Manager's owners:

1. certified copy of its certificate of incorporation, articles of incorporation or corporate charter;
2. bylaws as amended through the date of the Application;
3. certified copy of its certificate of formation or articles of organization of a limited liability company;
4. limited liability company agreement or operating agreement as amended through the date of the Application;
5. certified copy of its certificate of partnership;
6. partnership agreement as amended through the date of the Application;
7. certified copy of its certificate of limited partnership;
8. limited partnership agreement as amended through the date of the Application;
9. other legal instrument of organization;
10. joint venture agreement;
11. trust agreement or instrument, each as amended through the date of the Application;
12. voting trust or similar agreement; and
13. stockholder, member or similar agreement.

## VII. EVALUATION CRITERIA AND SELECTION PROCESS

In recommending an Application for License, the Board is required to follow the provisions of the PML, which require the evaluation of the Applications using the factors specified in the Act. The following Sections require the provision of information that will permit the Board to evaluate Applications appropriately.

The Board may also engage the assistance of various consultants including, without limitation, engineers, financial advisors, market analysts, or other advisors to assist with its review.

The decision by the Board to award a recommendation for License shall be weighted by:

### A. ECONOMIC ACTIVITY AND BUSINESS DEVELOPMENT FACTORS

#### (Statutory Value: 70 percent)

The decision by the Board to select an Applicant shall be weighted by seventy (70) percent based on economic activity and business development factors including the following:

1. realizing the maximum capital investment exclusive of land acquisition and infrastructure improvements;
2. maximizing revenues received by the State and localities;
3. providing the highest number of quality jobs in the Gaming Facility;
4. building a Gaming Facility of the highest caliber with a variety of quality amenities to be included as part of the Gaming Facility;
5. offering the highest and best value to patrons to create a secure and robust gaming market in the Region in which the Gaming Facility is located and the State;
6. providing a market analysis detailing the benefits of the site location of the gaming facility and the estimated recapture rate of gaming-related spending by residents travelling to an out-of-state Gaming Facility;
7. offering the fastest time to completion of the full Gaming Facility;
8. demonstrating the ability to fully finance the Gaming Facility; and
9. demonstrating experience in the development and operation of a quality Gaming Facility.

## **B. LOCAL IMPACT AND SITING FACTORS**

### **(Statutory Value: 20 percent)**

The decision by the Board to select an Applicant shall be weighted by twenty (20) percent based on local impact and siting factors including the following:

1. mitigating potential impacts on host and nearby municipalities that might result from the development or operation of the Gaming Facility;
2. gaining public support in the host and nearby municipalities that may be demonstrated through the passage of local laws or public comment received by the Board or the Applicant;
3. operating in partnership with and promoting local hotels, restaurants and retail facilities so that patrons experience the full diversified regional tourism industry; and
4. establishing a fair and reasonable partnership with live entertainment venues that may be impacted by a Gaming Facility under which the Gaming Facility actively supports the mission and the operation of the impacted entertainment venues.

## **C. WORKFORCE ENHANCEMENT FACTORS**

### **(Statutory Value: 10 percent)**

The decision by the Board to select an Applicant shall be weighted by ten (10) percent based on workforce enhancement factors including the following:

1. implementing a workforce development plan that utilizes the existing labor force, including the estimated number of construction jobs a proposed Gaming Facility will generate, the development of workforce training programs that serve the unemployed and methods for accessing;
2. employment at the Gaming Facility;
3. taking additional measures to address problem gambling including, without limitation, training of gaming employees to identify patrons exhibiting problems with gambling;
4. utilizing sustainable development principles including, without limitation:
  - a. having new and renovation construction certified under the appropriate certification category in the Leadership in Energy and Environmental Design Green Building Rating System created by the United States Green Building Council;
  - b. efforts to mitigate vehicle trips;
  - c. efforts to conserve water and manage storm water;

- d. demonstrating that electrical and HVAC equipment and appliances will be Energy Star labeled where available;
  - e. procuring or generating on-site ten (10) percent of its annual electricity consumption from renewable sources; and
  - f. developing an ongoing plan to submeter and monitor all major sources of energy consumption and undertake regular efforts to maintain and improve energy efficiency of buildings in their systems;
5. establishing, funding and maintaining human resource hiring and training practices that promote the development of a skilled and diverse workforce and access to promotion opportunities through a workforce training program that:
- a. establishes transparent career paths with measurable criteria within the Gaming Facility that lead to increased responsibility and higher pay grades that are designed to allow employees to pursue career advancement and promotion;
  - b. provides employee access to additional resources, such as tuition reimbursement or stipend policies, to enable employees to acquire the education or job training needed to advance career paths based on increased responsibility and pay grades; and
  - c. establishes an on-site child day care program;
6. purchasing, whenever possible, domestically manufactured slot machines for installation in the Gaming Facility;
7. implementing a workforce development plan that:
- a. incorporates an affirmative action program of equal opportunity by which the Applicant guarantees to provide equal employment opportunities to all employees qualified for licensure in all employment categories, including persons with disabilities;
  - b. utilizes the existing labor force in the state;
  - c. estimates the number of construction jobs a Gaming Facility will generate and provides for equal employment opportunities and that includes specific goals for the utilization of minorities, women and veterans on those construction jobs;
  - d. identifies workforce training programs offered by the Gaming Facility; and
  - e. identifies the methods for accessing employment at the Gaming Facility; and
8. demonstrating that the Applicant has an agreement with organized labor, including hospitality services, and has the support of organized labor for its Application, which specifies:

- a. the number of employees to be employed at the Gaming Facility, including detailed information on the pay rate and benefits for employees and contractors in the Gaming Facility and all infrastructure improvements related to the project; and
- b. detailed plans for assuring labor harmony during all phases of the construction, reconstruction, renovation, development and operation of the Gaming Facility.

## VIII. ECONOMIC ACTIVITY AND BUSINESS DEVELOPMENT

### (Statutory Value: 70 percent)

#### A. FINANCE AND CAPITAL STRUCTURE

##### 1. CAPITAL INVESTMENT

- a. **Minimum Investment.** Within ten (10) business days after the Applicants' conference, the Board will promulgate the Minimum Capital Investment required.
- b. **Calculating Minimum Capital Investment.** The Board has determined that for purposes of calculating the "Minimum Capital Investment," the Applicant shall include only those costs related to:
  1. actual construction of the Gaming Facility including any hotel, gaming area, restaurants, convention space, back-of-house and other amenities;
  2. preparation of the site including demolition, excavation, clearing, grading, earthwork and abatement;
  3. remediation of environmental conditions or hazardous materials;
  4. improvement of the existing or construction of new infrastructure inside the property boundaries of the site of the Gaming Facility including those related to drainage, utility support, roadways, parking, interchanges, fill and soil or groundwater or surface water contamination issues, sewer, storm water, landscaping and public transportation;
  5. pre-opening purchase of furniture, fixtures, equipment, gaming equipment, information technology equipment and personal property to be used within the Gaming Facility including those within hotels, restaurants, retail and other components associated with the Gaming Facility;
  6. design of the Gaming Facility including building design, interior design and exterior site design; and
  7. professional and management fees including for engineers, architects, developers, contractors, or operators to the extent that they represent indirect and overhead costs related to the development of the Gaming Facility and do not represent profits or payout as part of partnership agreements;

- c. **Exclusions from Minimum Capital Investment Calculation.** The Board has determined that the “Minimum Capital Investment” shall not include those costs related to:
1. the purchase or lease or optioning of land where the Gaming Facility will be located including costs relative to registering, appraising, transferring title, or obtaining title insurance for the land;
  2. carried interest costs and other associated financing costs;
  3. mitigating impacts on host and nearby municipalities whether directly attributable to a specific impact or not;
  4. designing, improving or constructing the infrastructure outside the property boundaries of the site of the Gaming Facility including those related to drainage, utility support, roadways, interchanges, fill and soil or groundwater or surface water contamination issues, sewer, storm water, landscaping, and public transportation whether or not such costs are the result of any agreement with a Host Municipality or nearby municipality;
  5. legal fees;
  6. promotional, communications and marketing costs prior to and attributable to the efforts to obtain support for the Gaming Facility project including costs associated of obtaining local support for the Gaming Facility;
  7. payments to the Board or the Commission including, without limitation, the application fee, investigation fees and other fees and other similar fees paid to municipalities;
  8. marketing, advertising and promotions; and upfront costs designed to implement workforce development plans;
  9. consulting and due diligence necessary to fund studies to devise engineering solutions in accordance with the Act including traffic studies, environmental studies and other associated mitigation studies;
  10. applications for Federal, state and municipal permits;
  11. the safety, training, quality assurance, or testing incurred during the construction of the Gaming Facility; and
  12. the pre-opening bankroll.

## 2. APPLICANT MINIMUM CAPITAL INVESTMENT

- a. Submit as Exhibit VIII. A.2.a. a calculation of Applicant’s Minimum Capital Investment for its Gaming Facility (which capital investment shall not be less than the applicable

- Minimum Capital Investment for the particular Region in which the Gaming Facility will be located). Include with such calculation a detailed description of the costs included in such calculation. Applicants may propose an aggregate capital investment in excess of the Minimum Capital Investment.
- b. For purposes of providing the information required in Exhibit VIII. A.2.a. the Applicant shall not include costs incurred prior to the Effective Date of the Act. Rather, the Applicant shall submit as Exhibit VIII. A.2.b. (i) a description of any capital investment made by the Applicant prior to the Effective Date including the date, type and dollar amount of any such investment and the reason for making the investment; (ii) the current fair market value of capital assets obtained from such prior capital investment; (iii) the amount of VLT Capital Award funds or other external reimbursement of such prior capital investment costs; and (iv) state whether the Applicant believes such capital investment(s) should be included in calculating the Applicant's Minimum Capital Investment and if yes, the reasons why such amounts should be included. Pursuant to PML Section 1315, the Board may, in its sole discretion, determine what portion, if any, of such capital investments may be included toward computing the Applicant's Minimum Capital Investment.

### **3. MARKET/REVENUE STUDY**

Submit as Exhibit VIII. A.3. a study completed by an independent expert assessing the size of the potential gaming market for the proposed Gaming Facility. Include annual projections of gaming patronage (e.g. by gaming visitor count) and gaming revenues (including itemization of slot, table and gross revenues) annually for a period of at least the first ten (10) years after opening for gaming on a high-, average- and low-case basis. The high-, average- and low-case bases should be the same as used for tax revenue analysis provided by the Applicant pursuant to Item VIII. B.4 hereof.

Include a description of all assumptions that are material to the expert's projections. Substantiate the bases and reasonableness of all such assumptions, for example, by comparison to comparable gaming facilities in comparable gaming markets. The study should explain the model or methodology used to derive the projections, identify the sources and robustness of input data, report the results of projections and include a comparison of those results to actual observed visitation and revenue performance against the most comparable gaming facilities in other jurisdictions for which data are available.

### **4. PRO-FORMA FINANCIAL INFORMATION**

Submit as Exhibit VIII. A.4. for the proposed Gaming Facility, a detailed financial forecast in the form of a pro-forma (i) statement of material revenue lines, material expense categories, EBITDA and net income, (ii) balance sheet and calculation of debt-to-equity ratio, and (iii) statement of cash flows, each, annually for a period of at least the first ten (10) years after opening for gaming on a high-, average- and low-case basis. The high-, average- and low-case pro-forma forecasted financial information should be presented for the high-, average- and low-case revenue and gaming patronage projections for such years that are reported in the independent expert's gaming market study provided pursuant to Item VIII. A.3. of this RFA.



Detail all assumptions relevant to the pro-forma forecasted financial information and relevant projected operating statistics, including but not limited to: (i) operating margins; (ii) liquidity; (iii) margins; (iv) growth; (v) revenue; (vi) visitation; (vii) win per day; (viii) hold percentages; (ix) number of slot and table positions; and (x) customer database growth. Substantiate the bases and reasonableness of all such assumptions, for example, by comparison to the Applicant's other gaming facilities currently in operation or by comparison to the most comparable gaming facilities for which data are available.

## 5. BUSINESS PLAN

Submit as Exhibit VIII. A.5. a qualitative five (5) year business plan for the proposed Gaming Facility describing, at least, the components and projected results of the material revenue lines and expense categories of the proposed Gaming Facility, the Applicant's sources and availability of financing, the principal business and financing risks of the proposed Gaming Facility and plans to mitigate those risks.

## 6. CAPITAL AND FINANCING STRUCTURE

- a. Submit as Exhibit VIII. A.6.a. a schedule for each Financing Source that is an entity, describing such entity's current capital structure, including secured debt, unsecured debt, and equity. Indicate maturity dates, interest rates, preferred dividends or distributions and key covenants. For each Financing Source that is a trust or individual, provide evidence of financial wherewithal to participate in the proposed financing. Describe and quantify any other material financial commitments, obligations and guarantees that would materially impact such wherewithal.
- b. Submit as Exhibit VIII. A.6.b. a detailed description of how the project will be financed. Provide a statement of financing sources and uses for the Application fee, Application and suitability investigation expenses, license fee, capital investment deposit, and construction of the proposed Gaming Facility based on the proposed construction budget and timeline provided pursuant to Items VIII.C.19. and VIII.C.20. of this RFA, including reasonable and customary contingencies, and the pro-forma forecasted financial information provided pursuant to Item VIII.A.4. of this RFA. Provide a statement of financing sources and uses, annually, for at least the first three (3) years after beginning gaming operations using each of the high-, average- and low-case scenarios included in the pro-forma forecasted financial information provided pursuant to Item VIII.A.4. of this RFA. Expressly identify the funding source to cover any forecasted operating losses.
- c. Submit as Exhibit VIII. A.6.c. a description of the financing plans, arrangements and agreements for the Application fee, Application and suitability investigation expenses, license fee, capital investment deposit, construction and first three (3) years of operation of the proposed Gaming Facility. For debt financing, describe the material terms, conditions and covenants of any debt commitment letter or debt financing facility agreement that the Applicant has entered into or, if not providing such letters and/or agreements, the anticipated material terms, conditions and covenants of the anticipated debt financing arrangements. Provide a copy of each debt commitment letter and debt facility agreement. For equity other than common equity, describe the material terms and economic rights of each class and series of equity. Provide a copy of each legal

- document defining such terms and economic rights. Provide a copy of any term sheets, offering documents or similar documents describing the material terms of any current or contemplated public or private offering of equity the proceeds of which may be used to finance the construction and first three (3) years of operation of the proposed Gaming Facility. Provide copies of any highly confident or other similar letters or representations from financial advisors describing the likely availability of debt and equity financing for the application fee, Application and suitability investigation expenses, license fee, capital investment deposit, construction and first three (3) years of operation of the proposed Gaming Facility.
- d. Submit as Exhibit VIII. A.6.d. an analysis of how the financing plans for the Application fee, Application and suitability investigation expenses, license fee, capital investment deposit, construction and first three (3) years of operation of the proposed Gaming Facility will affect each Financing Source's compliance with the financial covenants under its current financing arrangements.
  - e. Submit as Exhibit VIII. A.6.e. a schedule of the Financing Sources' anticipated capital structure after construction and first three (3) years of operation of the proposed Gaming Facility, including secured debt, unsecured debt, and equity. Provide an analysis supporting the Financing Source's ability to service their contemplated post-opening capital structure and material financial commitments, obligations and guarantees.

## **7. FINANCIAL STATEMENTS AND AUDIT REPORT**

- a. Submit as Exhibit VIII. A.7.a. for the Applicant and each Financing Source, (i) audited annual financial statements prepared by an independent registered public accounting firm in accordance with U.S. Generally Accepted Accounting Principles ("GAAP") for each of the last five (5) fiscal years; and (ii) for any fiscal quarter(s) of the current fiscal year that have ended before the date Applications are due, unaudited quarterly financial statements. If, for any entity, audited annual financial statements are unavailable for any given period, provide unaudited annual financial statements prepared in accordance with GAAP. For any individual, provide annual financial statements along with an attestation by such individual that such statements are true and accurate.
- b. Submit as Exhibit VIII. A.7.b. for the Applicant, an independent audit report of all financial activities and interests including, but not limited to, the disclosure of all contributions, donations, loans or any other financial transactions to or from a gaming entity or operator in the past five (5) years.

## **8. DOCUMENTATION OF FINANCIAL SUITABILITY AND RESPONSIBILITY**

- a. Submit as Exhibit VIII. A.8.a. any bank references, business and personal income and disbursement schedules, tax returns and other reports filed with government agencies and business and personal accounting check records and ledgers pursuant to PML Section 1320.1.(e).

- b. Submit as Exhibit VIII. A.8.b. at least three (3) financial references from banks or other financial institutions attesting to each Financing Source's creditworthiness.
- c. Submit as Exhibit VIII. A.8.c. copies of securities analysts' and credit rating agencies' reports for the past three (3) years, if any, covering any Financing Source.

## **9. U.S. SECURITIES AND EXCHANGE COMMISSION FILINGS; NOTICES AND REPORTS TO FINANCING SOURCES AND EQUITY HOLDERS**

Submit as Exhibit VIII. A.9. copies of all U.S. Securities and Exchange Commission ("SEC") filings, if any, for the Financing Sources, for the three (3) fiscal years ended before the date Applications are due and any interim period between the end of the most recent fiscal year and the date Applications are due, including any SEC filings made by the Financing Sources on a voluntary basis. To the extent not duplicative of the preceding sentence, provide copies of all notices and reports delivered by the Financing Sources to financing sources and agents, equity holders or others for the three (3) fiscal years ended before the date Applications are due and for any interim period between the end of the most recent fiscal year and the date Applications are due that describe the Financing Sources' general business, business risks, results of operation and financial condition, material agreements, employment arrangements and other similar matters that are required to be included in annual, quarterly and periodic reports filed with the SEC by public companies. Omit from such SEC filings and notices and reports delivered to financing sources and agents, equity holders and others the financial statements for any period covered by the financial statements provided pursuant to Item VIII.A.7. of this RFA, but indicate such omission by inserting a page in such SEC filings where the omission occurs that briefly describes the financial statements so omitted. In lieu of physical submissions, an Applicant may provide links to all responsive materials.

## **10. LEGAL ACTIONS**

Submit as Exhibit VIII. A.10. the following information relating to legal actions of any Applicant Party:

- a. A statement as to whether there are any pending legal actions, whether civil, criminal or administrative in nature, to which the Applicant Party is a party and a brief description of any such actions;
- b. A brief description of any settled or closed legal actions, whether civil, criminal or administrative in nature, against the Applicant Party over the past ten (10) years;
- c. A description of any judgments against the Applicant Party within the past ten (10) years, including the case name, number, court, and what the final ruling or determination was from the court, administrative body or other tribunal;
- d. In instances where litigation is ongoing and the Applicant Party has been directed not to disclose information by the court, provide the name of the judge, location of the court, and case name and number;

- e. A statement whether the Applicant Party was indicted, accused or convicted of a crime or was a subject of a grand jury or criminal investigation during the past ten (10) years; and
- f. A statement whether the Applicant Party was the subject of any order, judgment or decree of any court, administrative body or other tribunal of competent jurisdiction permanently or temporarily enjoining it from or otherwise limiting its participation in any type of business, practice or activity during the past ten (10) years.

## **11. BANKRUPTCY OR OTHER INSOLVENCY MATTERS**

Submit as Exhibit VIII. A.11. a description of any bankruptcies (voluntary or involuntary), assignments for the benefit of creditors, appointments of a receiver or custodian or similar insolvency proceedings made, commenced or pending during the past ten (10) years by or involving any Applicant Party. Provide the name of the parties, the case number, the name of the court, and a description of the matter and its status.

## **12. BREACH OF CONTRACT**

Submit as Exhibit VIII. A.12. a description of any contract, loan agreement or commitment that any Applicant Party has breached or defaulted on during the past ten (10) years and provide information for any lawsuit, administrative proceeding or other proceeding that occurred as a result of the breach or default.

## **13. TAX AUDIT**

Submit as Exhibit VIII. A.13. a description of any delinquencies in the payment of or in dispute over the filings concerning or the payment of any fees or tax required under any Federal, state or municipal law within the past ten (10) years by an Applicant Party.

## **14. LICENSES IN OTHER JURISDICTIONS**

- a. Submit as Exhibit VIII. A.14.a. a description of any gaming-related licenses issued in any jurisdiction to an Applicant Party. Also, state whether an Applicant Party has ever had a gaming-related license denied, suspended, withdrawn or revoked, or if there is a pending proceeding that could lead to any of these conditions. If yes, provide a detailed summary of each denial, suspension, revocation, withdrawal or relevant documents in connection with such pending proceedings.
- b. Submit as Exhibit VIII. A.14.b. a description of any disciplinary action brought against an Applicant Party by any gaming licensing authority during the past five (5) years.

## **15. PROOF OF ADVANCING OBJECTIVES**

In order to be awarded a Gaming Facility license, an Applicant must demonstrate that it has sufficient business ability and experience to create the likelihood of establishing and maintaining a successful Gaming Facility.

- a. Submit as Exhibit VIII. A.15.a. a description of the Applicant's and, if applicable, the Manager's experience, training and expertise in developing, constructing and operating casinos and related facilities (e.g., hotels, restaurants and entertainment facilities). For each such project, include the name and location, the total dollar investment, number of gaming devices, number of hotel rooms, amenities, total gaming revenues for the last three (3) years, total non-gaming revenues for the last three (3) years, number of full-time employees, and approximate size of the site on which the project is located. For any such project no longer owned or operated, include a description of the disposition of the project or termination of its operations
- b. Additionally, submit as Exhibit VIII. A.15.b. a brief description of any destination casino resort or other gaming projects that the Applicant and, if applicable, the Manager, has publicly announced that it is in the process of acquiring, developing or proposing to acquire or develop. For each such project, include the name and location, the estimated total dollar investment, number of gaming devices, number of hotel rooms, amenities, and the timeframe within which Applicant or Manager expects to acquire or develop such project.

## 16. **ADDITIONAL FINANCIAL COMMITMENTS**

Submit as Exhibit VIII. A.16. a description of all financial commitments and guarantees the Applicant or, if applicable, the Manager, or its Affiliates is prepared to provide to the Commission over and above the deposit or bond required by PML Section 1315.1 to ensure that the Gaming Facility is completed, license conditions are fulfilled and sufficient working capital is available to allow continuous operation in manner described in the Applicant's financial forecasts. Include examples of letters of credit, construction completion guaranties, performance bonds, keep-well agreements, MOUs or other agreements or commitments the Applicant, the Manager or their Affiliates commit to provide in connection with the Gaming Facility.

## **B. ECONOMICS**

Four Upstate Gaming Facilities will boost economic development, create thousands of well-paying jobs and provide added revenue to the State. These Gaming Facilities are intended to attract non-New York residents and bring downstate New Yorkers to Upstate, which will enhance the tourism industry and the State's economic infrastructure. The Act contemplates increases in potential State and local tax revenue. It also contemplates maximum economic and other benefits to the Host Municipalities and nearby municipalities, including incremental job creation and a reduction in unemployment rates.

### **1. MARKET ANALYSIS**

One of the principal objectives of the Act is to recapture gaming-related spending by New York residents at out-of-state gaming facilities. Submit as Exhibit VIII. B.1. a market analysis showing the benefits of the site location of the Applicant's Gaming Facility and the estimated recapture

rate of gaming-related spending by New York residents travelling to out-of-state gaming facilities. In addition, such market analysis must describe:

- a. the components of the Applicant's marketing plan that focus on out-of-state visitors and the anticipated gaming and non-gaming gross revenues the Applicant anticipates from out-of-state visitors during each of the first five (5) years of the Gaming Facility's operations on a low-, average- and high-case scenario and clearly explain how this recapture rate was determined;
- b. how the Applicant plans to compete with other nearby gaming facilities in New York and other jurisdictions; and
- c. the Applicant's overall perspective and strategy for broadening the appeal of the Region and the Host Municipality in which its Gaming Facility is located and the State to travelers inside and outside of New York.

## 2. PLAYER DATABASE AND LOYALTY PROGRAM

Submit as Exhibit VIII. B.2. the following:

- a. describe any loyalty, reward or similar frequent player program (a "**Program**") maintained by the Applicant or, if applicable, the Manager for any casino the Applicant or Manager owns, operates or manages;
- b. state whether the Applicant or, if applicable, the Manager maintains a casino customer relationship management system and database (a "**Database**") that tracks the play of its Program members;
- c. indicate whether the Program and Database will be available for the marketing, promotion and advertising of the Gaming Facility and whether they are "exclusive" to the Applicant and/or, if applicable, the Manager;
- d. indicate the number of "active" (those who have played within the past 12 months) and "inactive" (those who have played over 12 months ago) members in the Database;
- e. indicate the number of rated players included in the Database that are located within 50-, 100-, 150- and 200-miles of the proposed Gaming Facility; and
- f. describe how the Database and Program will be used to market, promote and advertise the Gaming Facility.

## 3. STUDIES AND REPORTS

- a. A major goal of the Act is to enhance the financial condition of localities in the State that have suffered from economic hardships. Submit as Exhibit VIII. B.3.a. economic impact studies completed by an independent expert showing the proposed Gaming Facility's overall economic incremental benefit to the Region, the State, and the Host Municipality and nearby municipalities including the manner in which the facility will generate new revenues as opposed to taking revenues from other New York businesses; and

- b. Submit as Exhibit VIII. B.3.b. economic impact studies completed by an independent expert showing the proposed Gaming Facility's positive and negative impacts on the local and regional economy, and on the host and nearby municipalities including impacts on incremental job creation, unemployment rates, cultural institutions and small businesses.

Each of the above studies should include a description of the background conditions in the comparable year (*i.e.*, assuming economic, traffic, etc. continues to develop as to trend without the Applicant's proposed project) and build a scenario with express enumeration of assumptions. Where independent studies depend on visitation or revenues, they should include analysis of the low-, average- and high-cases analogous to the same used for the revenue and tax studies. Studies should explain their methodology, report their results and compare those results to actual observed conditions in similar built projects.

#### **4. PROJECTED TAX REVENUE TO THE STATE**

Submit as Exhibit VIII. B.4. a study completed by an independent expert providing projections for all estimated State, county and local tax revenue (e.g., gaming, sales, income, real estate, hotel, entertainment and other taxes) for a period of at least the first five (5) years of operations on a high -, average- and low-case basis, identifying the source of each element of these tax revenues.

The study should include a description of the background conditions in the comparable year (*i.e.*, assuming economic conditions and demographics continues to develop as to trend without the Applicant's proposed Gaming Facility) and build scenario with express enumeration of assumptions. Include analysis of the low-, average- and high-cases used for the revenue study and financial forecasts. Studies should explain their methodology, report their results and compare those results to actual observed conditions in similar built projects.

#### **5. REGIONAL ECONOMIC PLAN COORDINATION**

Submit as Exhibit VIII. B.5. a statement as to whether the Applicant's proposed Gaming Facility is part of a regional or local economic plan, and, if yes, provide documentation demonstrating the Applicant's inclusion within, and coordination with, regional economic plans.

#### **6. NEW YORK STATE SUBCONTRACTORS AND SUPPLIERS**

Applicants are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the License. Such partnering may be as subcontractors, suppliers or other supporting roles.

Submit as Exhibit VIII. B.6. a description of the Applicant's plans and minimum commitments (expressed in terms of annual biddable spend) for use of New York-based suppliers and materials both in the construction and furniture, fixtures, and equipment furnishing phase of the Applicant's project and in the operational phase of Applicant's project. Provide copies of any contracts, agreements or understandings evidencing such plans or commitments.

## 7. EMPLOYEES

- a. Submit as Exhibit VIII. B.7.a. tables for each low-, average-, and high-revenue cases modeled in the revenue study and financial forecasts reporting for each functional area of operation of the Gaming Facility following construction: (i) the estimated number of total employees by full-time and part-time positions and full-time equivalents; (ii) each job classification and the pay rate and benefits therefor; and (iii) the number of such positions that are anticipated to be filled by residents of the State, residents of the Region and residents of the Host Municipality or nearby municipalities in which the Gaming Facility is to be located. Describe the bases for these projections, for example, by comparison to similar projects.
- b. Submit as Exhibit VIII. B.7.b. a description of how the Applicant proposes to ensure that it provides a high number of quality jobs in the Gaming Facility and the Applicant's commitment to hire a minimum number of employees, both full-time and part-time, at the opening of the Gaming Facility.

## 8. COMPETITIVE ENVIRONMENT

Submit as Exhibit VIII. B.8. a description of the competitive environment in which the Applicant anticipates the proposed Gaming Facility will operate over the ten (10) years after opening and how the Applicant plans to succeed in that environment while limiting the impact on revenues at other New York gaming establishments (e.g., VLT facilities, tribal casinos, race tracks) or other New York businesses.

## 9. MARKETING PLANS

- a. Submit as Exhibit VIII. B.9.a. a detailed description of the target market segments of the Gaming Facility.
- b. Submit as Exhibit VIII. B.9.b. the Applicant's marketing plans for the proposed Gaming Facility with specific reference to pre-opening marketing and opening celebrations. Include the minimum annual dollar amounts, kinds and types of general promotion and advertising campaigns that will likely be undertaken, and the proposed market to be reached; the number of visitors who are projected to stay overnight at the Gaming Facility; and other examples of joint marketing ventures, if any, undertaken by the Applicant in other jurisdictions.
- c. Submit as Exhibit VIII. B.9.c. a description of the strategies to be used by the Applicant to deal with the cyclical/seasonal nature of tourism demand and ensure maximum use of the Gaming Facility project throughout the entire calendar year.

## 10. SUPPLEMENTAL TAX PAYMENT

For a Gaming Facility in Zone Two, PML Section 1351 imposes a tax on Gross Gaming Revenues. The tax imposed is as set forth below:



- a. For a Gaming Facility located in Region Two, forty-five (45) percent of Gross Gaming Revenue from slot machines and ten (10) percent of Gross Gaming Revenue from all other sources.
- b. For a Gaming Facility located in Region One, thirty-nine (39) percent of Gross Gaming Revenue from slot machines and ten (10) percent of Gross Gaming Revenue from all other sources.
- c. For a Gaming Facility located in Region Five, thirty-seven (37) percent of Gross Gaming Revenue from slot machines and ten (10) percent of Gross Gaming Revenue from all other sources.

PML Section 1351, however, allows an Applicant, in its Application, to agree to supplement the tax by providing in its Application to pay a binding supplemental fee, which is in addition to the tax imposed by PML Section 1351.

Submit as Exhibit VIII. B.10. a statement as to whether the Applicant agrees to pay a binding supplemental fee if the Applicant is awarded a License. If yes, describe the amount of the binding supplemental fee. Any agreement to pay a binding supplemental fee will become a condition to the License. If the Applicant does not agree to pay a binding supplemental fee, it should explicitly state such.

## 11. LICENSING FEE

A Licensee must pay a minimum licensing fee, set below, within thirty (30) days after the award of a License. However, nothing shall prohibit an Applicant from agreeing to pay an amount in excess of the fees listed below:

<b>For a Gaming Facility located in:</b>	<b>The minimum licensing fee is:</b>
<b><u>REGION 1</u></b>	
Region 1 in Dutchess or Orange Counties	\$70,000,000
If no License is awarded for a Gaming Facility located in Dutchess or Orange Counties, then for the remaining portion of Region 1 (comprising Columbia, Delaware, Greene, Sullivan and Ulster Counties)	\$50,000,000
If a License is awarded for a Gaming Facility located in Dutchess or Orange Counties, then for the remaining portion of Region 1 (comprising Columbia, Delaware, Greene, Sullivan and Ulster Counties)	\$35,000,000
<b><u>REGION 2</u></b>	\$50,000,000
<b><u>REGION 5</u></b>	
Region 5 in Broome, Chemung, Schuyler, Tioga or Tompkins Counties	\$35,000,000

Region 5 in Wayne or Seneca Counties \$50,000,000

If a License is awarded for a Gaming Facility located in Wayne or Seneca Counties, then for the remaining portion of Region 5 (comprising Broome, Chemung, Schuyler, Tioga and Tompkins Counties) \$20,000,000

If an Applicant agrees to pay a licensing fee in excess of the fee set forth above for its proposed Gaming Facility, the Applicant shall submit as Exhibit VIII. B.11, a statement as to the Applicant's agreement to pay a licensing fee in excess of the amount set forth above and state the amount Applicant agrees to pay. If an Applicant agrees to pay only the licensing fee set forth above for its proposed Gaming Facility, then the Applicant shall so state.

The Board, if requested by an Applicant or Applicants at the mandatory applicant conference, may, in its discretion, thereafter choose to establish an alternative licensing fee required of a Licensee in a Region in the event that the Board selects two Applicants from such Region to proceed to the Commission for consideration of licensure.

## **C. LAND, CONSTRUCTION AND DESIGN OF PHYSICAL PLANT**

### **1. DESCRIPTION OF LAND**

- a. Submit as Exhibit VIII. C.1.a, the address, legal description, maps, book and page numbers from the appropriate registry of deeds for the location of the Applicant's gaming facility.
- b. Submit as Exhibit VIII. C.1.b, the assessed value of each parcel of the land for the proposed gaming facility and of the existing facilities, improvements and infrastructure thereon, if any, as of the time of the Application. Provide a schedule of the real estate taxes paid on such property for the past five (5) years.
- c. Submit as Exhibit VIII. C.1.c, a description of, and aerial and surface photography demonstrating, the salient topographic, geographic, and vegetative characteristics of the land for the proposed gaming facility as well as any significant existing facilities, improvements or infrastructure thereon. Provide schematics/maps of topographical, geographic and vegetative features and facilities, improvements and infrastructure. Describe and provide schematics/maps illustrating (in scale) the relationship to surrounding development and infrastructure.
- d. Submit as Exhibit VIII. C.1.d, a reasonably detailed description, including the dimensions and total acreage, and provide a schematic/map illustrating the boundary of the area of the land constituting the Project Site.
- e. Submit as Exhibit VIII. C.1.e, a description of any geological or structural defect of the Project Site, and include a description of the engineering, design, and construction plans

- to remedy the defect. Indicate whether or not any of the Project Site is proposed to be located in a floodplain and, if so, include a description of the flood history of the site.
- f. Submit as Exhibit VIII. C.1.f. copies of any Phase I and II reports or any other investigations of site, sub-surface, geotechnical or environmental conditions or hazardous materials that have been completed relating to the condition of the Project Site.

## 2. OWNERSHIP OF LAND

- a. Submit as Exhibit VIII. C.2.a. a description of all ownership interests in the land for the past twenty (20) years, including all easements, options, encumbrances, and other interests in the property.

Pursuant to PML Section 1316, the Applicant must own or acquire the land where the Gaming Facility is proposed to be constructed within sixty (60) days after a License has been awarded (an Applicant shall be deemed to own the land if it has entered into a tenancy for a term of years under a lease that extends not less than sixty (60) years beyond ten (10) years for a License).

- b. Submit as Exhibit VIII. C.2.b. copies of any lease, deed, option, or other documentation and provide an explanation as to the status of the land upon which the proposed Gaming Facility will be constructed. If the Applicant does not currently possess an ownership interest in the land, provide an agreement and description of its plan as to how it intends to own or acquire, within sixty (60) days after a License has been awarded, the land where the Gaming Facility is proposed to be constructed. Further, state whether the land that the Applicant purchased or intends to purchase is publicly owned.
- c. Submit as Exhibit VIII. C.2.c. the total amount the Applicant has spent or proposes to spend to acquire or occupy the land for the proposed Gaming Facility. If other than a lump sum, provide a table indicating the amount spent or proposed to be spent in each year. If different from the amount spent, describe Applicant's total investment in the land.

## 3. ZONING

- a. Submit as Exhibit VIII. C.3.a. copies of current local zoning approvals and any rezoning or variances that are required and any land use approvals, a detailed explanation of the status of any request for any of the foregoing with copies of all filings, including a specific schedule of applications for zoning approvals and anticipated approval dates.
- b. Submit as Exhibit VIII. C.3.b. a description of the applicable zoning designation for the Project Site.
- c. Submit as Exhibit VIII. C.3.c. a list of any State and/or local permits or special use permits that the Applicant must obtain for the Project Site, and for such permits describe: (i) the procedure by which the Applicant shall obtain the permits; (ii) what conditions, if any, are likely to be placed on the permits; and (iii) the estimated dates by which the Applicant will obtain the permits.

#### 4. MASTER PLAN AND BUILDING PROGRAM

- a. Submit as Exhibit VIII. C.4.a. a description of, and provide schematics illustrating, the Applicant's master plan for the land and the Project Site showing major activities and functions. Provide a phasing plan for the proposed components of the master plan, if applicable.
- b. Submit as Exhibit VIII. C.4.b. a detailed analysis of the suitability of the proposed Project Site for the proposed Gaming Facility and the ways in which the proposed Gaming Facility supports revitalization, if applicable, and the proposed relationship of the Project Site to adjoining land uses and proposed land uses to ensure compatibility with those adjoining land uses.
- c. Submit as Exhibit VIII. C.4.c. a description of, and provide a table indicating, the building program of the proposed Gaming Facility and master plan by major function/activity/use and square footage. Substantiate the basis for the proposed building program with reference to the projected visitation and gaming revenues in the gaming market study by, for example, comparison to comparable existing facilities and/or to capacity standards customary and reasonable in the gaming and hospitality industries.

#### 5. DESIGNS AND LAYOUT

- a. Submit as Exhibit VIII. C.5.a. designs for the proposed Gaming Facility as follow:
  1. a site plan for the Project Site, including any off-site ancillary property to be used by Applicant in connection with the Gaming Facility.
  2. full build out floor plans by building and floor including front- and back- of-the-house areas with major function/activity/use and approximate square footage thereof denoted. For repetitive activities like a hotel tower, a typical floor plan may be provided where floors are materially similar.
  3. building elevations and perspectives (showing heights, relative scale and relationship to adjacent existing or proposed buildings and areas).
  4. cross-sections sufficient to illustrate the interrelation of principal building program components (e.g. of a hotel room tower, if any, to circulation areas, the hotel lobby and/or gaming floor).
  5. proposed hardscape, landscape and landscape treatments including any off-site improvements required to implement the proposal.
  6. exterior lighting design.
  7. plans for parking structures, if any. For parking structure floors, a typical floor plan may be provided where floors are materially similar.

8. surface parking and Project Site traffic circulation plan, including denotation of pick-up/drop-off areas for hotel and casino patrons, buses and valet parking and of parking areas for employees, patrons, valet-parked vehicles and buses if separate parking areas are to be provided.
- 9 high-quality, color perspective renderings of the exterior of the proposed Gaming Facility showing general massing and context of the overall building program layout from each of the principal exterior approaches.
- 10 at least one high-quality, color perspective rendering of the exterior of the proposed Gaming Facility at night showing the effect of the proposed exterior lighting design.
11. high-quality, color perspective renderings of significant interior spaces providing general orientation and a sense of layout including, for example, the main entrance lobby, gaming floor, convention lobby/ballroom and principal circulation space(s).
- 12 Project Site access plan indicating adjacent properties and buildings, streets, automobile and pedestrian access and site circulation, parking, building footprints, service areas, vegetation, tour bus drop-off facilities and other related infrastructure and access to and egress from all major traffic arterials and freeways identifying those off-site improvements required to implement the proposal.

Please do not provide any physical models.

- b. Submit as Exhibit VIII. C.5.b. a narrative description of the basis of the overall architectural and building plan, any unique or defining exterior and interior themes or characteristics and prevailing style. Describe how various aspects of the proposed plans are designed to interrelate and principal decisions as to the layout of the building program, consolidation or segregation of major functions/activities/uses and configuration of the building program to meet any constraints or opportunities presented by the Project Site. Describe how the programmatic and architectural decisions contribute to an overall superior customer experience or address unique challenges or opportunities of the proposed Gaming Facility and Project Site.
- c. Submit as Exhibit VIII. C.5.c. a description of the types of materials, finishes and furnishings that are proposed and how those complement or interrelate with the chosen style or theme.
- d. Submit as Exhibit VIII. C.5.d. interior and exterior photos or descriptions of analogous resort gaming facility projects in other jurisdictions, either of the Applicant or, if applicable, the Manager, or, if the Applicant or, if applicable, the Manager have few or no such analogous projects, of other operators of destination resort gaming facilities.

## 6. CASINO

- a. Submit as Exhibit VIII. C.6.a., a description of the proposed gaming area (or areas, if more than one is being considered). The description should include, but not be limited to, the following:
  1. Square footage of each sub-area and a total for all gaming space.
  2. Total number of planned table games, with a breakdown by game type and number of positions per table.
  3. Total number of slot machines.
  4. Number and description of other electronic gaming devices or specialty games being considered.
  5. Description of any special purpose rooms that are being considered (e.g., poker rooms, high-limit gaming areas, etc.).
  6. Layout of cage area, including number of windows, and a breakdown of special-use windows, if any.
  7. Description of size, layout, and location of count room.
  8. Layout of any players-club areas, include number of stations, location, etc.
  9. Include a description of any other gaming related amenities that are not included in this section, but are relevant to operation.
  10. If the plan is to build the facility in different phases, the information provided should be broken out to explain the details of each phase, and then the Applicant should show a final description of the finished product. All descriptions should include plans created with a Computer Aided Design type of software.
- b. Submit as Exhibit VIII. C.6.b. a description of any plans for special high limit or VIP programs and amenities, including areas such as club member lounges, dining areas, restrooms, or VIP hotel check-in area(s).
- c. Submit as Exhibit VIII. C.6.c. a description of any particular efforts (e.g., design, operations, and/or marketing) that are planned to differentiate the casino from competitors and to maximize the potential of the market.
- d. Submit as Exhibit VIII. C.6.d. a description of the attributes of the slot accounting system that is planned for Applicant's operation, which allows the Gaming Commission access for the purposes of auditing revenues and game status.
- e. Submit as Exhibit VIII. C.6.e. any details of casino operation that the Applicant believes should be included in the evaluation of its operation.

## 7. HOTEL

- a. Submit as Exhibit VIII. C.7.a. a description of the proposed hotel(s), including the types of rooms, the numbers and proposed square footage of each type of room at full build-out and for each phase, if applicable. Describe the level of service and, if known, the flag or brand of the proposed hotel. If more than one level of service and/or flag or brand is intended, describe each level of service and/or flag or brand and how they will be developed, operated, and marketed separately but may be operationally combined. Provide copies of any arrangements or agreements relating to branding, franchising and hotel loyalty or patronage programs planned in connection to the proposed hotel(s) that are different from the Applicant's or the Manager's branding and customer loyalty or patronage programs.
- b. Submit as Exhibit VIII. C.7.b. copies of any forecast, projections, analysis or studies used to determine the number and type of hotel rooms, level(s) of service and flag(s) or brand(s). Describe any assumptions and the bases thereof. Substantiate their reasonableness.
- c. If any part of the hotel(s) is not to be managed or operated by the Applicant or the Manager, submit as Exhibit VIII. C.7.c. the name of the proposed manager or operator of such part and provide copies of any contracts, agreements or understandings between the Applicant and/or the Manager and such manager or operator.
- d. Submit as Exhibit VIII. C.7.d. a forecast of the number of hotel rooms that will be used for casino and other forms of marketing or reserved for gaming establishment promotions and substantiate the basis of such forecast, for example, by comparison to comparable facilities.
- e. Submit as Exhibit VIII. C.7.e. a description, including square footage, any proposed spa, fitness and pool facilities for the hotel(s). If a pool is proposed, describe plans, if any, to mitigate water and energy (for heating) resource demands.
- f. Submit as Exhibit VIII. C.7.f. a description of any particular efforts – design, operations, and/or marketing – that are planned to differentiate the hotel from competitors and to maximize the potential of the market.
- g. Submit as Exhibit VIII. C.7.g. names of hotels of comparable quality to that of the proposed hotel(s) at the Gaming Facility.
- h. Specify in Exhibit VIII. C.7.h. whether linen supply, housekeeping, and laundry will be outsourced or retained within the Gaming Facility operations.

## 8. MEETING AND CONVENTION FACILITIES

- a. Submit as Exhibit VIII. C.8.a. a description of any proposed meeting and convention spaces, including attached back of house and catering facilities, by square footage and approximate participant capacity of each space.

- b. Submit as Exhibit VIII. C.8.b. a description of any proposed business center facilities.

## 9. ENTERTAINMENT VENUES

- a. Submit as Exhibit VIII. C.9.a. a description of the entertainment venues proposed for the Project Site whether located inside or outside the Gaming Facility, the square footage and patron capacity of each (minimum/maximum), admission charges/price, the contemplated frequency of events (e.g., number of entertainment events and entertainment days), and uses/types of entertainment to which the venues will be dedicated. Describe and provide copies of any arrangements or agreements with promoters, artists, or performance companies or troupes. Substantiate (e.g., by comparison to analogous projects) the bases for such plans and estimates.
- b. As a major goal of the Act is to enhance the State's live entertainment venues, submit as Exhibit VIII. C.9.b. a description of how the entertainment venues proposed for the Project Site are distinguished (whether by design or intended use) and intended to complement the impacted live entertainment venues identified pursuant to Item IX.B.2.
- c. Submit as Exhibit VIII. C.9.c. a description of the extent to which entertainment venues and plans are contemplated to be used for casino and/or other marketing. Include the manner in which the Gaming Facility will enhance entertainment venues already existing in the Host Municipality and nearby municipalities.

## 10. NON-GAMING AMENITIES

- a. Submit as Exhibit VIII. C.10.a. a description of:
  - 1. the proposed restaurants, including the approximate number, square footage and patron capacity, types and themes and the identity of any restaurateurs the Applicant anticipates will operate the restaurants.
  - 2. the proposed retail spaces, including the approximate number, square footage and types of retail shops and how such retail development will serve the general community.
  - 3. the proposed lounges and bars, including the approximate number, square footage and patron capacity and types.
  - 4. any proposed recreation facilities.
  - 5. any other proposed and related facilities or amenities.

If any of the above amenities are not proposed to be operated by the Applicant or the Manager, indicate the names of the proposed operators and provide copies of any contracts, agreements or understandings between the Applicant and/or the Manager and such operator.

- b. Submit as Exhibit VIII. C.10.b. a description of plans, if any, to highlight Host Municipality local and regional products, brands and cuisine in restaurants, lounges,



bars, retail spaces and ancillary amenities. Describe any proposed tie-ins or ventures with Host Municipality, local and regional establishments. Provide copies of any agreements or arrangements for the same. Describe how the Gaming Facility will complement and be compatible with the Host Municipality's culture and how it will showcase, stimulate and improve the use of existing and future attractions, including tourism and convention facilities within the Host Municipality and nearby municipalities

## **11. QUALITY OF AMENITIES**

Submit as Exhibit VIII. C.11. a statement as to how the hotels, hotel rooms, restaurants and other amenities that are part of the proposed Gaming Facility will compare in quality to other area hotels, restaurants and amenities as well as those included and offered in other competitive gaming facilities.

## **12. HOURS OF OPERATION**

Submit as Exhibit VIII. C.12. a description of the Applicant's proposed hours of operation for the various components of the proposed Gaming Facility including the casino, restaurants, bars and other amenities.

## **13. BACK OF HOUSE**

Submit as Exhibit VIII. C.13. a description, including square footage, of back of house, security, kitchen and office facilities to support the remaining building program.

## **14. PARKING AND TRANSPORTATION INFRASTRUCTURE**

- a. Submit as Exhibit VIII. C.14.a. a description of the approximate number, location and accessibility of parking spaces and structures for employees, patrons, valet-parked vehicles and buses. Substantiate (e.g. by inclusion of discussion in the independent traffic study to be provided pursuant to Item IX.A.2.b. of this RFA) the adequacy of parking and site circulation plans to service the projected visitor and employee demand.
- b. Submit as Exhibit VIII. C.14.b. a description of traffic circulation plans for the Project Site including ingress and egress of casino patrons, employees and suppliers including plans for tour bus, limousine and valet drop-off areas, plans for service vehicle parking, satellite parking and other related transportation infrastructure, and plans to offer refueling, overnight bus parking, disabled vehicle assistance, and convenience store facilities on site.

## **15. DOCK AND LOADING**

Submit as Exhibit VIII. C.15. a description of the planned dock and loading facilities, as well as armored car bay, including by square footage and schematic diagram. Describe their adequacy to serve the planned program (e.g. by comparison to analogous facilities).

## 16. PHYSICAL PLANT AND MECHANICAL SYSTEMS

Submit as Exhibit VIII. C.16. a brief description of plans for mechanical systems and on-site infrastructure, with particular emphasis on unique features (e.g. district hot or cold water, on-site power generation, on-site water or waste treatment, etc.). Indicate whether the project relies on distributed or building HVAC, chilled and hot water, and other systems. Describe plans for systems redundancy, if any. Describe significant dedicated physical plant spaces by location and approximate square footage. Describe plans for emergency power generation and uninterruptable power supply.

## 17. INFRASTRUCTURE REQUIREMENTS

- a. Submit as Exhibit VIII. C.17.a. studies of independent engineers or other experts reporting projections of estimated fresh water and electricity demand (base and peak-period) and sanitary sewer and storm water discharge, each, for the proposed Gaming Facility. Include in those reports an assessment of the feasibility of any plans to accommodate that demand onsite (e.g. by onsite production of electricity, treatment of fresh or waste water, or detention of storm water).
- b. Submit as Exhibit VIII. C.17.b. a description of plans to address water and electricity use restrictions during peak demand periods.
- c. Submit as Exhibit VIII. C.17.c. a description of the electricity, sewer, water, and other utility improvements needed to adequately serve the Gaming Facility Site to include: (i) the estimated cost of the improvements; (ii) the estimated date of completion; (iii) the names of the parties, whether public or private, initiating the improvements; (iv) the names of the parties responsible for the costs of the improvements; and (v) if more than one party is responsible for the costs, the proportionate distribution of the costs among the parties.
- d. Submit as Exhibit VIII. C.17.d. a description of the roadway and traffic improvements needed to ensure adequate access to the Gaming Facility Site to include: (i) the estimated cost of the improvements; (ii) the estimated date of completion; (iii) the names of the parties, whether public or private, initiating the improvements; (iv) the names of the parties responsible for the costs of the improvements; and (v) if more than one party is responsible for the costs, the proportionate distribution of the costs among the parties.
- e. Submit as Exhibit VIII. C.17.e. a description of plans for management, detention and discharge of storm water on and from the Project Site to include (i) the estimated cost of the improvements; (ii) the estimated date of completion; (iii) the names of the parties, whether public or private, initiating the improvements; (iv) the names of the parties responsible for the costs of the improvements; and (v) if more than one party is responsible for the costs, the proportionate distribution of the costs among the parties.

For the improvements described in this section: (i) state whether local government approval is necessary for making the improvements; (ii) include a description of the procedure by which the local government approval is going to be obtained; (iii) indicate

all conditions likely to be placed on the local government approval; and (iv) indicate the estimated date by which local government approval will be granted.

## 18. PROJECT FIRMS

- a. Submit as Exhibit VIII. C.18.a. names, addresses and relevant experience of the architects, engineers, contractors and designers of the proposed Gaming Facility and related proposed infrastructure improvements.
- b. Submit as Exhibit VIII. C.18.b. the name, title, office address, email address, direct phone number and fax number of the Applicant's or, if applicable, the Manager's principal contact individual at each such firm.

## 19. CONSTRUCTION BUDGET

Submit as Exhibit VIII. C.19. a detailed construction budget showing the total costs of the Gaming Facility project including hard costs (e.g., land acquisition, site preparation, remediation of environmental conditions or hazardous materials; excavation, grading and earth works; foundation; erection of structures; materials and labor; equipment HVAC; electrical; plumbing; furnishings; landscaping; and site improvements, including infrastructure in direct relation to both construction and operations), construction soft costs (e.g., architectural, engineering and consulting fees; real estate commissions; recordation fees and transfer taxes; insurance; contingency reserve, etc.), financial and other expenses (e.g., financing fees; interest; legal; etc.) and pre-opening expenses (e.g., training, pre-opening marketing; and initial working capital), and timing of such expenditures, together with a construction cash flow analysis.

## 20. TIMELINE FOR CONSTRUCTION

- a. Submit as Exhibit VIII. C.20.a. a proposed timeline of construction of the proposed Gaming Facility that includes detailed stages of construction for opening phase of the Gaming Facility and non-gaming structures and all related infrastructure improvements. Include major events/milestones/deadlines, including design plans completed, construction bid award, construction financing received, site secured, start site mitigation/remediation if necessary, excavation, grading and earth works, start construction, approvals, infrastructure completion dates, permanent financing executed, certificate of occupancy, training start, building loading, system testing, dry runs, and the like, and the dates or deadlines associated therewith. Describe any proposed construction phasing plan, including the proposed sequence of any phases, whether any phases are dependent upon future events, and if so, clearly describe such future events, and the approximate dates of beginning and completion of each phase.
- b. Submit as Exhibit VIII. C.20.b. a description of anticipated street and sidewalk closures, plans for redirecting traffic, impacts on existing parking, if any, noise and dust impacts, and plans for mitigating such impacts both during and following construction. Describe measures that will be taken to mitigate all construction impacts on the local community.

In the event the financing for any further phase is not included in Item VIII.A.6. of this RFA, indicate the anticipated sources of financing for such phase and the details of such financing.

- c. Submit as Exhibit VIII. C.20.c. an explanation as to how quickly after issuance of a License the Applicant would expect to commence construction of the Gaming Facility and explain conditions precedent to be satisfied prior to the Applicant being able to commence said construction.
- d. If the Applicant's plan for the proposed Gaming Facility is expected to displace or relocate any existing businesses, tenants or services, submit as Exhibit VIII. C.20.d. the Applicant's plans for relocating or compensating such displaced parties.
- e. Submit as Exhibit VIII. C.20.e. a proposed date for the proposed Gaming Facility to open for gaming and indicate major risks to such proposed opening date and the range of probable delays associated with each. Describe plans to mitigate such risks. Indicate whether the proposed Gaming Facility will open in phases or all at one time. If the facility is to open in phases, provide a detailed description of what will open in each phase and the proposed opening date for each phase and/or what conditions each such opening date will be contingent upon. Provide Applicant's commitment for a proposed outside date, notwithstanding any delays, for substantial completion of the initial fully operational phase of the proposed Gaming Facility.

## **21. CONSTRUCTION JOBS**

Submit as Exhibit VIII. C.21. a table indicating by trade and calendar quarter the number of construction hours, the average daily number of full time equivalent ("FTE's") workers expected to work on the project, the average monthly compensation and benefits per FTE, the average monthly total labor cost per FTE (compensation plus benefits). Provide overall and by trade the total construction hours, FTEs, compensation, benefits, and labor cost for the entire construction period.

## **22. GAMING EQUIPMENT VENDORS**

Realizing that formal plans may not be finalized, submit as Exhibit VIII. C.22. the names of all proposed vendors of gaming equipment to the best of your present knowledge and belief, including, without limitation, slot machines, table games, bases and chairs, signage, cage and count room equipment, player club systems, accounting and TITO systems, etc.

### **D. INTERNAL CONTROLS AND SECURITY SYSTEMS**

#### **1. INTERNAL CONTROLS AND SECURITY SYSTEMS**

- a. The Commission will develop regulations governing internal controls for all gaming facilities in the near future. To assist the Board in its evaluation of the Applicant, the Board is interested in knowing what standards the Applicant anticipates adhering to at its Gaming Facility. Accordingly, subject to any adjustments required upon promulgation of the future regulations, submit as Exhibit VIII. D.1.a. a full description of

- the proposed internal controls, electronic surveillance systems, and security systems for the proposed Gaming Facility and any related facilities, including, for example, any contemplated internal audits, independent external audits, separation of accounting and cage processes for independent verifications, cage and count room supervision, gaming floor drop processes, and other asset preservation and secure cash handling systems and processes. Where third-parties are to be engaged (e.g., external audit and law enforcement/safety entities), so indicate. Indicate how these efforts will achieve risk management/control goals at the enterprise/Licensee level as well as regulatory, law enforcement, and other local, regional, State, and Federal levels as applicable.
- b. Submit as Exhibit VIII. D.1.b. a projected table of organization for the entire project. For compliance, accounting, audit (both financial and internal control), security, and surveillance show additional detail that includes staffing levels and identifies the critical departments of detailed organization charts for each control/risk management related activity (e.g., positions in compliance, accounting, cage, cashiering, count room(s), credit issuance, credit collection, asset management, and income control), data processing, internal audit, compliance and security, and surveillance. Show staffing levels for each position. If risk management/control is vested in other departments, functions or activities, identify them and describe their role. Indicate which staff position(s) would be responsible for communications with the Commission.

## IX. LOCAL IMPACT AND SITING FACTORS

(Statutory Value: 20 percent)

### A. ASSESSMENT OF LOCAL SUPPORT / MITIGATION OF LOCAL IMPACT

#### 1. ASSESSMENT OF LOCAL SUPPORT

As stated previously as a condition of acceptance of this Application, local support must be demonstrated through a post-November 5, 2013 vote of the local legislative body of each Host Municipality.

- a. Submit as Exhibit IX. A.1.a. a copy of a resolution passed by the local legislative body of each Host Municipality supporting the Application.
- b. Submit as Exhibit IX. A.1.b. a list of any other evidence of local support including public statements and declarations, letters or resolutions from the Host Municipality, nearby municipalities, private organizations, community, religious and civic groups, charitable organizations, entertainment venues, chambers of commerce, local businesses, labor organizations, etc.

NOTE: Referring to the November 5, 2013 election results for Proposition 1 of a specific locality or the Host Municipality is NOT an acceptable demonstration of local support and will not be considered as part of the evaluation.

#### 2. LOCAL IMPACTS AND COSTS

- a. Submit as Exhibit IX. A.2.a. studies completed by independent experts showing the proposed Gaming Facility's cost to each Host Municipality, nearby municipalities and the State for the proposed Gaming Facility including, without limitation, the incremental effect on local government services (police, fire, EMS, health and building inspection, schools, public health and addiction services and general government services); and
- b. Submit as Exhibit IX. A.2.b. studies completed by independent experts showing the local and regional impacts of the proposed Gaming Facility in each of the following areas: traffic and roadway infrastructure; water demand, supply and infrastructure capacity; waste water production, discharge, and infrastructure capacity; storm water discharge and management; electricity demand and infrastructure capacity; protected habitats and species; and light pollution.

Each independent expert's study should describe the background, qualifications and experience on similar projects of the preparer and contain a description of the background conditions in

the comparable year (i.e. assuming economic, traffic, and demographic conditions, etc. continue to develop as to trend without the proposed Gaming Facility) and under the build scenario with express enumeration of assumptions. The report should include a comparison to similar projects or scenarios. The build scenario and assumptions should reasonably correspond to the description of the proposed Gaming Facility, revenue and visitation projections, and expense and employment estimates included in the Application. That is, the Applicant and the various independent studies should present comparable assumptions and build scenarios. Where independent studies depend on visitation or revenue assumptions, they should include analysis of the low-, average- and high-cases analogous to the same used for the gaming market and tax studies. Studies should explain their methodology, report their results and compare those results to actual observed conditions in similar built projects. The reports should critique and analyze the adequacy of the Applicant's proposed mitigation plans to address the identified impacts of the build conditions.

### **3. MITIGATION OF IMPACT TO HOST MUNICIPALITY AND NEARBY MUNICIPALITIES**

Submit as Exhibit IX. A.3. a description of Applicant's commitments to mitigate impacts of the proposed Gaming Facility (during construction and operation) on each Host Municipality and the nearby municipalities including for traffic mitigation, infrastructure costs, costs of increased emergency services and the other impacts identified in the studies included in Item IX.A.2.b of this RFA. Provide copies of any contracts, agreements or other understandings evidencing such mitigation commitments.

### **4. HOUSING**

Submit as Exhibit IX. A.4. an assessment of the likely impact on the housing stock in each Host Municipality and nearby municipalities resulting from the new jobs the Gaming Facility provides, and the Applicant's plans and commitments to remedy or mitigate any negative impacts. Provide copies of any contracts, agreements or other understandings evidencing such mitigation commitments.

### **5. SCHOOL POPULATION**

Submit as Exhibit IX. A.5. an assessment of the likely impact on school populations in the Host Municipality and nearby municipalities resulting from new jobs the Gaming Facility provides, and the Applicant's plans and commitments to remedy or mitigate any negative impacts. Provide copies of any contracts, agreements or other understandings evidencing such mitigation commitments.

## **B. REGIONAL TOURISM AND ATTRACTIONS**

### **1. LOCAL BUSINESS PROMOTION**

Submit as Exhibit IX. B.1. a description of plans for promoting local businesses in Host Municipality and nearby municipalities including developing cross-marketing strategies with local restaurants, small businesses, hotels and retail facilities. Provide copies of any contracts, agreements or other understandings evidencing such cross-marketing.

### **2. PARTNERSHIPS WITH LIVE ENTERTAINMENT VENUES**

A major goal of the Act is to enhance the State's live entertainment venues.

- a. Submit as Exhibit IX. B.2.a. copies of any and all contracts, agreements, MOUs or other understandings with live entertainment venues that may be impacted by the Gaming Facility. Contracts, agreements, MOUs and understandings shall include terms and conditions governing cross marketing, coordination of performance schedules, booking of performers, arrangements or agreements with promoters, promotions and ticket prices. Also explain how the Gaming Facility intends to actively support the mission and operation of impacted live entertainment venues including any minimum dollar commitments and/or special efforts the Applicant will make to promote live entertainment venues.
- b. Submit as Exhibit IX. B.2.b. the identity of any entertainment venue that requested an agreement which the Applicant declined. Explain the reason for the declination, and describe the nature of the discussions or negotiations the Applicant had with the entertainment venue. Include any materials or statements from the venue that requested the agreement as to why it merited treatment as an impacted live entertainment venue.

### **3. LOCAL BUSINESS OWNERS**

Submit as Exhibit IX. B.3. a description of plans for contracting with local business owners for provision of goods and services to the Gaming Facility, including developing plans designed to assist businesses in the State in identifying the needs for goods and services to the Gaming Facility.

### **4. LOCAL AGREEMENTS**

Submit as Exhibit IX. B.4. copies of local agreements designed to expand Gaming Facility draw (i.e., number of patrons brought to the Region).



## 5. CROSS MARKETING

Submit as Exhibit IX. B.5. a description of plans for cross-marketing with other attractions. Provide copies of any contracts, agreements or other understandings evidencing such cross-marketing commitment.

## **X. WORKFORCE ENHANCEMENT FACTORS**

**(Statutory Value: 10 percent)**

### **A. MEASURES TO ADDRESS PROBLEM GAMBLING**

#### **1. ON-SITE RESOURCES FOR PROBLEM GAMBLING**

Submit as Exhibit X. A.1. a description of on-site resources that will be available to those affected by gambling-related problems, including procedures for the exclusion of self-identified problem gamblers who request that they be prohibited from entering facilities throughout the State's various gaming venues.

#### **2. PROBLEM GAMBLING SIGNAGE**

Submit as Exhibit X. A.2. a description of signs, alerts and other information that will be available in the proposed Gaming Facility to identify resources available for those affected by gambling related problems, including the New York State Office of Alcoholism and Substance Abuse Services (OASAS) HOPEline (1-877-8-HOPENY).

#### **3. IDENTIFICATION OF PROBLEM GAMBLING**

Submit as Exhibit X. A.3. a description of the initial and ongoing training that will be used to help Gaming Facility employees identify those who may have gambling-related problems, or self-identify, and assist them to obtain help for those problems.

#### **4. SELF-EXCLUSION POLICIES**

Submit as Exhibit X. A.4. a description of the exclusion policies that will be available for Gaming Facility patrons and employees, including the process to notify individuals of the availability of self-exclusion, the steps that will be taken to assist those who request exclusion and steps that will be taken to assure that excluded patrons are identified before gaining access to the gaming floor.

#### **5. TREATMENT AND PREVENTION**

Submit as Exhibit X. A.5. a description of plans to coordinate with local providers to facilitate assistance and treatment for those with gambling-related problems and plans to develop prevention programs targeted toward vulnerable populations.

## 6. HISTORICAL EFFORTS AGAINST PROBLEM GAMBLING

Submit as Exhibit X. A.6. a description of the processes proposed to address problem gambling at the other facilities it owns or controls, the effectiveness of those processes, and the metrics the Applicant will use to determine the effects.

### B. WORKFORCE DEVELOPMENT

#### 1. HUMAN RESOURCE PRACTICES

Submit as Exhibit X. B.1. a statement of whether the Applicant or, as applicable, the Manager has prepared, and how the Applicant or, as applicable, the Manager proposes to establish, fund and maintain human resource hiring and training practices at the proposed Gaming Facility that promote the development of a skilled and diverse workforce and access to promotion opportunities through a workforce training program that:

- a. establishes transparent career paths with measurable criteria within the Gaming Facility that lead to increased responsibility and higher pay grades that are designed to allow employees to pursue career advancement and promotion;
- b. provides employee access to additional resources, such as tuition reimbursement or stipend policies, to enable employees to acquire the education or job training needed to advance career paths based on increased responsibility and pay grades; and
- c. establishes an on-site child day-care program.

Further, identify whether the Applicant and, as applicable, the Manager plans to establish employee assistance programs, including those relative to substance abuse and problem gaming.

#### 2. AFFIRMATIVE ACTION PLAN

Submit as Exhibit X. B.2. how the Applicant and, as applicable, the Manager proposes to establish and implement an affirmative action program that identifies specific goals for the engagement of minorities, women, persons with disabilities and veterans on construction jobs and service and professional jobs during operation.

#### 3. JOB OPPORTUNITIES AND TRAINING FOR UNEMPLOYED

Submit as Exhibit X. B.3. the Applicant's and, as applicable, the Manager's strategy to provide on-the-job opportunities and training in areas, and with respect to regional and local demographic groups with high unemployment.

#### **4. EXPERIENCE WITH HIRING UNEMPLOYED**

Submit as Exhibit X. B.4. a description of the Applicant's and, as applicable, the Manager's approach and experience in the last ten (10) years with hiring in general, and with particular respect to demographic groups evidencing high unemployment.

#### **5. ORGANIZED LABOR CONTRACTS**

Submit as Exhibit X. B.5. a statement as to whether the Applicant and, as applicable the Manager has, is subject to, or is negotiating any contract with organized labor, including hospitality services, and whether the Applicant or, as applicable, the Manager has the support of organized labor for its Application, which specifies:

- a. the number of employees to be employed at the proposed Gaming Facility, including detailed information on the pay rate and benefits for employees and contractors,
- b. the total amount of investment in the proposed Gaming Facility and all infrastructure improvements related to the project,
- c. completed studies and reports including an economic benefit study, for the State, the Region, and the Host Municipality, and
- d. detailed plans for assuring labor harmony during all phases of the construction, reconstruction, renovation, development and operation of the Gaming Facility.

#### **6. LABOR HARMONY**

Submit as Exhibit X. B.6. a statement as to whether the Applicant or, as applicable, the Manager has entered into labor peace agreements with labor organizations that are actually engaged in representing gaming or hospitality industry workers in the State. Provide copies of any such agreements. If the Applicant or, as applicable, the Manager has not entered into such agreements, provide an instrument stating that it will enter into such labor peace agreements and maintain such labor peace agreements in place during the term of a License.

### **C. SUSTAINABILITY AND RESOURCE MANAGEMENT**

#### **1. TRAFFIC MITIGATION**

Submit as Exhibit X. C.1. a description of the steps, plans and measures, including infrastructure improvements, to mitigate traffic flow and vehicle trips in the vicinity of the Gaming Facility. Include a description of plans to use public or alternate transportation methods and transportation demand management.

## **2. LEED CERTIFICATION**

Submit as Exhibit X. C.2. a description of plans, including all proposed baseline and improved building design elements and measures, for its Gaming Facility to become certified under a certification category in the Leadership in Environmental and Energy Design (LEED) program created by the United States Green Building Council.

## **3. ENERGY EFFICIENT EQUIPMENT**

Submit as Exhibit X. C.3. a description of Applicant's plans for ensuring use of Energy Star-rated equipment and high-efficiency HVAC equipment and appliances throughout the Gaming Facility complex.

## **4. STORM WATER**

Submit as Exhibit X. C.4. a description of plans for management of storm water including any plans to use Institute for Sustainable Infrastructure techniques to minimize impact of storm water and maximize its reuse.

## **5. WATER CONSERVATION**

Submit as Exhibit X. C.5. a description of plans for water efficiency and conservation at the Gaming Facility including, without limitation, plans to use low-flow water fixtures, water efficient appliances, and implement water conservation at the Gaming Facility.

## **6. RENEWABLE ENERGY**

Submit as Exhibit X. C.6. a description of plans for procuring or generating on-site at least ten (10) percent of the facility's annual electricity consumption from renewable energy sources qualified by the New York State Energy Research and Development Authority (NYSERDA).

## **7. ENERGY CONSUMPTION MONITORING**

Submit as Exhibit X. C.7. a description of plans for developing an ongoing system that will submeter and monitor all major sources of energy consumption and for undertaking regular and sustained efforts throughout the life-cycle of the facility to maintain and improve energy efficiency and reliance on renewable sources of power in all buildings and equipment that are part of the facility.

## **8. DOMESTIC SLOT MACHINES**

Submit as Exhibit X. C.8. a description of plans for purchasing, whenever possible, domestically manufactured slot machines for installation in the Gaming Facility.

## XI. POST-LICENSURE RESPONSIBILITIES

### A. DEPOSIT TEN (10) PERCENT OF TOTAL INVESTMENT

Upon award of a License by the Commission, an Applicant must deposit ten (10) percent of the total investment proposed in the Application into an interest-bearing escrow account approved by the Commission.

This deposit will be held in escrow until the final stage of construction, as detailed in the timeline of construction submitted with the Application and approved by the Commission, at which time the deposit plus interest earned shall be returned to the Applicant to be applied for the final stage of construction.

In the event the Applicant is unable to complete the Gaming Facility, the deposit shall be forfeited to the State.

In place of a cash deposit, an Applicant may secure a deposit bond in a form acceptable to the Board insuring that ten (10) percent of the proposed capital investment shall be forfeited to the State if the Applicant is unable to complete the Gaming Facility.

### B. PAY LICENSING FEE

A Licensee must pay a minimum licensing fee, set below, within thirty (30) days after the award of a License. However, nothing shall prohibit an Applicant from agreeing to pay an amount in excess of the fees listed below:

<b>For a Gaming Facility located in:</b>	<b>The minimum licensing fee is:</b>
<b><u>REGION 1</u></b>	
Region 1 in Dutchess or Orange Counties	\$70,000,000
If no License is awarded for a Gaming Facility located in Dutchess or Orange Counties, then for the remaining portion of Region 1 (comprising Columbia, Delaware, Greene, Sullivan and Ulster Counties):	\$50,000,000
If a License is awarded for a Gaming Facility located in Dutchess or Orange Counties, then for the remaining portion of Region 1 (comprising Columbia, Delaware, Greene, Sullivan and Ulster Counties):	\$35,000,000
<b><u>REGION 2</u></b>	\$50,000,000
<b><u>REGION 5</u></b>	
Region 5 in Broome, Chemung, Schuyler, Tioga, Tompkins Counties	\$35,000,000

Region 5 in Wayne or Seneca Counties	\$50,000,000
--------------------------------------	--------------

If a License is awarded for a Gaming Facility located in Wayne or Seneca Counties, then for the remaining portion of Region 5 (comprising Broome, Chemung, Schuyler, Tioga and Tompkins Counties)	\$20,000,000
---	--------------

### **C. BEGIN GAMING OPERATIONS WITHIN TWO (2) YEARS**

Any Licensee that fails to begin gaming operations within twenty-four (24) months following License award shall be subject to suspension or revocation of the License and may, after being found by the Commission, after notice and opportunity for a hearing, to have acted in bad faith in its Application, be assessed a fine of up to \$50 million.

### **D. ESTABLISH QUALIFICATIONS FOR CERTAIN PERSONS**

Licensees must provide and satisfy all requests for information pertaining to qualification; waive liability as to the Commission, the Board and the State and its instrumentalities and agents, for any damages resulting from any disclosure or publication; consent to inspections, searches and seizures while at a Gaming Facility; supply handwriting exemplars; provide, on a continuing basis, any assistance or information required by the Commission; cooperate in any inquiry, investigation or hearing conducted by the Commission; be photographed and fingerprinted for identification and investigation purposes; and inform the Commission of any action believed to constitute a violation.

### **E. OBTAIN AND MAINTAIN CASINO KEY EMPLOYEE LICENSES**

A Licensee, or a holding or intermediary company of a Licensee, may only employ as a "Casino Key Employee" individuals who hold valid Casino Key Employee licenses. Applicants for such license must produce information, documentation and assurances concerning qualification criteria. Criteria include, among others, financial stability, integrity and responsibility of the Applicant, good character, honesty and integrity.

### **F. REGISTER GAMING EMPLOYEES**

Each gaming employee of a Licensee must have a valid registration on file with the Commission.

### **G. LICENSE VENDOR ENTERPRISES**

Any business to be conducted with an Applicant or Licensee by a vendor offering goods or services that directly relate to gaming activity, including gaming equipment manufacturers, suppliers, repairers and independent testing labs, shall be licensed as a casino vendor enterprise prior to conducting any business with an Applicant or Licensee, its employees or agents (subject to other timing as determined by the Commission).

## **H. LICENSE AND REPORT ON JUNKET OPERATORS**

A Licensee must file a report describing the operation of all junkets engaged in on the premises. Junket representatives must be licensed as Casino Key Employees.

## **I. OBTAIN OPERATION CERTIFICATE**

A Licensee must obtain an operation certificate in order to open or remain open to the public.

## **J. MAINTAIN RECORD OF AGREEMENTS**

A Licensee must maintain a record of all agreements in regard to the project.

## **K. ENTER LABOR PEACE AGREEMENT**

A Licensee must produce documentation that it has entered into a labor peace agreement with each labor organization that is actively engaged in representing and attempting to represent gaming and hospitality industry workers in the State. This is an ongoing material condition of licensure. A Licensee must also ensure that operations conducted by contractors, subcontractors, licensees, assignees, tenants or subtenants and that involve gaming or hospitality industry employees will be done under a labor peace agreement.

## **L. PAY ANNUAL MACHINE AND TABLE FEES**

A Licensee must pay an annual license fee of \$500 per slot machine and table at the Gaming Facility, as adjusted by the Commission for inflation as provided in PML Section 1348.

## **M. PAY REGULATORY INVESTIGATORY FEE**

A Licensee must pay fees and charges established by the Commission for any investigations including, but not limited to, billable hours of the Commission staff involved in the investigation and costs of services, equipment and other expenses incurred during the investigation.

## **N. PAY ADDITIONAL REGULATORY COSTS**

The Licensee bears any remaining costs of the Commission necessary to maintain regulatory control over gaming facilities that are not covered by the fees set forth in PML Section 1349; any other fees assessed under such section; or any other designated sources of funding, shall be assessed annually on Licensees in proportion to the number of gaming positions at each Gaming Facility. Each Licensee shall pay the amount assessed against it within thirty (30) days after the date of a notice of assessment from the Commission.

## **O. PAY TAX ON GAMING REVENUES BASED ON ZONE AND REGION**

For a Gaming Facility in Zone two, PML Section 1351 imposes a tax on Gross Gaming Revenues. The amount of such tax imposed is as set forth below; provided, however, should a Licensee



have agreed within its Application to supplement the tax with a binding supplemental fee payment exceeding the aforementioned tax rate, such tax and supplemental fee shall apply for a Gaming Facility:

1. In Region Two, forty-five (45) percent of Gross Gaming Revenue from slot machines and ten (10) percent of Gross Gaming Revenue from all other sources.
2. In Region One, thirty-nine (39) percent of Gross Gaming Revenue from slot machines and ten (10) percent of Gross Gaming Revenue from all other sources.
3. In Region Five, thirty-seven (37) percent of Gross Gaming Revenue from slot machines and ten (10) percent of Gross Gaming Revenue from all other sources.

**P. RETAIN UNCLAIMED FUNDS AND DEPOSIT IN THE COMMERCIAL GAMING REVENUE FUND**

Unclaimed funds, cash and prizes shall be retained by the Gaming Facility licensee for the person entitled to the funds, cash or prize for one year after the game in which the funds, cash or prize was won. If no claim is made for the funds, cash or prize within one year, the funds, cash or equivalent cash value of the prize shall be deposited in the commercial gaming revenue fund established under PML Section 1352.

**Q. PAY RACING INDUSTRY SUPPORT PAYMENTS**

A Licensee that possesses a pari-mutuel wagering franchise or license awarded pursuant to PML Article 2 or Article 3, or who possessed in 2013 a franchise or a license awarded pursuant to PML Article 2 or Article 3 or is an articulated entity or such Applicant, shall maintain:

1. Payments made from video lottery gaming operations to the relevant horsemen and breeders organizations at the same dollar level realized in 2013, to be adjusted annually pursuant to changes in the consumer price index for all urban consumers, as published annually by the United States Department of Labor Bureau of Labor Statistics; and
2. Racing activity and race dates pursuant to PML Articles 2 and 3.

A Licensee that does not possess either a pari-mutuel wagering license or franchise awarded pursuant to PML Article 2 or Article 3 is issued a License, the Licensee shall pay:

1. an amount to horsemen for purses at the licensed racetracks in the region that will assure the purse support from video lottery gaming facilities in the region to the licensed racetracks in the region to be maintained at the same dollar levels realized in 2013 to be adjusted by the consumer price index for all urban consumers, as published annually by the United States Department of Labor Bureau of Labor Statistics; and
2. amounts to breeding and development funds to maintain payments from video lottery gaming facilities in the region to the funds to be maintained at the same dollar levels realized in 2013 to be adjusted by the consumer price index for all urban consumers, as published annually by the United States Department of Labor Bureau of Labor Statistics.

**R. CONFIRMATORY AFFIDAVIT**

All Applicants are advised that if a License is awarded as a result of this RFA, the successful Applicant will be required to complete a Confirmatory Affidavit in form determined by the Commission that confirms that the statements, affirmations and agreements made in the Applicant's RFA remain true and correct.

**S. ISSUANCE OF LICENSES**

When the Board recommends to the Commission which Applicants are to be considered for licensure, the Commission will undertake its licensing process. If the Commission finds an Applicant suitable for licensing, the Commission will issue a license, including any terms and conditions the Commission may require. All terms and conditions contained in the RFA, any amendments to the RFA, the Application, and the Board's decision statement shall be obligations and requirements of a Licensee.

## XII. LIST OF REQUIRED EXHIBITS

Number	Descriptive	Check If Included
Exhibit V	EXECUTIVE SUMMARY	
Exhibit VI.A.	NAME OF APPLICANT	
Exhibit VI.B.	CONTACT PERSON	
Exhibit VI.C.	LOCATION OF THE PRINCIPAL PLACE OF BUSINESS OF THE APPLICANT	
Exhibit VI.D.	TYPE OF BUSINESS FORMATION	
Exhibit VI.E.	TABLE OF OWNERSHIP	
Exhibit VI.F.	ORGANIZATIONAL CHART	
Exhibit VI.G.	NAMES, ADDRESSES AND EXPERIENCE OF DIRECTORS AND OFFICERS	
Exhibit VI.H.	NAMES, ADDRESSES AND OWNERSHIP AND OTHER INTERESTS	
Exhibit VI.I.	NAMES AND ADDRESSES OF PROMOTERS, SPONSORS AND OTHERS	
Exhibit VI.J.	REGION AND HOST MUNICIPALITIES	
Exhibit VI.K.	CONFLICTS OF INTEREST	
Exhibit VI.L.	PUBLIC OFFICIALS	
Exhibit VI.N.	CONTRACTS WITH STATE OF NEW YORK	
Exhibit VI.O.	CASINO MANAGER	
Exhibit VI.P.	ORGANIZATIONAL DOCUMENTS	
	1. Certified copy of its certificate of incorporation, articles of incorporation or corporate charter	
	2. Bylaws as amended through the date of the Application	
	3. Certified copy of its certificate of formation or articles of organization of a limited liability company	
	4. Limited liability company agreement or operating agreement as amended through the date of the Application	
	5. Certified copy of its certificate of partnership	
	6. Partnership agreement as amended through the date of the Application	
	7. Certified copy of its certificate of limited partnership	
	8. Limited partnership agreement as amended through the date of the Application	
	9. Other legal instrument of organization	
	10. Joint venture agreement	
	11. Trust agreement or instrument, each as amended through the date of the Application	
	12. Voting trust or similar agreement	
	13. Stockholder, member or similar agreement	
Exhibit VIII.A.2.	APPLICANT MINIMUM CAPITAL INVESTMENT	
	a. Minimum Capital Investment	
	b. Prior Capital Investment	

Exhibit VIII.A.3.	MARKET/REVENUE STUDY	
Exhibit VIII.A.4.	PRO-FORMA FINANCIAL INFORMATION	
Exhibit VIII.A.5.	BUSINESS PLAN	
Exhibit VIII.A.6.	CAPITAL AND FINANCING STRUCTURE	
	a. Financing Source Schedule	
	b. Financing Descriptive	
	c. Financing plans, arrangements and agreements	
	d. Financing plan analysis	
	e. Anticipated Financing Sources	
Exhibit VIII.A.7.	FINANCIAL STATEMENTS AND AUDIT REPORT	
	a. Financing Source Financial Statements	
	b. Financing Source Audit Reports	
Exhibit VIII.A.8.	DOCUMENTATION OF FINANCIAL SUITABILITY AND RESPONSIBILITY	
	a. Financial reports filed with government agencies and check records/ledgers	
	b. Financial references	
	c. Securities analysts' and credit rating agencies reports	
Exhibit VIII.A.9.	U.S. SECURITIES AND EXCHANGE COMMISSION FILINGS; NOTICES AND REPORTS TO FINANCING SOURCES AND EQUITY HOLDERS	
Exhibit VIII.A.10.	LEGAL ACTIONS	
Exhibit VIII.A.11.	BANKRUPTCY OR OTHER INSOLVENCY MATTERS	
Exhibit VIII.A.12.	BREACH OF CONTRACT	
Exhibit VIII.A.13.	TAX AUDIT	
Exhibit VIII.A.14.	LICENSES IN OTHER JURISDICTIONS	
	a. Gaming licenses issued	
	b. Disciplinary actions brought	
Exhibit VIII. A.15.	PROOF OF ADVANCING OBJECTIVES	
	a. Past similar Applicant/Manager experience	
	b. Publically announced acquisition, development or proposed competing gaming projects	
Exhibit VIII.A.16.	ADDITIONAL FINANCIAL COMMITMENTS	
Exhibit VIII.B.1.	MARKET ANALYSIS	
Exhibit VIII.B.2.	PLAYER DATABASE AND LOYALTY PROGRAM	
Exhibit VIII.B.3.	STUDIES AND REPORTS	
	a. Municipality, Region and State economic benefit impact studies	
	b. Local and regional economic impact study	
Exhibit VIII.B.4.	PROJECTED TAX REVENUE TO THE STATE	
Exhibit VIII.B.5.	REGIONAL ECONOMIC PLAN COORDINATION	
Exhibit VIII.B.6.	NEW YORK STATE SUBCONTRACTORS AND SUPPLIERS	
Exhibit VIII.B.7.	EMPLOYEES	
	a. Tables for total employees/pay rate/in-region and in state employees	
	b. Commitment to hire minimum number of employees	
Exhibit VIII.B.8.	COMPETITIVE ENVIRONMENT	

Exhibit VIII.B.9.	MARKETING PLANS		
	a.	Target market	
	b.	Marketing plans	
	c.	Strategy to ensure maximum use	
Exhibit VIII.B.10.	SUPPLEMENTAL TAX PAYMENT		
Exhibit VIII.B.11.	LICENSING FEE		
Exhibit VIII.C.1.	DESCRIPTION OF LAND		
	a.	Location information	
	b.	Assessed value of land	
	c.	Description of land	
	d.	Description of Project Site	
	e.	Geological or structural defect in Project Site	
	f.	Phase I or Phase II environmental reports	
Exhibit VIII.C.2.	OWNERSHIP OF LAND		
	a.	All ownership interest in past 20 years	
	b.	Status of land	
	c.	Total amount spent/proposed to spend	
Exhibit VIII.C.3.	ZONING		
	a.	Current zoning/proposed rezoning or variance	
	b.	Applicable zoning designation	
	c.	Necessary permits	
Exhibit VIII.C.4.	MASTER PLAN AND BUILDING PROGRAM		
	a.	Master plan for land	
	b.	Suitability of Project Site	
	c.	Gaming Facility building program and	
Exhibit VIII.C.5.	DESIGNS AND LAYOUT		
	a.	Designs	
	b.	Overall architectural and building plan	
	c.	Description of materials	
	d.	Photos/descriptions of analogous resorts	
Exhibit VIII.C.6.	CASINO		
	a.	Description of proposed gaming area	
	b.	High limit	
	c.	Plans to differentiate casino	
	d.	Attributes of slot accounting system	
	e.	Additional details	
Exhibit VIII.C.7.	HOTEL		
	a.	Description of proposed hotel	
	b.	Determination of number of rooms/service/etc.	
	c.	Proposed manager of hotel	
	d.	Usage and allotment of hotel rooms	
	e.	Spa, fitness and pool areas	
	f.	Plans to differentiate hotel from competitors	
	g.	Names of hotels of comparable quality	
	h.	Outsourcing of linen, housekeeping and laundry	
Exhibit VIII.C.8.	MEETING AND CONVENTION FACILITIES		
	a.	Proposed meeting and convention space	
	b.	Proposed business center facilities	

Exhibit VIII.C.9.	ENTERTAINMENT VENUES	
	a.	Description of entertainment venues
	b.	Marketing of entertainment venues
	c.	Entertainment venues contemplated
Exhibit VIII.C.10.	NON-GAMING AMENITIES	
	a.	Proposed restaurant/retail/lounges/bars/recreation/etc.
	b.	Promotion of local and regional amenities
Exhibit VIII.C.11.	QUALITY OF AMENITIES	
Exhibit VIII.C.12.	HOURS OF OPERATION	
Exhibit VIII.C.13.	BACK OF HOUSE	
Exhibit VIII.C.14.	PARKING AND TRANSPORTATION INFRASTRUCTURE	
	a.	Description of parking spaces and structures
	b.	Description traffic circulation plans
Exhibit VIII.C.15.	DOCK AND LOADING	
Exhibit VIII.C.16.	PHYSICAL PLANT AND MECHANICAL SYSTEMS	
Exhibit VIII.C.17.	INFRASTRUCTURE REQUIREMENTS	
	a.	Estimated fresh water and electricity demand
	b.	Peak demand plans
	c.	Necessary utility improvements
	d.	Necessary roadway and traffic improvements
	e.	Storm water management
Exhibit VIII.C.18.	PROJECT FIRMS	
	a.	Information on associated project firms
	b.	Contact information for associated project firms
Exhibit VIII.C.19.	CONSTRUCTION BUDGET	
Exhibit VIII.C.20.	TIMELINE FOR CONSTRUCTION	
	a.	Proposed construction timeline
	b.	Proposed closures
	c.	Commencement of construction
	d.	Dislocation due to construction
	e.	Proposed opening date of Gaming Facility
Exhibit VIII.C.21.	CONSTRUCTION JOBS	
Exhibit VIII.C.22.	GAMING EQUIPMENT VENDORS	
Exhibit VIII.D.1.	INTERNAL CONTROLS AND SECURITY SYSTEMS	
	a.	Proposed internal controls
	b.	Projected table of organization
Exhibit IX.A.1.	ASSESSMENT OF LOCAL SUPPORT	
	a.	Copies of resolution
	b.	Other evidence of local support
Exhibit IX.A.2.	LOCAL IMPACTS AND COSTS	
	a.	Cost to host municipalities and State
	b.	Local and regional impacts
Exhibit IX.A.3.	MITIGATION OF IMPACT TO HOST MUNICIPALITY AND NEARBY MUNICIPALITIES	
Exhibit IX.A.4.	HOUSING	
Exhibit IX.A.5.	SCHOOL POPULATION	
Exhibit IX.B.1.	LOCAL BUSINESS PROMOTION	
Exhibit IX.B.2.	PARTNERSHIPS WITH LIVE ENTERTAINMENT VENUES	

	a.	Agreements with impacted entertainment venues	
	b.	Declined agreements	
Exhibit IX.B.3.		LOCAL BUSINESS OWNERS	
Exhibit IX.B.4.		LOCAL AGREEMENTS	
Exhibit IX.B.5.		CROSS MARKETING	
Exhibit X.A.1.		ON-SITE RESOURCES FOR PROBLEM GAMBLING	
Exhibit X.A.2.		PROBLEM GAMBLING SIGNAGE	
Exhibit X.A.3.		IDENTIFICATION OF PROBLEM GAMBLING	
Exhibit X.A.4		SELF-EXCLUSION POLICIES	
Exhibit X.A.5.		TREATMENT AND PREVENTION	
Exhibit X.A.6		HISTORICAL EFFORTS AGAINST PROBLEM GAMBLING	
Exhibit X.B.1.		HUMAN RESOURCE PRACTICES	
Exhibit X.B.2.		AFFIRMATIVE ACTION PLAN	
Exhibit X.B.3.		JOB OPPORTUNITIES AND TRAINING FOR UNEMPLOYED	
Exhibit X.B.4.		EXPERIENCE WITH HIRING UNEMPLOYED	
Exhibit X.B.5.		ORGANIZED LABOR CONTRACTS	
Exhibit X.B.6.		LABOR HARMONY	
Exhibit X.C.1.		TRAFFIC MITIGATION	
Exhibit X.C.2.		LEED CERTIFICATION	
Exhibit X.C.3.		ENERGY EFFICIENT EQUIPMENT	
Exhibit X.C.4.		STORM WATER	
Exhibit X.C.5.		WATER CONSERVATION	
Exhibit X.C.6.		RENEWABLE ENERGY	
Exhibit X.C.7.		ENERGY CONSUMPTION MONITORING	
Exhibit X.C.8.		DOMESTIC SLOT MACHINES	
Attachment 1		AFFIRMATION	
Attachment 2		ADDENDUM ACKNOWLEDGEMENT FORM	
Attachment 3		WAIVER, RELEASE, COVENANT NOT TO SUE AND INDEMNIFICATION	

## ATTACHMENT 1: AFFIRMATION

I, \_\_\_\_\_, on behalf of \_\_\_\_\_, hereby affirm under the penalty of perjury and subject to Section 210.10 of New York Penal Law, (Perjury in the Second Degree, a class E felony), that the information contained in this RFA Application and all materials accompanying said Application are true and accurate to the best of my knowledge and understanding; that I have reviewed the information contained in the RFA Application for accuracy; that I read and understand the questions and responses on the RFA Application; that any document accompanying this RFA Application that is not an original document is a true copy of the original document; that I have read and understood all applicable provisions of PML Sections 1317 and 1318; that the Applicant agrees to all terms, conditions, and obligations made applicable to all Applicants for a Gaming Facility license; that in the event that the Applicant is awarded a Gaming Facility license it agrees to all obligations, terms, and conditions imposed upon a successful Applicant; and that I am authorized to submit this Application on behalf of the Applicant.

\_\_\_\_\_  
APPLICANT

\_\_\_\_\_  
REPRESENTATIVE SIGNATURE



---

## ATTACHMENT 2: ADDENDUM ACKNOWLEDGEMENT FORM

\_\_\_\_\_  
Addendum Number

\_\_\_\_\_  
Date Addendum Issued

Summary:

By signing below, the Applicant attests to receiving and responding to the addendum number indicated above.

\_\_\_\_\_  
APPLICANT

\_\_\_\_\_  
REPRESENTATIVE SIGNATURE

### ATTACHMENT 3: WAIVER, RELEASE, COVENANT NOT TO SUE AND INDEMNIFICATION

This Waiver, Release, Covenant Not to Sue and Indemnification Agreement (“**Agreement**”) is entered into by and between the New York State Gaming Facility Location Board (“**Board**”) and \_\_\_\_\_, as (Manager) (Applicant) (indirect owner of Manager), (indirect owner of Applicant) (direct owner of Manager) (direct owner of Applicant) (hereinafter “**Proposer**”).

WHEREAS, Proposer is, or has a proprietary or direct or indirect ownership relationship with, a Manager or an Applicant that is filing or has filed an application (“**Application**”) for a gaming facility license (“**License**”) pursuant to Chapter 174 of the Laws of 2013, Upstate New York Gaming Economic Development Act of 2013, as amended by Chapter 175 of the Laws of the 2013, each of the State of New York (the “**Act**”);

WHEREAS, in consideration of the Board’s acceptance of the Application for review, the Board has required the Proposer to agree to release, indemnify and hold harmless the Board and the New York State Gaming Commission, and the State of New York and their respective representatives, agents, employees, officers, directors, elected or appointed officials commissioners, consultants and board members (collectively the “**New York Agencies**”), as more fully set forth below, and to waive any current or future, known and unknown, claim, appeal, review or reconsideration concerning, related to, or in any way involving: (i) the Act, the Application process, the consideration, selection and evaluation of any Application, and the administration of the Act; (ii) the investigation of any Applicant, Manager or Related Party with respect to any Application; (iii) the release or disclosure of any information provided by any Applicant or Manager or owner of an Applicant or Manager, or otherwise obtained during the Application and investigation process; (iv) the issuance of any License; or (v) the use, investigation or processing of any information found or provided during the Application and investigation process.

WHEREAS, the Proposer is a sophisticated business/person, has been represented by counsel and other advisors and/or consultants and has not relied upon anything the New York Agencies have communicated but instead on its own investigation, review and inquiry and determined to submit his/her/its Application and to release, waive and surrender any claim, past, present or future, and to indemnify and defend the New York Agencies from any claim involving the Application or the Application process.

WHEREAS, the Proposer acknowledges and agrees that the receipt and acceptance by the Board of the Application is full and adequate consideration for the promises, covenants and undertakings in this Agreement.

NOW, THEREFORE, it is hereby agreed:

1. The recitals are incorporated herein and made a part of the Agreement;
2. Proposer, on behalf of himself/herself/itself and his/her/its agents, servants, representatives, affiliates, parents, subsidiaries, directors, officers, employees, assigns, predecessors and successors (and their heirs, estates, executors, spouses), covenants and agrees to release, waive, covenant not to sue or make any current or future, known and unknown, claim for damages, costs, fees, expenses or request any relief whatsoever, including but not limited to equitable relief arising from, related to or otherwise involving: (i) the Act, the Application process, the consideration, selection and evaluation of any Application and the administration of the Act; (ii) the investigation of any Applicant, Manager or Related Party with respect to any Application; (iii) the release or disclosure of any information provided by any Applicant or Manager or

- owner of an Applicant or Manager or otherwise obtained during the Application and investigation process; (iv) the issuance of any License; or (v) the use, investigation or processing of any information found or provided during the Application and investigation process.
3. The Proposer on behalf of himself/herself/itself and his/her/its agents, servants, representatives, affiliates, parents, subsidiaries, directors, officers, employees, assigns, predecessors and successors (and their heirs, estates, executors, spouses) covenants and agrees not to seek appeal, review or reconsideration of any decision or action of the New York Agencies.
  4. Proposer, on behalf of himself/herself/itself and his/her/its agents, servants, representatives, affiliates, parents, subsidiaries, directors, officers, employees, assigns, predecessors and successors (and their heirs, estates, executors, spouses) covenants and agrees to indemnify, defend and hold the New York Agencies harmless from and against any current or future, known and unknown, claim, cause, suit, cause of action, damages, costs, damages and expense, including attorney's fees, (whether known or unknown, suspected or unsuspected, contingent or liquidated) arising from or related to or otherwise involving: (i) the Act, the Application process, the consideration, selection and evaluation of any Application and the administration of the Act; (ii) the investigation of any Applicant, Manager or Related Party with respect to any Application; (iii) the release or disclosure of any information provided by any Applicant or Manager or owner of an Applicant or Manager or otherwise obtained during the Application and investigation process; (iv) the issuance of any License; or (v) the use, investigation or processing of any information found or provided during the Application and investigation process.
  5. Each of the promises, covenants and agreements set forth in Paragraphs 1-4 above run in favor of the New York Agencies.
  6. Capitalized terms used but not defined in this Agreement shall have the meanings defined in the Board's Request for Applications under the Act dated March 31, 2014, as the same may be amended from time to time.

**NEW YORK GAMING FACILITY LOCATION BOARD**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
Applicant

\_\_\_\_\_  
Manager

\_\_\_\_\_  
Owner\*

Dated: \_\_\_\_\_

\* The legal guardian of any minor owner must execute on his or her behalf.

**FIRST ROUND OF QUESTIONS AND ANSWERS – APRIL 23, 2014**



**REQUEST FOR APPLICATIONS  
TO DEVELOP AND OPERATE  
A GAMING FACILITY IN NEW YORK STATE**

**Round 1 - Questions and Answers**

**April 23, 2014**

**Any term or phrase used within this Question and Answer document shall have the means ascribed under Request For Applications Article II**

**DEFINITIONS**

**Q.1:** How do you define a "manager" included in the term "Applicant Party"?

**A.1:** See RFA Article II.

**Q.2:** Page 29 of the RFA deals with required Organizational Documents. Throughout the document, there are items that pertain to the Applicant and Applicant Party, but in this section there is the undefined term "Applicant's owners."

a. What is meant by "owner?"

b. Is this more, less, or the same standard as the definition of Applicant Party?

**A.2:**

**a. "Applicant's owners" means any person or entity that has a direct or indirect ownership interest in the Applicant or the Manager equal to or greater than five (5) percent.**

**b. This is a subset of the RFA definition of "Applicant Party".**

**Q.3:** a. How is "host municipality" defined?

b. Is it a municipal entity that provides services to the Project?

**A.3: See RFA Article II.**

**Q.4:** With respect to the RFA, the definitions of Applicant, Applicant Party, and Financial Source, can a New York State Off-Track Betting Corporation participate in the RFA process under any of those three definitions?

**A.4: The Board encourages any interested Off Track Betting Corporation to conduct a legal review of the applicable provisions of the N.Y. Racing, Pari-Mutuel Wagering and Breeding Law and its own bylaws or operating agreement to determine the scope of business it may lawfully undertake.**

**Q.5:** Confirm that the term "other non-gaming structures related to the gaming area", within the definition of "Gaming Facility", would not include existing amenities that pre-date the proposed gaming facility and are ancillary to the gaming project (e.g., existing golf course).

**A.5: An Applicant need not include pre-existing amenities, but should note that excluded amenities will not be considered as prior capital investments for purposes of calculating the project's overall capital investment.**

**Q.6:** Confirm for the purposes of the definition of "Financing Source," if a Manager is not providing any equity, debt, credit support or credit enhancement for the proposed Gaming Facility, it is not a "Financing Source".

**A.6: Confirmed.**

## **OVERVIEW**

### **Term of License**

**Q.7:** According to the RFA, the initial licenses are going to be limited to 10 years. Based on our discussions with lending institutions, it may be impossible to finance a \$400-500 million casino development based on a 10 year term because of the difficulty in being able to fully amortize the loan.

a. Can the Gaming Facility Board shed some light on its intentions regarding renewals, the criteria for renewals and the terms of any such renewals that will make financing a casino a more realistic possibility?

b. Is the 10 year license limitation based upon the time a gaming facility opens to the public or from when the license is first awarded/issued?

**A.7.**

**a. N.Y. Racing, Pari-Mutuel Wagering and Breeding Law §1311.1 provides that the “duration of such initial license shall be ten years. The term of renewal shall be determined by the commission.” The Commission has not yet established terms of renewal.**

**b. The formal award of a license and commencement of the two year period for construction will be at a date subsequent to the announcement of final Commission suitability determination. The effective date of the license is likely to be concurrent with the opening of the gaming facility.**

**Q.8:** When will the Commission determine the term of any renewal of a License? The length of the initial license term and any renewals thereafter will have a material impact on the terms of project financing.

**A.8: See Answer to Question 7.a.**

**Q.9:** The term of an initial License granted by the Commission after selection for recommendation by the Board will be ten (10) years, as set forth in N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1311.1. When does the license term begin (e.g., upon selection or when the Gaming Facility opens)?

**A.9: See answer to Question 7.b.**

**Q.10:** Initial license term will be 10 years.

a. Will there be any renewal fee?

b. How long will the renewal term be?

**A.10: The statute contemplates three different payments: 1. an application fee of \$1 million to defray the costs of backgrounding; 2. a license fee; and 3. a renewal fee, which is currently limited to defraying the costs of renewal backgrounding. See N.Y. Racing, Pari-Mutuel Wagering and Breeding Law §§ 1311.1 and 1315.4**

**a. Present law does not authorize a renewal fee for other than backgrounding.**

**b. A renewal term would be set by regulation.**



## Questions and Inquiries

**Q.11:** A preliminary question is whether in seeking answers to questions, the identity of my client must be made public. For example when a question is posed and answered must the identity of my client be publically disclosed?

**A.11:** **The Question & Answer summary will reiterate the question, without identifying the party that posed the question. However, subsequent to the selection of applicants for licensing, these submitted written questions and the parties that posed these questions will be part of the public record, subject to disclosure.**

**Q.12:** The application indicates that there will be a second opportunity for applicants to submit questions on May 7th. Since inevitably additional questions will come up closer to the June 30 submission date as applicants refine their applications, will there be additional opportunities to ask questions or request clarification on an ad hoc or scheduled basis after the May 7th date?

**A.12:** **The schedule has been designed to allow for a period in advance of submission of the Application wherein Applicants can uniformly rely upon the information provided. The Board reserves the discretion to allow additional question periods and will do so to the extent that further clarification is necessary.**

## Procurement Lobbying Restrictions, Permissible Contacts

**Q.13:** Please confirm that all contact with you by us or, if we elect to retain a lobbyist, our lobbyist, must be in writing and that we may not communicate with you in person or by telephone concerning the RFA.

**A.13:** **Confirmed. The only points of contact with regard to matters relating to the RFA, unless otherwise designated by the Board, are Gail P. Thorpe and Stacey Relation. See RFA Article III § E.**

**Q.14:** Is an Applicant permitted to discuss directly with the Commission, the Board, or their respective staffs the persons and entities qualifying as the Applicant and any Related Parties (including discussions to assist in determining whether to grant temporary or permanent exemptions for particular persons or entities such as certain institutional investors, passive investors, stockholders of publicly held corporations or other circumstances)?

**A.14:** **No. Discussions are permitted to take place only as directed in RFA Article § III. E.**

**Q.15:** During the background investigation into the suitability of an Applicant, the Applicant will necessarily have direct contact with the Commission staff. Is such contact during the Restricted Period an exception to the communication restrictions described in the RFA?

**A.15: Yes.**

**Q.16:** Does the communication bar between the Commission/Board and Applicants as described in the RFA apply to an Applicant's provision of comments to proposed regulations of the Commission/Board or other responses by Applicants in reply to solicitations for public comment made by the Commission/Board?

**A.16: No.**

**Q.17:** The RFA provides that "[a]s required by the Procurement Lobbying Law (Sections 139-j and 139-k of the New York State Finance Law), this RFA includes and imposes certain restrictions on communications between the Commission/Board and an Applicant during the Application process. An Applicant is restricted from making contacts during the Restricted Period with anyone at the Commission or the Board other than designees of the Commission's staff, unless the contact is permitted by the statutory exceptions set forth in Section 139-j.3.a. of the New York State Finance Law." RFA, Section III.C. As written, this requirement implies that an Applicant is restricted from making contacts during the Restricted Period with anyone at the Commission or the Board for all purposes – not solely contacts concerning the RFA. Section 139-j.3.a., however, states that "[e]ach offerer that contacts a governmental entity about a governmental procurement shall only make permissible contacts with respect to the governmental procurement, which shall mean that the offerer: a. shall contact only the person or persons who may be contacted by offerers as designated by the governmental entity pursuant to paragraph a of subdivision two of this section relative to the governmental procurement, except that the following contacts are exempted . . ." This implies that the restrictions on an Applicant's contacts with the Commission or the Board are limited to contacts concerning the RFA. As Applicants may conceivably have communications with the Commission concerning matters unrelated to the RFA, such as those concerning horse racing or the lottery, please clarify which specific communications are restricted under the RFA and the Procurement Lobbying Law. Further, please specify if an Applicant's communications with the Commission that are unrelated to the RFA are permissible.

**A.17: Communications made with the Commission unrelated to the RFA (such as those made in the course of fulfilling statutory or regulatory reporting requirements) are not restricted by the RFA. Those communications deemed restricted are those attempts that are to solicit**

information, etc. from the Commission and Board that are germane to the RFA.

**Q.18:** Is submitting a question considered "lobbying" under the RFA?

**A.18: No.**

### **Registration of Lobbyists**

**Q.19:** Does a person submitting a question need to be registered as a lobbyist with the Commission if they are not engaged in lobbying on the RFA at the time the question is submitted?

**A.19: No.**

**Q.20:** Under § 1329.2, lobbyists seeking to engage in lobbying activity before the Commission are required to register with the Secretary of the Commission. Legislative Law, Article 1, provides that the definition of lobbying shall not include certain activities related to procurements. Are Applicants and those appearing on behalf of an Applicant required to register as a lobbyist with the Commission or are they exempt?

**A.20: Yes. Pursuant to N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1329.2, each lobbyist seeking to engage in lobbying activity on behalf of a client or a client's interest before the Commission or the Gaming Facility Location Board shall first register with the secretary of the Commission. Section 1329 does not change the Legislative Law definition of "lobbyist".**

### **Mandatory Applicants Conference**

**Q.21:** What is the agenda and estimated end time for the Applicant Conference on April 30?

**A.21: The intent of the Applicant Conference is to clarify written responses to the initial round of questions and provide an open forum for Applicants to ask additional questions. The schedule for the Conference is posted on the Commission's website.**

**Q.22:** Will the Location Board limit the number of attendees on behalf of the Applicant at the April 23, 2014 Applicant's Conference?

**A.22: The Applicant Conference is scheduled for April 30, 2014, not April 23, 2014.**

**No. There will not be a limit of attendees; however, subsequent to payment of the Application fee, the Applicant will be asked to provide an estimated number of attendees so that sufficient accommodation is provided.**

**Q.23:** Can the Applicant's consultants (architect, engineer, attorneys, etc.) attend the Applicant Conference on April 23, 2014 with or on behalf of the Applicant?

**A.23: The Applicant Conference is scheduled for April 30, 2014, not April 23, 2014.**

**Yes, the Applicant's Consultants may attend the Applicant Conference on April 30, 2014 with or on behalf of the Applicant, but upon payment of an Application fee, the Applicant must be identified.**

**Q.24:** a. Who must attend the Applicant Conference?

b. Must the ultimate applicant attend? May a representative attend?

c. Must the applicant identify site/region at the conference?

**A.24:**

**a. All Applicants or representatives of identified Applicants must attend.**

**b. We are uncertain as to what is meant by "ultimate applicant" and note that the RFA contains a process by which Applicant parties and principals may change.**

**c. No.**

**Q.25:** Who is permitted to represent the Applicant in the Applicant Meeting, Presentation and Hearing?

**A.25: See answer to Question 23.**

### **Background Investigations**

**Q.26:** The RFA provides that "the Commission or the Board, in their sole discretion and as applicable to their respective duties under the Act, shall determine the persons and entities qualifying as the Applicant and any Related Parties including determining whether to grant temporary or permanent exemptions for particular persons or entities such as certain institutional investors, passive investors, stockholders of publicly held corporations or other circumstances." RFA, Section

III.H. What is the process for seeking such determinations? For example, in other competitive bid jurisdictions (e.g., Massachusetts and Maryland most recently), an applicant has been permitted to submit to the regulatory agency or its consultants detailed information as to the applicant's management and ownership structure for the purposes of determining the natural persons and entities who must submit to qualification. The applicant was then notified sufficiently in advance of the application due date to cause the completion and filing of the requisite disclosure forms in a timely manner. Will such a process be available to Applicants intending to file an application in response to the pending RFA? If so, are such communications an exception from the communication restrictions described in the RFA?

**A.26: Applicants shall make a good faith effort to determine whether they and their respective related parties must submit background investigation forms as set forth in RFA Article III § H. If the Board determines that an Applicant has failed to provide background forms for a person or entity required to disclose, the Board will afford the Applicant the opportunity to submit promptly the necessary background forms for such person or entity.**

**The Board may, in its discretion, waive disclosure requirements for institutional and other passive investors that can demonstrate they obtained an interest in a relevant party for investment purposes only and do not have any intention to influence or affect the affairs of an Applicant, a manager or any affiliated companies thereof. It is anticipated that the Commission will promulgate regulations in regard to this concern.**

**Q.27:** Will the background investigation into the suitability of an Applicant be conducted by the Commission staff or outsourced?

**A.27: The New York State Police will conduct the background investigations.**

**Q.28:** a. Under Section III.H of the RFA, where is the bright line for owners of hedge funds and private equity investors of Applicants, and for variations in a capital stack that range from equity to preferred to debt?

Specifically, a background check is required for a person/entity who has a 5percent direct or indirect ownership interest in the Applicant.

Would 5percent ownership through one of the following ownership structures trigger a background check:

b. Preferred equity

- c. Redeemable preferred equity
- d. Debt at a corporate entity that owns the operating entity
- e. Is the 5percent ownership threshold triggered by warrants (before they are exercised)?
- f. Does it apply to penny warrants (warrants that have no strike price)?
- g. If a person/entity has a 5percent debt interest (*i.e.*, has loaned 5percent of the project cost to the Applicant), but has no ownership interest, does that trigger a background check?

**A.28: Pursuant to N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1317.1(f), the Commission shall investigate the suitability of an Applicant, including the suitability of all parties in interest to the License, including Affiliates and Close Associates and Financing Sources of the Applicant. With its initial Application pursuant to the RFA, each Applicant is required to submit Background Investigation Forms for, among others, persons having a beneficial or proprietary interest of five (5) percent or more in an Applicant or Manager. The five (5) percent beneficial or proprietary interest threshold is only an initial request, and the Commission and Board reserve the right to require submission of Background Investigation Forms for and investigate the suitability of any other Affiliate, Close Associate or Financing Source of the Applicant as the Commission and Board may in their discretion determine. Applicants shall make a good faith effort to determine whether they and their respective related parties must submit background investigation forms as set forth in RFA Article III § H. The Board may, in its discretion, waive disclosure requirements for institutional and other passive investors that can demonstrate they obtained an interest in a relevant party for investment purposes only and do not have any intention to influence or affect the affairs of an applicant, a manager or any affiliated companies thereof. It is anticipated that the Commission will promulgate regulations in regard to this issue. If the Board determines that an applicant failed to provide background forms for a person or entity for which disclosure is required under RFA Article III § H, the Board will afford the applicant the opportunity to submit the necessary background forms for such person or entity.**

**Q.29:** Will the background investigation process also include investigations of lenders, investment bankers, bonding companies, limited partners, managers, etc or is it limited to the applicant and related parties?

**A.29: The scope of background investigations required will depend upon the structure of the Applicant described in the Application.**

**Q.30:** The RFA states that the “Commission or the Board, in their sole discretion ... shall determine the persons and entities qualifying as the Applicant and any Related Parties including determining whether to grant temporary or permanent exemptions for particular persons or entities such as certain institutional investors, passive investors, stockholders of publicly held corporations or other circumstances.”

a. Are there any guidelines or preliminary indications of what an Applicant might expect in terms of exceptions for institutional investors of publicly-traded corporation Applicants (e.g., in some states that have passed gaming legislation, this would apply to institutional investors who hold more than 5percent but less than 10percent of the outstanding shares of such publicly held Applicant)?

b. Similarly, with respect to an Applicant who is a wholly- or partially-owned subsidiary of a publicly held corporation, are there any guidelines or preliminary indications of what an Applicant might expect in terms of exceptions for certain directors of the publicly held corporation (e.g., would investigations be limited to a subset of directors such as the Executive Committee and/or Lead Independent Director or Audit Committee Chairman)?

c. In calculating what it means to be “a person having beneficial or proprietary interest of five (5) percent or more in an Applicant or Manager” in the case of an Applicant that is a joint venture between two or more companies, would the percentage ownership of one of the joint venture partners in the Applicant be multiplied by the ownership of an individual in one of the joint venture partners to determine whether or not the five percent threshold has been met (e.g., in a 50/50 JV, would a person have to have a 10percent ownership in one of the partners in order to meet the 5percent threshold with respect to the Applicant)?

**A.30:**

a. See answer to Question 26.

b. See answer to Question 26.

c. Yes.

**Q.31:** The RFA requires that all Related Parties of the Applicant complete and submit Background Investigation Forms. This includes “any entity having a

beneficial or proprietary interest of five (5) percent or more in an Applicant or a Manager”.

Will the Board or Commission provide any guidance regarding disclosure levels, particularly related to private equity or hedge funds with an interest of greater than 5percent in the Applicant?

**A.31: See answer to Question 26.**

**Q.32:** The RFA defines “Applicant Party” as each of: (i) the Applicant; (ii) the Manager; (iii) any person or entity that has a direct or indirect ownership interest in the Applicant or the Manager equal to or greater than five (5) percent; and (iv) any Casino Key Employee.

**A.32: This question fails to seek guidance or clarity regarding an element of the RFA and thus is outside the scope of response.**

**Q.33:** The background investigation is required for all “Related Parties” including the Applicant, Affiliates, Close Associates, and financial resources of the Applicant.

- a. Must the Casino Manager be named in the Application?
- b. What if all relevant parties have not yet been identified?
- c. A background check is required for a person/entity who has a direct or indirect ownership interest in the Applicant, but what if a person/entity has a 5percent debt interest (i.e., has loaned 5percent of the project cost to the Applicant) without any ownership interest?
- d. Will this trigger a background investigation?

**A.33: All Related Parties known to the Applicant at the time of filing shall be disclosed in the Application. Any person or entity that has a five (5) percent debt interest may be subject to a background check.**

**Q.34:** Must Casino Key Employees be identified in the RFA response?

**A.34: Yes, to the extent possible.**

**Q.35:** Can Applicant Members be changed after the RFA response is submitted?

**A.35: Yes. Each Applicant has a continuing duty to disclose promptly to the Board, in writing and electronically, any changes or updates to the information submitted in its Application or any related materials.**



**Q.36:** Section III H. of the RFA states: the Commission or the Board, in their sole discretion and as applicable to their respective duties under the Act, shall determine the persons and entities qualifying as the Applicant and any Related Parties including determining whether to grant temporary or permanent exemptions for particular persons or entities such as certain institutional investors, passive investors, stockholders of publicly held corporations or other circumstances:

- a. What are the standards for such temporary or permanent exemptions?
- b. What is the process for requesting such temporary or permanent exemptions?
- c. Are there set forms that should be used?
- d. What is the timing of decisions on temporary or permanent exemptions? Will decisions be made sufficiently far in advance of the June 30, 2014 filing deadline so that an Applicant can decide whether or not to file a response?
- e. Is a passive investor who has no ability to control the Applicant eligible for an exemption? Are there limits on the amount of the ownership interest a passive investor may hold and be eligible for an exemption?
- f. Are Applicant's permitted to communicate directly with the Commission and its staff on matters such as these or must all communications of this type be with the persons designated in section III E?

**A.36: For parts a., b., and c., please see the answer to Question 26.**

**d. Decisions on requests for exemptions will not be made until after an Application is submitted.**

**f. Applicants are not permitted to communicate directly with the Commission and its staff on matters related to the application or the RFA process. The only contact relating to the RFA, unless the Board designates otherwise, are Gail P. Thorpe and Stacey Relation. See RFA Article III § E.**

**Q.37:** With regard to the Background Investigation section (article III, §H), please provide further guidance as to:

- a. Which (1) entities and (2) natural persons would be required to submit the Background Investigation Forms where an Applicant and/or Applicant Party is (A) a Delaware LLC, partially owned by (B) a New York LLC, which in turn is wholly owned by (C) a gaming enterprise of a federally recognized Indian tribe?

b. Specifically, where a tribal council has assigned responsibility for the management of gaming operations to a tribal gaming enterprise, please confirm that the elected members of the tribal council are not required to submit the Background Investigation Forms?

c. Where an Applicant and/or Applicant Party is a New York LLC that is wholly owned by a tribal gaming enterprise, and the New York LLC has been given irrevocable authority by the tribal council to oversee the tribe's participation in the gaming project, please advise whether (in addition to the New York LLC, and its individual Board of Managers) the gaming enterprise and/or its decision making officers must also submit the Background Investigation Forms?

**A.37: In general, please refer to the answer to Question 26.**

**a. Each entity with a direct or indirect ownership interest would be required to submit background investigation forms.**

**b. Whether members of the tribal council would be required to submit background investigation forms would depend on the ownership interests and management roles of each such council member.**

**c. The gaming enterprise and its officers would be required to submit background investigation forms.**

**Q.38:** Under Article III, §H of the RFA a "Related Party" is defined as "all related parties in interest to the Applicant, including Affiliates, Close Associates and financial resources of the Applicant." Please provide further guidance on the meaning of "financial resources" under this definition. Does "financial resources" have the same meaning as the defined term "Financing Source" under the RFA? Also, please provide specific instructions for when and under what circumstances a provider of financing (and which natural persons thereof) is a "related part[y] in interest" and must submit Background Investigation Forms?

**A.38: Financial resources of an Applicant means "any person or entity that will provide, or is expected to provide, any equity, debt, credit support or credit enhancement for the proposed Gaming Facility." Entities qualifying shall submit Background Investigation Forms required by RFA Article II §§ H. 1. - 2. and Commission regulation §§ 5301.2 (a)(1) - (a)(2).**

**Q.39:** a. In the case of applicants with existing facilities, how will their current background investigations and licensing with NYS Lottery be considered in the scope of this application process?

b. Will applicants that have current NYS Lottery licenses need to submit new applications and disclosure forms?

**A.39:**

**a. No, a new background investigation will be needed.**

**b. Yes.**

**Q.40:** Will any current or future investors that own less than 5percent of an entity be required to go through the licensing and investigation process?

**A.40: If the Commission determines that a current or future investor that owns less than five (5) percent of an entity must submit information as part of the licensing and investigative process, the Applicant will be notified and will have time to submit such additional information requested.**

**Q.41:** a. What does "timely" mean in the sentence that reads "If payment of the additional amount is not made timely..."

b. Along those same lines, is there any opportunity to contest request for additional fees?

**A.41:**

**a. If payment of an additional amount is required, the Commission will provide a deadline for submitting the additional amount.**

**b. No. If an Applicant does not pay the additional fees, the Application may be rejected in the discretion of the Commission.**

**Q.42:** There are requests for Business Entity and Individual forms to be submitted with the RFA. Part of the request includes the submission of forms from anyone who is "designated by the Commission" to submit a form. How can we comply with this requirement to submit forms at the time of the RFA if we have not received requests from the Commission to submit forms?

**A.42: If the Commission determines that there are additional individuals who need to submit information as part of the Commission's suitability investigation, the Applicant will receive notification and will have time to submit such additional information requested.**

### **Continuing Duty to Update Application**

**Q.43:** Under the RFA, an Applicant has a continuing “duty to disclose to the Board promptly, in writing (and electronically), any changes or updates to the information submitted in its Application or any related materials submitted in connection therewith.” RFA, Section III.I. (Emphasis added.) Will the Board or Commission provide guidance as to its view on what changes or updates are sufficiently material to require disclosure?

**A.43:** **As a general rule, it is better to err on the side of over-reporting changes than to fail to report a change. Reporting a change will not, in and of itself, prejudice an Application, but information provided will be evaluated against prior submissions and could affect the Board’s evaluation positively or negatively, depending on the information provided.**

**Q.44:** What, if any, ongoing compliance and/or reporting requirements will be required of applicant project investors and/or lenders?

**A.44:** **See answer to Question 43.**

**Q.45:** If an Applicant modifies its ownership or capital structure after the deadline for the submission of Applications (June 30, 2014), may the Applicant provide a supplemental submission to the Commission/Board without prejudice to the Application to ensure the Commission/Board has the most recent information?

**A.45:** **See answer to Question 43.**

### **Public Notification/News Releases**

**Q.46:** On page 16 regarding Public Notification/News Releases; Do we need approvals for press releases for submitting the \$1 million application fee and submitting the Application?

**A.46:** **No.**

### **APPLICATION INSTRUCTIONS**

#### **General, Submission, Application Format**

**Q.47:** The RFA calls for the submission of 20 hard copies of the application with each application set consisting of a minimum of 4 binders and two redacted copies of each application. This will require the submission of at least 88 individual binders and probably more. Is there any way the Commission can reduce the number of

hard copies of the application that it needs especially in light of the fact that it will have electronic copies of the application?

**A.47: No. The number was determined by necessity based on the number of Board members, expert consultants and Commission staff that will need to review the materials.**

**Q.48:** Article IV, §B(3) of the RFA requires Applicants to submit proprietary models from third-party consultants for review (and manipulation) by Board consultants, some of whom are direct competitors with these third-party consultants (outside of this RFA process) within a highly proscribed marketplace. Assuming it is not the Board's intention to require third-party consultants to reveal their proprietary modeling techniques and methodologies to direct competitors as part of an application process, please advise what alternative(s) to fully functioning proprietary models the Board will accept in order to protect these proprietary trade secrets?

**A.48: The Board may have a need to review in more detail a model that is deemed to be proprietary. In such a circumstance, the Board will take appropriate measures to evaluate the alleged proprietary nature of the model and, if necessary, shield disclosure of a model deemed to be proprietary from any consultant shown to be a competitor of the Applicant's consultants.**

**The Board expects an Applicant to supply a sufficient explanation of assumptions and data to enable a thorough professional review of the Application. The Board must be able to verify data, methodology and outputs an Applicant supplies in order to assess the construction of models or projections. The Board is not responsible for independently collecting or reconstructing the data and other informational inputs used to complete those analyses. Hence, RFA Article IV § B. 3. requires that Applicants submit electronic copies of data, non-proprietary models and outputs in Excel or similar widely used spreadsheet software. Applicants are encouraged for this reason to use publicly accessible sources for all data presented in the market/revenue study to be provided pursuant to RFA Article VIII § A. 3., including data-driven assumptions about present and future market conditions (competition). To the extent the study relies on "proprietary" data or information that is not freely and publicly available, applicants must provide copies of that proprietary data or information to facilitate the Board's review.**

**The results of the market/revenue study submitted pursuant to RFA Article VIII § A. 3. must be replicable. To ensure that the results of the market/revenue study are replicable, the independent expert must supply**

**to the Board and the Commission a clear description of all assumptions made in the market/revenue study.**

**To facilitate the Board's and the Commission's evaluation of the market/revenue study submitted pursuant to RFA Article VIII § A. 3., the study outputs (dollars spent at the proposed gaming facility) must be presented by discrete geographic region.**

**The market/revenue study included as Exhibit VIII.A.3. must include a clear, simple, and easily understood statement of the methodology employed in constructing the market/revenue models and arriving at projections. The Board anticipates that market/revenue studies may present the sources of gaming revenue projections by discrete geographic region, (e.g., concentric circle or drive time ranges within regions defined by the independent expert, provided that the borders of these regions are clearly defined by the independent expert) as well as projections of what percentage of gaming revenue is projected to come from outside the defined local market area (i.e., gaming spend by tourists).**

**Q.49:** After submission of the application:

- a. If an applicant would like to add a new financing source to the project, is that permissible?
- b. Is the applicant permitted to submit additional information, drawings, renderings, relating to the proposed project?

**A.49:**

- a. **Yes. See, RFA, Article III § I.**
- b. **Only as requested by the Gaming Facility Location Board.**

**Q.50:** Document formatting:

- a. Are there any specific font requirements related to a License application. (Font Face, Font Size, etc.)
- b. Are there any other line spacing requirements. (Single, Normal, 1.5, double, etc.)
- c. Are pages to be printed on a single side or double sided format.
- d. Are there any specific paper requirements, weight, color, etc.?

- e. Are there any specific tab requirements or restrictions?
- f. Can tabs be colored?
- g. Is face copy on tabs required, restricted or permissible?
- h. Is it permissible to add additional tabs (sub exhibits) for additional ease of reference or ease of readability/evaluation.
- i. Are there any restrictions on the ring size of the binders?

**A.50: There are no specific requirements or restrictions.**

- Q.51:** a. Can video be submitted as additional documentation of support?
- b. If so, Please confirm it's placement in the response.
  - c. Please confirm the acceptable file format(s).
  - d. Is a written transcript required?
  - e. If not, May a written transcript be submitted?

**A.51: No, video is not permitted. Video will be allowable during the Applicant public presentation.**

**Q.52:** Inclusion of Forms. The three basic application forms (Facility License, New York and Multijurisdictional Disclosures)

- a. Are these forms available in Microsoft Word format? If not,
- b. May the applicant create and submit a comparable document in Word version so that responsive data may be entered electronically rather than in handwriting?
- c. Gaming Facility License Application form – How is this to be submitted?
- d. Is it part of the RFP as a specific section/exhibit and then included as copies both in the binders and on the USB drives?
- e. What is to be specifically done with the notarized copy?

i.

**A.52:**

**a. Yes. Please refer to the Commission website to download the relevant forms in Microsoft Word.**

**b. See answer to Question 52.a.**

**c. The Gaming Facility Location Application shall be submitted as an individual document within the overall response to the RFA.**

**d. Yes.**

**e. The notarized copy is to be submitted to the Commission.**

**Q.53:** Page 21, Section C Application Format specifies that hard copies be submitted in three ring binders. Please note that our reduced drawings will be on 11" x 17" format which will be folded to fit within a standard 8 ½" x 11" binder. We are assuming this is acceptable.

**A.53: Yes.**

**Q.54:** Page 20 section 4: Please define specifications for large format and medium quality files.

**A.54: Applicant should use best judgment.**

### **Public Presentations, Public Hearing**

**Q.55:** What will be the formal process for oral presentations?

**A.55: Detailed guidelines for the public presentation will be forthcoming.**

**Q.56:** Will local stakeholders be permitted to testify at local hearings conducted by the Commission/Board in each Region?

**A.56: Yes.**

**Q.57:** Will the public hearings be held before or after the June 30th bid submission deadline?

**A.57: After.**

**Q.58:** a. What types of Presentation aids are acceptable?



b. Will the Committee accept presentation boards or digital (PowerPoint) presentations only?

c. If so, is there a size/format requirement for the boards?

d. Is there a limit as to the quantity of presentation aids?

**A.58: See Answer to Question 55.**

**Q.59:** a. When will the Board set the presentation dates?

b. How much advance notice will the applicants be provided?

**A.59: A specific date or dates for the public presentation will be issued by July 2, 2014.**

**Q.60:** When does the Board anticipate announcing the schedules for the public hearings?

**A.60: A specific date or dates for the public hearing will be issued by July 2, 2014.**

**Q.61:** Does "Others" include opposing applicants? i.e. will other applicants be given an opportunity to challenge the veracity of another project?

**A.61: No. Each Applicant will make a presentation to the Board. Clarifying questions, if any, may be asked by or on behalf of the Board. Applicants will not be given an opportunity to opine about other Applications.**

#### **Public Disclosure of Application Materials (FOIL)**

**Q.62:** When a question is posed and answered must the identity of my client be publically disclosed?

**A.62: See answer to Question 11.**

**Q.63:** Will the people submitting questions be publicly disclosed?

**A.63: See answer to Question 11.**

**Q.64:** Will all shareholders, investors and lenders involved with applicant be publically disclosed during the RFA process?

**A.64: Yes. The Board intends to treat all information in the applications as public records and will make them available to the public, subject to applicable exemptions under the Freedom of Information Law. If an applicant believes that the identities of shareholders, investors and/or lenders involved with the applicant should be classified as confidential, the applicant must follow the procedures outlined in RFA Article IV § F., when submitting a response.**

**Q.65:** When will all the applications be posted on the Gaming Commission website?

**A.65: Applications will be posted on the Commission website after the Commission has completed its review required under N.Y. Public Officers Law § 87.2.**

**Q.66:** Please define “trade secrets” in the context of page 23 of the RFA?

**A.66: Generally speaking, a trade secret is information or a proprietary process the disclosure of which would compromise a competitive advantage.**

**Q.67:** Public Disclosure of Application Materials. The RFA at Section IV.F (p. 22) and the Racing, Pari-Mutuel Wagering and Breeding Law § 1313(2) provide an exemption from public disclosure under the New York State Freedom of Information Law (FOIL) for any records containing “trade secrets, competitively sensitive or other proprietary information provided in the course of an applicant for a gaming license, the disclosure of which would place the applicant at a competitive disadvantage.” In Massachusetts—a state with similar exemptions to public disclosure in its Public Records Law—the Massachusetts Gaming Commission produced specimens of Background Investigation Forms with certain data fields highlighted to indicate fields that would be protected from public disclosure.

Will the Commission/Board be issuing any specimens or other guidance concerning what specific information requested by the Commission/Board will be protected from public disclosure?

**A.67: No.**

**Q.68:** Protection of Propriety Consultant Information. RFA Section IV.B.3. requires submission of functional “models” used in forecasting or projecting revenues and other economic calculations. Some of the models utilized contain proprietary data and analytical methods.

The RFA also provides in Section VI.K. Conflicts of Interest, specific provisions to avoid real or perceived conflicts of interest affecting any “member, employee or consultant or agent of the Board.” (emphasis added)

While the N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1313.2 and Section 87 of the New York Public Officers Law can protect such information from public disclosure, the consultants who utilize such financial models are relatively few in number and are competitors of the consultants retained by the Gaming Commission and Board.

Can these proprietary models be shielded from the State’s consultants during the Board and Commission application review? Alternatively, can the functioning models be presented to the Board in a meeting review session attended in person by both the Applicant’s consultants and the State’s consultants?

**A.68: The Board or the Commission will determine whether a model alleged to be proprietary is a trade secret that is permitted to be withheld from public disclosure under N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1313.2 and N.Y. Public Officers Law § 87. The applicant has the burden of demonstrating the proprietary nature of the model asserted to be a trade secret and the burden of demonstrating that its consultants are competitors of the Board or Commission’s consultants.**

**If the Board or the Commission determines that the consultants of an applicant are competitors of consultants retained by the Board or the Commission, models deemed to be trade secrets will not be disclosed to such consultants shown to be competitors of the applicant’s consultants.**

**Q.69:** The RFA on page 20 stipulates that revenue models are to be delivered on flash drive to the New York Gaming Facility Location Board. We assume that the Commission is not asking for the actual propriety amount in some cases patented analytical models themselves. Could you confirm?

**A.69: See answer to Question 48.**

**Q.70:** Under section IV.F (p.23) of the RFA, will the Board be issuing further guidance prior to the deadline for the submission of applications concerning what information or fields of the Gaming Facility Application Form, Multi-Jurisdictional Personal History Disclosure Form, or New York Supplemental Form will be protected from public disclosure (such as specimens identifying protected information as issued by the Massachusetts Gaming Commission, available at: <http://massgaming.com/licensing-regulations/phase-1-applications-for-regions-a-b/>).

**A.70: The Board does not currently intend to withhold from public disclosure of such information or fields, but reserves the right to do so if deemed appropriate.**

### **Gaming Regulations**

**Q.71:** The casino industry is a highly regulated sector of the economy. In other states where casino gaming is either mature or emerging, the regulations have a direct impact on casino operations, expenses, and thus profit margins. Therefore, regulations have a direct bearing on the models that will be submitted by Applicants as part of the siting process.

Other than the promulgation of the Minimum Capital Investment, does the Commission and/or Board expect to promulgate any regulations (emergency or otherwise) prior to the submission deadline for applications? If so, when can the Applicants expect to review the regulations to ensure that the impact of the state regulatory scheme is incorporated into the various components of the Application?

**A.71: RFA Article IV § G. provides that “For the benefit of Applicants, the Commission anticipates releasing, prior to the submission deadline for Applications in response to this RFA, an outline of the approach the Commission plans to follow in establishing regulations governing commercial gaming in the State.”**

**Q.72:** The Commission plans to release an outline of its regulatory approach – do we have an approximate date for such release?

**A.72: See answer to Question 71.**

**Q.73:** Will the Commission or Board be issuing any regulations prior to June 30th?

**A.73: See answer to Question 71.**

**Q.74:** When are the Gaming Regulations going to be made public? Are they likely to include additional expenses to be paid by the Licensee? (Reference page 23)

**A.74: See answer to Question 71.**

**Q.75:** Will the gaming regulations be released giving ample time for us to create the internal controls for submittal?

**A.75: See answer to Question 71.**

## **EXECUTIVE SUMMARY**

**Q.76:** The RFA requires an executive summary, not to exceed four (4) pages in length, highlighting the principal terms of an Application. RFA, Section V. Will the Board define “principal terms”?

**A.76: Principal terms would be those most material to the Applicant’s proposal.**

**Q.77:** In Exhibit V.

- a. Is four pages defined as four pages single-sided or double-sided?
- b. What is the definition or what is desired as “principal terms”?

**A.77:**

**a. Single sided.**

**b. See answer to Question 76.**

**Q.78:** Does the Board have specifications regarding layout, font, etc. governing the four page executive summary?

**A.78: No, the Board leaves to the Applicant formatting preference for the Executive Summary.**

## **APPLICANT INFORMATION**

### **General Applicant and Business Information**

**Q.79:** What constitutes a “beneficial or proprietary interest” as such term is used in the RFA?

**A.79: A “beneficial or proprietary interest” is any financial interest (equity, debt, credit support or credit enhancement) of five (5) percent or more in an Applicant or a Manager.**

**Q.80:** Disclosure of Public Officials Owning a Financial Interest in the Applicant or its Affiliates. Is there any exception for publicly held corporations (e.g., as there is for names/addresses of owners of the Applicant)?

**A.80: An applicant that is a public corporation, or that has a public corporation with a financial interest in the applicant, should make a good**

**faith effort to determine whether any public official owns a financial interest in the applicant or the related parties of an applicant. It is anticipated that the Commission will promulgate regulations on this issue.**

**Q.81:** Please confirm that the RFA requires a Multi Jurisdictional Personal History Disclosure Form and New York Supplemental Form be filed only for a Casino Key Employee who is either presently employed or whose employment by the Applicant is reasonably certain if the Applicant is awarded a License.

**A.81: A complete and accurate Multi Jurisdictional Personal History Disclosure Form and New York Supplemental Form for each natural person who is (i) a director, manager, general partner or person holding an equivalent position with the Applicant, a Manager or any direct or indirect parent entity of the Applicant; (ii) a Casino Key Employee; (iii) a person having beneficial or proprietary interest of five (5) percent or more of an Applicant or a Manager; or (iv) designated by the Commission.**

#### **Table of Ownership, Organizational Chart**

**Q.82:** Section VI – E. “Table of Ownership.”

a. If the Manager is a NY limited liability company, and it is wholly owned by a parent corporation, which is ultimately owned by an Indian tribal government, how would one satisfactorily disclose the “owners”?

b. In other words, is there mechanism for determining a cut-off point for the ownership chart in this tribal context, comparable to the published standard for a publically held company?

c. If there is no definitive guidance, how could an applicant seek an advance ruling?

**A.82: The name and business address of each person or entity that has a direct or indirect ownership or proprietary interest must be disclosed, including the identity of the Indian tribal government. In the example given, there would be no further indirect owners of an Indian tribal government.**

**Q.83:** Section VI – F. “Organizational Chart.”

a. Are there categories of Applicant's personnel that will presumptively be defined as Casino Key Employees (i.e., certain back of house functions)?

b. If no such itemization of title or function exists, is there a mechanism for seeking a preliminary ruling on the issue, prior to submission of the application, so as to avoid unintended errors and consequences during the application process?

There is very little mention/guidance in terms of Surveillance's role:

c. Are these employees considered Key Employees?

d. Are there minimum specs for equipment, etc.?

There is very little mention/guidance in terms of Internal Audit's role:

e. Are these employees considered Key Employees?

f. May the function be outsourced, and if so, how is that addressed within the current Application?

Outsourcing of other functions:

g. May other functions be outsourced, such as payroll, certain IT functions, etc.

h. If so, how is this issue to be addressed within the current Application, if at all?

**A.83: N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1301.8 defines "Casino key employee" as any natural person employed by a gaming facility licensee, or holding or intermediary company of a gaming facility licensee, and involved in the operation of a licensed gaming facility in a supervisory capacity and empowered to make discretionary decisions which regulate gaming facility operations. Applicants shall make a good faith effort to determine whether an individual is a Casino Key Employee. If the Board determines that an applicant failed to provide background forms for a Casino Key Employee, the Board will afford the applicant the opportunity to submit the necessary background forms for such person or entity.**

### **Region and Host Municipalities**

**Q.84:** May an Applicant file two or more competing applications for separate and distinct Gaming Facilities to be located in the same Region?

**A.84: Yes.**

**Q.85:** May an Applicant file two or more competing applications for separate and distinct Gaming Facilities, each of which is to be located in a different Region?

**A.85: Yes.**

**Q.86:** Is Region Two guaranteed to be issued a gaming license, or is it possible that each of Regions of One and Five are awarded two licenses, and Region Two does not get any. Next, is it possible for Region Two to be awarded more than one gaming license?

**A.86: Per N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1311, at least one Applicant in each of regions one, two and five will receive a license, so long as the Board selects an Applicant for such region and the Commission determines that such Applicant is suitable. A second license may be recommended to a qualified Applicant in a single region.**

**Q.87:** Can an Applicant Party submit an RFA for two different projects in different Regions? And can an Applicant Party win in two different Regions?

**A.87: Yes.**

**Q.88:** This provision suggests that an applicant can designate multiple sites in a single application – is this interpretation correct?

**A.88: No.**

**Q.89:** Are there any prohibitions against partnering in a traditional Joint Venture?

**A.89: No.**

**Q.90:** a. Are there any prohibitions on multiple bids in the same region?

b. Could multiple bids prejudice the applicant?

**A.90:**

**a. No.**

**b. No.**

**Q.91:** Are there any prohibitions on bidding in more than one region? Could multiple bids prejudice the applicant?

**A.91: See answer to Question 90.**



**Q.92:** Are separate \$1,000,000 Application fees, as described in Section III.A of the RFA, required for multiple applications by the same ownership group, even if the Applicant entities are different?

**A.92:** The purpose of the Application Fee is to defray the costs of the Applicant's investigation. Thus, a single fee may govern multiple Applications, provided the financing, organizational structure, and principals and officers of the Applicant are identical within each Application. If there is any material disparity between the submitted Applications, each will require an independent Application Fee.

It is important to note that the ultimate charge for the Application process is determined by the actual costs of the investigation. Thus, if the costs of investigating Applications exceed the Application Fee, the Applicant will be charged that excess amount. Conversely, if the costs of the investigation are less than Application Fee, the unexpended funds will be returned to the Applicant.

**In short, regardless of the cost of the initial Application Fee, Applicants are charged for the actual cost of the investigation.**

**Q.93:** If there are bids for multiple sites by one applicant, will more than one application fee be required?

**A.93: No.**

**Q.94:** Are there any prohibitions on owning a license in more than one region?

**A.94: No.**

**Q.95:** Is there any restriction on the number of locations within one or more Regions for which one can apply?

**A.95: No.**

**Q.96:** If one applied for multiple locations, must each Application for a location be filed by a separate entity even if the ultimate ownership of the Applicant(s) is identical?

**A.96: See answer to Question 92.**

**Q.97:** Is any paperwork required to be submitted with the payment of the \$1 million application fee?

**A.97: No.**

### **Conflicts of Interest, Public Officials**

**Q.98:** Under § 5300.1. (b)(2), Applicants are required to identify all conflicts of interest. The scope of the regulation is very broad and includes any relationship or affiliation of the applicant, manager or any of their respective affiliates that currently exist with any member, employee, consultant or agent of the Board or the Commission, any public officials or officers or employees of any governmental entity, and immediate family members of said public officials, officers or employees, who directly or indirectly own any financial interest in, have any beneficial interest in, are the creditors of, hold any debt instruments issued by, or hold or have an interest, direct or indirect, in any contractual or service relationship with the applicant, the manager, or their affiliates. Similarly, the RFA requires an Applicant to “[s]ubmit as Exhibit VI.K. a description of any relationship or affiliation of the Applicant, the Manager or any of their respective Affiliates that currently exists or existed in the past five (5) years with any member, employee, consultant or agent of the Board or the Commission that is a conflict of interest or may be perceived as a conflict of interest during the RFA process.” For purposes of assisting Applicants in their compliance with such requirements, will the Board or Commission:

- a. Publish a list of names of all employees, consultants (and their employees) and agents of the Board or the Commission;
- b. Either (i) provide guidance to public traded companies with an interest in an Applicant as to an acceptable methodology for confirming that no member, employee, consultant or agent of the Board or the Commission, any public officials or officers or employees of any governmental entity, and immediate family members of said public officials, officers or employees, directly or indirectly own any financial interest in, have any beneficial interest in, are the creditors of, hold any debt instruments issued by, or hold or have an interest, direct or indirect, in an affected public traded company or (ii) confirm that interests of less than 5percent in a publicly traded company are not deemed to be a conflict of interest; and
- c. Provide guidance or clarification as to what types of relationship(s) or affiliation(s) constitute a conflict of interest, e.g., those of strictly a financial, beneficial or contractual relationship or affiliation, or does such bar extend to casual social relationships?

**A.98:**

**a. No. An applicant should survey its organization and affiliates for known conflicts.**

**b. A company, publicly traded or not, should survey its employees, officers, directors, affiliates and agents for known conflicts. If a publicly traded company has a direct or indirect interest of less than five (5) percent of the applicant, such public company is not required to conduct such a survey.**

**c. The types of relationships that may constitute a conflict of interest include those that could be reasonably interpreted to compromise the integrity of the applicant selection process. Applicants must disclose any relationships (financial, contractual, ownership, professional, social or otherwise) that could be a direct or indirect conflict of interest or a perceived conflict of interest.**

**Q.99:** There is a request that Applicants, Managers and Affiliates submit a description of any relationship or affiliation "that currently exists or existed in the past five (5) years with any member, employee, consultant or agent of the Board or the Commission that is a conflict of interest or may be perceived as a conflict of interest..."

a. Is the Board/Commission going to provide a list?

b. How is an applicant supposed to know who could be (or was in the last 5 years) considered a consultant and/or agent of the Board or Commission?

**A.99:**

**a. No lists will be provided.**

**b. Applicants are responsible for performing appropriate due diligence to determine and disclose all actual or perceived conflicts of interest.**

### **Public Officials**

**Q.100:** This provision is impossible for a public company to comply with. Can there be some clarification that the list is only required to the extent such individuals are known to the Applicant, Manager and the Affiliates?

**A.100:** See answer to Question 80.

### **Application Fee**

**Q.101:** If we apply for two Licenses, will we be required to pay two Application Fees of \$1,000,000 each? If we apply for two Licenses, each in the name of a newly formed limited liability company, with each entity having the identical indirect owners, will we be required to pay an Application Fee for each limited liability

company. For example, if we form LLC A, which is owned by newly formed Corp A, which is a wholly owned subsidiary of our Parent Company, and we form LLC B, which is wholly owned by newly formed Corp B, which is also a wholly owned subsidiary of our Parent Company, and LLC A plans on filing an Application for Region 1 and LLC B plans on filing an Application for Region 2, must LLC A and LLC B, each file a \$1,000,000 Application Fee?

**A.101: See answer to Question 92.**

**Q.102:** If the same applicant wishes to bid on multiple sites will they be required to pay multiple application fees?

**A.102: See answer to Question 92.**

**Q.103:** If an Applicant intends to file more than one application, is there a \$1 million fee payable on or before April 23, 2014 for each such application, if the Applicant entity is different but the ownership of the Applicant is the same?

**A.103: See answer to Question 92.**

**Q.104:** If a single Applicant or multiple Applicants with identical ownership are seeking multiple locations in more than one Region, must it or they pay a \$1 million Application Fee for each location for which an Application is made?

**A.104: See answer to Question 92.**

**Q.105:** With respect to the \$1 million application fee, the RFA indicates that if "an Applicant pays the \$1 million fee and does not complete and submit its Application on or before June 30, 2014, the Commission will return the fee less any reasonable costs the Commission will have already incurred related to processing, including overhead and administrative expenses"

Can you provide more details on the makeup of the costs that the Commission could incur prior to June 30th? Specifically, are the costs referenced above costs specific to the Applicant, or are they pooled costs that the Commission will have incurred across all applicants to that date? Further, if the costs are specific to the Applicant, what could those costs be related to if the Applicant has not yet submitted an Application?

**A.105: If an interested party submits the Application Fee, but chooses to withdraw within five (5) business days following the Board's release of minimum capital investment requirements, the entire Application Fee will be refunded. However, after that five (5) business day period, Applicants will be charged for actual costs related to any investigation related to such**

**Applicant, even if the Applicant ultimately decides not to submit an Application.**

**Q.106:** Can the Board elaborate on its “overhead and administrative expenses” and how much it intends to allocate towards the Applicant’s fees?

**A.106:** See answer to Question 92.

**Q.107:** Would the amount of a refund be based upon apportioned expenses among all applicants or on expenses associated with the applicant requesting the refund?

**A.107:** See answer to Question 92.

**Q.108:** Does a person submitting a question, if a potential bidder, need to submit the \$1 million fee in order to submit a question?

**A.108: No, however entities intending to submit an Application are required to remit the Application Fee no later than April 23, 2014.**

**Q.109:** Refund of Application Fee: the RFA states “If an Applicant pays the \$1 million fee and does not complete and submit its Application on or before June 30, 2014, the Commission will return the fee *less* any reasonable costs the Commission will have already incurred related to processing, including overhead and administrative expenses.” The notice of the April 30 Applicant Conference states, in part “The purpose of the Application fee is to defray the costs of Applicant’s investigation. Unexpended funds will be returned to the Applicant. Full reimbursement will be made to any party declining to file an Application.”

a. If an Applicant does not file an Application by June 30, will it receive a refund of the “full” amount (i.e., the entire \$1 million application fee) or will a portion of that fee be retained by the New York State Gaming Commission?

b. If a portion will be retained, is there an estimated amount that Applicants should expect the Commission will retain?

c. If the costs of investigating the Applicant do not exceed \$1 million, will the unexpended amount of the initial fee be reimbursed to the Applicant?

**A.109:** See answers to Question 92 and 105.

**Q.110:** Would the amount of a refund be based upon apportioned expenses among all applicants or on expenses associated with the applicant requesting the refund?

**A.110:** See answer to Question 105.

**Q.111:** What application fees are due for each individual qualifier (key person) who is required to submit the Multi-Jurisdictional Personal History Disclosure Form and NY Supplement?

**A.111: None. The purpose of the Application Fee is to defray the costs of an Applicant's investigation, which includes review of individual Applicant qualifiers.**

**Q.112:** Can the application fee be applied to a different site if the site in the application becomes less desirable?

Clarification to Question: If we change the location of the proposed casino site after we submit our application would we have to pay additional fees?

Reasons for such a change could include things such as unforeseen environmental, historical or geological problems with a site that are discovered after the application has been submitted.

**A.112: No. Once an Application has been submitted, the location of a project site cannot be changed.**

**Q.113:** Application fee (p. 11-12) "individual, entity, consortium or other party evincing interest"

- a. Must the ultimate applicant make the \$1 million payment?
- b. May a representative make the payment?
- c. Must a site and/or region be identified with the \$1 million payment?
- d. Is the application fee "per applicant" as stated or "per application?"
- e. Please define "reasonable costs the Commission will have already incurred related to "processing including overhead and administrative expenses."
- f. Will State employee payroll be included in "overhead and administrative expenses?"
- g. When will the application fee be returned if no application is filed?

**A.113:**

- a. **The Board is uncertain as to what is meant by “ultimate applicant,” as the RFA contemplates the possibility of altering the ownership of the Applicant.**
- b. **Yes, but an Applicant must be disclosed in order to participate in the Mandatory Applicant Conference.**
- c. **No, it is not necessary to disclose the intended site at the time of Application Fee payment.**
- d. **See generally the answer to Question 92.**
- e. **See the answer to Question 105.**
- f. **See the answer to Question 105.**
- g. **The Application Fee will be refunded as soon as practicable.**

### **EVALUATION CRITERIA AND SELECTION PROCESS**

**Q.114:** If an Applicant fails to include any one of the elements listed in Sections VIII – X, such as a hotel under Section VIII.C.7, or proposes phases without demonstrating financial backing to build future phases, how will the Commission/Board treat these situations as it relates to the scoring of an Application?

**A.114:** See N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1315.

**Q.115:** What is the burden of proof for an Applicant to demonstrate prior work or capital costs to qualify for scoring as part of the Minimum Capital Investment purposes under the RFA?

**A.115:** Per RFA Article VIII § A. 1. a., “Within ten (10) business days after the Applicants’ conference, the Board will promulgate the Minimum Capital Investment required.” Included within this document will be a provision addressing the circumstances under which prior capital investment can be credited toward Minimum Capital Investment.

**Q.116:** If an Applicant places competitive restrictions or other conditions to accepting a License in its RFA bid (i.e. no other license is awarded in X county or within X miles of Applicant’s site) would the Board consider such bid non-conforming?

**A.116:** Yes.

**Q.117:** Will there be an opportunity for potential competitors to respond to and/or challenge other competitors' applications and claims?

**A.117: No.**

**Q.118:** a. To what degree will locating a casino in a distressed community be viewed in weighing an applicant's bid?

b. The Upstate New York Gaming Economic Development Act of 2013 outlined the process and criteria for siting no more than four gaming resorts to create jobs and reduce employment in "disadvantaged areas" of the State. What is the definition of "disadvantaged areas"?

c. Are all of the Regions and counties located within those Regions automatically covered under this definition?

**A.118:**

**a. The issue of locating a casino in a distressed or disadvantaged community will be considered as a part of the evaluation of economic activity and business development factors pursuant to N.Y. Racing, Pari-Mutuel Wagering and Breeding Law §1320.1.**

**b. Disadvantaged or distressed areas will be evaluated on the basis of objective criteria, including poverty rates, numbers of persons receiving public assistance, unemployment rates, rate of employment decline, population loss, rate of per capita income change, decline in economic activity and private investment, and such other indicators as the Board deems appropriate.**

**c. No**

**Q.119:** The RFA, at sections VIII, IX, and X, lists a number of different components to be taken into consideration by the Board in reviewing an application for a Gaming Facility License.

Are the specifically named components, including but not limited to a hotel, convention space, and on-site child day-care program, required to be included in a proposal for a gaming facility license, or are they elements that the Board will take into consideration when evaluating a proposal, but not necessarily required?



**A.119: Applicants should refer to the appropriate sections of N.Y. Racing, Pari-Mutuel Wagering and Breeding Law Article 13 to determine statutorily required versus permissive elements.**

**Q.120:** Should we expect any more guidance on the weighing of the factors for selection?

**A.120: The Board may issue clarifications, as necessary, in response to specific Applicant questions.**

**Q.121:** Under N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1320 and section X (p.62-65) of the RFA

a. are the criteria listed in this section elements that must be included in any application submitted to the Board, or issues for the Board to take into consideration in evaluating Workforce Enhancement Factors?

b. If issues for the Board to take into consideration, will the Board be quantifying each element for purposes of evaluation?

**A.121:**

**a. See answer to Question 119.**

**b. No.**

**Q.122:** Under N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1320(3)(d)(3) and RFA Sections VII.C.5.c and X.B.1.c., is the establishment of an “on-site child day care program” an element that must be included in any application submitted to the Board, or an issue for the Board to take into consideration in evaluating Workforce Enhancement Factors?

**A.122: See answer to Question 119.**

**Q.123:** Will plans to eliminate VLTs in favor of Class 3 machines at an existing location have a negative impact on scoring?

**A.123: No.**

**Q.124:** Has the Board created standards by which to evaluate Applicant experience?

**A.124: No.**

**Q.125:** Has the Board developed standards by which to identify localities experiencing economic hardship?

**A.125:** See answer to Question 118.b.

**Q.126:** Has the Board established standards by which to evaluate an Applicant's participation in a "regional economic development plan"?

**A.126:** No.

## **ECONOMIC ACTIVITY AND BUSINESS DEVELOPMENT**

### **A. FINANCE AND CAPITAL STRUCTURE**

#### **Capital Investment**

**Q.127:** Section VIII – Economic Activity and Business Development of the RFA indicates that the Board will promulgate the Minimum Capital Investment required in each Region. When will the Board make that information available since applications are due within 90 days?

**A.127:** See answer to Question 115.

**Q.128:** Pursuant to section VIII.A.1 of the RFA, will the Commission/Board select different Minimum Capital Investment thresholds within certain counties in a Region, similar to the different minimum licensing fee thresholds that exist in the RFA?

**A.128:** See answer to Question 115.

**Q.129:** When the Minimum Capital Investment is defined, is it anticipated there will be differential minimums between the Regions and Counties?

**A.129:** See answer to Question 115.

**Q.130:** Since the minimum capital investment has not been determined by the Location Board and there will not be regulations issued until after the applications required by the RFA are submitted, what factors/determinants/criteria will the Location Board use for determining the amount of the Minimum Capital Investment?

**A.130:** See answer to Question 115.

**Q.131:** The listed inclusions/exclusions do not specifically list the license fee – is it correct that the license fee is considered an element of the Minimum Capital Investment requirement?

**A.131: The license fee is not considered as part of the minimum capital investment requirement.**

**Q.132:** Section VIII (A) 1(c) provides that payments to the Commission may not be included within the Minimum Capital Investment. Does this include the License Fee?

**A.132: See answer to Question 131.**

**Q.133:** The announcement of the Minimum Capital Investment will be promulgated within ten business days after the Applicants' conference on April 30, 2014. In the initial RFA the Commission identified different minimum licensing thresholds within both Region 1 and 5.

a. Will the Commission or Board identify different Minimum Capital Investment thresholds for certain counties within a region, similar to the licensing minimums?

b. If so, what is the basis for different minimum thresholds within a region?

**A.133: See answer to Question 115.**

**Q.134:** In calculating the Minimum Capital Investment, can an Applicant include the costs of developing non-gaming amenities which will not be owned or operated by the Applicant or the Manager but (a) are to be located on real property that is a part of the Project Site, (b) are integral to the development scheme for the proposed project as a whole, and (c) the third party operator is contractually obligated to develop and operate such non-gaming amenities if a License is awarded to the Applicant?

**A.134: Yes.**

**Q.135:** The RFA provides that there are certain exclusions from the Minimum Capital Investment Calculation. One such exclusion is "the pre-opening bankroll." RFA, Section VIII. Does such term mean (a) unrestricted cash maintained in the cage or in cash and cash equivalent bank accounts that is readily available to meet prize payment obligations or (b) something broader?

**A.135:**

a. Yes

**b. No.**

**Q.136:** The RFA lists specific items that may be included in the calculation of Minimum Capital Investment and specific items that shall be excluded. However, there are items that are not listed in either the included or excluded categories. Will the Board provide clarification on, for example, which types of pre-opening expenses other than those which are specifically excluded count as part of the Minimum Capital Investment?

**A.136: See answer to Question 120.**

**Q.137:** Will the Minimum Capital Investment be set by the Commission/Board on a county by county or Region basis?

**A.137: See answer to Question 115.**

**Q.138:** Will the amount of the minimum capital investment be based on region or county of the proposed gaming facility?

**A.138: See answer to Question 115.**

**Q.139:** Maximizing revenues received by the State and localities. The RFA sets forth that there will be minimum capital investment requirements for each respective zone, and requires the Applicant to exclude certain investment and items:

a. For purposes of calculating whether the Applicant has met the minimum, how will the Board treat certain state and local incentives, such as economic development and/or tax incentives?

b. Will IDA benefits be factored in when determining these elements of the RFA?

**A.139:**

**a. State and local incentives cannot be used to calculate Minimum Capital Investment.**

**b. While nothing in statute or RFA directly prevents use of applicable state and local economic development programs, a factor for the graded RFA evaluation is economic impact and a subsidized application will likely illustrate diminished economic impacts when competitively evaluated.**

**Q.140:** a. What methodology and data inputs will be utilized to determine the minimum capital investment for each region?

b. Could the Board disclose such information in a manner similar to that as described on page 36 Section 3 Market/Revenue Study?

**A.140:** See answer to Question 115.

### **Applicant Minimum Capital Investment**

**Q.141:** Section VIII also indicates that costs incurred by an Applicant prior to the Effective Date of the Act are not eligible, however the applicant may submit a request to include such costs.

a. Are costs incurred previously for casino approvals, site remediation, and initial construction of the casino project be considered eligible?

b. When will the Board make that determination?

**A.141:** See answer to Question 115.

### **Market/Revenue Study**

**Q.142:** What is the distinction, if any, between the independent “market/revenue” study to be submitted as Exhibit VIII.A.3 (described at page 36 of the RFA) and the “market analysis” that is to be submitted as Exhibit VIII.B.1 (described at pages 41-42 of the RFA)?

**A.142:** Exhibit VIII.A.3. requires, in part, the Applicant to show credible projections related to gaming revenue and to use comparable gaming facilities in comparable markets as means of substantiating such projects. Exhibit VII.B.1. requires, in part, an Applicant to address how location of and marketing efforts on behalf of the gaming facility will secure a customer base, enable the gaming facility to compete successfully against other facilities and promote the State, region and Host Municipality.

**Q.143:** Section VIII – 3. “A study by an independent expert.” Please clarify that a third party hired by an Applicant would constitute an independent expert?

**A.143:** To be considered an “independent expert,” a third party should maintain appropriate credentialing and be so experienced as to make credible, independent findings and determinations. A third-party is not considered to be an independent expert merely by having been retained by an Applicant.

## Pro-forma Financial Information

**Q.144:** How will the Board/Commission treat “free play” as part of the detailed financial forecast to be submitted in the form of a pro-forma, as required in Section VIII.A.4 (taxed, not taxed, partially taxed)?

**A.144:** N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1301.25 provides that promotional credits or free play shall not be taxable for purposes of determining “gross gaming revenue.” Other provisions of statute governing competing gaming facilities strictly limit the amount of the deductible promotions. The Commission may, in its discretion, by regulation determine to level equitably amounts of deductible promotions available that a casino gaming facility may issue.

**Q.145:** a. If the Applicant does not forecast an operating loss during the projection period, must the Applicant maintain any minimum amount to be held against any unforeseen loss?

b. Must the minimum amount be covered by a single financing source?

**A.145:** These issues are not addressed in statute, but the Applicant should present its financial capabilities.

**Q.146:** For purposes of preparing financial projections, are there any limits on the amount of complimentary and “free play” an Applicant may offer in connection with its operations?

**A.146:** For purposes of “free play”, please see answer to Question 144. There are no limitations as to the amounts of complimentary benefits that may be offered.

**Q.147:** Article VIII, §A(4) of the RFA requires a detailed financial forecast in the form of a pro-forma showing financial projections for a period of at least ten (10) years after opening on a high-, average-, and low-case basis. Please explain:

a. How an Applicant is to prepare such pro-forma projections without knowing whether the Applicant’s Region is to have one or two Gaming Facilities?

b. Are Applicants expected to submit multiple pro-forma forecasts, each based on a different set of contingencies relating to (1) whether there is a competing facility within the same Region and (2) within the same or a different county within such Region?

c. Will a Licensee be permitted to revise its pro-forma forecast if a second casino license is granted within the Licensee's Region? (For example, if an Applicant proposing a Gaming Facility in Sullivan County is granted a license and a second Facility is licensed in Orange County, the pro-forma projections for the Facility in Sullivan County would need to be adjusted.

d. Under this scenario, would the Licensee in Sullivan County be permitted to revise, amend, and re-state its pro-forma projections?)

e. Similarly, in the event a competing facility is licensed within the Licensee's Region, will the Licensee be permitted to revise its Gaming Facility proposal (size of facilities, amount of capital investment) and be permitted additional time (beyond the 24 month deadline to commence gaming) to revise its construction drawings, amend permits, and, if necessary, re-negotiate financing?

**A.147: In evaluating Applications, the Board will be sensitive to regional competition. Therefore, an Applicant may choose to submit an additional market/revenue study (Exhibit VIII.A.3.) and pro-forma financial information (Exhibit VIII.A.4.) that reflects the effect a second casino in the region would have upon the Applicant's projections.**

### **Capital and Financing Structure**

**Q.148:** For purposes of preparing Exhibit VIII.A.6.a., is there a threshold percentage which triggers the informational requirements for a Financial Source?

**A.148: No.**

**Q.149:** What is the difference between the terms "financing source" and "funding source" as such terms are used in the RFA?

**A.149: There is no difference.**

**Q.150:** What constitutes a "highly confident" letter" as such term is used in the RFA?

**A.150: An investment banking firm's letter indicating that the firm is highly confident it will be able to arrange financing.**

**Q.151:** What constitutes a "financial commitment" as such term is used in the RFA?

**A.151: The phrase "financial commitment" is intended to have its customary meaning. Generally, a financial commitment is an undertaking to provide financing or capital to another or to bear expenses of another.**

**Q.152:** What constitutes a “guarantee” as such term is used in the RFA?

**A.152:** The term “guarantee” is intended to have its customary meaning. Generally, a “guarantee” is an agreement by which one person promises to perform the obligations (whether financial or otherwise) of another.

**Q.153:** VIII.A.6a, d-e,7a, 8b-c, 9. The likely pool of Applicants will include various sized Gaming companies, many of which are likely publicly traded. It is also likely that some, it not most, maintain existing credit facilities on an ongoing basis and would likely be used to fund the Gaming Facility development. Financial participants in such credit facilities can and do number in the hundreds of institutions. These participants typically include large regulated financial institutions such as Wells Fargo or Bank of America as well public employee retirement funds, insurance companies, investment funds and other similar entities. Financing Source is defined to include such institutions and the RFA requests significant information related to such. A number of these requests are as a practical matter likely impossible to collect from such institutions. As it relates, are Applicants required to submit the information requested in VIII.A.6a,d-e,7a,8b-c,9 for each of Applicant’s third-party financial institutions?

**A.153:** Neither the statute nor the RFA contemplates exclusion of Institutional Investors. Such subject matter will likely be considered in the context of Commission rulemaking.

The Commission has, however, made Institutional Investor exceptions in other gaming contexts. Should the Commission choose to craft such an exception, it is likely the exception would be consistent with other uses.

Historically, an “Institutional Investor” has been defined along the following lines:

1. A “qualified institutional buyer” as defined in Rule 144A under the Securities Act of 1933 that is:
  - a. A bank as defined in Section 3(a)(6) of the Securities Exchange Act of 1934, as amended.
  - b. An insurance company as defined in Section 2(a)(17) of the Investment Company Act of 1940, as amended.
  - c. An investment company registered under Section 8 of the Investment Company Act of 1940, as amended.
  - d. An investment advisor registered under Section 203 of the Investment Advisors Act of 1940, as amended.



- e. **Collective trust funds as defined in Section 3(c)(11) of the Investment Company Act of 1940, as amended.**
  - f. **An employee benefit plan or pension fund subject to the Employee Retirement Income Security Act of 1974, as amended, excluding an employee benefit plan or pension fund sponsored by an Applicant, Manager or any Person having a beneficial or proprietary interest of five (5) percent or more in an Applicant or Manager.**
2. **A pension plan sponsored by a state or federal government.**
  3. **A group comprised entirely of the types of persons specified in Items 1 and 2, above.**
  4. **Such other persons as the Commission may determine for reasons consistent with the policies under applicable statutes or compacts.**

**For financing plans, highly confident letters, financing commitments and financing arrangements or agreements in the form of any syndicated debt facility or underwritten offering, the arrangers, agents, book runners and underwriters are Financing Sources for which the Application should include the disclosures to be made as to Financing Sources. For third-party financings and offerings that are not syndicated or underwritten, the individual participants are each a Financing Source for which the Application should include the disclosures to be made.**

**Q.154:** Is it feasible to include/allow Investors to our project who may have a complex background by having them fund through a trust and/or company not directly held by them. Are there any specified degrees of separation (minimum or maximum) between them and our project.

**A.154: All direct and indirect investors must be disclosed. See answer to Question 28 for an explanation of which investors/owners are subject to a background investigation.**

### **Economic Development**

**Q.155:** By its very name and nature, the purpose of the Act is to spur economic development "in disadvantaged areas of the state" (RFA p. 6). The scoring criterion is heavily weighted toward economic activity and business development factors (RFA at p. 30-31). The state's robust economic development programs are wide and varied and include other tools and programs to spur economic development beyond those contained in the Act.

a. Will an Applicant be eligible for state and local economic development programs, such as brownfield tax credits, etc.?

b. If so, should the use of such programs be incorporated into the Application to the Board?

**A.155:**

**a. Nothing in statute or RFA directly prevents use of applicable state and local economic development programs. See also the answer to Question 139.**

**b. Yes.**

**Q.156:** Will proposed gaming facilities be eligible for brownfield credits or other state or local economic development funding?

**A.156:** See answers to Question 139 and 155.

### **Financial Statements and Audit Report**

**Q.157:**

a. Section VIII - Financial Statements – is the Board requesting audited financials from lending sources as well as the Applicant?

b. If the applicant is an SPE (single purpose entity) created specifically for a casino project, will it be requesting audited statements from the SPE?

**A.157: As to the Applicant and Manager, see RFA Article IV. A., second paragraph. As to Financing Sources, each Application should include the disclosures to be made as to Financing Sources. Presuming an Institutional Investor exception is authorized by the Commission pursuant to regulation, a Financing Source that reflects the standards discussed within the answer to Question 153 would likely be excluded from disclosure filing.**

**Q.158:** Item 7 in RFA Section VIII requires submission of five years of audited financial statements. We note and appreciate the ability as indicated in Item 9 of Section VIII to provide a link to access company SEC filings instead of producing hard copies. As a publicly traded company our audited financial statements are included in our SEC filings. We request permission to be allowed to provide a link (or alternately an electronic copy) for audited financial statements instead of providing hard copies as these are also typically large documents.

**A.158: As indicated in RFA Article VIII § A. 9., a link to the location of all responsive material is sufficient to fulfill this requirement.**

**Documentation of Financial Suitability and Responsibility**

**Q.159:** The RFA requires certain information for documentation of “financial suitability and responsibility.” RFA, Section VIII.A.8.

- a. Is this requirement applicable to business entities, natural persons, or both?
- b. For what time period should the requisite documentation be produced?
- c. For what time period should this information be produced?

**A.159:**

**a. RFA Article VIII § A. 8. a. applies to the Applicant and requires submission as Exhibit VIII.A.8.a. clear and convincing evidence of financial stability. See also N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1313.1(e)**

**RFA Articles VIII § A. 8. b. and VIII § A. 8. c. apply to Financing Sources.**

**b. Applicants should submit as Exhibit VIII.A.8.b. references as of a reasonably current date. Applicants should submit as Exhibit VIII.A.8.c. securities analysts’ and credit rating agencies’ reports for the past three (3) years.**

**c. The past three (3) years.**

**Q.160:** For purposes of satisfying the requirements of Exhibit VIII.A.8.a., what constitutes “business and personal income and disbursement schedules” and “business and personal accounting check records and ledgers”?

**A.160: Applicants may take the position that Exhibit VIII.A.7.a. addresses this request. See N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1313.1(e)**

**Q.161:** An Applicant is required to submit as Exhibit VIII.A.8.b. at least three (3) financial references from banks or other financial institutions attesting to each Financing Source’s creditworthiness. Please clarify this requirement in that banks and other financial institutions no longer issue such references in the ordinary course of business.

**A.161:** See N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1313.1(e) Applicants may take the position that other documents specified in N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1313.1(e) satisfy the request under RFA Article VIII § A. 8. b.

**Q.162:** The reference to *N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1320.1.(e)* in Item 8 of RFA section VIII appears to be incorrect.

a. Should the correct reference be to *Section 1313.1.(e)*?

b. Also Item 8 of the RFA asks for tax returns but does not say for what period. Since for a large publicly traded company these are very large documents, we would ask that this be limited to the most recent year or the most recent three years of tax returns.

c. Additionally, we ask the Commission to consider allowing applicants the option to submit tax returns in an electronic format without also requiring hard copies which would likely take up several binders.

**A.162:** RFA Article VIII § 8. a. should cite N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1313.1(e).

**Q.163:** Section VIII (A) 8(a) of the RFA references N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1320.1(e). We do not see the connection between the requirements of this portion of the N.Y. Racing, Pari-Mutuel Wagering and Breeding Law and the “bank references, business and personal income and disbursement schedules, tax returns and other reports filed with government agencies” referenced in this section of the RFA. Is the cite to the N.Y. Racing, Pari-Mutuel Wagering and Breeding Law correct?

**A.163:** See answer to Question 162.

**Q.164:** a. Please clarify whether the requirement for “...documentation of financial suitability and responsibility” is applicable to business entities, individuals, or both?

b. For what time period should this information be provided?

**A.164:** See answer to Question 159.

**Q.165:** Article VIII, §A(8)(a) of the RFA asks for documentation of financial suitability and responsibility, but does not state from whom they are to be received. Please advise precisely which entities are required to provide the requested documentation?

**A.165: See answer to Question 159.**

**Q.166:** Subsection “a” does not clarify who must submit the requested information.

a. Is it just for Applicant?

b. Applicant and Manager and Affiliates?

**A.166: See answer to Question 159.**

### **Legal Actions**

**Q.167:** If an applicant is facing litigation regarding its rights to build a casino, how does that affect the applicant’s ability to be awarded a license?

**A.167: The Board may consider pending or threatened litigation in its siting evaluation. Once the Board selects an applicant to present to the Commission for licensure, the Commission may consider pending or threatened litigation in its suitability determination.**

## **B. ECONOMICS**

### **Projected Tax Revenue to the State**

**Q.168:** How will IDA and other tax and/or economic development benefits be factors?

**A.168: See answer to Question 155.**

**Q.169:** How should free play, comps and incentives be treated for purposes of calculating net win and projected tax revenue to the State?

**A.169: See answer to Question 144 for treatment of free play in calculating net win.**

**Comps and incentives are not to be deducted from net win and should be recorded in conformity with Generally Accepted Accounting Principles (GAAP).**

### **Employees**

**Q.170:** The RFA requires, as Exhibit VIII.B.7.a, employee tables, that include “the number of such positions that are anticipated to be filled by residents of the State,

residents of the Region and residents of the Host Municipality or nearby municipalities in which the Gaming Facility is to be located.” Is a single table required showing overall employment or three separate tables, i.e., (a) a table showing employment of residents of the State, (b) a table showing employment of residents of the Region and (c) a table showing employment of residents of the Host Municipality or nearby municipalities?

**A.170: Presentation in a single table would be preferred, but is not required.**

**Q.171:** If an applicant or its [sic] principals or primary shareholders of an applicant that already has a gaming license for a racino in the approved region where an applicant will be applying for a new license, will that applicant be allowed to count the preservation of existing jobs toward its projected job counts?

**A.171: No.**

**Q.172:** Will employees who work in the Casino Operations be required to be 21?

**A.172: Age restriction would be set by regulation. State practice for other elements of the gaming industry is to allow employment of individuals under the age of 21.**

### **Competitive Environment**

**Q.173: Effect on Surrounding Casinos.** The RFA requires the Applicant to describe how it “plans to succeed . . . while limiting the impact on revenues at other New York gaming establishments (e.g. VLT facilities, tribal casinos, race tracks) . . .” (RFA at p. 44). In the legislative findings and purpose section of the Act, it states “[f]our upstate casinos can boost economic development, create thousands of well-paying jobs and provide added revenue to the state.” (N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1300 [5]).

a. Does the Applicant have an affirmative responsibility to limit its potential growth, and thus impact on surrounding gaming facilities, including VLT facilities, tribal casinos, and race tracks?

b. Additionally, does this responsibility exist, remain the same, or change depending upon whether the surrounding gaming facility is located within the same region as the Licensee or outside of the region?

**A.173: The language that is quoted from the RFA is clear that what is required of the Applicant is to describe how it intends to expand the**

**relevant market by bringing in new visitors, as opposed to merely shifting visitors from existing gaming venues in the region.**

**Q.174:** What exactly is the applicant's responsibility to limit the impact on revenues at other gaming establishments"?

**A.174:** See answer to Question 173.

### **Licensing Fee**

**Q.175:** Article VIII, §B(11) provides for differing minimum license fees for certain regions, depending upon whether another Gaming Facility license is awarded within the same region. Please explain (for example): if Applicant A is awarded a license to build a Gaming Facility in Sullivan County, and at some subsequent date Applicant B is awarded a license to build a Gaming Facility in Orange County, does Applicant A receive a refund for the difference between the license fee paid versus the license fee Licensee A would have paid had Licensee B been awarded a license first?

**A.175:** The Commission anticipates that licenses will be awarded concurrently.

**Q.176:** The amount of the minimum license fee for a Gaming Facility located in Columbia, Delaware, Greene, Sullivan or Ulster Counties (collectively, "Region 1 Impacted Counties") depends on whether a License is awarded for a Gaming Facility located in Dutchess or Orange Counties (collectively, "Region 1 Dominant Counties"). Similarly, the amount of the minimum license fee for a Gaming Facility located in Broome, Chemung, Schuylers, Tioga and Tompkins Counties (collectively, "Region 5 Impacted Counties") depends on whether a License is awarded for a Gaming Facility located in Wayne or Seneca Counties (collectively, "Region 5 Dominant Counties"). A lesser minimum licensing fee is due for a Gaming Facility located in the Region 1 Impacted Counties or Region 5 Impacted Counties if a License is awarded for a Gaming Facility located in the corresponding Region 1 Dominant Counties or Region 5 Dominant Counties, respectively. Accordingly, may an Applicant who proposes to develop a Gaming Facility to be located in the Region 1 Impacted Counties or Region 5 Impacted Counties make an application in the alternative whereby two scenarios would be presented as to the scope, scale and Minimum Capital Investment of the proposed Gaming Facility dependent on whether a License is awarded for a Gaming Facility located in the corresponding Region 1 Dominant Counties or Region 5 Dominant Counties?

**A.176:** An Applicant who proposes to develop a gaming facility to be located in the Region 1 Impacted Counties or Region 5 Impacted Counties is permitted to make an Application in the alternative whereby two

**scenarios would be presented as to the scope, scale and Minimum Capital Investment of the proposed gaming facility dependent on whether a License is awarded for a gaming facility located in the corresponding Region 1 Dominant Counties or Region 5 Dominant Counties.**

**Q.177:** Pg.46(B) says the Commission may select an alternative licensing for a given Region at the Mandatory Conference, if requested, in the event that the Commission selects two applicants from such region to proceed for consideration of licensure.

a. Does this mean that the Commission will make a determination at the Mandatory Conference on April 30 who among the applicants that will be permitted to proceed to licensure?

b. Or, is some other Mandatory Conference contemplated to address this possibility?

**A.177: By way of this response, the last paragraph of RFA Article VII § B. 11. is deleted.**

**Q.178:** The RFA requires a "Description of any special purpose rooms that are being considered (e.g., poker rooms, high-limit gaming areas, etc.)".

a. May separate casino properties be included on the same license?

b. For example, a major gaming facility and a separate high-limit facility?

c. If multiple gaming facilities are included on the same license, must the facilities be located on a single parcel?

d. What is the minimum number of hotel rooms for the hotel component of the project?

**A.178:**

**a. No.**

**b. No. Multiple gaming facilities cannot be included in one license.**

**c. See answer to Question 178.b.**

**d. No minimum number of rooms has been established.**



**Q.179:** Will the Board consider a revision to the “minimum licensing fee” schedule to adjust the minimum licensing fee calculable on a sliding scale based on population size within a certain radius of an Applicant’s proposed gaming facility?

**A.179: No.**

**Q.180:** a. What was the methodology and data input used to create the licensing fee structure?

b. Could the Board disclose such information in a manner similar to that as described on page 36 Section 3 Market/Revenue Study?

**A.180:**

**a. This question fails to seek guidance or clarity regarding an element of the RFA and thus is outside the scope of response.**

**b. This question fails to seek guidance or clarity regarding an element of the RFA and thus is outside the scope of response.**

## **C. LAND, CONSTRUCTION AND DESIGN OF PHYSICAL PLANT**

### **Description of Land, Ownership of Land**

**Q.181:** If the applicant’s site is comprised of two, non-contiguous parcels, will gaming be allowed at both locations?

**A.181: No.**

**Q.182:** a. If the applicant’s site is comprised of two, non-contiguous parcels, how will the property(s) be considered in the event that the primary gaming facilities are on one parcel and some complimentary, non-gaming amenities are located the second parcel?

b. Will both be viewed as a single property relative to the Board’s land use governances?

**A.182:**

**a. Both will be viewed as a single property. The distance between the two parcels may have an impact on the evaluation of the feasibility of the project site.**

**b. Yes.**

**Q.183:** a. If the applicant's site is comprised of two, non-contiguous parcels, how will the property(s) be considered in the event that the primary gaming facilities are on proposed on one parcel and a non-gaming amenity with smaller, complimentary gaming facility located the second parcel?

b. Will this be interpreted as a single property relative to the Board's land use governances?

**A.183:**

**a. An application is for one gaming facility. If an applicant's property comprises two non-contiguous parcels, gaming will only be allowed on one parcel. A "smaller...gaming facility located on the second parcel" would be a second gaming facility that would require a second application.**

**b. No.**

### Zoning

**Q.184:** The N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1309.2 provides, "If any provision of this article is inconsistent with, in conflict with, or contrary to any other provision of law, such provision of this article shall prevail over such other provision and such other provision shall be deemed to be superseded to the extent of such inconsistency or conflict. Notwithstanding the provisions of any other law to the contrary, no local government unit of this state may enact or enforce any ordinance or resolution conflicting with any provision of this article or with any policy of this state expressed or implied herein, whether by exclusion or inclusion. The commission shall have exclusive jurisdiction over all matters delegated to it or within the scope of its powers under the provisions of this article.

In addition, N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1366 further provides, "Zoning. Notwithstanding any inconsistent provision of law, gaming authorized at a location pursuant to this article shall be deemed an approved activity for such location under the relevant city, county, town, or village land use or zoning ordinances, rules, or regulations.

The RFA requires, inter alia, submission of detailed plans regarding development and operation of a gaming facility including site plans, building design, drainage and stormwater, utilities, traffic circulation etc., --all consistent with typical local municipal land use approvals.

However, the RFA also requires submission of information regarding "required" rezoning, variances, land use approvals, local permits or special use permits and a

schedule pertaining to their acquisition (Section VIII. C. 3), which would appear in conflict with N.Y. Racing, Pari-Mutuel Wagering and Breeding Law §§ 1309.2 and 1366 noted above.

a. Are the requirements of RFA Section VIII.C.3. consistent with the supersession provisions of the N.Y. Racing, Pari-Mutuel Wagering and Breeding Law?

b. If so, are there any specific forms of local approvals that the Board or Commission believe are superseded?

**A.184: N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1366 operates as a complete preemption of local zoning only with respect to the conduct of gaming, which is defined in §1301.20 as “dealing, operating, carrying on, conducting, maintaining or exposing for pay of any game.” §1309.2 does not preempt local zoning or land-use laws, other than as set forth in § 1366. The applicant is required to identify any required rezoning, variances, land use approvals, local permits, or special use permits and a schedule pertaining to their acquisition for any use or activity that does not constitute gaming, e.g. drainage and storm water, traffic circulation, etc.**

**Q.185:** Section 1366 of the Upstate New York Gaming Economic Development Act sets forth the same land use and zoning State exclusivity and preemption language contained in Article 34 of the Tax Law (for the establishment of video lottery gaming). In light of the State’s previous action is using such preemption for approved gaming facilities:

a. What is the purpose of requesting zoning information and permits as provided at page 47 Section 3?

b. Will an approved gaming facility be required by the Location Board (or the Commission) to comply with local zoning, land use ordinances and permit processes?

c. If local zoning and land use is required to be complied with, what is the effect of the statutory preemption in connection with the approved gaming facility?

**A.185: See answer to Question 184.**

**Q.186:** N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1366 provides: “Zoning. Notwithstanding any inconsistent provision of law, gaming authorized at a location pursuant to this article shall be deemed an approved activity for such location under the relevant city, county, town, or village land use or zoning ordinances, rules, or regulations.” Meanwhile, Article VIII, §C(3)(a) of the RFA

requests copies of "current local zoning approvals and any rezoning or variances that are required and any land use approvals."

Please explain the distinction between the language in N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1366 and RFA VIII §(C)(3)(a)?

**A.186: See answer to Question 184.**

**Q.187:** Will the State's Office of General Services issue building permits for approved gaming facilities similar to the existing practice for existing (Article 34) casinos in the State?

**A.187: No. The State's Office of General Services is involved with video lottery facilities because gaming activity at such facilities is conducted by the Division of Lottery at the Gaming Commission. Gaming activity at commercial casinos will be conducted by private entities.**

**Q.188:** Does the gaming law supersede local zoning decisions?

**A.188: No, except that no local zoning may prohibit authorized gaming activity pursuant to N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1366. Further, see the answer to Question 184.**

**Q.189:** Article VIII, §C (3)(c) of the RFA requires "a list of any State and/or local permits or special use permits that the Applicant must obtain for the Project Site," however, the State Environmental Quality Review Act (SEQR), is not specifically identified. Please explain:

a. Are the Gaming Facility projects contemplated under the RFA subject to the provisions of the State Environmental Quality Review Act (SEQR)?

If yes:

b. The SEQR process typically takes nine (9) months or longer to complete. Will the Board accept Applications as complete and will the Commission issue licenses for projects prior to the completion of the SEQR process?

If yes:

c. Once a license is issued by the Commission, the licensee has 24 months to commence gaming at an approved facility. Failure to commence gaming within 24 months shall subject the licensee to fines and penalties. Will the Commission toll the 24 month time limit until such time as the SEQR process for a licensed project is completed?

d. Will the Board and the Commission allow a local municipal agency to serve as the Lead Agency for SEQR purposes?

If no:

e. If the Board, Commission, or other designee is to be substituted for a local municipal agency as Lead Agency, will the work product and approvals from the SEQR process that began with a local municipal agency serving as the Lead Agency be honored, or will the SEQR review process need to start over?

**A.189:**

a. Yes.

**b. The Board will accept applications as complete without completion of the SEQRA process. However, Applicants must disclose in their applications the status of the SEQRA review, the anticipated timeframe for completion of the SEQRA review, and any obstacles that may prevent the gaming facility from opening within 24 months of licensure.**

**c. The Commission has not considered whether it will toll the 24-month time limit pending completion of the SEQRA process.**

d. Yes.

**e. The Board and the Commission will not serve as Lead Agency for SEQRA purposes and therefore cannot provide an answer.**

**Q.190:** The RFA states that the Applicant has to submit as Exhibit VIII.C.3.a. copies of current local zoning approvals and any rezoning or variances that are required and any land use approvals, a detailed explanation of the status of any request for any of the foregoing with copies of all filings, including a specific schedule of applications for zoning approvals and anticipated approval dates. It also requires the applicant to submit as Exhibit VIII.C.3.c. a list of any State and/or local permits or special use permits that the Applicant must obtain for the Project Site, and for such permits describe: (i) the procedure by which the Applicant shall obtain the permits; (ii) what conditions, if any, are likely to be placed on the permits; and (iii) the estimated dates by which the Applicant will obtain the permits. Can you clarify the relationship between Local Zoning Regulations and language from N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1366 which appears to exempt the selected site from local zoning?

**A.190: See answer to Question 184.**

## Designs and Layout

**Q.191:** a. Are the designs in Exhibit VIII.C.5.a. best described as “concept” or “schematic” designs for the proposed Gaming Facility?

b. Given that further refinement of the design would be expected as the design evolves through construction documentation, is there a process to modify (not materially change) the design after the submission of the application or after license award?

**A.191:**

**a. The designs submitted should reflect the flow and style of the gaming facility, but will be considered conceptual.**

**b. We recognize modifications are likely as the construction progresses and licensee shall provide regular updates to the Commission to document improvements to the facility design during construction.**

**Since an application will be evaluated and approved based on the initial design, changes that reduce the size, quality, or fit and finish of a facility will not be permitted.**

**Q.192:** a. Will the Board/Commission be providing any guidance concerning gaming facility design to address issues such as underage guests’ access to or through a gaming floor in advance of the Application deadline?

b. If so, will they be in the form of regulations, emergency or otherwise?

c. Will they be provided to Applicants sufficiently in advance to incorporate into gaming facility design before the June 30, 2014 deadline for submission of Applications?

**A.192:**

**a. An Applicant’s design should minimize the need for minors to cross a gaming floor for any purpose.**

**Present State-based video lottery and Indian gaming facilities afford access when needed, but generally require well-marked paths observed by surveillance. It is unlikely that a new policy would be created for commercial gaming.**

**b. The issue of underage access to a gaming floor will likely be addressed in regulation.**

**c. Existing Commission video lottery regulations restrict access by minors and video facilities require an escort by licensed gaming staff any time a minor must cross the gaming floor.**

**Q.193:** May an underage guest access hotel and non-gaming areas through the gaming floor if reasonable and specified controls are in place?

**A.193:** See answer to Question 192.

**Q.194:** Is there a required drawing scale or sheet size for the site plan(s), floor plan(s), elevations and sections and other visual materials required for submission under RFA Article VIII § C. 5.?

**A.194:** There is no specific requirement. The Commission has accepted a scale of 1/32" to 1.0' for other gaming submissions.

**Q.195:** RFA Article VIII § C. requires submission of plans, etc. for the building program, designs and layout, etc. What level of detail is expected in the architectural drawings?

**A.195:** Drawings should be submitted in sufficient detail for the Board to understand the Applicant's vision for the facility.

**Plans should be to scale.**

**To the extent feasible, specific locations of buildings and features should be identified. Planned amenities should be identified in detail and back-of-house functions should be presented. Representations of finish details should be included.**

**Q.196:** Are video presentations showing the exterior and interior views of the project buildings and grounds permissible?

**A.196:** Video presentations are not allowed as part of the Application submission. They may be used at subsequent presentations or hearings.

**Q.197:** Please clarify if there is a required drawing scale or sheet size for the site plan(s), floor plan(s), elevations and sections and other visual materials required for submission under RFA Article VIII § C. 5., at p.48.

**A.197:** See answer to Question 194.

**Casino, Hotel, Meeting and Convention Facilities,  
Entertainment Venues, Non-Gaming Amenities**

**Q.198:** Exhibit VIII.C.6.A.2: Is it necessary to break the table game type down by specific game, i.e. Three Card Poker, Blackjack, Let It Ride, etc. or are you looking for the number of blackjack sized tables, poker, craps, roulette, etc.?

**A.198: An Applicant should provide a breakdown of the specific games anticipated, along with the Applicant's rationale for the selections. The Board acknowledges that the counts may be modified prior to opening.**

**Q.199:** Must all contracts, agreements, MOUs or other understandings (hereinafter "Partnerships") with live entertainment venues be in writing?

**A.199: Yes.**

**Q.200:** Is there a geographical limitation on the requirement that an Applicant must obtain Partnerships with live entertainment venues that may be impacted by the proposed gaming facility (such as a geographical limitation of "venues already existing in the Host Municipality and nearby municipalities" as this phrase is used in section VIII.C.9.c [p.52])?

**A.200: Yes. The area considered is the host county, those counties adjoining the host county and any county within 25 miles of the proposed casino location.**

**Q.201:**

a. What are the Commission's criteria for evaluating agreements with regional entertainment venues?

b. What is the Commission definition of an entertainment venue?

c. Does it include local bars and clubs with live music?

**A.201:**

**a. The existence of a full-executed agreement(s) is sufficient.**

**b. A live entertainment venue is a not-for-profit or government-owned performance venue designed in whole or in part for the presentation of live concerts, comedy or theatrical performances.**



c. No.

**Q.202:** Regarding Entertainment Venues on page 52; are the venue descriptions for just new construction or are existing venue descriptions required as well?

**A.202: Existing venues.**

**Parking and Transportation Infrastructures, Dock and Loading,  
Physical Plant and Mechanical Systems, Infrastructure Requirements**

**Q.203:** RFA Article VIII § C. 17. (Infrastructure Requirements) requires a description of the storm water management system.

- a. Does the State have a preference for the type of system to be deployed?
- b. Does the State require that 100 percent of storm water be kept on site and reused?

**A.203:**

- a. **The Board indicates no preference and leaves to the Applicant's discretion how storm water is managed.**
- b. **The Board does not seek to establish a percentage of storm water to be kept on site and reused.**

**Project Firms, Construction Budget, Timeline for  
Construction, Construction Jobs**

**Q.204:** Will Construction Trade Agreements need to be in place prior to the Applicant's submission?

**A.204: An evaluated factor is the Applicant's demonstration of an agreement, inter alia, with organized labor and support of organized labor for its Application. The form of the demonstration is left to the Applicant's discretion.**

**Q.205:** Will the construction permitting agency allow for multiple packages as opposed to a singular submission?

**A.205: The Board declines to respond, since the Board will not be the construction permitting agency.**

## **B. INTERNAL CONTROLS AND SECURITY SYSTEMS**

**Q.206:** The regulations for gaming oversight have not yet been promulgated. Applicants are, however, required to submit a full description of internal controls and security systems. Is it acceptable for an Applicant to utilize the regulations of a state in which the Applicant is currently conducting gaming operations (such as New Jersey or Nevada) or will the Board suggest a jurisdiction that the Applicant should follow as a guidepost in preparing its internal controls and security systems submission?

**A.206:** **The Applicant is encouraged to consider the regulations from another jurisdiction in which it does business in developing internal controls and security systems. An Applicant should identify the jurisdiction selected, if it has modeled its internal controls on the regulations of another jurisdiction.**

**Q.207:** Please clarify upon what the applicant is to base its description of internal controls and security, given that the gaming oversight regulations have not been published?

**A.207:** See answer to Question 206.

## **LOCAL IMPACTS AND SITING FACTORS**

### **ASSESSMENT OF LOCAL SUPPORT/ MITIGATION OF LOCAL IMPACT**

#### **Assessment of Local Support**

**Q.208:** According to the RFA for a casino siting application, the local legislative body has to vote in support of the application. If there isn't a favorable vote by the local legislative body, would the Gaming Commission's siting board accept the application, or is the application not allowed to move forward and automatically denied?

**A.208:** **The Board would decline to accept the application. As a condition of filing an application, each applicant must submit to the Board a post-November 5, 2013 resolution passed by the local legislative body of the Host Municipality supporting the location of a gaming facility in such Host Municipality.**

**Q.209:** In the local support section, what if any weight will be given to the popular vote for or against in a given county or host community (city, town, etc.)?

**A.209: None.**

**The Board will, however, pursuant to N.Y. Racing, Pari-Mutuel Wagering and Breeding Law §1320.2, consider factors such as whether the applicant has demonstrated public support in the host and nearby municipalities, which may be shown by passage of local laws and public comments.**

**Q.210:** On page 7, can you please define “nearby” regarding support from nearby municipalities and local governments?

**A.210: “Nearby” includes any county or municipality that is adjacent to the municipality in which the proposed gaming facility site is located or any county or municipality where a proposed gaming facility would likely have social, environmental, traffic, infrastructure or any other impact on the local and regional economy, including impact on cultural institutions and on small businesses.**

**Q.211:** Is a Host Municipality required to complete the SEQRA process for a proposed gaming facility before passing a resolution in support of the Application, as required under Section I of the RFA?

**A.211: No.**

**Q.212:** Will the Gaming Facility Location Board and/or the NYS Gaming Commission assume the authority to approve site plans for Gaming Facilities, or will that authority reside with the Host Municipality?

**A.212: Neither the Board nor the Commission will assume authority to approve site plans beyond the Board’s evaluation of site plans as part of the RFA evaluation process.**

**Q.213:** If the GFLB/Gaming Commission will be the site permitting authority, to what extent, if any, will the Host Municipality’s local land use law and site plan approval process be applicable to the approval of site plans for Gaming Facilities?

**A.213: See answer to Question 212.**

**Q.214:** Does the GFLB/Gaming Commission intend to seek Lead Agency status for the purposes the SEQR review associated with the approval of site plans for Gaming Facilities?

**A.214: No.**

**Q.215:** Is the award of a Gaming Facility License subject to SEQRA, and if so, will that SEQR review and determination encompass the eventual approval of site plans for the Gaming Facility?

**A.215:** See answer to Question 189.a. The award of a gaming facility license is independent of the SEQRA process.

**Q.216:** Does the host municipality resolution need to accompany the Application Fee on the 23rd of April?

**A.216: No. The Host Municipality resolution of support must be submitted by June 30, 2014 at 4:00 p.m. EDT, the due date for applications.**

**Q.217:** Initial Requirement of Local Support. The RFA states that "each Applicant must submit to the Board a [post-November 5, 2013] resolution passed by the local legislative body of its Host Municipality supporting the Application." If a Host Municipality has passed a resolution after November 5, 2013 that endorses the location of a casino in the Host Municipality, would an Applicant need such Host Community to pass a subsequent resolution that endorses the specific plans proposed by the Applicant and/or the specific identity of the Applicant?

**A.217: No, so long as the resolution passed clearly indicates the Host Municipality supports any gaming facility within such Host Municipality.**

**Q.218:** Is there any specific provision which will be required by the Location Board and which should be included in the Host Municipality resolution referenced in Section IX.A.1.a ?

**A.218: No. Such a resolution must clearly indicate that the Host Municipality supports the location of *either* the applicant's proposed gaming facility *or* any gaming facility within such Host Municipality.**

**Q.219:** If the Host Municipality is a Town or City, what level or kind support is required or expected by the Location Board from the Host County?

**A.219: Local support means a post-November 5, 2013 resolution passed by the local legislative body of the Host Municipality supporting the location of either the applicant's proposed gaming facility or any gaming facility in such Host Municipality.**

**There is no requirement of action at the county level, however county support would be positively viewed the N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1320.2 evaluation.**

**Q.220:** Legislative Form of Action Demonstrating Host Community Support of Gaming Application. The RFA Section I, Initial Requirement of Local Support, states "local support means a post-November 5, 2013 resolution passed by the local legislative body of the Host Community." N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1320. (b), and RFA Section VII.B.2 require evidence of local support by: "gaining public support in the host and nearby municipalities which may be demonstrated through the passage of local laws...." The New York Municipal Home Rule Law defines and authorizes the adoption of local laws by NY municipalities but does not appear to provide for the adoption of local laws in support of an application (See MHRL Sections 2 & 10).

Will the adoption of a resolution by the local legislative body of a Host Community in support of an Application for Casino Gaming be sufficient to satisfy the requirements of the RFA?

**A.220: Yes, so long as such resolution of support is for *either* the applicant's proposed facility in such Host Municipality *or* any casino in such Host Municipality and such resolution is approved after November 5, 2013.**

**Q.221:** a. How do we determine host community if a subject parcel lies within three (3) separate municipalities?

b. Would the host community be the municipality with the greatest land area?

**A.221:**

**a. Each of the three municipalities would need to adopt a post-November 5, 2013 resolution of support for the Applicant's proposed gaming facility or for any gaming facility.**

**b. No.**

**Q.222:** a. How do we determine host community if a subject parcel lies within a Village that is located within a Town that has no land use regulations nor land use jurisdiction?

b. The land use decisions can only be made by the Village. In this unique case, would the Village be the host community?

**A.222: The village and the town would each be considered Host Municipalities.**

**Q.223:** In establishing local support from the host community, is there a minimum standard requirement, i.e., a Resolution of the municipal board in support or is a letter from the host municipality sufficient?

**A.223: A resolution is required. A letter is insufficient.**

**For the Board to deem a Host Municipality resolution to be sufficient, such resolution should state *either* support for the location of a gaming facility at a specific location within the jurisdiction of the Host Municipality *or* support for any gaming facility within the jurisdiction of the Host Municipality. If a Host Municipality's resolution states support for any gaming facility within the jurisdiction of the Host Municipality, the Board will interpret such resolution to support the location of either one or two gaming facilities within the jurisdiction of such Host Municipality, unless such resolution of support states otherwise explicitly. A resolution from a Host Municipality that states support for a gaming facility within a county, but does not state support for the location of a facility within the jurisdiction of the Host Municipality, will not be a sufficient demonstration of local support.**

**Q.224:** When is the host community municipal resolution due to be submitted to the Board?

**A.224: See answer to Question 216.**

**Q.225:** Section IX-A-1-b (RFA, p.58): "Submit a list of any other evidence"

- a. Please clarify that it is a "list" that is requested.
- b. Is it permissible to submit hardcopy letter, resolutions and other support documentation in this or another section?

**A.225:**

- a. A list is requested.**
- b. An applicant is permitted to submit letters, resolutions and other support documentation.**

**Q.226:** As a final, binding commitment of the Host Community, is the resolution supporting a project subject to SEQ?R?

**A.226: No.**

**Q.227:** Applicability of the NYS Environmental Quality Review Act, "SEQRA", ECL Article 8: The New York State Environmental Quality Review Act, ECL article 8 and implementing regulations at 6 NYCRR Part 617 ("SEQRA") require that all discretionary actions undertaken, approved or funded by a State or local agency comply with the requirements of SEQRA prior to authorizing the action. For Type I actions (6 NYCRR §617.4), which are likely to include a casino facility, SEQRA requires a coordinated review among State and local agencies with discretionary actions (involved agencies). The N.Y. Racing, Pari-Mutuel Wagering and Breeding Law contains no reference to the provisions of the New York State Environmental Quality Review Act, ECL article 8 and implementing regulations at 6 NYCRR Part 617. Similarly, the RFA makes no reference to SEQRA.

- a. At what stage of the gaming license process will the New York Gaming Facility Location Board or Gaming Commission invoke the SEQRA process?
- b. If the SEQRA process has already been initiated at a local level, should the Board and/or Commission be added as involved or interested agencies?
- c. Does the Board or Commission intend to seek lead agency status?

**A.227:**

- a. Neither the Board nor the Commission will invoke the SEQRA process.**
- b. Yes.**
- c. No.**

**Local Impact and Costs, Mitigation of Impact to  
Host Municipality and Nearby Municipalities, Housing, Schools**

**Q.228:** Can an environmental impact statement be used to comply with the requirement for studies completed by independent experts?

**A.228: The RFA requires the submission of a number of studies. It is incumbent upon the Applicant to determine if a completed environmental impact statement satisfies each requirement.**

**Q.229:** Local Impacts and Costs- Effect of Maximum Usage Analysis on Presentation of Low, Average & High Build Scenarios. The RFA Section IX. A.2.b. outlines the requirements for studies of local and regional impacts and provides:

"The build scenario and assumptions should reasonably correspond to the description of the proposed Gaming Facility, revenue and visitation projections, and

expense and employment estimates included in the Application. That is, the Applicant and the various independent studies should present comparable assumptions and build scenarios.

Where independent studies depend on visitation or revenue assumptions, they should include analysis of the low-average- and high-cases analogous to the same used for the gaming market and tax studies.”

**A.229: Please see answer to Question 230.**

**Q.230:** Environmental impact analysis typically requires consideration of maximum build out and utilization of project facilities in forecasting project impacts on environmental and community resources.

If required local and regional impact studies present impact analysis and mitigation of the maximum utilization of casino and related facilities, is it also necessary to provide comparable impact assessment of low and average scenarios developed for gaming market and tax studies?

**A.230: Yes, please address all three scenarios.**

**Q.231:** Is a Licensee responsible for limiting the impact of its gaming facility on other gaming facilities in the surrounding area, whether located within the Licensee’s region or not?

**A.231: See answer to Question 173.**

**Q.232:** If so, should a project incorporate into its model financial and economic impact data that demonstrates net increases in state tax revenue and economic development to off-set any negative impact to existing gaming facilities?

**A.232: Applicants should include information that is responsive to the specified requests of the RFA.**

**Q.233:** Given limited offerings of existing Racinos/Casinos will mitigation include superior offerings to the public to enhance customer experience and regional development, such as tourism?

**A.233: See answer to Question 173.**

**Q.234:** What is the Applicant’s responsibility to limit impact on revenue of other gaming facilities (both Indian and non-Indian)?

**A.234: See answer to Question 173.**



**Q.235:** What are some examples of commitments to mitigate impacts of the proposed Gaming Facility on Host Municipality and nearby municipalities for traffic, infrastructure costs, costs of increased emergency services and other impacts identified in the studies of the RFA?

**A.235:** The Board cannot specify examples of mitigation, which would necessarily differ depending upon the circumstances of the Application. The Applicant is encouraged to work with a Host Municipality to reach what each considers appropriate mitigation.

**Q.236:** Can tax and fee payments be considered as part of the mitigation measures for the host municipality and nearby municipalities?

**A.236:** No.

**Q.237:** Should the report for local and regional impacts of the Gaming Facility for traffic and roadway infrastructure, water demand, waste water production and discharge, protected habitats and species and light pollution include build scenarios for casinos in the region?

**A.237:** The Board has requested the inquirer to clarify this question. Since no response has been timely received, the answer will remain pending for the Applicant Conference or the Second Round of questions.

## **REGIONAL TOURISM AND ATTRACTIONS**

### **Local Business Owners, Local Agreements, Cross Marketing**

**Q.238:** Will NYS government agencies with existing tourism/economic development marketing strategies be authorized to cross-market with individual Applicants?

**A.238:** There is neither a prohibition nor a requirement for cross-marketing.

## **WORKFORCE ENHANCEMENT FACTORS**

### **A. MEASURES TO ADDRESS PROBLEM GAMBLING**

**No questions were received for this category.**

## B. WORKFORCE DEVELOPMENT

**Q.239:** Does the reference to an “agreement” with organized labor representing the hospitality and casino industry employees in NY, including detailed information on pay rate and benefits contemplate that an Applicant would have/should have a collective bargaining agreement in place prior to having employees? (Question applies to VII.C(8) and X.B.(5)(6)).

**A.239:** See answer to Question 204.

## C. SUSTAINABILITY AND RESOURCE MANAGEMENT

**Q.240:** If a proposal contains some, but not all, of the Sustainability and Resource Management criteria itemized in Article X, §C of the RFA, will the Application be eligible to receive partial credit for those criteria that are satisfied?

**A.240:** See N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1320.3(c)(1-6)

**Q.241:** Must the facility be LEED Certified or LEED qualified?

**A.241:** See N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1320.3(c)(1).

**Q.242:** The language in N.Y. Racing, Pari-Mutuel Wagering and Breeding Law §1320(3)(c)(1) indicates that LEED certification is a factor the Board will consider in weighing the 10 percent score allocated to Workforce Enhancement Factors, while the language in Article X, §C(2) of the RFA indicates that LEED Certification a requirement for Gaming Facility projects. Please explain:

- a. Is LEED certification a requirement or merely a consideration when allocating a score for Workforce Enhancement Factors?
- b. What is the level of LEED Certification is required / preferred?
- c. Will a project with a higher LEED rating be viewed more favorably under the Evaluation Criteria?

**A.242:**

**a. Per N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1320.3, “workforce enhancement factors” constitute ten percent of the weighted criteria. Section 1320.3(c). indicates that “utilizing sustainable development factors” is a constituent element of “workforce enhancement**

factors". Section 1320.3(c) continues that "sustainable development factors" contemplated as part of the weighted criteria for "workforce enhancement factors" includes, but is not limited to, the subsequent enumerated elements indicated in § 1320.3(c)(1-6).

b. A facility is required to be LEED certified only.

c. If an Applicant chooses to seek a level of LEED certification or qualification in excess of statutory requirement, the Board will take that investment into consideration in conjuncture with the other constitute elements that comprise the totality of Workforce Enhancement Factors.

## **POST-LICENSURE RESPONSIBILITIES**

### **Deposit of Ten Percent of Total Investment**

**Q.243:** The RFA requires that upon award of a License by the Commission an Applicant must deposit ten (10) percent of the total investment proposed in the Application into an interest bearing escrow account approved by the Commission:

a. how are the funds required to be deposited upon the award of a license to be calculated;

b. does the ten (10) percent deposit apply solely to construction costs; and

c. at what point in the construction will these funds be returned to the applicant to pay down the construction costs to which they were associated?

**A.243: The Applicant will be required to deposit ten (10) percent of all costs qualifying for the Minimum Capital Investment as defined in RFA Article VIII § A. 1. b. As stated in RFA Article XI § A., these funds will be held in escrow until the final stage of construction, as detailed in the timeline of construction submitted with the Application and approved by the Commission.**

**Q.244:** Requires the posting of an escrow of 10percent of the total investment proposed in the Application to ensure completion to be returned to Applicant at "the final stage of construction".

a. What is the definition of "total investment" is it the same as Minimum Capital investment or something else?

b. What is the definition of "final stage of construction?"

c. What if the Project was intended to be phased?

**A.244: See answer to Question 243.**

**Q.245:** a. Upon license award, is there a deadline by which the 10percent construction cost estimate must be escrowed?

b. Has the Board identified the Escrow Agent?

c. Upon establishing the Escrow Account, has the Board identified a formal procedure to timely review and approve plans?

**A.245:**

**a. The statute is silent as when the ten (10) percent construction cost estimate shall be deposited with the Commission. Such timing will be developed in regulation.**

**b. No. The Applicant should engage an Escrow Agent of its own choosing.**

**c. No.**

**Q.246:** Section XI – A. “Upon award of License by the Commission, an Applicant must deposit ten (10) percent of the total investment proposed in the Application into an interest-bearing escrow account approved by the Commission.”

a. When will this deposit be due?

b. What constitutes “total investment”?

c. Please clarify how the funds required to be deposited upon the award of a license are to be calculated?

d. Is it ten percent of project construction costs?

e. At what point in the construction will these funds be returned to the applicant to pay down the construction costs to which they are associated?

**A.246: See answers to Question 243 and 245.**

**Q.247:** When will the 10percent escrow be released?

**A.247: See answer to Question 243.**

## Begin Gaming Operations Within Two Years

**Q.248:** The RFA specifies that “gaming operations” must begin within 24 months following the License award or the licensee shall be subject to license suspension or revocation and may be subject to a fine.

- a. What specifically is required to begin in order to meet the 24-month timeframe?
- b. For example, can there be a phased opening of the casino first and then later non-gaming amenities and various other components of the project?

**A.248:**

**a. It is anticipated that the Commission will promulgate regulations on this topic.**

**b. Yes. An Application may contemplate a phased opening, in which the gaming area and ancillary entertainment services and non-gaming amenities open first, with remaining elements of the initial fully operational phase of the proposed Gaming Facility to open at a later date.**

**Applicants proposing a phased opening must provide a construction timeline as Exhibit VIII.C.20.a. and proposed date for the proposed Gaming Facility to open for gaming as Exhibit VIII.C.20.e. that specify that the proposed Gaming Facility will open for gaming before substantial completion of the initial fully operational phase. As specified in RFA Article VIII § C. 20. e., the Applicant must also provide a detailed description of what will open in each phase and the proposed opening date for each phase and/or what conditions each such opening date will be contingent upon.**

**To facilitate the Board’s consideration and determination, Applicants proposing a phased opening should present reasonable, detailed phasing plans that describe, along with the gaming area, which ancillary entertainment services and non-gaming amenities of the proposed Gaming Facility program the Applicant proposes to open simultaneously with the gaming area and within twenty-four (24) months after award of a License. The proposed construction timeline and phasing plan to open for gaming within twenty-four (24) months after award of a License should include reasonable contingencies for the major risks to the proposed date to open for gaming and the range of probable delays associated therewith that are identified in Exhibit VIII.C.20.e. of the Application.**

**Lastly, in addition to the proposed date to open for gaming, each Application must include in Exhibit VIII.C.20.e. the Applicant's commitment for a proposed outside date, notwithstanding any delays, for substantial completion of the initial fully operational phase of the proposed Gaming Facility.**

**Establish Qualifications for Certain Persons, Obtain and Maintain Casino Key Employee Licenses, Register Gaming Employees**

**Q.249:** a. Is the requirement to begin gaming operations within twenty-four (24) months an absolute/strict requirement or is it subject to force majeure?

b. What happens if the applicant is unable to open to comply within that twenty four (24) month period?

c. Does the ten-year license get extended for force majeure?

**A.249:**

**a. The Commission will interpret the 24-month timeline reasonably to provide for force majeure.**

**b. N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1315.3 sets forth the consequences of failing to begin gaming operations within twenty-four (24) months following license award.**

**c. No.**

**Q.250:** Gaming operations are required by the Act and the RFA to be commenced within 24 months of award.

a. Does this require an Applicant to have each part of the proposed project in operation within such time frame?

b. Can the project have a phased opening provided that the gaming floor and support facilities are operational within 24 months of award?

**A.250:**

**a. No**

**b. Yes**

**Q.251:** Imposes an absolute deadline of 24 months to open.

a. does this reference opening the casino portion of the Project or the entirety of the Project?

b. What about a phased project?

c. Does the Commission anticipate the promulgation of standards for determining the good faith efforts of an Applicant to exclude circumstances beyond an Applicant's control?

**A.251: See answers to Question 249 and 250.**

**Q.252:** Can or will there be given any extension of the 24 months within which a location must commence gaming operations due to delays caused by the design, permitting and construction of required off-site infrastructure, such as those found in the referenced section?

**A.252: No.**

**Q.253:** Section XI (C) requires that the Licensee begin gaming operations within twenty-four months following license award.

a. Is License award the time of the announcement of the award, or is there a more formal event at a later date that will constitute "License Award"?

b. Is it sufficient that gaming operations actually begin within the 24 month period, even though other improvements related to the project may not be completed?

c. For example, would a hotel associated with the project also have to be open within that 24 month time frame?

**A.253:**

**a. See answer to Question 7.b.**

**b. Yes. See answers to Question 248 and 250.b.**

**c. No. See answers to Question 248 and 250.b.**

**Q.254:** a. When does the clock start on the two-year time limit to open after the receipt of the license?

b. When all licenses have been awarded or when each individual license is awarded?

**A.254:**

**a. See answer to Question 253.a.**

**b. The Commission anticipates award of all licenses at the same time.**

**Q.255:** Can minor amenities related to the project, but not integral to expanded gaming operations, be completed after the 2 year time period?

**A.255:** Yes. See answers to Question 248 and 250.b.

**Establish Qualifications for Certain Persons, Obtain and Maintain  
Casino Key Employee Licenses, Register Gaming Employees**

**Q.256:** "Each gaming employee of a Licensee must have a valid registration on file with the Commission." How will the employees register?

**A.256:** The employee registration process will be established pursuant to regulation.

**License Vendor Enterprises, License and Report on Junket Operators,  
Obtain Operation Certificate, Maintain Record of Agreements**

**Q.257:** a. Are new gaming product vendors able to submit for approval to provide goods in services in New York?

b. How long does this process take?

**A.257:**

**a. Yes, vendors are encouraged to offer new products for the gaming facilities.**

**b. The licensing process should be anticipated to last not more than three to six months.**

**Q.258:** "A Licensee must obtain an operation certificate in order to open or remain open to the public." How will the Licensee obtain the operation certificate?

**A.258:** The Commission will issue a Certificate of Operation once the facility has exhibited full readiness to open and operate.



## Enter Labor Peace Agreement

**Q.259:** Is there any standard for what it means to “attempt to represent gaming and hospitality industry workers in the State”?

**A.259: Yes. Applicants should review the various State-based gaming facilities and identify labor organizations that have engaged in organizing activity at such locations.**

**Q.260:** a. Does this section give the right to an Applicant to propose terms or to decline unreasonable terms in LPAs?

b. If an Applicant and a labor organization sign an LPA, is the Applicant permitted to apply (offer only an identical LPA) to all labor organizations?

c. Is Applicant required to sign disparate LPAs presented by different labor organizations?

**A.260:**

a. **Yes. A labor peace agreement is intended to be a negotiated document.**

b. **The applicable statute does not require uniformity.**

c. **The answer would be driven by the number of unions seeking to represent workers. All unions are not, by law, bound by the agreement of one.**

## Pay Annual Machine Table Fees, Pay Regulatory Investigatory Fee, Pay Additional Regulatory Costs, Pay Tax on Gaming Revenues Based on Zone and Region

**Q.261:** Will the Board establish standards from which to demonstrate need prior to assessing the Licensee for additional regulatory expenses? (Reference page 68)

**A.261: The Commission, not the Board, will provide an annual budget of commercial gaming expenditures as the basis for regulatory assessment. Licensees should anticipate direct billing for staffing levels adequate to assure twenty four-hour, 365 days-per-year coverage of the gaming operation, estimated to be not less than nine (9) full time employees at each gaming facility and their direct supervisors. The Commission receives no allocation of gaming revenues for administrative costs, so all administrative costs allocated to the commercial gaming program will be**

assessed annually on gaming licensees in proportion to the number of gaming positions at each gaming facility, per N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1350. All Commission expenses are subject to review a part of the State's annual budget cycle.

**Retain Unclaimed Funds and Deposit in the  
Commercial Gaming Revenue Fund**

**Q.262:** Unclaimed cash is currently turned over to the police. Will this change?

**A.262:** Lost personal property, including cash, is required to be turned over to local law enforcement in accordance with the N.Y. Personal Property Law.

Unclaimed funds are addressed by N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1352, where funds, cash, or prizes forfeited from gambling activity must be transferred to the Commission for deposit into the Commercial Gaming Revenue Fund.

**Pay Racing Industry Support Payments**

**Q.263:** a. With respect to the payments outlined in Section XI Q – RACING INDUSTRY SUPPORT PAYMENTS, can you provide an example of how these payments will be calculated?

b. Specifically, will the amounts for purse support and amounts to breeders be calculated on a pooled basis across the state, or will the amounts be specific to each of Regions One, Two and Five?

**A.263:**

**a. N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1355 sets forth the obligations to make racing support payments.**

**b. For gaming facility licensees that do not possess a pari-mutuel wagering license or franchise awarded pursuant to N.Y. Racing, Pari-Mutuel Wagering and Breeding Law Articles Two or Three, the obligations to make payments as required by § 1355.2 will be calculated by region.**

**Q.264:** In calculating any reduction in payments made by a VLT operator who is not awarded a gaming license, will there be any thought given to circumstances at the VLT facility that otherwise impact its revenues and related racing industry support payments (e.g., what if a building is damaged or destroyed or the facility decides to

reduce the number of VLTs or not replace older VLTs as would be generally done over time consistently with industry practice)?

**A.264: The Commission will consider all relevant factors in making its determination. It is not appropriate to specifically address this hypothetical situation.**

**Q.265:** a. Please identify by Region the “licensed racetracks” and the “video lottery gaming facilities” in Region One and Region Two.

b. What are the realized “purse support” payments made in 2013 by each video lottery gaming in such Regions?

c. What are the payments realized in 2013 from each video lottery gaming facilities in each region to the breeding and development funds?

d. If two licenses are awarded in a region, how will these payments be shared between the two licensees?

e. Under such a circumstance, will a licensee only be responsible for the payment of its share in the event the other licensee fails to pay its share?

f. Will the licensee(s) be relieved of this obligation if the licensed racetracks and/or video lottery gaming facilities in its region close or cease operating for any reason, including as a result of damage by casualty, a regulatory closure, or a voluntary closure?

g. How will gaming competition in surrounding states and regions be factored into a reduction in purse support of payments to the breeding and development funds generated by a video lottery gaming facilities in a region?

**A.265:**

**a. There is a licensed racetrack and video lottery gaming facility in Region One of Zone Two (Monticello Casino & Raceway). There is also one relevant licensed racetrack and a video gaming facility in Region Two of Zone Two (Saratoga Casino & Raceway).**

**b-c. The table below illustrates Calendar Year 2013 purse and breeding fund support payments by relevant video lottery gaming facility.**

Location	Facility	Purses	Breeding Fund
Zone 2, Region 1	Monticello Casino & Raceway	\$5,453,972	\$785,267
Zone 2, Region 2	Saratoga Casino & Raceway	\$13,257,060	\$1,994,935
Zone 2, Region 5	Tioga Downs Casino	\$4,558,752	\$744,897

d. It is anticipated that Commission regulations will address the issue of how payments required by N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1355 will be made in the event two gaming facility licenses are awarded in a region.

e. See answer to Question 265.d.

f. See answer to Question 265.d.

g. N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1355 contains no provisions for consideration of gaming competition in surrounding states and regions.

**Q.266:** The Act essentially maintained payments to horsemen and breeder organizations at the “same dollar levels realized in 2013” as adjusted by the consumer price index. This level of financial support to racing and breeding does not appear to be tied to the ebbs and flow of the industry, particularly as it relates to the good faith obligations of race tracks to maintain 2013 levels of racing operations. This issue has a direct impact on the RFA process and individual Applications as the Act and the RFA require contributions from the racinos and/or the new casinos within a region to maintain the 2013 levels plus CPI. As a stark illustration, suppose a race track unilaterally decreased racing by 50percent in year 3 of a gaming facility's 10-year License and ceased racing operations in year 6 of the gaming facility License.

Will the Commission require racetracks within Regions 1, 2, and 5 to maintain 2013 levels of racing operations as a prerequisite to payment of racing support payments?

**A.266: No. Racetrack obligations to maintain racing are set forth in N.Y. Racing, Pari-Mutuel Wagering and Breeding Law Article 3.**

**Q.267:** a. If more than one Gaming Facility License is awarded in a Region, what methodology will be used to determine the pro rata contribution payable by each Licensee to satisfy the racing industry support payments described in RFA, Section XI.Q and § 1355?

In responding to this question, please take into account each of the following scenarios:

1. a racetrack location is awarded a Gaming Facility License and an applicant that does not possess either a pari-mutuel wagering license or franchise awarded pursuant to N.Y. Racing, Pari-Mutuel Wagering and Breeding Law Article Two or Three is issued a Gaming Facility License;

2. a racetrack location is not awarded a Gaming Facility License but an applicant that does not possess either a pari-mutuel wagering license or franchise awarded pursuant to N.Y. Racing, Pari-Mutuel Wagering and Breeding Law Article Two or Three is issued a Gaming Facility License; and

3. a racetrack location is not awarded a Gaming Facility License but two applicants that do not possess either a pari-mutuel wagering license or franchise awarded pursuant to N.Y. Racing, Pari-Mutuel Wagering and Breeding Law Article Two or Three are issued Gaming Facility Licenses.

**A.267: See answer to Question 265.d. – f.**

**Q.268:** Will horse racing tracks have clear obligations to maintain existing levels of racing operations to support 2013 + CPI funding levels?

**A.268: The obligations of racetracks to maintain racing operations are set forth in N.Y. Racing, Pari-Mutuel Wagering and Breeding Law Article 3.**

**Q.269:** What level of maintenance of effort by the racino is required before support payments are due?

**A.269: The obligations of video lottery facilities to maintain operations are set forth in N.Y. Tax Law Article 34. As agents of the Commission's Division of the Lottery, video lottery gaming facilities cannot unilaterally make any changes to the gaming floor (e.g., the number of and types of machines) nor alter hours of gaming operation.**

**Q.270:** What is the time period for a licensee to pay Racing Support Payments?

**A.270: The statute does not sunset the time period for racing support payments. It is anticipated that Commission regulations will define the timing of payments.**

**Q.271:** If casino licenses are awarded in the same region to an Applicant with a VLT license and an Applicant that does not hold a VLT license, what is the non-VLT license holder's responsibility to the horsemen at the VLT licensed facility?

**A.271: It is anticipated that Commission regulations will address this issue.**

**Q.272:** a. Regarding Racing Industry Support Payments in the second paragraphs numbered 1 and 2, does the term "region", found in both paragraphs, used in the phrase, "in the region" refer to the term Region as defined at II of the RFA materials?

b. If not, how is "region" defined?

**A.272:**

a. Yes.

b. Not applicable.

### **Confirmatory Affidavit, Issuance of Licenses**

**Q.273:** Section XI.R, requires a confirmatory certification by the Applicant in a form approved by the Commission – Would the Commission consider a statement of recognition that the characteristics of a project change during planning and construction, and impose a standard of materiality within the spirit of the Application as the basis for the confirmatory affidavit?

**A.273: No.**

**Q.274:** Will the Board consider issuing an Applicant a Temporary License during the pendency of the background check review period?

**A.274: No.**

**Q.275:** When do you anticipate that licenses will be awarded?

**A.275: The Commission anticipates awards to be made in fall of 2014.**

**Q.276:** Will the licenses for all three regions be awarded together?

**A.276: See answer to Question 175.**

**Q.277:** How soon after selection will the winning bidders receive their licenses?

**A.277: The timing and award of a license is dependent upon an applicant meeting each of the licensure requirements set forth in N.Y. Racing, Pari-Mutuel Wagering and Breeding Law Article 13, including, without limitation, a more in-depth screening and background investigation into the suitability of the Applicant.**

**Q.278:** a. Does the selection of an Applicant by the Facility Location Board assure that Applicant will be granted a gaming facility license by the New York State Gaming Commission?

b. If not, please advise as to the expected process and timeline for review and decision by the New York State Gaming Commission.

**A.278:**

**a. No, an Applicant is required to be licensed by the Commission.**

**b. It is anticipated that the Commission will make its licensing decisions as soon as practicable following receipt of all necessary background information and supporting documentation.**

**Q.279:** Will all licenses be awarded at the same time?

**A.279:** See answer to Question 175.

## **LICENSE APPLICATION FORM**

**Q.280:** Article I, § C of the Gaming Facility License Application Form states: "All entries on this application, except signatures, must be typed or printed in block lettering using dark ink. The Commission will not review your application if it is illegible *or if you have modified any of the questions or preprinted information in this application.*" (Emphasis added.) Will the Board provide versions of the Application (and Background Investigation Forms) in a PDF "form filler" format?

**A.280: No, however please see answer to Question 52.a.**

## **MISCELLANEOUS**

**Q.281:** How does an applicant seek an advance determination that a Management Agreement between an Applicant and Manager satisfies the requirements of the Upstate New York Gaming Economic Development Act of 2013 and Section 1341.1(d) of the Destination Resort and Gaming Law?

**A.281: An Applicant may not seek an advance determination.**

**Q.282:** Can an applicant or the principals or primary shareholders of an applicant be awarded a Class III gaming license if they already hold significant interests in multiple other NYS gaming facilities? In Pennsylvania, individuals and companies are strictly limited in the interest they can hold across multiple gaming facilities

(capped at 133percent of one facility) so as to prevent said individuals or companies from possessing too much statewide control in the industry.

**A.282: Yes.**

**Q.283:** If an Applicant's proposed casino is proximate to a non-casino related development, can the Applicant incorporate the economic development benefits anticipated from the non-casino development into its application, particularly if a non-casino related developer intends to proceed regardless of the Applicant's licensing outcome?

**A.283: No.**

**Q.284:** If an applicant has no prior experience as a company in operating Class III gaming facilities, is an applicant still eligible to receive a NYS class III license?

**A.284: Yes.**

**Q.285:** a. Would an existing NYS racino that applies for a Class III casino license on another site be allowed to keep their existing horse racing track while removing the slot machines from the site?

b. If so, does the loss of revenue at the racino in any way count against the revenue generated at the new Class III facility?

**A.285:**

**a. Yes. The racing facility license is not predicated upon the holding of a video lottery gaming facility license.**

**b. No.**

**Q.286:** Are there any plans, or discussions underway, to split future casino revenues with the Racing industry and/or any other sources other than funding for education and property tax relief?

**A.286: This question fails to seek guidance or clarity regarding an element of the RFA and thus is outside the scope of response.**

**Q.287:** If the site has access to the water, will the Commission allow gaming on a docked ship, owned by the applicant?

**A.287: An Applicant could submit such a proposal in its site plan. A single gaming facility on a docked ship would be permissible. If the Applicant**



**plans a land-based gaming facility, a second facility at the location would not be permitted on a docked ship.**

### **Reciprocal Exclusivity / Buffer Zones**

**Q.288:** A stable gaming landscape and market would appear to be a common goal of state government and those participating as Applicants in this RFA process. The state has granted exclusivity to certain Native American tribes in Regions 3, 4 and 6. Regions 1, 2 and 5 have no similar exclusivity provisions from expanded tribal gaming. Economic models are most reliable when they can accurately forecast future gaming development. As such, will the Commission consider as a component of a gaming facility License, granting an area of exclusivity within the defined Regions in the statute and outside of the defined Regions, including counties with tribal exclusivity (Regions 3, 4 and 6), in an effort to stabilize casino gaming in the state once the Gaming Facility Location Board has selected and recommended sites to the Commission. For example, would the Commission grant a license in Regions 1, 2 or 5 and agree to not issue any necessary approvals for the siting of future casinos in "County X" in Regions 3, 4 or 6 in an effort to maintain a stable gaming market (*i.e.* a buffer zone) from future tribal casino expansion in close proximity to a non-tribal casino?

**A.288: No.**

### **Exclusivity**

**Q.289:** Under the Act, the Mohawk, Oneida and Seneca tribes were granted certain multi-county exclusivity regions within Zone 2. While private sector commercial casinos are prohibited from operating gaming facilities in Regions 3, 4, and 6 due to exclusivity granted by the State, it does not appear that the law reciprocates and limits tribes from competing for a License in Regions 1, 2 or 5. Moreover, State law would not appear to prevent tribes from pursuing casino opportunities through the Bureau of Indian Affairs and the Department of the Interior. Finally, while the legal landscape as it relates to quantity and limitation on the number of New York state issued licenses appears predictable, there is no current protection from new Indian casino facilities in Regions 1, 2, and 5.

Will the Commission issue a Gaming Facility License that includes exclusive rights to gaming within the region, specifically including exclusivity for the License holder with protection against expansion of Indian gaming in the region?

**A.289: See answer to Question 288.**

**Q.290:** Will the Board and Commission consider granting a casino license accompanied by an exclusivity agreement within the region related to future Indian gaming?

**A.290:** See answer to Question 288.

### **VLT Facilities**

**Q.291:** Will Applicants that possess a video lottery gaming license under Tax Law § 1617-a be scored on accretive revenues or total revenues?

**A.291:** Total revenues.

**Q.292:** May an Applicant that possesses a video lottery gaming license under Tax Law § 1617-a also possess a gaming facility license under Article 13 of the Racing Law?

**A.292:** Yes, at a location separate from the video lottery gaming facility.

**Q.293:** May a Licensee that possesses a video lottery gaming license under Tax Law § 1617-a and a gaming facility license under N.Y. Racing, Pari-Mutuel Wagering and Breeding Law Article 13 operate VLTs, slot machines and table games within a Gaming Facility, as defined by § 1301(23) and Section II of the RFA?

**A.293:** See answer to Question 292.

**Q.294:** What limits will the Board/Commission place upon racing industry support payments made by a Licensee to horsemen and the applicable breeding and development funds, as required under Section XI.Q of the RFA?

**A.294:** The Commission will be guided by N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1355.

**Q.295:** Will the Board/Commission implement any maintenance requirements for VLT licensees before the racing industry support payments are due?

**A.295:** See generally the answer to Question 263.

**Q.296:** If a Racino is awarded the license:

a. How would the transition to Class III gaming affect the day to day operations as it relates to MGAM and the existing VLTs?

b. How quickly would the State expect the transition to occur?

c. Would the tax structure remain in place until the transition?

**A.296.**

**a. If a video lottery gaming facility is awarded a commercial casino gaming license, video lottery gaming will be required to cease prior to conversion. All video lottery equipment, which is owned by the Commission's Division of the Lottery, would be removed by the Lottery's vendors, unless the new licensee directly arranged to purchase the equipment.**

**b. Applicants should propose the timing for an anticipated transition.**

c. Yes.

### **Slot Machines & Video Lottery Terminals**

**Q.297:** Currently, the State and licensed operators maintain thousands of VLT machines in facilities throughout upstate New York—specifically within Regions 1, 2 and 5. Published reports indicate that certain existing VLT facilities will seek a Gaming Facility License under N.Y. Racing, Pari-Mutuel Wagering and Breeding Law Article 13.

a. May a VLT license currently allowing for operations at a site/location also qualify as an Applicant to obtain a License to operate slot machines within a gaming facility authorized under Article 13 of the Racing Law?

b. If so, may a facility operate both VLT and slot machines within the same site/location?

**A.297:**

**a. See answer to Question 292.**

**b. No.**

**Q.298:** Will a single gaming facility be permitted to host both VLTs and Class 3 slot machines?

**A.298: See answer to Question 292.**

**Q.299:** The March 31, 2014 RFA at page 12 and page 71, does not reference an Exhibit VI.M. Is an Exhibit M intentionally omitted?

**A.299: Yes, omission of RFA Article VI § M. was intentional.**

**Q.300:** The RFA provides that the Board reserves the right to answer or refrain from answering questions in its discretion:

- a. will all questions and answers be published for public review; and
- b. will all questions, even if the Board refrains from answering, be published for public

**A.300:**

**a. Yes.**

**b. Yes.**

**Q.301:** Does the term "Gaming Facility" include non-gaming amenities which will not be owned or operated by the Applicant or the Manager but (a) are to be located on real property that is a part of the Project Site, (b) are integral to the development scheme for the proposed project as a whole, and (c) the third party operator is contractually obligated to develop and operate such non-gaming amenities if a License is awarded to the Applicant?

**A.301: Yes, the Gaming Facility includes elements of the proposed building program that are to be built or operated on the project site but are to be developed, operated or managed by an entity other than the Applicant or Manager and are primarily intended for the use and enjoyment of gaming patrons. See RFA Article VIII.C.7.c. and VIII.C.10.a.**

**Q.302:** Will the Board provide recommendations or forms that specify the formatting for the requisite:

- 1. Business Plan;
- 2. Marketing Plan; and
- 3. Financial Forecast?

**A.302: Applicants have discretion as to the formatting of the qualitative five (5) year business plan to be provided pursuant to RFA Article VIII § A. 5. the marketing plans to be provided pursuant to RFA Article VIII § B. 9.**

**The Board anticipates Exhibit VIII.A.5. will be a narrative discussion supplemented by appropriate quantitative references and/or tabular**

disclosure of relevant market/revenue projections, pro-forma financial statements, and financing arrangements. The narrative discussion should substantiate the bases of projections and estimates, including, for example, by reference to comparable projects or standards in the gaming or hospitality industry. Material assumptions should be identified and their reasonableness substantiated. RFA Article VIII § A. 5. outlines the specific minimum required contents of the business plan.

The Board anticipates that Exhibits VIII.B.9.a., VIII.B.9.b. and VIII.B.9.c. will be a narrative discussion of the Applicant's marketing plans. RFA Article VIII § B. 9. a., VIII § B. 9. b. and VIII § B. 9. c. outline the specific contents required in the respective Exhibits.

Applicants must provide the detailed financial forecasts requested in RFA Article VIII § A. 4. in a tabular format that facilitates comparison across the periods and scenarios requested by, for example, using consistent revenue lines, expense categories and asset and liability classes across all periods and scenarios. Applicants have discretion what particular revenue lines, expense categories and asset and liability classes are material, but the Board expects Applicants to provide sufficient detail as to allow a reasonably comprehensive understanding of the projected results of operations and financial condition of the proposed Gaming Facility. On the pro-forma statements of results of operations, for example, the Board typically would expect Applicants to include, as applicable and among other potential items, slot, table and card room gaming revenues; free play or promotions; food & beverage revenue; hotel (room) revenue; convention & catering revenue; entertainment venue revenues; compensation and benefits expense; capital investment, interest and financing expense; and gaming and other taxes.

**Q.303:** If a current licensee intends to make improvements to its existing facility that are unrelated to full scale gaming (VGM and/or track related), should that be included in the Application?

**A.303:** Yes.

**Q.304:** Are there standards and procedures for obtaining a waiver of any applicable licensing or qualification requirements for institutional investors and other institutional financing sources?

**A.304:** See answer to Question 26.

**Q.305:** Can a party act as both a gaming equipment supplier and an operator?

**A.305: Yes.**

**Q.306:** Is there any limit on the number of gaming positions allowed per facility?

**A.306: No.**

**Q.307:** Will the Commission have a licensing waiver process for institutional investors beneficially owning more than 5percent of a publicly traded company?

**A.307: See answer to Question 26.**

**Q.308:** Will the horse racing purse subsidy obligation be net of any impacts from out-of-state competition and general market conditions?

**A.308: No.**

**Q.309:** If a racetrack is closed for whatever reason, thus no longer providing a venue to race, what happens to the subsidy obligations (both purse enhancement and breeding funds)?

**A.309: This scenario poses a question that would require a legislative answer.**

**Q.310:** Certain application exhibits, such as VIII-A-3, VIII-A-4, VIII-B-4 and VIII-B-7-a ask for financial, tax, employment and other projections. In order to allow the Commission to make apples to apples comparisons between applicants, we ask that the Commission consider providing standardized templates that applicants would complete for some or all of these requested projections. Our recent experience has shown that other jurisdictions have asked for additional information in a standardized format from all applicants after original applications had been submitted.

**A.310: The Board anticipates RFA Addenda in the form of templates to be populated by Applicants. Anticipated are:**

**1. In Exhibit VIII.A.3., Applicants will be required to submit a populated template of gaming revenues and visitation for the first ten (10) years after opening for gaming on a high-, average- and low-case basis.**

**2. In Exhibit VIII.A.4., Applicants will be required to submit populated templates for financial forecasts in the form of pro-forma statements of EBITDA and net income, balance sheets and calculations of debt-to-equity ratio and cash flows for the first ten (10) years after opening for gaming on a high-, average- and low-case basis.**

**3. In Exhibit VIII.B.4., Applicants will be required to submit populated templates for estimated State, county and local tax revenue (e.g., gaming, sales, income, real estate, hotel, entertainment and other taxes) for the first five (5) years of operations on a high-, average- and low-case basis.**

**These Addenda will be timely released. Applicants are encouraged to begin developing responsive materials to RFA Articles VIII § A. 3., VIII § A. 4. and VIII § B. 4. promptly, as the Board does not anticipate extension of the Application submission deadline.**

**Notwithstanding the expected provision of the aforementioned templates, Applicants are permitted to include materials otherwise responsive to RFA Articles VIII § A. 3., VIII § A. 4. and VIII § B. 4. For example, Applicants are permitted to present the requested information in an alternative form, to explain how the information requested in the templates may not be representative of the proposed Gaming Facility or to present additional responsive information that would assist the Board in reviewing the Applicant's proposal for a Gaming Facility.**

**Q.311: Saratoga Springs does not seem likely to grant a local support resolution, yet is home to two important horse racing tracks. Is the Commission concerned that a full casino elsewhere in the region will have a negative impact on horse racing, which it also regulates?**

**A.311: This question fails to seek guidance or clarity regarding an element of the RFA and thus is outside the scope of response.**

**# # #**

**ADVANCE QUESTIONS AND ANSWERS – APRIL 30, 2014**





**REQUEST FOR APPLICATIONS  
TO DEVELOP AND OPERATE  
A GAMING FACILITY IN NEW YORK STATE**

**Applicant Conference – Advance Questions and Answers**

**April 30, 2014**

**Q.312:** RFA Exhibit VI.L, under the heading of “Public Officials,” requests:

... names, titles, addresses and telephone numbers of any Public Officials or officers or employees of any governmental entity, and Immediate Family Member(s) of said Public Officials, officers or employees, who, directly or indirectly, own any financial interest in, have any beneficial interest in, are the creditors of, hold any debt instrument issued by, or hold or have an interest, direct or indirect, in any contractual or service relationship with the Applicant, the Manager or their Affiliates ...

and then provides that:

... a statement listing all persons and entities not listed in the immediately preceding sentence who or that have any arrangement, written or oral, to receive any compensation from anyone in connection with the Application, the RFA process or obtaining of a License from the State, describing the nature of the arrangement, the service to be provided and the amount of such compensation, whether actual or contingent.

Is the “statement” requested in the second part of this Exhibit with reference specifically to Public Officials, or does it reference “all persons” who have any arrangement for compensation in connection with the Application (which would seemingly include all professionals, consultants, employees, etc., each of which is to be separately identified under other Exhibits of the RFA Application)?

**A.312: Such statement should be interpreted as referring to “all persons and entities ... to receive any compensation from anyone in connection with the Application, the RFA process or obtaining of a License from the State ... ”.**

**Q.313:** Please specify:

a. how many square feet, and in what location, should office space be allocated for offices for the Gaming Commission and any other state agencies intending to have a presence within the Gaming Facility?

b. what fixtures and finishes this space will require?

**A.313:**

**a. While requirements have not been formalized, we anticipate State needs to be consistent with existing Indian gaming facilities. Such locations are generally two distinct sets of offices. Each set is generally no less than 450 square feet, divided among two distinct, connected spaces with one being no less than 100 square feet.**

**Offices should be located within the gaming facility, in close proximity to the gaming floor.**

**b. An applicant need not supply fixtures for the two sets of offices, although each should have full communications functionality. The larger of the space should also have one surveillance station and have connectivity to the utilized accounting and financial reporting system.**

**Q.314:** Exhibit III, §H of the RFA (and 9 NYCRR §5300.2) requires each Applicant to submit (with its application) "A complete and accurate Gaming Facility License Application Form *for each of* ... [Applicant, parent entity, holding company, Manager, holder of beneficial interest of 5%, etc.]." (emphasis added)

Please advise whether this requirement is for one Gaming Facility License Application Form covering each enumerated interested party, or, rather, is each enumerated interested party required to submit its own separate Gaming Facility License Application Form?

**A.314:** Please see the answer to Round 1 Question 26, which is replicated below:

**Applicants shall make a good faith effort to determine whether they and their respective related parties must submit background investigation forms as set forth in RFA Article III § H. If the Board determines that an Applicant has failed to provide background forms for a person or entity required to disclose, the Board will afford the Applicant the opportunity to**

submit promptly the necessary background forms for such person or entity.

**The Board may, in its discretion, waive disclosure requirements for institutional and other passive investors that can demonstrate they obtained an interest in a relevant party for investment purposes only and do not have any intention to influence or affect the affairs of an Applicant, a manager or any affiliated companies thereof. It is anticipated that the Commission will promulgate regulations in regard to this concern.**

**Q.315:** PML § 1346.6 states, "*If otherwise applicable*, any gaming facility entering into a contract for a gaming facility capital project shall be deemed to be a state agency, and such contract shall be deemed to be a state contract, for purposes of article fifteen-A of the executive law and section two hundred twenty-two of the labor law." (emphasis added)

a. Please advise whether the Commission or the Board has determined that Labor Law §222 is in-fact applicable to the building and construction work to be performed under a Gaming Facility License?

Labor Law §222.2 (a) provides: "The [agency] having jurisdiction over the public work *may require* a contractor... for a project to enter into a project labor agreement during and for the work involved with such project when such [agency] ...determines that its interest in obtaining the best work at the lowest possible price, preventing favoritism, fraud and corruption, and other considerations such as the impact of delay, the possibility of cost savings advantages, and any local history of labor unrest, are best met by requiring a project labor agreement." (emphasis added)

b. Specifically, has the Commission or the Board affirmatively determined that Project Labor Agreements shall be required for the building and construction work to be conducted under a Gaming Facility License?

**A.315:**

**a. The Board encourages any interested party to conduct a legal review of N.Y. Labor Law § 222 to determine whether such section applies to a gaming facility building and construction work.**

**b. The Board respectfully directs applicants to N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1320.3 (g)(2), which provides that among the selection factors that the Board will evaluate is an Applicant's demonstration that it has an agreement with organized labor that specifies detailed plans for assuring labor harmony during all phases of**

**the construction, reconstruction, renovation, development and operation of the gaming facility. The form of the demonstration is left to the Applicant's discretion.**

**Q.316:** The Commission has not set forth a process where opponents of the Casino can file their objections. I propose that a 6 month period after the submission be given to any group that wishes to file an objection. This is fair since the applicants have been working on their plans for a long time and we are to be given ample time to review and respond. Let this communication serve as notice that we will file papers in response and we should be given this time period.

**A.316: This question fails to seek guidance or clarity regarding an element of the RFA and thus is outside the scope of response.**

**Q.317:** Let the applicant address the impact of the casino on the surrounding summer community.

**A.317: This question fails to seek guidance or clarity regarding an element of the RFA and thus is outside the scope of response.**

**Q.318:** We must be given copies of all communications and data in the possession of the applicant even though it was not submitted to the Site Commission.

**A.318: This question fails to seek guidance or clarity regarding an element of the RFA and thus is outside the scope of response.**

**Q.319:** Let the applicant address the consequences when New York City allows the building of Casinos in the city after the casinos have destroyed the residential climate of Monticello and Monticello will no longer have this economic base.

**A.319: This question fails to seek guidance or clarity regarding an element of the RFA and thus is outside the scope of response.**

**Q.320:** Inasmuch as up to two casinos can go in a particular region, are we to contemplate a second casino when identifying local impacts?

**A.320: No.**

**Q.321: Board Question, Posed For Clarification.** Pursuant to N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1316.8 and the RFA, all Applicants were required to remit an Application fee of one million dollars to defray the costs associated with the processing of the Application and investigation of the applicant.

Under what circumstances and to what extent may an Applicant's fee be refunded?

**A.321: Please see *Guidance Document - Refunding of Application Fee*, which has been posted to the Commission's RFA webpage.**

**Q.322. Board Question, Posed For Clarification.** Will the Board consider the loss of VLT revenue caused by the conversion of a VLT facility to a commercial Gaming Facility when evaluating a proposed commercial Gaming Facility's revenue generation?

**A.322. No. If a VLT facility is converted to a commercial Gaming Facility, all gaming revenue generated by the commercial Gaming Facility will be considered, without regard to the loss of VLT revenue.**

**Q.323. Board Question, Posed For Clarification.** Will the Board consider the impact that a proposed commercial gaming facility may have on a VLT facility's gaming revenue?

**A.323. No. Any potential reduction in VLT facility revenue will not be considered in evaluating a proposed commercial gaming facility's revenue.**

**# # #**

**GUIDANCE DOCUMENT – APPLICATION FEE REFUND – APRIL 30, 2014**



**REQUEST FOR APPLICATIONS  
TO DEVELOP AND OPERATE  
A GAMING FACILITY IN NEW YORK STATE**

**REVISED GUIDANCE**

**Refunding of Application Fee**

**April 30, 2014**

Pursuant to the N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1316.8 and the Request For Applications to Develop and Operate a Gaming Facility in New York State, all Applicants have been required to remit a fee of one million dollars to defray the costs associated with the processing of the Application and investigation of the Applicant. Accordingly, the Commission has received fees from 22 entities.

Such fees may be refunded under the following circumstances:

1. Full refund. The Fee will be fully refunded if an Applicant chooses to withdraw from consideration within five (5) business days subsequent to the Gaming Facility Location Board's release of capital investment guidance. This capital investment guidance will be released no later than ten (10) days following the Applicant Conference.
2. Partial refund. An Applicant may receive a partial refund of its Application Fee if it chooses not to submit an Application subsequent to the aforementioned deadline for the full refund. Under such circumstances, an Applicant will be entitled to a refund of its Fee, minus any charges for costs associated with the processing of the Application and the investigation of the Applicant. Should the costs of the processing and investigation not exceed the Fee remitted, any unexpended portion will be returned to the Applicant.

**###**

**APPLICANT CONFERENCE QUESTIONS AND ANSWERS – MAY 2, 2014**





**REQUEST FOR APPLICATIONS  
TO DEVELOP AND OPERATE  
A GAMING FACILITY IN NEW YORK STATE**

**Applicant Conference - Questions and Answers**

**May 2, 2014**

Q.324. Will the Commission toll the twenty-four (24) month time limit until such time as the SEQR process is completed?

**A.324. As addressed in the answer to Question 189. c., the Commission has not considered whether it will toll the twenty-four month time limit pending completion of the State Environmental Quality Review (SEQR) process.**

**The Commission believes that it will be unnecessary to toll any time limit as we assume Applicants will timely commence the SEQR process since speed to market is a graded factor in the RFA evaluation.**

Q.325. Will litigation over SEQR determinations toll the twenty-four (24) month period?

**A.325. See answer to Question 324.**

Q.326. Will post-application design changes to the Gaming Facility and Amenities be allowed?

**A.326. Yes. The Commission and the Board will authorize changes that do not reduce the size, quality, or fit and finish of a Gaming Facility or amenities or are otherwise government-mandated changes.**

Q.327. Do the preemption provisions of N.Y. Racing Pari-Mutuel Wagering and Breeding Law Article 13 extend beyond the "gaming floor"? Because the statute requires at least one hotel and other facilities, it is not clear why preemption doesn't extend beyond gaming activities.

**A.327. See N.Y. Racing Pari-Mutuel Wagering and Breeding Law § 1366 and the answer to Question 184.**

**The preemption of local zoning and land use under N.Y. Racing Pari-Mutuel Wagering and Breeding Law § 1366 applies only to conduct of gaming as a permitted use or approved activity for the Project Site. N.Y. Racing Pari-Mutuel Wagering and Breeding Law § 1366 does not preempt local zoning and land use regulation as to non-gaming activities and permitted uses of a proposed Gaming Facility.**

Q.328. What is the permissible format and time frame for public presentations?

**A.328. As mentioned at the Mandatory Applicant Conference, the Applicant Public Presentations are likely to be scheduled in Albany for the first Monday following Labor Day, September 8, 2014.**

**The extent of the time afforded each Applicant will depend upon the number of Applications received. Applicants should anticipate that the Board will confirm the date and format for the Presentations no later than July 14, 2014.**

**The format and scope of materials used at an Applicant's presentation will largely be left to the discretion of the Applicant. Applicants are advised that Public Presentations shall not be used to denigrate other proposals.**

Q.329. Are financial backers exempted from background investigations? What about providers of debt financing?

**A.329. In May 2014, the Commission will issue a regulatory white paper that will outline the direction the Commission intends to follow regarding the regulation of commercial gaming. Part of this paper will address waivers for certain investors including, among others, those providing debt financing.**

Q.330. For Regions in which more than one Gaming Facility is proposed, will the Board consider the potential anti-competitive implications of setting the Minimum Capital Investment too high, which could exclude one or more bidders.

**A.330. Yes. This issue will be considered by the Board.**

Q.331. Many answers to the Round 1 – Questions and Answers mentioned forthcoming Commission regulations. When will these regulations be issued?

**A.331. See answer to Question 329.**

Q.332. RFA Article VIII § C.1.f. asks for copies of any environmental reports. These reports could be thousands of pages. Can we provide an executive summary in hard copy and a supplemental USB drive with a soft copy?

**A.332. Yes. Applicants, however, should submit hard copies of any narrative, summary or executive reports. If a report's supporting exhibits, findings, field notes and related supporting matter would be unwieldy, Applicants may use their discretion to submit such materials in electronic form. The hard copy of Exhibit VIII.C.1.f. should briefly describe the physical materials omitted, but electronically submitted.**

Q.333. How were the purse amounts listed in the answer to Q.265 b. and c. calculated?

**A.333. Purse and breeding fund contributions were calculated consistent with the language contained in N.Y. Tax Law § 1612.**

**In general, purse contributions are subject to an agreement between a video lottery gaming facility and the organization representing the racetrack's horsemen. These agreements require a specific percentage of video lottery gaming net win to be allocated to purses, net of amounts required to be remitted to fund equine health and safety programs.**

**Breeding fund contributions are statutorily set at one and a quarter (1.25) percent of net win at each facility.**

Q.334. a. Regarding the answer to Q.147, should Applicants submit a high/low/average case for each competitive scenario? We would vary the assumptions with respect to competition.

b. Do we then need a low/average/high case for each competitive scenario?

**A.334. RFA Article VIII § A.3. requires submission of a study assessing the potential gaming market for the proposed Gaming Facility and submission of gaming revenue projections and gaming patronage on a high-, average- and low-case basis for the proposed Gaming Facility. For the purpose of the required projections, please assume that only the Gaming Facility proposed will be awarded in the Region. As noted in the answer to Question 147, the Board will be sensitive to intra-Region competition in evaluating the Applications.**

**As set forth in the answer to Question 147, an Application may, but is not required to, present gaming revenue and gaming patronage projections**

**under one competitive scenario that reflects another License awarded in the same Region. For the competitive scenario, the Application must include all the required components of the required gaming revenue and gaming patronage projections without intra-Region competition: high-, average- and low-case projections and a description of all material assumptions, including the geographic location within the Region of the assumed competitive Gaming Facility and its approximate size by number of slot machine and table positions.**

Q.335. If a license is granted in Southern Orange County that makes financing for a Sullivan or Ulster County casino difficult, what happens to the fourth license?

**A.335. This question fails to seek guidance or clarity regarding an element of the RFA and is thus outside the scope of response.**

Q.336. Does the ban under the Procurement Lobbying Law restricting communications between Applicants and the Commission/Board during the Application process apply to communications between an Applicant and other state agencies?

**A.336. No. Applicants may contact other State agencies, which are not subject to the requirements of the Procurement Lobbying Law, regarding technical elements necessary to appropriately respond to Application questions.**

Q.337. Will there be a media blackout during the period following the submission of applications and prior to the award?

**A.337. No.**

Q.338. Will regulations be issued in time for the SAPA public comment process?

**A.338. See answer to Question 331. Following issuance of guidance on the Commission's regulatory white paper, the Commission will propose regulations pursuant to the State Administrative Procedure Act (SAPA).**

Q.339. Given the answers to Question 189.a. and Question 215:

a. Is the award of a Gaming Facility license subject to SEQR?

b. Is the issuance of a Gaming Facility license subject to SEQR?

**A.339. Yes.**

Q.340. The answer to Question 184 says that the Applicant must supply a schedule of local zoning variances, permits, etc. Is the acquisition of those permits to be determined by the State or the local authority?

**A.340. N.Y. Racing Pari-Mutuel Wagering and Breeding Law §1366 preempts land use and zoning regulations only with respect to the conduct of gaming. All other land use and zoning approvals, as well as construction and occupancy permitting, shall be governed by the regulations of the applicable local authority.**

Q.341. Please clarify the definition of “fully operational” as to what is required to be open in 24 months.

**A.341. See generally the answer to Question 248.**

**The Board will evaluate each Application to determine what “fully operational” means for each proposed facility. Applicants proposing phased development should submit construction timelines that are intended to construct and open as much of the proposed Gaming Facility as is practicable on the proposed date to open for gaming.**

**The RFA is a competitive process, and Applicants should be aware that whether ancillary entertainment services and non-gaming amenities are proposed in an Application to open along with the gaming area may be part of the evaluation criteria.**

Q.342. In response to Question 70 of the Applicants' first round questions, the Board stated that it “does not currently intend to withhold from public disclosure” information contained in certain fields of the Multi-Jurisdictional Personal History Disclosure Form and New York Supplemental Form “but reserves the right to do so if deemed appropriate.” Are we correct in assuming that the Applicants will have an opportunity to discuss this issue with the proper Board designee(s) consistent with Section III.E of the RFA in advance of submitting their Applications?

**A.342. Yes, the Commission and Board anticipate the scheduling of sessions wherein Applicants will have an opportunity to discuss the applications with Commission staff. Details regarding these sessions will be announced and posted on the Commission’s RFA webpage.**

Q.343. In the Q&A’s released by the Board on April 23, Answer 52.a. states that the Board will provide certain forms in MS word format.

a. Has this been done yet?

b. If so, where can they be found?

**A.343.**

**a. Yes.**

**b. The forms are available on the Commission’s RFA webpage at the following address: <http://www.gaming.ny.gov/gaming/casinos.php>**

Q.344. With respect to Exhibit VI.K (Conflicts of Interest) the Board is asking for any relationship or affiliation of the “Applicant, the Manager, or any of their respective Affiliates” with the Board, Commission, employees and consultants.

a. Do project consultants providing professional services to the Applicant and/or Manager constitute an “Affiliate” for purposes of conflict of interest disclosure?

b. What is the definition of “Conflict of Interest”?

c. What is the definition of “relationship or affiliation”?

**A.344.**

**a. Yes.**

**b. The phrase ‘conflict of interest’ is intended to mean any relationship, affiliation or situation that could be reasonably interpreted to compromise the integrity of the Application selection process by creating a risk that professional judgment or actions will be influenced unduly by a secondary interest. Applicants are encouraged to err on the side of disclosure of any relationship, affiliation or situation that could be a direct or indirect conflict of interest or perceived conflict of interest.**

**c. The phrase ‘relationship or affiliation’ is intended to mean any connection, whether financial, contractual, ownership, professional, social or otherwise, between a person or entity and another person or entity.**

**###**

**GUIDANCE DOCUMENT – MINIMUM CAPITAL INVESTMENT – MAY 12, 2014**



**REQUEST FOR APPLICATIONS  
TO DEVELOP AND OPERATE  
A GAMING FACILITY IN NEW YORK STATE**

**DETERMINATION OF MINIMUM CAPITAL INVESTMENT**

**REVISED**

May 12, 2014

N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1315 requires that the Gaming Facility Location Board establish a minimum capital investment for Gaming Facilities by zone and region. Such investment must include, but is not limited to, the cost of a casino area and at least one hotel and other amenities. In addition, the Board is required to determine whether it will include the purchase or lease price of the land where the Gaming Facility will be located or any infrastructure designed to support the site. Article VIII § A.1. of the Board's March 31, 2014 Request for Applications to Develop and Operate a Gaming Facility in New York State sets forth the Board's determination of which costs each Applicant for a gaming license will be permitted to include in its calculation of its minimum capital investment and which costs may not be included. That section of the RFA also stated that within ten (10) business days after the Mandatory Applicant Conference held on April 30, 2014 the Board would promulgate the minimum capital investment required.

In determining the minimum capital investment, the Board has reviewed data on recently constructed and proposed gaming facilities in various States including Massachusetts, Maryland and Ohio. In-state developments of various Native American gaming facilities were also considered. Such data included the nearby adult population, estimated total investment and, where applicable, required minimum investment in such gaming facilities. The Board also reviewed economic and financial models prepared by its consultants that were developed based on estimated gross gaming revenues for likely Gaming Facility locations and accepted industry operating margins, debt-to-equity ratios and rates of return. The Board's observation is that there is a wide range of market comparables for both total investment and required minimum investment in Gaming Facilities. This is due to a variety of factors, some being site specific, others driven by a gaming developer's ability to create amenities and features that will have wide appeal and can



successfully be marketed as a destination to populations having a higher average disposable income. In addition, the Board’s determination of minimum capital investment was influenced by its desire to balance the goal of encouraging competition in order to preserve the integrity of the selection process with the goal of maximizing the economic benefits to the State and each region that are associated with high-quality, large-scale destination resorts.

As the result of this process the Board establishes the following minimum capital investment:

<b>For a Gaming Facility located in:</b>	<b>The minimum capital investment is:</b>
<b><u>REGION 1</u></b>	
Dutchess or Orange Counties:	\$ 350,000,000
If no License is awarded for a Gaming Facility located in Dutchess or Orange Counties, then for the remaining portion of Region 1 (comprising Columbia, Delaware, Greene, Sullivan and Ulster Counties):	\$ 130,000,000
If a License is awarded for a Gaming Facility located in Dutchess or Orange Counties, then for the remaining portion of Region 1 (comprising Columbia, Delaware, Greene, Sullivan and Ulster Counties):	\$ 100,000,000
<b><u>REGION 2</u></b>	\$ 135,000,000
<b><u>REGION 5</u></b>	
Broome, Chemung, Schuyler, Tioga or Tompkins Counties:	\$ 85,000,000
Wayne County or Seneca Counties:	\$ 135,000,000
If a License is awarded for a Gaming Facility located in Wayne or Seneca Counties, then for the remaining portion of Region 5 (comprising Broome, Chemung, Schuyler, Tioga or Tompkins Counties):	\$ 70,000,000

The RFA minimum capital investment standard established was intended to reflect the fact that some parts of the total investment developers will make do not create the type of economic development benefits the statute is intended to foster. As a result, these were treated as excluded investments in the calculation of the minimum investment.

Our consultants have advised us that these excluded investments, which include land, financing costs, and certain startup expenses among other factors, typically constitute about 35 percent of the total investment of this type of new development. In other words, the minimum capital investment levels established are approximately 65 percent of the total amounts of the investment that developers are expected to make.

The following chart clearly illustrates the full-anticipated investment by Gaming Facility location. Included in the chart is the:

- Minimum Capital Investment (Column A);
- Implied Total Investment, which is the additional 35 percent investment otherwise excluded (Column B);
- Total Estimated Investment (Columns A + B), and
- Total Estimated Investment, With Licensing Fee (Column C + License Fee).

**CUMULATIVE INVESTMENT BY GAMING FACILITY LOCATION**

<b>Gaming Facility Location</b>	<b>Minimum Capital Investment</b>	<b>Implied Total Investment</b>	<b>Total Estimated Investment</b>	<b>License Fee</b>	<b>Total Estimated Investment, With Licensing Fee</b>
<b><u>REGION 1</u></b>					
<b>Dutchess or Orange Counties:</b>	<b>\$ 350,000,000</b>	<b>\$ 122,500,000</b>	<b>\$ 472,500,000</b>	<b>\$ 70,000,000</b>	<b>\$ 542,500,000</b>
<b>If no License is awarded for a Gaming Facility located in Dutchess or Orange Counties, the for the remaining portion of Region 1 (comprising Columbia, Delaware, Greene, Sullivan and Ulster Counties):</b>	<b>\$ 130,000,000</b>	<b>\$ 45,500,000</b>	<b>\$ 175,500,000</b>	<b>\$ 50,000,000</b>	<b>\$ 225,500,000</b>
<b>If a License is awarded for a Gaming Facility located in Dutchess or Orange Counties, the for the remaining portion of Region 1 (comprising Columbia, Delaware, Greene, Sullivan and Ulster Counties):</b>	<b>\$ 100,000,000</b>	<b>\$ 35,000,000</b>	<b>\$ 135,000,000</b>	<b>\$ 35,000,000</b>	<b>\$ 170,000,000</b>
<b><u>REGION 2</u></b>	<b>\$ 135,000,000</b>	<b>\$ 47,250,000</b>	<b>\$ 182,250,000</b>	<b>\$ 50,000,000</b>	<b>\$ 232,250,000</b>
<b><u>REGION 5</u></b>					
<b>Broome, Chemung, Schuyler, Tioga or Tompkins Counties:</b>	<b>\$ 85,000,000</b>	<b>\$ 29,750,000</b>	<b>\$ 114,750,000</b>	<b>\$ 35,000,000</b>	<b>\$ 149,750,000</b>
<b>Wayne County or Seneca Counties:</b>	<b>\$ 135,000,000</b>	<b>\$ 47,250,000</b>	<b>\$ 182,250,000</b>	<b>\$50,000,000</b>	<b>\$ 232,250,000</b>
<b>If a License is awarded for a Gaming Facility located in Wayne or Seneca Counties, then for the remaining portion of Region 5 (comprising Broome, Chemung, Schuyler, Tioga or Tompkins Counties):</b>	<b>\$ 70,000,000</b>	<b>\$ 24,500,000</b>	<b>\$ 94,500,000</b>	<b>\$ 20,000,000</b>	<b>\$ 114,500,000</b>

**REQUEST FOR APPLICATIONS ADDENDUM – MWBE – MAY 12, 2014**



**REQUEST FOR APPLICATIONS  
TO DEVELOP AND OPERATE  
A GAMING FACILITY IN NEW YORK STATE**

**ADDENDUM REGARDING MINORITY AND  
WOMEN-OWNED BUSINESS ENTERPRISE**

**May 12, 2014**

---

**Replace RFA Article X §§ B. 2, B. 3 and B. 4 with the following sections**

**New language is highlighted in red**

---

**2. AFFIRMATIVE ACTION PLAN**

The Gaming Facility Location Board recognizes the importance placed upon minority and women-owned business enterprises (MWBE) business participation by the State and adopts a policy to encourage contract opportunities for all small businesses including State certified MWBEs. A successful RFA proposal will include a meaningful opportunity for state certified MWBE businesses to participate in the development, construction and operation of the gaming industry.

Meaningful participation includes significant opportunity by certified MWBE small businesses through inclusion of specific, measurable commitments for vendor and supplier participation and development of a MWBE small business-monitoring program.

Submit as Exhibit X. B.2. how the Applicant and, as applicable, the Manager proposes to establish and implement an affirmative action program that identifies specific goals for the engagement of minorities, women, persons with disabilities and veterans on construction jobs and service and professional jobs during operation, in order to increase the diversity of the gaming industry workforce.

### **3. JOB OPPORTUNITIES AND TRAINING FOR UNEMPLOYED**

Submit as Exhibit X. B.3. the Applicant's and, as applicable, the Manager's strategy to provide on-the-job opportunities and training in areas, and with respect to regional and local demographic groups with high unemployment.

Pre-employment training, designed to assist people with developing the skills necessary to enter the gaming workforce and on-the-job programs to complement pre-employment training should be considered. Apprenticeship programs to support career development for employees should also be considered. An adequate apprenticeship program will blend classroom instruction and on-the-job training to enable employees to successfully enter designated jobs or gain promotions.

### **4. EXPERIENCE WITH HIRING UNEMPLOYED**

The Gaming Facility Location Board recognizes the benefits to business and the economy of utilizing the skills of the long-term unemployed. A commitment to the removal of barriers that may prevent qualified long-term unemployed job seekers from applying or being fully considered for jobs generally requires the following practices:

- a. Ensuring that advertising does not discourage or discriminate against unemployed individuals.
- b. Reviewing screens or procedures used in recruiting and hiring processes so as to not intentionally or inadvertently disadvantage individuals from being considered for a job based solely on their unemployment status.
- c. Reviewing current recruiting practices to encourage all qualified candidates to consider applying, including the long-term unemployed, by taking steps that may include:
  1. Publicizing a commitment that qualified unemployed individuals will not be disadvantaged solely on their unemployment status on the Applicant's website, in application materials, or in other places where it can be seen by potential applicants;
  2. Interviewing or otherwise considering qualified long-term unemployed individuals;

3. Training hiring teams and recruiters to focus on the bona fide occupational requirements and leadership requirements for a given role and not on an applicant's current or recent employment status; and
4. Engaging local and regional entities in order to reach broad segments of the population with relevant skills and experience.

Submit as Exhibit X. B.4. a description of the Applicant's and, as applicable, the Manager's approach and experience in the last ten (10) years with hiring in general, and with particular respect to demographic groups evidencing high unemployment. Also include a structured plan or approach for the recruitment and hiring of the unemployed and long-term underemployed.

**SECOND ROUND OF QUESTIONS AND ANSWERS – MAY 14, 2014**





**REQUEST FOR APPLICATIONS  
TO DEVELOP AND OPERATE  
A GAMING FACILITY IN NEW YORK STATE**

**Round 2 - Questions and Answers**

**May 14, 2014**

**Q.345.** While a verbal emphasis to use N.Y. companies is well intended, as there was to the TPZ Bridge bidders, a written requirement would be better to assure the use of such New York companies. Will there be any language added to the RFP regarding the use of N.Y.S. companies?

**A.345. No. The Board will not be adding any supplemental language to the RFA.**

**Q.346.** Answer 200 in the Round 1-Questions and Answers indicated that the geographical area for partnerships with live entertainment venues that may be impacted by the proposed Gaming Facility was to include the host county, those counties adjoining the host county and any county within 25 miles of the proposed casino location. (emphasis added). Did the board intend to only limit the area within 25 mile radius of the facility rather than any county within 25 miles of the proposed casino location?

Any county within 25 miles of any proposed location would encompass more than 70 venues for nearly any Applicant.

**A.346. The Board's language was intentional. The Board respectfully directs the questioner to the answer to Question 201, wherein a live entertainment venue is defined to include only a not-for-profit or government-owned performance venue designed in whole or in part for the presentation of live concerts, comedy or theatrical performances. It is also likely that the live entertainment venues will form coalitions, and Applicant can enter partnership agreements with such coalitions.**

**Q.347.** For individuals completing the Multijurisdictional Personal History Disclosure Form and New York Supplemental Form, may they utilize financials

prepared in the 4 months preceding June 30, as an acceptable period in order to complete and compile the information in a timely manner for the June 30, 2014 submission?

**A.347. Yes, although the Board and Commission reserve the right to request supplemental filings from any individual.**

**Q.348.** RFA Section 7 calls for an Exhibit (A.7.b) that is an independent audit report of all financial activities and interests including, but not limited to donations, loans, or other financial transactions to or from a gaming operator in the past 5 years.

a. Do we need to engage a separate independent audit report explicitly for this purpose which goes beyond audited financial statements?

b. If yes, is there a specific form of this report or a material threshold deemed acceptable?

**A.348.**

**a. If the audited financial statements submitted by the Applicant include a specific disclosure of all financial activities and interests, including, but not limited to, donations, loans or other financial transactions to or from a gaming operator in the past five years, then a separate independent audit report explicitly for this purpose is not required.**

**b. There is no specific form for this report or material threshold.**

**Q.349.** The Commission has not set forth a process where opponents of a casino can file their objections. I propose that a six month period after the submission be given to any group that wishes to file an objection. This is fair since the Applicants have been working on their plans for a long time and we should be given ample time to review their applications and respond. Let this communication serve as notice that we will file papers in response and we should be given a reasonable time period to do so.

**A.349. This question fails to seek guidance or clarity regarding an element of the RFA and thus is outside the scope of response.**

**Q.350.** The Applicant should be required to address the impact of the casino on the surrounding summer community.

**A.350. This question fails to seek guidance or clarity regarding an element of the RFA and thus is outside the scope of response.**

Q.351. We must be given copies of all communications and data in the possession of the Applicant even though it was not submitted to the Site Commission.

**A.351. This question fails to seek guidance or clarity regarding an element of the RFA and thus is outside the scope of response.**

Q.352. Let the Applicant address the consequences that the eventual approval of casino locations within New York City will have on the current proposed locations and surrounding areas once the casinos have destroyed the peaceful and residential climate of Monticello and Sullivan County.

**A.352. This question fails to seek guidance or clarity regarding an element of the RFA and thus is outside the scope of response.**

Q.353. As follow-up to the response to Question 261, could the Commission provide any further guidance, in terms of projected dollar amounts, regarding what may be assessed against licensees each year for regulatory costs, with respect to both onsite regulatory costs at each respective casino and headquarters regulatory costs which will be assessed and allocated among the four licensees?

**A.353. It is not yet possible to provide more than general estimates of the regulatory costs. For rough planning purposes, an Applicant can assume that on-site staff salary plus fringe benefit costs will amount to approximately \$750,000 annually, subject to increases based on civil service contracts. Administrative (overhead) costs would be in addition to the aforementioned figures.**

**See also the answer to Question 394.**

Q.354. The statute provides that minors under the legal drinking age are not permitted on the gaming floor unless by way of passage to another room. This acknowledges that minors may need to pass through the casino, but does not give guidance on design parameters or requirements. Can the location board elaborate on what is required to be included in the design to facilitate the passage of minors?

**A.354. See answer to Question 192.**

Q.355. a. Are smoking rooms permitted in the Gaming Facility?

b. If so, is there a limit or minimum requirement for size and quantity of smoking rooms?

c. Are there any additional design parameters?

**A.355.**

**a. No. Please refer to N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1364.**

**b. See answer to Question 355.a.**

**c. See answer to Question 355.a.**

**Q.356.** The New York State Lobbying Act defines "lobbyist" to mean every person or organization retained, employed or designated by any client to engage in lobbying. According to the Lobbying Act, "lobbying" does not include "the submission of a bid or proposal (whether submitted orally, in writing or electronically) in response to a request for proposals, invitation for bids or any other method for soliciting a response from offerers intending to result in a procurement contract". The Lobbying Act also states that "persons who participate as witnesses, attorneys or other representatives in public proceedings of a state or municipal agency with respect to all participation by such persons which is part of the public record thereof and all preparation by such persons for such participation" are not engaged in lobbying. Accordingly, please explain the basis for the response to Round One Question 20 which indicates that registration as a lobbyist is required for persons engaging in the above activities and advise:

**a. Are Applicants and those appearing on behalf of an Applicant or submitting a response to the RFA required to register as a lobbyist with the Commission?**

**b. Are Applicants and those appearing on behalf of an Applicant or submitting a response to the RFA exempt from registering as a lobbyist with the Commission?**

**A.356.**

**A.356.** Pursuant to N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1329.2 a "lobbyist" seeking to engage in "lobbying activity" on behalf of a client or a client's interest before the commission must register with the commission. "Lobbying activities" means and includes any attempt to influence, among other things, any determination "by a public official, or by a person or entity working in cooperation with a public official relating to a governmental procurement. . . ." N.Y. Legislative Law § 1-c(c)(v)(A). As explained in the Guidelines to the New York State Lobbying Act, "attempt to influence" means any activity intended to support, oppose, modify, delay, expedite or otherwise affect any of the actions specified in N.Y. Legislative Law § 1-c(c)(i)-(x). See [http://www.jcope.ny.gov/about/lob/Lobbying%20Guidelines%209 11 12.pdf](http://www.jcope.ny.gov/about/lob/Lobbying%20Guidelines%209%2011%2012.pdf).

As set forth in RFA section III.C. and as required by sections 139-j and 139-k of the N.Y. Finance Law, communications between an Applicant and the Commission or the Board are restricted during the Application process to Permissible Contacts as designated in RFA section III.E.

**[NOTE: The web address reference in the RFA regarding lobbying inquiries is incorrect. The correct website address is [www.ogs.ny.gov](http://www.ogs.ny.gov) (not [www.ogs.state.ny.gov/acpl](http://www.ogs.state.ny.gov/acpl))].**

**Q.357.** RFA, Section XI.Q, Concerning Racing Support Payments, states that: A Licensee that possesses a pari-mutuel wagering franchise or a license awarded pursuant to N.Y Racing, Pari-Mutuel Wagering and Breeding Law Article 2 or Article 3, or who possessed in 2013 a franchise or a license awarded pursuant to N.Y Racing, Pari-Mutuel Wagering and Breeding Law Article 2 or Article 3 or is an articulated entity or such Applicant, shall maintain payments made from video lottery gaming operations to the relevant horsemen and breeders organizations at the same dollar level realized in 2013, to be adjusted annually pursuant to changes in the consumer price index for all urban consumers, as published annually by the United States Department of Labor Bureau of Labor Statistics; and racing activity and dates pursuant to N.Y Racing, Pari-Mutuel Wagering and Breeding Law Articles 2 and 3. This is inconsistent with N.Y. Racing, Pari-Mutuel Wagering and Breeding Law §1355.

Please clarify that the statute controls.

**A.357. The statute controls. The Board disagrees with the assertion of inconsistency.**

**Q.358.** Round One Question and Answer 303 states that a current licensee's intended "improvements to its existing facility that are unrelated to full scale gaming (VGM and/or track related)" should be included in the RFA Application. Will such improvements to its existing facility that are unrelated to full scale gaming (VGM and/or track related) be included in the calculation of the minimum capital investment?

**A.358. Applicants should refer both to the guidance document on Minimum Capital Investment released by the Board on May 12, 2014 and RFA Article VIII § A.1.b for what is applicable toward Minimum Capital Investment.**

**Q.359.** RFA Article III § J. requires that a selected Applicant must certify that its Application was arrived at independently and without collusion aimed at restricting competition in accordance with New York State Finance Law § 139-d, which provides:

Every bid hereafter made to the state or any public department, agency or official thereof, where competitive bidding is required by statute, rule or regulation, for work or services performed or to be performed or goods sold or to be sold, shall contain the following statement subscribed by the bidder and affirmed by such bidder as true under the penalties of perjury: Non-collusive bidding certification.

(a) By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his knowledge and belief:

(1) The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;

(2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and

(3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

Using the definitions contained in Question 176, may an Applicant in an Impacted County of Region 1 or Region 5 discuss with an Applicant in a Dominant County of Region 1 or Region 5, assuming that neither Applicant discourages the other from submitting or not submitting a bid and does not otherwise seek to restrict competition:

a. Joint marketing programs to be implemented if both Applicants are selected?

b. Debt or equity investments in each other's project?

c. Revenue sharing between Applicants under certain circumstances?

**A.359. Each Applicant must certify that its Application was arrived at independently and without collusion aimed at restricting competition in accordance with N.Y. Finance Law § 139-d. The Board encourages any Applicant interested in contacting another Applicant to conduct a legal review of N.Y. State Finance Law 139-d to determine whether such contact is permissible.**

**Q.360.** Several RFA sections refer to the selection of Applicants by the Board and the award of a License by the Commission. For example, the definition of

“Restricted Period” means the period of time beginning with the public release of this RFA through (i) such time as the Board selects an Applicant or Applicants other than the Applicant to proceed to Commission consideration of suitability for a License to operate a Gaming Facility in the Region in which an Applicant has sought such a License or (ii) the final decision of the Commission on the suitability of the Applicant for a License, if the Board selects the Applicant to proceed to Commission consideration of suitability for a License, as the case may be. The N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1311, requires licensees to commence gaming operations no more than twenty-four months following “license award”.

- a. Since the applications for the Gaming Facility License and the applications for suitability are required to be submitted simultaneously, will the Board and Commission be conducting their respective responsibilities concurrently?
- b. Do the Commission and Board contemplate the selection of the Applicant and the determination of suitability to be made at the same time?
- c. Will there be a time lag between selection of an Applicant, a suitability determination and the actual award of a license?
- d. If so, how long will it be?
- e. Certain financing arrangements may be contingent upon the awarding of the license, rather than the selection by the Board. Since the Commission anticipates awarding all 4 licenses at the same time, will an Applicant that is “shovel ready” at the time of the selection by the Board be delayed in being awarded a license by an Applicant that still has to comply with the SEQRA timetables and delay caused by obtaining other permits?
- f. If not, what determines when a license will be awarded?
- g. Licensees are to begin gaming operations within 24 months of the award of a license. Should the construction timeline address the date that the Board selects the applicant or the date that the Commission awards the license if they are not the same?

**A.360.**

**a. Yes.**

**b. No.**

**c. See answer to Question 360.b.**

**d. A determination of suitability will take as long as necessary to determine if an Applicant selected by the Board is suitable for licensure.**

**e. Whether the Commission awards licenses to more than one Applicant at the same time will depend on the facts and circumstances of the selected Applicants, including how far along each Applicant is in the SEQRA (State Environmental Quality Review Act) process each Applicant may be.**

**f. See answer to Question 360.e.**

**g. The construction timeline should commence with the award of a license.**

**Q.361.** Will the Confirmatory Affidavit required under RFA Article XI § R require an Applicant that has been awarded a license to certify that it is in compliance with all of the requirements of The Upstate New York Gaming Economic Development Act, including the good faith obligation to be open for gaming within 24 months from the awarding of the license?

**A.361. Yes.**

**Q.362.** An entity applicant for a license to act as a Gaming Facility Manager is an LLC that is wholly owned by one corporate holding company and two intermediary companies. One of the intermediary companies operates a casino in the United States and has several executives with the title vice president. These executives will have no involvement with the operation of the Gaming Facility. Provided that the identities of all such executives are disclosed in the Gaming Facility license application and that the entity Applicant represents in writing that they will have no involvement with the Gaming Facility, may such executives be excused or waived from filing for individual licensure?

**A.362. See answer to Question 26.**

**Q.363.** Are we correct that private roads providing access to the Gaming Facility and service parking facilities will not be considered part of the "Project Site," as that term is defined in the RFA?

**A.363. No.**

**Q.364.** If the Applicant is a newly formed entity without any material amount of information to submit as Exhibit VIII.A.8.a, does the Applicant need to submit information for any other Related Parties to satisfy the requirements of RFA Section VIII.A.8.a?



**A.364. See answer to Question 157. and the second paragraph of RFA Article IV. § A.**

**Q.365.** In situations where multiple funding sources or entities are involved, or in joint venture situations, in accordance with GAAP, may Combined Financial Statements of the Project/Applicant be submitted for the purpose of satisfying the requirement of submitting audit and financial statements?

**A.365. RFA Article VIII § A.7.a. requires audited annual financial statements from each Applicant and each Financing Source. If either the Applicant or a Financing Source is a joint venture, then audited annual financial statements must be submitted from such joint venture. If, for any entity, audited annual financial statements are unavailable for any given period, unaudited annual financial statements prepared in accordance with GAAP may be provided.**

**Q.366.** Within the “Round 1 – Questions & Answers” released by the Board on April 23, 2014, Answers 159-166 make material changes to the information being sought by the Board under Exhibit VIII.A.8.a and VIII.A.8.b. For example, the answer to Question 159 seems to give instructions on answering Exhibit VIII.A.8.a as originally issued, while the Board’s answer to Question 160 seems to consolidate and/or substitute Exhibit VIII.8.a with Exhibit VIII.A.7.a.

To avoid mistakes and misunderstandings, will the Board please re-issue its instructions for Exhibits VIII.A.7 and VIII.A.8, fully incorporating the changes the Board made to the information required for these Exhibits though its answers to Questions 159-166 issued on April 23, 2014, so the bidders may understand exactly what information the Board wants submitted in these Exhibits?

**A.366. Exhibits VIII.A.8.a and VIII.A.8.b. are separate requirements of an Application and respond to separate requests in the RFA. However, the Board acknowledges those requests may overlap, and, pursuant to the answer to Question 160, an Applicant may take the position that the materials provided in Exhibit VIII.A.7.a. also satisfy the request in RFA Article VIII § A.8.a. An Application exhibit may cross-reference other exhibits to incorporate responsive material that is provided in the other exhibits.**

**Q.367.** Within the “Round 1 – Questions & Answers” released by the Board on April 23, 2014, Answer 20 states: “...each lobbyist seeking to engage in lobbying activity on behalf of a client or a client's interest before the Commission or the Gaming Facility Location Board shall first register with the secretary of the Commission.”

a. Given the restrictions described in Exhibit III.C (Procurement Lobbying Restrictions), is lobbying activity on behalf of a client before the Commission or the Board legally possible / permissible?

b. If yes, please describe what permitted activity before the Commission or Board would be deemed “lobbying”?

**A.367. See answer to Question 356. Lobbying on behalf of an Applicant before the Commission or the Board is not permissible during the Restricted Period.**

**Q.368.** In the document “Applicant Conference – Advance Questions and Answers April 30, 2014” Question 315 seeks an answer as to whether the Board has determined that Applicants are required to enter into Project Labor Agreements (PLA) for work related to the project pursuant to N.Y. Labor Law § 222 of the Labor Law. In its Answer (number 315), the Board instructs Applicants to review N.Y. Labor Law § 222. Re-reading N.Y. Labor Law § 222, however, does not inform us whether the Board (or the Commission), as the Agency having control over the public work, has affirmatively determined that PLA’s are required (or not required) for the Gaming Facility Projects that are to be licensed.

Therefore, please advise, yes or no: has the Board has determined that Applicants are required to enter into Project Labor Agreements (PLA) for work related to the Gaming Facility Projects?

**A.368. No. The Board encourages any Applicant to conduct a legal review of N.Y. Labor Law § 222 to determine its obligations thereunder.**

**Q.369.** Within the “Round 1 – Questions & Answers” released by the Board on April 23, 2014, the Board’s Answer 177 states: “By way of this response, the last paragraph of RFA Article VII.B.11. is deleted.”

Did the Board mean to reference the last paragraph of Exhibit VIII.B.11?

**A.369. Yes.**

**Q.370.** The Evaluation Criteria utilizes a statutory scoring structure allocating a possible 70% to Economic Activity and Business Development, 20% to Local Impact and Siting Factors, and 10% to Workforce Enhancement Factors. Please advise:

a. Will the Board automatically recommend the Applicant (within a particular region) that attains the highest cumulative score for licensure by the Commission?

b. If two Applicants receive the same exact cumulative score, however, the first receives a higher score for Economic Activity and Business Development, while the second receives higher scores for both of the categories of Local Impact and Siting Factors and Workforce Enhancement, which Applicant will be recommended to the Commission for licensure?

c. Will the Board's analysis and scoring of the factors included within the evaluation Criteria be made public?

**A.370.**

**a. The Board will not respond to hypothetical scoring scenarios.**

**b. See answer to Question 370.a.**

**c. Yes.**

**Q.371.** RFA Exhibit X.B.2 requires Applicants to propose an affirmative action program: Will the Board be issuing guidance setting forth specific participation goals for affirmative action, EEO, and WMBE participation in the construction and operation of the Gaming Facilities as the Lottery did in section 2.9 of the RFP for VLTs at Aqueduct?

**A.371. The Board issued an RFA Addendum that modifies several provisions relative to Affirmative Action, Equal Employment Opportunity and Women and Minority-Owned Business Enterprises.**

**This addendum is available at the following address:**

**<http://www.gaming.ny.gov/pdf/05.12.14.MWBEAddendum.pdf>**

**The Addendum did not set specific goals.**

**Q.372.** With regard to the Multi-Jurisdictional Personal History Disclosure Form:

a. Must Applicants submit the exact form provided by the Board or may an Applicant update and submit a version of the Multi-Jurisdictional Personal History Disclosure Form that has been issued in another state?

For example, the Form issued by the Board has the tracking number PHDMJ06901. Other jurisdictions utilize a version of the Form with the tracking number PHDMJ111504. May an Applicant use the PHDMJ111504 Form?

b. Are they interchangeable in the Board's view?

c. Also, will the Multi-Jurisdictional Personal History Disclosure Form be issued in MS Word format?

**A.372.**

**a. The Board and Commission adopted the most recent version of the Multi-Jurisdictional Personal History Disclosure Form maintained by the International Association of Gaming Regulators. The Board strongly suggests review of the earlier document to ensure it is identical with that adopted by the Board and Commission.**

**b. The Board is unfamiliar with any version not presently maintained on the webpage of the International Association of Gaming Regulators.**

**c. No. The application is available as an Adobe PDF Version and an Omniform Fillable Version at <http://iagr.org/multi-jurisdictional-application/>**

**Q.373.** RFA Section XI.C warns that any licensee failing to begin gaming operations within twenty-four (24) months following license award shall be subject to suspension or revocation of the license and may, after being found by the Commission, after notice and opportunity for a hearing, to have acted in bad faith in its Application, be assessed a fine of up to \$50 million. Accepting that certain events may occur during this two year period prior to opening, Applicants acting in good faith and capable of otherwise finishing the project within the mandated timeline are concerned that events outside of the Applicants control could serve to sabotage their project, or at a minimum cost them significant amounts of money.

a. Will litigation filed by third parties challenging the location, selection or award toll the 2 year timeline for opening?

b. Would injunctive action, halting construction for a period of time, toll the 2 year timeline for opening?

c. Will litigation filed by third parties against a project inhibiting the project from opening within the 24 month period constitute “good cause” for a delay in opening of the Gaming Facility?

d. Given the deadline of 24 months, would the proposed phasing of a project be considered a negative by Board as it relates to the scoring and selection process?

e. If unforeseen environmental issues concerning the Project Site arise after selection, will the Board or Commission (as applicable) work with the chosen Applicant and consider extending the 24 month window for opening while the

unforeseen problems are addressed and the resolved to the satisfaction of the governing agency?

**A.373.**

**a. No. See answer to Question 249.b**

**b. No. See answer to Question 249.b.**

**c. It is not possible to evaluate such a hypothetical question without the particular facts and circumstances.**

**d. The Board cannot speculate on evaluation standards. Applicants are advised that the Board will consider speed to market in its evaluations.**

**e. No. See answer to Question 249.b.**

**Q.374.** The Act essentially maintained payments to horsemen and breeder organizations at the “same dollar levels realized in 2013” as adjusted by the consumer price index. (RFA at p. 69-70). This level of financial support to racing and breeding does not appear to be tied to the ebbs and flow of the industry, particularly as it relates to the good faith obligations of race tracks to maintain 2013 levels of racing operations. This issue has a direct impact on the RFA process and individual Applications as the Act and the RFA require contributions from the racinos and/or the new casinos within a region to maintain the 2013 levels plus CPI. As a stark illustration, suppose a race track unilaterally decreased racing by 50% in year 3 of a Gaming Facility’s 10-year License and ceased racing operations in year 6 of the Gaming Facility License.

a. Is the purse subsidy to the horsemen owed irrespective of third party causations, closure of the track or force majeure events?

b. Will either party be required to maintain business interruption insurance and if so, will the money recouped as a result of the policy mitigate the amount of money owed to the horsemen via the purse subsidy?

**A.374.**

**a. See answer to Question 309.**

**b. The Commission does not anticipate a requirement for business interruption insurance, but advises that regulations are likely to address this issue.**

**Q.375.** Are the submission deadlines for the 10 % deposit, the licensing fee and the 24 months to build linked to the selection date or the licensing date?

**A.375. Please see RFA Section XI §§ A., B., C. All referenced sections declare that the award of a License is a condition predicate to Post-Licensure Responsibilities.**

**Q.376.** a. How much time does the Board and the Commission anticipate will pass between selection by the Board and licensing by the Commission?

b. How long is the post selection suitability review expected to take?

c. Upon findings of suitability, does the Board or Commission expect to license Applicants prior to, or in conjunction with, casino openings?

**A.376.**

**a. The time is unknown, given it is dependent upon many variables.**

**b. The time is unknown. It will depend on the facts and circumstances of the selected Applicants.**

**c. The Commission will award licenses following completion of a suitability review of selected Applicants. The award will be made prior to a casino opening. The Board will not engage in licensing.**

**Q.377.** RFA Section IV.F (p. 22) and the Racing, Pari-mutuel Wagering and Breeding Law § 1313(2) provide an exemption from public disclosure under the New York State Freedom of Information Law (FOIL) for any records containing “trade secrets, competitively sensitive or other proprietary information provided in the course of an Applicant for a gaming license, the disclosure of which would place the Applicant at a competitive disadvantage.” In Massachusetts—a state with similar exemptions to public disclosure in its Public Records Law—the Massachusetts Gaming Commission produced specimens of Background Investigation Forms with certain data fields highlighted to indicate fields that would be protected from public disclosure.

a. Regarding A.65 (p. 21), from Round One of the Question & Answer process, will the Multi-Jurisdictional and N.Y. Supplemental Personal History Disclosure Forms for each person required to submit Background Investigation Forms be posted on the Commission’s website?

b. If yes, in redacted or unredacted form?

c. Will the Board or Commission promulgate regulations concerning the publication of sensitive personal or proprietary information sufficiently in advance of the deadline for submission of the application to the Board?

d. Regarding A.64 (p. 21) from Round One of the Question & Answer process, will the Commission exempt the following fields in the Multi-Jurisdictional Personal History Disclosure Form and N.Y. Supplemental Form from public disclosure:

1. Family / Social Data (incl. names and identification details of family members);
2. Financial Data (incl. bankruptcies, information concerning debt);
3. Net worth (incl. assets and liabilities); and
4. Cash, loans, notes, receivables, securities and real estate interests?

e. Are the Background Investigation Forms subject to protection under the state Personal Privacy Protection Act Public Officers Law, Article 6-A?

**A.377.**

**a. All postings on the Commission website will be subject to the N.Y. Personal Privacy Protection Law, codified in Article 6-A of the N.Y. Public Officers Law.**

**b. Redacted form.**

**c. No. Applicants should refer to N.Y. Public Officers Law Article 6 for guidance on the standard for withholding of proprietary information from public disclosure and N.Y. Public Officers Law Article 6-A for guidance on the standard for withholding of personal information from public disclosure.**

**d. Applicants should refer to N.Y. Public Officers Law Article 6-A for guidance on the standard for withholding personal information from public disclosure.**

**e. Yes.**

**Q.378.** Will there be a contract negotiated with the state in connection with selection or licensing?

**A.378. No.**

**Q.379.** There are several questions in the RFA and the Gaming Facility License Application that are duplicative. For example, both ask for financial statements, company formation governance documents, SEC reports, and information on bankruptcies, etc. Are the Applicants required to provide separate answers to these

duplicative items or, in the RFA, can Applicants simply reference the appropriate section of the Gaming Facility License Application where the same information is provided?

**A.379. The request for an Applicant to submit redundant documents for the RFA and the Gaming Facility License Application is purposeful, and an Applicant must provide answers and submit required information as required by the documents. An Applicant cannot incorporate by reference in either document.**

**Q.380.** Many Applicants are joint venture partners whose parent entities will have to file separate Gaming Facility License Application forms. These forms contain confidential and proprietary information (e.g. salary information). Can each partner to a joint venture submit separate Gaming Facility Application Forms on behalf of their respective parent entities?

**A.380. Each partner to a joint venture may submit separate Gaming Facility Application Forms on behalf of the respective parent companies provided that the name of the Applicant is clearly identified at the top of the first page of the hardcopy of the forms and on the outside of the USB flash drives submitted by each such partner.**

**Q.381. a.** Will an Applicant be permitted to withdraw its application before site selection by the Facility Location Board?

b. If so, what are the withdrawal procedures?

c. Will an Applicant be permitted to withdraw its application after being selected by the Facility Location Board?

d. If so, what are the withdrawal procedures?

**A.381. Applicants are permitted to withdraw before a selection by the Board. Procedures for withdrawal will be posted on the Commission's website.**

**Q.382. a.** Although included in the RFA under "Post-Licensure Responsibilities," Section XI, K (page 68), are Applicants required to have a signed Labor Peace Agreements in place by the time they submit their Applications on June 30?

b. Are labor neutrality agreements required or preferred with submissions on June 30?

**A.382.**



**a. An evaluated factor is the Applicant’s demonstration of an agreement, *inter alia*, with organized labor and support of organized labor for its Application. The form of the demonstration is left to the Applicant’s discretion.**

**b. The Board directs the questioner to N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1346.3, which provides that the Commission shall require any applicant for a Gaming Facility license who has not yet entered into a labor peace agreement to produce an affidavit stating it shall enter into a labor peace agreement with labor organizations that are actively engaged in representing or attempting to represent gaming or hospitality industry workers in the state.**

**Q.383.** RFA Section X.C.6. requires Applicants to submit a description of plans for procuring or generating on-site at least ten (10) percent of the facility’s annual electricity consumption from renewable energy sources qualified by the New York State Energy Research and development Authority, or NYSERDA. Assuming the above underlined terms are phrased to denote the disjunctive,

a. Does the renewable power need to be generated on the casino site or can it be generated at a satellite location and be transmitted to the project site?

b. Does the entity that owns the casino need to own the renewable energy assets and or other improvements that make up the facility?

c. What if a ground lease is used or a foundation is delivered for a third party to build and own some of the improvements?

d. Does NYSERDA have a current list of qualified energy sources, and is there a contact at NYSERDA for the RFA?

e. Certain segments of the project site i.e. parking garage, etc. may not lend themselves to LEED certification to what extent, if any, is this a factor for purposes of scoring and evaluation of an application?

f. Is LEED certification limited to those areas defined as the Gaming Facility?

g. Do all of the above possibilities for complying with renewable power needs qualify as “utility support” under the capital investments definition at RFA section VIII. A. 1.b.4. (RFA page 34)?

**A.383.**

a. It is at the Applicant's discretion as to where the renewable power is generated.

b. No.

c. This scenario would be allowable.

d. <https://www.nyserda.ny.gov/Energy-Efficiency-and-Renewable-Programs/Renewables.aspx>

e. See answer to Question 264.

f. Yes.

g. Yes.

**Q.384.** It's clear from the first round of questions that a VLT operator awarded a gaming license, would need to operate the Casino in a segmented area. Moreover, in the responses as well as the clarification indicating the Applicant would be scored only on the new jobs created (not retention of existing jobs). In possible contrast was the response stating the Applicant would be scored on all, or total, revenues. If a VLT operator discontinues or continues VLT operations whether existing VLT revenues will be counted in the scoring process or only new revenues in excess of prior VLT gaming figures from the VLT sites will be considered?

**A.384. Applicants will be scored based upon the total revenue generated by the gaming operation.**

**Q.385.** Can the Commission provide a projected annual cost attributed to the licensed Gaming Facilities in addition to those costs required pursuant to N.Y Racing, Pari-Mutuel Wagering and Breeding Law §1349?

**A.385. See answer to Question 353.**

**Q.386.** In Round 1 – Questions and Answers dated April 23, 2014, Q. 171 states:” If an Applicant or it's [sic] principals or primary shareholders of an Applicant that already [has] a gaming license for a racino in the approved region where an Applicant will be applying for a new license, will that Applicant be allowed to count the preservation of existing jobs toward its projected job counts?” In response, A. 171 states “No.” Further, Q. 291 provides: “Will Applicants that possess a video lottery gaming license under Tax Law §1617-a be scored on accretive revenues or total revenues?” In response, A. 291 states “Total revenues.”

Will the Gaming Facility Location Board please provide the rationale behind these two responses as they appear to suggest contradictory objectives?

**A.386.** The Board understood Question 171 to have asked if a VLT operator could count VLT jobs if such operator were to receive a Gaming Facility license pursuant to N.Y. Racing, Pari-Mutuel Wagering and Breeding Law Article 13 in addition to the VLT facility. A potential operator of two facilities (one VLT and one a casino gaming facility) is not permitted to count the “preservation” of jobs at the VLT facility in its Application for a casino Gaming Facility.

**Q.387.** In Round 1 – Questions and Answers dated April 23, 2014, Q. 171 states:” If an Applicant or it’s [sic] principals or primary shareholders of an Applicant that already [has] a gaming license for a racino in the approved region where an Applicant will be applying for a new license, will that Applicant be allowed to count the preservation of existing jobs toward its projected job counts?” In response, A. 171 states “No.”

a. Does the term “existing jobs” include a job that will have similar responsibilities, but a different job title?

b. Will an Applicant be allowed to count such a job that will have similar responsibilities, but a different job title toward its projected job counts?

**A.387.**

**a. Yes.**

**b. No.**

**Q.388.** With respect to the on-site child day-care program, one interpretation of the statute is that an on-site child day-care program is just one factor in the weighted ten-percent Workforce Enhancement Factors. It appears from the Questions and Answers released on April 23, 2014, that the Board considers an on-site child day-care program a required element of an Applicant’s project.

a. Will an Applicant receive zero percent out of the ten percent weighted for Workforce Enhancement Factors if an Applicant does not include an on-site child day-care program or will an Applicant’s failure to include an on-site child day-care program deduct a fraction from the total possible amount of the ten percent for Workforce Enhancement Factors?

b. If an Applicant’s failure to include an on-site child day-care program will only deduct a fraction from the total possible amount of the ten percent for Workforce Enhancement Factors, has the Board determined how much weight will be given to the inclusion or exclusion of an on-site child day-care program (i.e. how much will

an Applicant's application lose for not including an on-site child day-care program)?

c. If an Applicant's failure to include an on-site child day-care program will only deduct a fraction from the total possible amount of the ten percent for Workforce Enhancement Factors, will the Board's scoring take into consideration alternatives to an on-site child day-care program?

d. For example, would an Applicant be eligible to receive, at least, partial credit if it offered an alternative means for its employees to receive child care services not located at the proposed facility?

**A.388. Please see the answer to Question 264 and N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1320.3.d(3).**

**Q.389.** The majority of the information required to be provided by individuals on the Multi-Jurisdictional Personal History Disclosure Form and New York Supplemental Form could result in an unwarranted invasion of personal privacy under New York's Freedom of Information Law if publicly released. Accordingly, will all information on these forms be considered confidential and not subject to public disclosure?

**A.389. Please see the answer to Question 64. All information in the Multi-Jurisdictional Personal History Disclosure Form and New York Supplemental Form are public records, available to the public, subject to applicable exemptions under the Freedom of Information Law (N.Y. Public Officers Law Article 6) and the Personal Privacy Protection Law (N.Y. Public Officers Law Article 6-A).**

**Q.390.** If an existing VLT facility is awarded the facility license, may the VLT facility, as part of the "conversion" referred to in A.296(a), and with a goal of reducing the time period of a total shut down of gaming operations at the facility, submit a plan for a staged shutdown of its VLT operations whereby the facility licensee will remove VLTs in stages and replace same with Class III gaming devices which will not become operational until the conversion is complete?

This plan would reduce the number of operational VLTs, pre-conversion, however it would also facilitate shorter time period for completion of the conversion of the facility and also continue to generate tax revenues and funds for education in the State.

**A.390. A conversion involving the gradual reduction of VLTs would be permissible so long as the area being converted to commercial gaming is secured against public access. The Commission would have to approve any transition plan.**

**Q.391.** In Round 1 – Questions and Answers dated April 23, 2014, A. 261 states in part: “The Commission receives no allocation of gaming revenues for administrative costs, so all administrative costs allocated to the commercial gaming program will be assessed annually on gaming licensees in proportion to the number of gaming positions at each gaming facility, per N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1350.”

Further, N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1350 provides: Any remaining costs of the commission necessary to maintain regulatory control over gaming facilities that are not covered by the fees set forth in section one thousand three hundred forty-nine of this title; any other fees assessed Under this article; or any other designated sources of funding, shall be assessed annually on gaming licensees under this article in proportion to the number of gaming positions at each Gaming Facility.

- a. Does the term “gaming positions” referred to in the above provision refer only to active gaming positions or does it also refer to proposed gaming positions?
- b. For example, if one of the facilities awarded a license commences gaming operations prior to the commencement of gaming operations at the other 3 facilities issued a license, will that facility be responsible for paying 100 percent of the regulatory costs contemplated by N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1350?

**A.391.**

- a. **The term “gaming positions” refers to on-site Commission employees.**
- b. **The Commission will accrue startup costs beginning in fiscal year 2013-2014. The four licensed gaming facilities will ultimately share assessment of startup costs in proportion to the number of Commission gaming positions at each facility. Once one Gaming Facility opens, that facility will pay future regulatory costs until successive facilities open, at which time assessed costs will be shared in proportion to the number of Commission gaming positions at each operational facility.**

- Q.392.** a. Will a proposed facility awarded a gaming license (as opposed to an operational facility) be assessed for any portion of the Commission’s regulatory costs as contemplated by N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1350?
- b. If so, what portion?

**A.392. A facility’s obligations under N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1350 commence upon award of the license.**

**Q.393.** When does a facility’s obligations under N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1350 commence upon the award of the license, at the time the facility commences gaming operations or at some other time?

**A.393. See answer to Question 392.**

**Q.394.** In Round 1 – Questions and Answers dated April 23, 2014, A. 261 provides in relevant part: “The Commission, not the Board, will provide an annual budget of commercial gaming expenditures as the basis for regulatory assessment. Licensees should anticipate direct billing for staffing levels adequate to assure twenty four-hour, 365 days-per-year coverage of the gaming operation, estimated to be not less than nine (9) full time employees at each Gaming Facility and their direct supervisors.”

If a licensee were to propose a plan to the Commission, prior to the opening of its facility or at any time thereafter, that demonstrated fewer than nine (9) full time employees would be needed at their facility, would the Commission lower this requirement?

**A.394. The Commission will be willing to consider a plan that lowers the staffing requirements, but reserves the right to determine what is in the best interests of New York State.**

**Q.395.** Is an affiliate of an Applicant permitted to participate in the hearing process of another non-affiliated Applicant (i.e., through oral presentation or the submission of written materials) where the affiliate holds its own VLT facility license in order to represent the interests of the affiliate’s VLT facility – and not the interests of the Applicant to which it is affiliated?

**A.395. We presume this question regards participation in the Public Presentations and not Public Hearings. Given that understanding, no. Participation in the Public Presentations will be limited to affiliates of the Applicant.**

**Q.396.** In Round 1 – Questions and Answers dated April 23, 2014, A. 61 states “Applicants will not be given an opportunity to opine about other Applications.” Does the term “Applicant,” in response to this question include the “Applicant Party” as that term is defined in the RFA?

**A.396. Yes, but the Applicant alone may determine which, if any, affiliates or other parties will participate in their Public Presentation.**

**Q.397.** In Round 1 – Questions and Answers dated April 23, 2014, A. 61 states “Applicants will not be given an opportunity to opine about other Applications.” Does the term “Applicant,” in response to this question include an “Affiliate” of an Applicant, as that term is defined in the RFA?

**A.397. See answer to Question 396.**

**Q.398.** In Round 1 – Questions and Answers dated April 23, 2014, A. 61 states “Applicants will not be given an opportunity to opine about other Applications.” Does the term “Applicant,” in response to this question include a “Close Associate” of an Applicant, as that term is defined in the RFA?

**A.398. See answer to Question 396.**

**Q.399.** Will existing New York based tribal gaming facilities be afforded the opportunity to provide written public comment to the Board with respect to an Applicant’s project?

**A.399. Yes, public comments will be accepted.**

**Q.400.** Will existing New York based tribal gaming facilities be afforded the opportunity to provide public comment at the Board Public Hearings identified in RFA Article IV § E with respect to an Applicant’s project?

**A.400. Yes, public comments will be accepted.**

**Q.401.** Will an existing New York VLT facility, that is neither an “Applicant,” nor and “Affiliate” of an Applicant, be afforded the opportunity to provide written public comment to the Board with respect to an Applicant’s project?

**A.401. Yes, public comments will be accepted.**

**Q.402. a.** Will the Board consider in its evaluation process the potential inequity in the implementation of § 1355 of the N.Y. Racing, Pari-Mutuel Wagering and Breeding Law as described herein?

The obvious intent of § 1355 is to insure that new gaming facilities make payments to offset a potential reduction in amounts otherwise due for purses and breeders from existing VLT gaming facilities. VLT gaming facilities will remain obligated to pay an amount equal to 10% of their gaming revenue for purses and breeders, while new gaming facilities will likely pay a significantly lower percentage. By way of

example, if an existing VLT facility generated \$60 million in revenue in 2013, it would have paid \$6 million (10% of that revenue) for purses and breeders. Upon the opening of a Gaming Facility not in close proximity to the VLT facility but yet still within the same region, assume the VLT facility's revenue decreases by only 5% to \$57 million. The VLT facility would then continue to pay 10% for purses and breeders but the dollar amount of its payment would be reduced to \$5.7 million. The Gaming Facility in the region would be required to pay only an additional \$300,000 regardless of its gaming revenue. If the new Gaming Facility generated \$100 million in slot machine revenue, the new facility would still pay only \$300,000, or 0.3% of its revenue for purses and breeders.

b. Will the Board consider this likely inequitable result in its evaluation process?

c. Assuming this inequity results in a competitive disadvantage to the existing VLT facility, will the Board consider the effect of this competitive disadvantage on overall gaming revenue to the State?

**A.402. See answer to Question 333. The Board will evaluate Applications for Gaming Facility licenses as set forth in N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1320.**

**Q.403.** a. Will the Board consider in its evaluation process the potential inequity in the implementation of § 1355 of the N.Y. Racing, Pari-Mutuel Wagering and Breeding Law as described herein?

If an existing VLT facility is awarded a gaming license it will pay 100% of the amounts for purses and breeders based on 2013 generated revenue paid by the VLT facility. Effectively, an existing VLT facility that obtains a gaming license will pay the slot and table tax amounts in addition to the 2013 dollar amount for purses and breeders. On the other hand, if a gaming license is awarded to someone other than an existing VLT facility, it will only pay that portion for purses and breeders which represents the difference between the 2013 amount and the amount paid by the VLT facility in a particular year.

b. Will the Board consider this and note this advantage in its evaluation process?

**A.403. See answers to Question 333 and Question 402.**

**Q.404.** a. Will the Board consider in its evaluation process the potential inequity in the implementation of § 1355 of the N.Y. Racing, Pari-Mutuel Wagering and Breeding Law as described herein?

The obvious intent of § 1355 is to insure that new gaming facilities make payments to offset a potential reduction in amounts otherwise due for purses and breeders



from existing VLT gaming facilities. VLT gaming facilities will remain obligated to pay an amount equal to 10% of their gaming revenue for purses and breeders, while new gaming facilities will likely pay a significantly lower percentage and only a percentage of reduction of the amount paid for purses and breeders within the region in which it is located. A new facility would not be required to contribute to payments for purses and breeders as required by § 1355(2) for reductions in payments for purses and breeders from VLT facilities located outside its region. By way of example, VLT Facility A located in Region 1 generates \$50 million in revenue in 2013. It would have paid \$5 million for purses and breeders. If a new Gaming Facility is awarded a license in a different region, in this example, Region 2, yet still in close proximity to the existing VLT Facility A in Region 1, any reduction in the payment for purses and breeders from the existing VLT Facility A in Region 1 will not be offset by any payment from the new Gaming Facility located in Region 2; thus, frustrating the intent of N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1355.

b. Will the Board consider this likely inequitable result in its evaluation process?

**A.404. See answers to Question 333 and Question 402.**

**Q.405.** Will an existing New York VLT facility that is neither an “Applicant,” nor an “Affiliate” of an Applicant, be afforded the opportunity to provide public comment at the Board Public Hearings identified in RFA Article IV § E with respect to an Applicant’s project?

**A.405. See answer to Question 401.**

**Q.406.** If a current Video Lottery Gaming Facility is awarded a Class III gaming license and (i) ceases to operate as a Video Lottery Facility, and (ii) removes all video lottery equipment and components owned or operated by the Commission’s Division of the Lottery:

a. Will the licensee be permitted to directly purchase or lease any or all of the remaining (i) networking hardware, (ii) gaming hardware, (iii) Gaming, Accounting and Central Determination software, and/or (iv) Video Lottery Terminal gaming equipment directly from the current vendors/owners?

b. Will Video Lottery Terminals (VLTs) be allowed to operate physical, logical, financial and completely isolated from the remaining video lottery gaming facilities and the Commission’s Division of the Lottery?

c. Will existing VLTs be allowed to operate with a standalone Accounting and Central Determination System residing locally and independently managed at the

site physical, logical, financial and completely disconnected from the Commission's Division of the Lottery?

d. Will there be any limitation to the use of any protocol (i.e. SAS) used between Electronic Gaming Machines (EGMs), Video Lottery Terminals (VLTs), Electronic Table Games (ETGs) and the Accounting system of choice?

e. Will the current technical standards for VLTs Central Determination be restricted?

f. Will restrictions be placed on the use of any Central Determination method or system chosen to operate in conjunction with Electronic Gaming Machines (EGMs), Video Lottery Terminals (VLTs), and Electronic Table Games (ETGs)?

g. Will plans to keep some or all existing VLTs at an existing location have a negative impact on scoring?

h. Will the current supplier of Video Lottery Terminals (VLTs) Accounting and Central Determination System be allowed to sell, deploy and service the System outside the Commission's Division of the Lottery?

i. Will Video Lottery Terminals (VLTs) Gaming Manufacturers be allowed to supply currently consumed files that determine outcomes physical, logical, financial and completely isolated from the video lottery gaming facilities and the Commission's Division of the Lottery?

#### **A.406.**

**a. A licensee is permitted to acquire the network infrastructure, VLTs for conversion to random number generator devices, and MGAM system equipment. Licensees may not acquire MGAM Central Determination software.**

**b. No.**

**c. No, the Commission will not permit operation of VLTs or a Central Determination system in the commercial Gaming Facility.**

**d. A licensee can determine the system protocols used in its facility, except that Central Determination VLTs are not permitted.**

**e. The current standard (Interface Control Document) is the property of MGAM.**

f. See answer to Question 406.c.

g. See answer to Question 406.c.

**h. The Lottery's vendor, MGAM, is allowed to sell its system, but a Licensee may not install the Central Determination system in New York State.**

i. No.

**Q.407.** N.Y. Racing, Pari-Mutuel Wagering and Breeding Law §1311, as established in Section 2 of Assembly Bill 8101 of the 2013-2014 Regular Session mandates:

AS A CONDITION OF LICENSURE, LICENSEES ARE REQUIRED TO COMMENCE GAMING OPERATIONS NO LESS THAN TWENTY-FOUR MONTHS FOLLOWING LICENSE AWARD. NO ADDITIONAL LICENSES MAY BE AWARDED DURING THE TWENTY-FOUR MONTH PERIOD, NOR FOR AN ADDITIONAL SIXTY MONTHS FOLLOWING THE END OF THE TWENTY-FOUR MONTH PERIOD.

As noted in the RFA, and consistent with N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1315: "Any Licensee that fails to begin gaming operations within twenty four (24) months following License Award shall be subject to suspension or revocation of the License and may, after being found by the Commission, after notice and opportunity for a hearing, to have acted in bad faith in its application, be assessed a fine of up to \$50 million."

On April 23rd, the Commission responded to question 189c saying: "The Commission has not considered whether it will toll the twenty four month time limit pending completion of the SEQRA process." (emphasis added). The response to Question 249a reads: "The Commission will interpret the 24-month timeline reasonably to provide for force majeure." Finally, the May 2 answers in response to Question 324 notes: "The Commission believes that it will be unnecessary to toll any time limit as we assume Applicants will timely commence the SEQR process since speed to market is a graded factor in the RFA evaluation." (emphasis added)

a. Are there statutory or other State procurement standards for force majeure that the Commission will be applying to depart potentially from the statutory requirement to commence gaming operations within 24 months of the license award?

b. Will the Commission define force majeure for this purpose in its forthcoming regulatory framework or otherwise prior to the June 30 RFA deadline?

c. Since environmental approvals are an expected part of any major gaming development project and have been anticipated by Applicants in Sullivan and Ulster Counties under the previous Law, prior to the enactment of the Act, will the Commission provide guidance to clarify, at a minimum, that completion of the SEQR process is not so outside of an Applicant's control as to constitute force majeure that would allow for a delay in opening of a licensed facility?

d. In the response to Question 324, shouldn't Applicants be timely "completing" the SEQR process in order to fulfil the statutory requirement of opening within 24 months of licensure and not just "commencing" the SEQR process?

e. Does the Board or Commission anticipate assigning a specific weight or percentage to the "speed to market" factor identified in Answer 324 or will it have an unassigned weighting within the statutory value of 70 percent for "Economic Activity and Business Development Factors?"

**A.407.**

**a. No. "Force majeure" will have its ordinary meaning under New York law. Generally, "force majeure" means an unavoidable catastrophe that is outside the control of the Applicant, such as a natural disaster**

**b. See answer to Question 407.a.**

**c. Compliance or noncompliance with SEQRA requirements would not constitute a "force majeure." The award of the license by the Commission will occur after the requirements of SEQRA have been satisfied. The Commission assumes that Applicants will timely commence the SEQRA process, as speed to market is a graded factor in the RFA evaluation.**

**d. Applicants should be completing the SEQRA process with all due speed. The Board will assess their ability to do so in its evaluation process. The time to open that is set forth in statute runs from the Commission's award of a license, which will occur consistent with SEQRA requirements.**

**e. The Board will score speed to market as a component of the seventy (70) percent weighting for "Economic Activity and Business Development Factors".**

**Q.408. On April 23rd, the Board also said that it will "accept Applications as complete without completion of a SEQRA process, however Applicants must disclose in their applications, the status of the SEQRA review, the anticipated timeframe for completion of the SEQRA review, and any obstacles they may prevent the Gaming Facility from opening within 24 months of Licensure." Given the enormity of**

obstacles (most unforeseen) that large scale developments face in the course of a full, start-to-finish SEQRA review, how can the Commission rely on and approve any prospective Casino Applicant's timing submission as compliant given the 24 month completion window from "License Award" stated in the RFA?

**A.408. The award of the license by the Commission will occur after the requirements of SEQRA have been satisfied. The Commission assumes Applicants will timely commence the SEQRA process, because speed to market is a factor in the Board's evaluation.**

**Q.409. a.** Given that many top gaming analysts consider the Orange County market to be the primary market that would ultimately serve casino development in the Catskill region, how will the Commission deem bids that are conditioned upon no Orange County facility to be conforming?

b. Must each Catskills Applicant provide an "A" scenario assuming at \$50M license fee and associated project costs and a "B" scenario assuming a \$35M license fee and associated project costs, the latter of which incorporates the potential harmful impact of a competing facility in Orange County?

c. If a full project debt and equity financing commitment, a critical component of an Applicant's bid, is conditioned upon a Casino not being constructed in Orange County, does that make said associated bid non-conforming?

**A.409.**

**a. An Application that is conditioned on a License not being awarded for another Gaming Facility in the same region would be non-conforming. However, as described below and in the answer to Question 176, Applicants are permitted to bid in the alternative by including binding alternative proposals depending on whether a License is granted for another Gaming Facility in the same Region.**

**b. As described in the answer to Question 176, an Application for a proposed Gaming Facility in Region One or Region Five may bid in the alternative by including binding alternative proposals as to the scope, scale and Minimum Capital Investment of the proposed Gaming Facility depending on whether a License is granted for another Gaming Facility in the same Region.**

**If presenting binding alternative proposals for the proposed Gaming Facility, an Application:**

1. must state in each of Exhibits V, VIII.A.2.a., VIII.A.3., VIII.A.4., VIII.A.5., VIII.A.6.b., VIII.B.1., VIII.B.3.a., VIII.B.3.b., VIII.B.4., VIII.B.6., VIII.B.7.a., VIII.B.7.b., VIII.B.8., VIII.B.10., VIII.B.11., VIII.C.4.a., VIII.C.4.b., VIII.C.4.c., VIII.C.5.a., VIII.C.5.b., VIII.C.6.a., VIII.C.6.b., VIII.C.6.c., VIII.C.6.d., VIII.C.7.a., VIII.C.7.b., VIII.C.7.d., VIII.C.7.e., VIII.C.8.a., VIII.C.9.a., VIII.C.10.a., VIII.C.13., VIII.C.14.a., VIII.C.14.b., VIII.C.15., VIII.C.16., VIII.C.17.a., VIII.C.17.b., VIII.C.17.c., VIII.C.17.d., VIII.C.17.e., VIII.C.19., VIII.C.20.a., VIII.C.20.b., VIII.C.20.d., VIII.C.20.e., VIII.C.21., IX.A.2.a., IX.A.2.b., IX.A.3., IX.A.4., IX.A.5., X.C.1., X.C.2., X.C.3., X.C.4., X.C.5. and X.C.6. that alternative proposals are presented depending on whether a License is granted for another Gaming Facility in the same Region;
2. must, to the extent that responses differ between the binding alternative proposals, provide responsive information for each alternative proposal to the requests for information in the corresponding section; and
3. must describe under what competitive circumstances each binding alternative would apply (e.g. that “Proposal A” applies if no License is awarded for another Gaming Facility in the same Region and that “Proposal B” applies if a License is is awarded for another Gaming Facility in the same Region).

Every Application must include a proposal for a Gaming Facility, either as its sole proposal or as one of its binding alternative proposals, that satisfies the Minimum Capital Investment requirement if no License is awarded for another Gaming Facility in the same Region. In addition, if an Application includes binding alternative proposals, the Application must include a proposal that commits to develop a Gaming Facility in accordance with the N.Y. Racing, Pari-Mutuel Wagering and Breeding Law and the RFA that satisfies the Minimum Capital Investment requirement if a License for another Gaming Facility is awarded in the same Region.

If an Application does not present binding alternative proposals depending on whether a License is granted for another Gaming Facility in the same Region, then, as discussed in answers to Question 147 and Question 334, the Application may, but is not required to, include projections of gaming revenue and gaming patronage in Exhibit VIII.A.3., financial forecasts in the form of pro-forma financial statements in Exhibit VIII.A.4. and projections of tax revenues in Exhibit VIII.B.4., in each case,

on a high-, average- and low-case basis under one scenario featuring intra-Region competition. In an Application that does not present binding alternative proposals, an Applicant has discretion whether to include a competition scenario and, if included, what assumptions inform that competition scenario. If an Application does not include binding alternative proposals, then the sole proposal, which must satisfy the Minimum Capital Investment requirement if no License is awarded for another Gaming Facility in the same Region, will also apply if a License is awarded for another Gaming Facility in the same Region.

c. The Board anticipates that Applicants' financing plans, arrangements and agreements will be subject to conditions that are usual and customary for significant projects similar in size and scope to the proposed gaming facilities. However, an Application that describes financing plans, arrangements and agreements that are conditioned on a License not being awarded for another Gaming Facility in the same region would be non-conforming. Applications may describe financing conditions related to competition that are less than a complete prohibition on intra-Region competition (e.g., that apply to a defined area that does not include most of the respective Region). The Board expects that the financing conditions for the proposed Gaming Facility will be a material consideration in evaluating, pursuant to the N.Y. Racing, Pari-Mutuel Wagering and Breeding Law, the relative value that the Application offers to the State, the zone and the Region in which the proposed Gaming Facility is to be located.

**Q.410.** The earlier response to Question 176 suggests that an Applicant for a Gaming Facility in one of the "Region 1 Impacted Counties" (namely Columbia, Delaware, Greene, Sullivan or Ulster Counties) may apply in the alternative whereby two scenarios would be presented including as to "Minimum Capital Investment."

a. If the Commission sets alternative Minimum Capital Investments for these Region 1 Impacted Counties based on a second license in one of the "Region 1 Dominant Counties" (Orange or Dutchess County), must the Applicant provide an alternative proposal under each scenario, even if it concludes that the Minimum Capital Investment scenario involving a second license in Region 1 Dominant Counties is too high or not in the best long-term interests of the Catskills region?

b. If an Applicant is open to a second license its same county or within the same Region 1 Impacted Counties will it be precluded from applying if it determines that the Minimum Capital Investment is not feasible with a second license in a Region 1 Dominant County?

**A.410.**

**a. See answer to Question 176.**

**b. See answer to Question 176.**

**Q.411.** Has the Commission or the Division of Budget published a guidance document or table that summarizes all of the information needed to estimate fiscal impacts to state and local entities, based on anticipated net revenues from the facility operator?

**A.411. No.**

**Q.412. Board Question, Posed For Clarification.** To what extent will the Board credit an Applicant toward the Minimum Capital Investment required for capital investment that has already occurred in regard to a gaming facility project site?

**A.412. The Board will issue a Guidance Document regarding credit toward the Minimum Capital Investment for capital investment already made. This Guidance will be posted on the Commission's RFA webpage and sent to official contacts of all Qualified Applicants.**

**###**



**GUIDANCE DOCUMENT – SEQRA – MAY 19, 2014**



**REQUEST FOR APPLICATIONS  
TO DEVELOP AND OPERATE  
A GAMING FACILITY IN NEW YORK STATE**

**SEQRA QUESTION & ANSWER REVISIONS**

May 19, 2014

**THE ANSWERS TO THE FOLLOWING PREVIOUSLY POSED QUESTIONS HAVE BEEN REVISED. THE NEW, REVISED ANSWERS NOW CONTROL.**

**Q.189.** Article VIII, § C (3)(c) of the RFA requires “a list of any State and/or local permits or special use permits that the Applicant must obtain for the Project Site,” however, the State Environmental Quality Review Act (SEQRA), is not specifically identified. Please explain:

**c.** Once a license is issued by the Commission, the licensee has 24 months to commence gaming at an approved facility. Failure to commence gaming within 24 months shall subject the licensee to fines and penalties. Will the Commission toll the 24 month time limit until such time as the SEQRA process for a licensed project is completed?

**Delete the prior answer to Question 189.c. and replace it with the following:**

**A.189.c. The Commission will not toll the 24-month time period before a Gaming Facility opens, as the award of the license by the Commission will occur after the requirements of SEQRA have been satisfied.**

--

**Q.215.** Is the award of a Gaming Facility License subject to SEQRA, and if so, will that SEQRA review and determination encompass the eventual approval of site plans for the Gaming Facility?

**Delete the prior answer to Question 215 and replace it with the following:**

**A.215. The actual award of a license by the Commission – as contrasted to the authorized recommended casino selection by the Board - will occur after the requirements of SEQRA have been satisfied. Since speed to market is a graded factor in the RFA evaluation, the Commission assumes that Applicants will timely commence the SEQRA process.**

--

**Q.227.** Applicability of the NYS Environmental Quality Review Act, "SEQRA", ECL Article 8: The New York State Environmental Quality Review Act, ECL article 8 and implementing regulations at 6 NYCRR Part 617 ("SEQRA") require that all discretionary actions undertaken, approved or funded by a State or local agency comply with the requirements of SEQRA prior to authorizing the action. For Type I actions (6 NYCRR §617.4), which are likely to include a casino facility, SEQRA requires a coordinated review among State and local agencies with discretionary actions (involved agencies). The N.Y. Racing, Pari-Mutuel Wagering and Breeding Law contains no reference to the provisions of the New York State Environmental Quality Review Act, ECL article 8 and implementing regulations at 6 NYCRR Part 617. Similarly, the RFA makes no reference to SEQRA.

**b.** If the SEQRA process has already been initiated at a local level, should the Board and/or Commission be added as involved or interested agencies?

**Delete the prior answer to Question 227.b. and replace it with the following:**

**A.227.b.** If the SEQRA process has already been initiated at a local level, the Commission should be added as an involved agency.

--

**Q.324.** Will the Commission toll the twenty-four (24) month time limit until such time as the SEQRA process is completed?

**Delete the prior answer to Question A.324 and replace it with the following:**

**A.324.** The actual award of a license by the Commission – as contrasted to the authorized recommended casino selection by the Board - will occur after the requirements of SEQRA have been satisfied. Since speed to market is a graded factor in the RFA evaluation, the Commission assumes that Applicants will timely commence the SEQRA process.

**[CONTINUED ON FOLLOWING PAGE]**

FOR REFERENCE, THE FOLLOWING PREVIOUSLY POSED QUESTIONS CONTEMPLATED SEORA ISSUES:

Round 1 - Questions and Answers

189, 211, 214, 215, 226, 227

Applicant Conference - Questions and Answers

324, 332, 339

Round 2 - Questions and Answers

360, 407, 408

# # #

**GUIDANCE DOCUMENT – RESOLUTIONS OF SUPPORT – MAY 20, 2014**



**REQUEST FOR APPLICATIONS  
TO DEVELOP AND OPERATE  
A GAMING FACILITY IN NEW YORK STATE**

**ACCEPTABLE HOST MUNICIPALITY RESOLUTIONS  
IN SUPPORT OF THE LOCATION OF A GAMING FACILITY**

**REVISED**

May 20, 2014

As a condition of filing a response to the Requests For Application, each Applicant is required to submit to the Board a resolution passed by the local legislative body of its Host Municipality supporting the Application. For purposes of this requirement, local support means a post-November 5, 2013 resolution passed by the local legislative body of the Host Municipality supporting the Application.

The identities of the potential gaming facility applicants have now been established. Accordingly, the Board believes that for a Host Municipality resolution to be sufficient, such resolution should indicate support for the specific gaming facility within the jurisdiction of the Host Municipality.

For the guidance of bidders, we have provided a specific "resolved clause" which would meet the Host Municipality support requirement. We have also provided examples of unacceptable "resolved clauses."

**ACCEPTABLE RESOLVED CLAUSE**

**NOW THEREFORE BE IT RESOLVED**, that in furtherance of the above goals, Municipality X hereby agrees to the location of Gaming Facility Y at premises within Municipality X, and

**UNACCEPTABLE RESOLVED CLAUSES**

(Overbroad) a resolution by a Municipality in support of a Gaming Facility located within a county or a resolution in support of a Gaming Facility located within a different Municipality.

(Ambiguous) a resolution by a host Municipality in support of any "reasonable," "substantial," "sensible" or "thoughtful" Gaming Facility located within a host Municipality.

The Board strongly advises each potential Host Municipality review any previously adopted resolution to ensure it meets the standards of this Guidance.

As of today, the Board has received 23 Host Municipality Resolutions; only three (the Village of Johnson City; the Town and Village of Liberty; and the Town of Wawarsing) are acceptable as consistent with the standards contained within this Guidance.

# # #

**GUIDANCE DOCUMENT – ADDITIONAL QUESTIONS AND ANSWERS – MAY 20, 2014**





**REQUEST FOR APPLICATIONS  
TO DEVELOP AND OPERATE  
A GAMING FACILITY IN NEW YORK STATE**

**ADDITIONAL QUESTIONS PERMISSIBLE**

May 20, 2014

Per the schedule set forth in the Request For Applications Article III § B, there are no further formal opportunities for Applicants to pose questions to the Gaming Facility Location Board. The Board is sensitive to the complexity of the RFA. Thus, in an effort to provide ongoing guidance to Applicants in advance of the submission deadline, additional questions may be posed to the Board. The Board will, however, only respond to those questions that it has determined pose new or novel inquiries which have not previously been answered.

As a matter of process, if the Board answers a question, the Board's response will be circulated by electronic mail to the official contact for each Applicant. All responses will also be posted to the Commission's RFA webpage.

**ALL NEW QUESTIONS MUST BE ADDRESSED IN WRITING TO THE  
SUPERVISOR OF CONTRACT ADMINISTRATION OR THE CONTRACT  
MANAGEMENT SPECIALIST NOTED BELOW:**

New York State Gaming Commission Contracts Office  
One Broadway Center  
Schenectady, NY 12301-7500

Gail P. Thorpe, Supervisor of Contract Administration  
[gail.thorpe@gaming.ny.gov](mailto:gail.thorpe@gaming.ny.gov)

or

Stacey Relation, Contract Management Specialist  
[stacey.relation@gaming.ny.gov](mailto:stacey.relation@gaming.ny.gov)

###

**RESOLUTIONS OF SUPPORT – QUESTIONS AND ANSWERS REVISIONS – JUNE 10, 2014**



**REQUEST FOR APPLICATIONS  
TO DEVELOP AND OPERATE  
A GAMING FACILITY IN NEW YORK STATE**

**RESOLUTIONS OF SUPPORT QUESTION & ANSWER REVISIONS**

June 10, 2014

**THE ANSWERS TO THE FOLLOWING PREVIOUSLY POSED QUESTIONS HAVE  
BEEN REVISED. THE NEW, REVISED ANSWERS NOW CONTROL.**

**Q.208:** According to the RFA for a casino siting application, the local legislative body has to vote in support of the application. If there isn't a favorable vote by the local legislative body, would the Gaming Commission's siting board accept the application, or is the application not allowed to move forward and automatically denied?

**Delete the prior answer to Question 208 and replace it with the following:**

**A.208: Acceptance of the Application would be declined. The RFA specifically provides that a condition of filing an Application is that each Applicant submit to the Board a post-November 5, 2013 resolution passed by the local legislative body of the Host Municipality that supports the Applicant's proposed Gaming Facility within their jurisdiction.**

--

**Q.217. Initial Requirement of Local Support.** The RFA states that "each Applicant must submit to the Board a [post-November 5, 2013] resolution passed by the local legislative body of its Host Municipality supporting the Application." If a Host Municipality has passed a resolution after November 5, 2013 that endorses the location of a casino in the Host Municipality, would an Applicant need such Host Community to pass a subsequent resolution that endorses the specific plans proposed by the Applicant and/or the specific identity of the Applicant?

**Delete the prior answer to Question 217 and replace it with the following:**

**A.217. Yes. A sufficient Host Municipality Resolution must specifically indicate support for the Applicant’s proposed Gaming Facility within the jurisdiction of the Host Municipality.**

–

**Q.218:** Is there any specific provision which will be required by the Location Board and which should be included in the Host Municipality resolution referenced in Section IX.A.1.a?

**Delete the prior answer to Question 218 and replace it with the following:**

**A.218: A sufficient Host Municipality resolution must indicate support for the Applicant’s proposed Gaming Facility within the jurisdiction of the Host Municipality.**

**Please see the Board’s Guidance Document: Acceptable Host Municipality Resolutions in Support of the Location of a Gaming Facility, May 20, 2014 for examples of acceptable and unacceptable “resolved clauses.”**

**<http://www.gaming.ny.gov/pdf/GuidanceResolutionsofSupport.pdf>**

–

**Q.219:** If the Host Municipality is a Town or City, what level or kind support is required or expected by the Location Board from the Host County?

**Delete the prior answer to Question 219 and replace it with the following:**

**A.219: None is required. While there is no requirement of action at the county level, such support would be positively viewed pursuant to the N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1320.2 evaluation.**

**Local support means a post-November 5, 2013 resolution passed by a local legislative body of the Host Municipality supporting the Applicant’s proposed Gaming Facility within the jurisdiction of the Host Municipality.**

**Please see the Board’s Acceptable Host Municipality Resolutions in Support of the Location of a Gaming Facility, May 20, 2014 for examples of acceptable and unacceptable “resolved clauses.”**

**<http://www.gaming.ny.gov/pdf/GuidanceResolutionsofSupport.pdf>**

–

**Q.220:** Legislative Form of Action Demonstrating Host Community Support of Gaming Application. The RFA Section I, Initial Requirement of Local Support, states” “local support means a post-November 5, 2013 resolution passed by the local legislative body of the Host Community.” N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1320. (b), and RFA Section VII.B.2 require evidence of local support by: “gaining public support in the host and nearby municipalities which may be demonstrated through the passage of local laws....” The New York Municipal Home Rule Law defines and authorizes the adoption of local laws by NY municipalities but does not appear to provide for the adoption of local laws in support of an application (See MHRL Sections 2 & 10).

Will the adoption of a resolution by the local legislative body of a Host Community in support of an Application for Casino Gaming be sufficient to satisfy the requirements of the RFA?

**Delete the prior answer to Question 220 and replace it with the following:**

**A.220: Yes, provided the resolution of support is specifically for the Applicant’s proposed Gaming Facility, within the jurisdiction of the Host Municipality, and such resolution is approved after November 5, 2013.**

–

**Q.221:** a. How do we determine host community if a subject parcel lies within three (3) separate municipalities?

b. Would the host community be the municipality with the greatest land area?

**Delete the prior answer to Question 221.a and replace it with the following:**

**A.221.a: Each of the three municipalities would need to adopt a post-November 5, 2013 resolution of support for the Applicant’s proposed Gaming Facility.**

**b. See the answer to Question 221.a.**

–

**Q.223:** In establishing local support from the host community, is there a minimum standard requirement, i.e., a Resolution of the municipal board in support or is a letter from the host municipality sufficient?

**Delete the prior answer to Question 221.a and replace it with the following:**

**A.223: Yes, a resolution is required. A letter is insufficient. For the Board to deem a Host Municipality resolution to be sufficient, such resolution should indicate specific support for the Applicant’s proposed Gaming Facility within its jurisdiction.**

**Please see the Board’s Acceptable Host Municipality Resolutions in Support of the Location of Gaming Facility, May 20, 2014 for examples of acceptable and unacceptable “resolved clauses.”**

**<http://www.gaming.ny.gov/pdf/GuidanceResolutionsofSupport.pdf>**

**For reference, the following previously posed Questions contemplated Host Municipality Resolution issues:**

Round 1 Questions and Answers

208, 216, 217, 218, 219, 220, 221, 223, 224, 225

**###**

**JOINT GUIDANCE DOCUMENT – LOBBYING – JUNE 16, 2014**



## JOINT GUIDANCE ON CASINO LOBBYING

June 16, 2014

The purpose of this document, which was developed by the Joint Commission on Public Ethics and the Gaming Facility Location Board, is to ensure commercial casino gaming license Applicants are aware of the applicable lobbying laws and regulations.

- 
- *The information contained in this document is not specific to any individual set of facts or circumstances, and represents a starting point for further research and analysis by Applicants and their counsel. Applicants are encouraged to contact the Joint Commission on Public Ethics (JCOPE) or the designated Gaming Facility Location Board (Board) contacts for specific guidance.*
  - *Unless otherwise noted, all citations are to the N.Y.S. Legislative Law Article 1-A (the "Lobbying Act").*
  - *The Lobbying Act defines a "municipality" as "any jurisdictional subdivision of the state, including but not limited to counties, cities, towns, villages, improvement districts and special districts, with a population of more than fifty thousand, and industrial development agencies in jurisdictional subdivisions with a population of more than fifty thousand; and public authorities, and public corporations, but shall not include school districts." See Lobbying Act § 1-c(k).*

*Please see the JCOPE website ([www.jcope.ny.gov](http://www.jcope.ny.gov)) for a [list](#) of localities that meet the Lobbying Act definition of "municipality".*

---

1. Our law firm represents an Applicant as its regulatory counsel:
  - a. Does our work helping the Applicant prepare the Application make us a lobbyist?



**No. The Lobbying Act definition of “lobbying activity” includes an exception for the submission of bids or proposals in response to a governmental procurement request for proposal. See Lobbying Act § 1-c(c)(K).**

- b. Does appearing at the April 30, 2014 mandatory conference (or other mandatory events held by the Commission or the Board, e.g., Applicant presentations) on behalf of the Applicant constitute lobbying activity?

**No. Lobbying Act §§ 1-c(c)(L), 1-c(c)(H), and 1-c(c)(K) provide exceptions to “lobbying activity” for the submission of questions (where answers are to be distributed to all Applicants), appearances at ‘all-Applicant’ conferences, and the submission of the Application (including the Applicant conference), respectively.**

- c. Do communications with the Board’s designated contacts constitute lobbying activity? If the communications are merely clarifications about the process/requirements, does this constitute lobbying activity?

**Once the restricted period has started, any communication that is not explicitly exempted by the Lobbying Act under §§ 1-n(2) (Restricted Period) or 1-c(c) (“lobbying activity” definition) and is intended to influence the governmental procurement would constitute lobbying activity.**

- d. If our activity does constitute lobbying, do we need a separate lobbying retainer or contract with our client?

**A single retainer may be used for all services. If you choose to use a single retainer, the retainer must separate lobbying activity compensation so the lobbying service is distinguishable from compensation for other services.**

- e. If we provide experts to explain the project, is that lobbying activity?

**No. Information provided by or other expert services is not lobbying activity as long as it falls within the confines of the Lobbying Act § 1-c(c)(M) exception for technical experts.**

2. Are efforts to influence local county and municipal governments' passage of gaming resolutions, or changes to local laws to accommodate for our planned facilities, such as zoning laws, considered lobbying?

**Yes. Lobbying Act §§ 1-c(c)(vii)-(x) and 1-c(k) provide that any attempts to influence a municipality or municipal agency, whether in support or opposition of an issue, are considered lobbying activities.**

3. During the Application process, is there any restriction on simultaneously contacting other government agencies or elected officials for separate – but related – measures, such as additional funding for State road improvements near our proposed casino, or measures meant to regulate gambling on a state level? Can we lobby these agencies or officials specifically to garner their support for our bid?

**An Applicant may contact another executive agency to gather information about that agency's process or activity in a related subject, such as, transportation studies or environmental rulemaking, but may not engage in attempts to influence that agency to garner support for the Applicant's bid.**

4. If we spend more than \$5,000 lobbying at the State level for a casino, but less than \$5,000 at the local level, do we still need to disclose local lobbying efforts?

**Yes. Once the lobbying registration threshold has been exceeded on an aggregate basis, any lobbying activity for any client must be disclosed, whether at the state or municipal level.**

5. Does the \$1 million application fee need to be reported as a lobbying expense?

**No. It is considered part of the response to the RFA (See Question 1.a., above).**

6. If we hire a public official's law firm or consulting firm to work on our proposed project does that need to be disclosed anywhere?

**Lobbying Act §§ 1-e(c)(8)(i)-(iii) and 1-j(b)(6)(i)-(iii) require the disclosure of any reportable business relationship (as defined in § 1-c(c)) valued at more than \$1,000 annually between a lobbyist (or client) and a public official.**

**Guidelines and instructions exist on the [JCOPE](#) website to help navigate the "Reportable Business Relationship" analysis. Additionally, please be aware that N.Y.S. Public Officers Law § 74 creates an obligation to avoid actual - or the appearance of - conflicts of interest on the part of the public official.**

7. Are there Lobbying Act restrictions on gifts or meals from lobbyists and clients to local officials, similar to the restrictions on gifts to state officials?

**Yes. Lobbying Act restrictions in § 1-m apply to all public officials, including employees and officials of municipalities with a population over 50,000. See Lobbying Act § 1-c(l).**

**State officials must be cognizant of their various ethics obligations under N.Y.S. Public Officers Law §§ 73 and 74.**

8. I am an employee for a gaming company and may or may not need to discuss the matter with public officials.

- a. How do I determine whether I need to register, and how long do I have to do so?

**Any attempts to influence a governmental procurement, whether by an employee or agent of a bidder, can be considered lobbying activity. Registration is required per Lobbying Act § 1-e within fifteen (15) days of anticipating exceeding the threshold, but no later than ten (10) days after actually exceeding the \$5,000 threshold.**

- b. Does my employer need to identify me as a lobbyist even if I don't have to register myself?

**Once an employer or entity has registered as a lobbyist, all employees whose role is to attempt to influence the public**

**official (other than as “technical experts”) in direct lobbying must be disclosed as additional lobbyists.**

9. I would like to show the Commission and/or the Board my existing gaming facility or facilities outside New York State to demonstrate why my Application should be selected. Can I do that in a manner that will not violate the Lobbying Act?

**The Commission and Board have imposed a restriction against this type of activity on its respective members and staff. Any such visits by other public officials should be thoroughly analyzed to ensure that the rules (including those against impermissible gifts) under Lobbying Act § 1-m, N.Y.S. Public Officers Law §§ 73 and 74, and JCOPE regulations (19 N.Y.C.R.R. Part 934) are followed.**

10. I intend to run advertisements for (or against) casino development in my area but will not meet with any public officials. Do I need to register as a lobbyist?

**Please contact JCOPE for individualized guidance about specific advertisements.**

11. Are expenses associated with garnering public support for a casino (as opposed to expenses for the direct lobbying of public officials) reportable as lobbying expenses to JCOPE?

**All expenses associated with a lobbying effort must be reported to JCOPE on the required periodic filings.**

---

Further inquiries related to these issues may be directed to either:

N.Y.S. Joint Commission on Public Ethics  
540 Broadway  
Albany New York 12207

Telephone: (518) 408-3976  
Facsimile: (518) 408-3975

[jcope@jcope.ny.gov](mailto:jcope@jcope.ny.gov)

or

N.Y.S. Gaming Commission  
Contracts Office  
One Broadway Center  
Schenectady, New York 12301---7500

Gail P. Thorpe, Supervisor of Contract Administration  
[gail.thorpe@gaming.ny.gov](mailto:gail.thorpe@gaming.ny.gov)

or

Stacey Relation, Contract Management Specialist  
[stacey.relation@gaming.ny.gov](mailto:stacey.relation@gaming.ny.gov)

**# # #**

**REGULATORY WHITE PAPER – JUNE 16, 2014**



## **REGULATORY PRACTICE WHITE PAPER**

**JUNE 16, 2014**

This document contains the views of the staff of the New York State Gaming Commission on how commercial gambling in New York State should be appropriately regulated under the Upstate New York Gaming Economic Development Act of 2013 [UNYGEDA].

The Commission staff believes that casinos should be regulated based on the intent of the State Legislature in passing the UNYGEDA. The Legislature recognized that the State has not fully capitalized on the economic development potential of legalized commercial casino gaming, finding that four upstate casinos could boost economic development, create thousands of well-paying jobs and provide added revenue to the State. The Legislature commanded that commercial casino gaming be tightly and strictly regulated to guarantee public confidence and trust in the credibility and integrity of all commercial casino gaming in the state and to prevent organized crime from any involvement in the casino industry. The Legislature also identified the need for strict regulatory controls of all persons, locations, practices and associations related to the operation of gaming licensees, gaming vendors and related service providers.

The legislative goals and expectations are not contradictory. Tight, effective regulatory control is a foundation of the commercial gaming industry. Patrons require confidence that the games are fair; host municipalities need assurances that Gaming Facility operators and owners are trustworthy; and the State must be confident that all monies are properly accounted for and scrutinized. Tight and strict regulation need not be overly burdensome. Regulations should not be promulgated simply for the sake of promulgating regulations. Each regulation needs to be appropriately and prudently examined to ensure it serves an important and necessary function, and then regularly reexamined to determine whether its proper purpose is being served.

- I. **Regulatory approach.** The elements of effective commercial casino regulation include various operational controls and licensing of those companies and individuals who participate in the gaming industry. It is imperative that criminal elements are kept out of the ownership, operation and service of Gaming Facilities, and that otherwise unqualified companies and individuals do not receive a casino license.

Additionally, from an operational perspective, the goal of commercial casino regulation is to ensure that all monies are accounted for and that the games are operated fairly.

- A. Operational Control. Commission staff anticipates that the Commission will monitor and regulate commercial casino gaming operations. A large element of this regulation will be to ensure that each licensee maintains effective operational control over the Gaming Facility. This will be accomplished through the promulgation of regulations to address insular aspects of gaming operation. Among the regulations anticipated to be recommended by the Commission staff are minimum accounting and other internal controls and uniform rules for games and surveillance standards.
- B. Problem Gambling. The Commission, the N.Y. Office of Alcoholism and Substance Abuse Services and the New York Council on Problem Gambling have formed the Responsible Play Partnership to address problem gambling issues in New York State. The Responsible Play Partnership considers a variety of issues surrounding problem gambling, including venue compliance with rules and regulations, outreach measures, self-exclusion policies and considering the best ways to advance New York's long-term commitment to prevent and treat compulsive gambling. The Commission staff anticipates that the recommendations and practices of the Responsible Play Partnership will form the basis for regulation of the social aspects of commercial gaming. Additionally, the Commission is engaged in fact finding to examine the best practices in the fields of addiction recovery and commercial gaming.

Commission staff believes that patrons must have access to information regarding signs of problem gambling and problem



gambling treatment. The Commission staff will recommend rules requiring this information,

- C. Regulatory Structure. It should be expected that the Commission will undertake a variety of activities including an ongoing review of daily operations, auditing revenue and licensing.
  - 1. Onsite. It should be expected that the Commission will provide for onsite regulatory personnel sufficient to illustrate a frequent presence on the gaming floor, accessible to the public and visible to facility employees. The Commission has a similar attendance at class III tribal gaming facilities and has endeavored to reduce both the operational intrusion and cost of such presence.
  - 2. Offsite. It should be expected that the majority of the Commission's operational activities relative to commercial casino gaming will be conducted offsite. These functions are likely to include licensing, financial analysis and auditing.
- D. Cost and Budgeting. Commission staff anticipates that Gaming Facility licensees will, collectively, bear the cost of industry regulation and, individually, bear the cost for background investigations and fingerprint history reviews for all employees and casino service providers doing business with or at their facility. A licensee will, however, be permitted to recoup such costs from their employees and vendors.

Relevant statutes regarding regulatory investigatory fees and additional regulatory costs may be found at N.Y. Racing, Pari-Mutuel Wagering and Breeding Law §§ 1349 and 1350.

**III. Identified regulatory concerns.** Based on the concerns of potential RFA respondents, the Commission staff offers the following non-binding regulatory guidance on topics of applicant interest.

- A. Term of License Renewal. N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1311 establishes the duration of an initial license to be ten (10) years. That same statute provides that the term of renewal is to be determined by the Commission. The Commission staff recognizes

that license terms vary widely from annual reviews in Indiana and Michigan to indeterminate length in Nevada and New Jersey.

The Commission staff is cognizant of the resources dedicated to any licensing process, both for the license Applicant and the licensing body. Highly detailed financial and personal information must be gathered, checked, assembled and submitted in a prescribed format. Interviews and background investigations of individuals must be performed.

Establishment of a lengthy license or renewal license term does not restrict a regulator's discretion. Once licensed, a Gaming Facility performs under close scrutiny. Regulators monitor financial results, auditing practices, surveillance and security activities and personnel changes. A licensee generally has an ongoing obligation to maintain its suitability. If cause emerges to revoke a license, a regulatory body does not have to wait until the end of a license term; it can act appropriately against the licensee at any time.

The Commission staff anticipates a license renewal period to be proposed for no less than ten (10) years.

- B. Standardization of Applications. As part of the package of materials adopted in the Request For Applications process, the Commission selected the International Association of Gaming Regulators Multi-Jurisdictional Personal History Disclosure Form for use by principals and key management of potential bidders. The Commission has previous experience utilizing such form in Indian and video lottery gaming.

The Commission operates three (3) divisions wherein gaming vendors may seek to operate. Each of these divisions presently utilizes differing application forms. Commission staff anticipates that the Commission will endeavor to establish a licensing process that reduces duplicative licensing applications. To this end, Commission staff anticipates that the Commission pledges to work with the various Indian nations and tribes, the video lottery gaming facilities and the Gaming Facilities in an effort to simplify the efforts and reduce the costs of doing business in New York State.

- C. Compatibility of occupational and service industry licenses. In a similar vein, commercial casino gaming, Indian gaming and video lottery gaming all employ similar categories of employees and use many of the same service industry vendors. At present, a service industry vendor undertaking business with each gaming component within the Commission would require separate filings. Commission staff anticipates that the Commission will seek to reduce these duplicative filings and establish a single fungible vendor license wherein approval under one gaming component would afford an ability to undertake business with any component. This would, however, require the consent of the various Indian nations and tribes with Gaming Facilities.

Likewise, commercial casino gaming, Indian gaming and video lottery gaming all employ similar categories of employees. An individual moving from a racetrack to an Indian gaming facility to a video lottery gaming facility would require separate application filings for employment that is largely identical among industries. Commission staff anticipates that the Commission will seek to reduce these duplicative filings and establish a single fungible occupational license wherein approval under one industry would allow employment in another upon employer notification. This too, however, would require the consent of the various Indian nations and tribes with Gaming Facilities.

- D. Institutional Investor Waiver. Suitability-based licensing of those who own gaming companies is central to modern gaming regulation. As gaming companies have grown in size and scope, and increasingly are public companies, the character of their ownership has changed. Today, gaming companies may be owned in substantial part by institutional investors such as investment companies, pension plans, hedge funds, and other large financial institutions. Many of these owners are passive investors; not managing the business except in unusual circumstances such as business reorganization.

Accordingly, many states allow the waiver of licensing and other regulatory requirements for institutional investors who own a non-controlling interest in the gaming companies. The threshold for this waiver, however, varies widely. In Missouri, the Executive Director of

the Missouri Gaming Commission may grant an exemption for institutional investors owning up to ten (10) percent of a licensee; the full membership of the Missouri Gaming Commission has the power to grant such exemptions for ownership of up to twenty (20) percent. In New Jersey and Nevada, an exemption can apply to institutional investors holding up to a twenty five (25) percent interest in a licensee.

A higher threshold increases the number of potential purchasers for shares in gaming licensees and therefore allows significantly greater financing flexibility. By facilitating the participation of institutional investors in the commercial gaming industry, regulators can improve licensees' access to the capital markets. Commission staff anticipates that the Commission will retain discretion to deny waivers when specific circumstances warrant closer regulatory scrutiny.

The Commission staff anticipates a rulemaking wherein automatic waivers of licensing and registration requirements for certain institutional investors may occur. The automatic threshold, perhaps up to a fifteen (15) percent interest in licensees, and a permissive threshold for those holding up to a twenty-five (25) percent interest in licensees, may be considered.

E. Pre-Approval for Debt Transactions.

Several states pre-approve debt transactions of casino licensees through advance review and approval of proposed borrowing. Such a pre-approval allows a licensee to conclude a debt transaction at any future point certain. The advantage to the licensee is substantial, allowing it to wait for the best credit opportunity in the capital markets. When the markets turn favorable to borrowers, the licensee with a shelf approval can strike quickly. Without pre-approval, a licensee could miss the best market opportunities while waiting for regulatory action. Pre-approvals give casino licensees the flexibility that most businesses enjoy: to respond to changing market conditions. As a safeguard, pre-approvals can include conditions on the structure of a transaction prudent to protect a licensee's solvency. Thus, such approvals can be granted without compromising regulatory responsibility.

The Commission staff commits to offering a rulemaking that would provide for pre-approval of casino licensee's debt transactions.

The Commission welcomes the opportunity to share its views on the proper scope of regulation with prospective casino licensees, host communities, and the general public. Any and all comments on this white paper are welcome and will be considered seriously and thoughtfully by the Commission.

**# # #**

**ADDITIONAL QUESTIONS AND ANSWERS – JUNE 16, 2014**



**REQUEST FOR APPLICATIONS  
TO DEVELOP AND OPERATE  
A GAMING FACILITY IN NEW YORK STATE**

**June 16, 2014**

**ADDITIONAL QUESTIONS AND ANSWERS**

**Q.413.** RFA §III.F specifies that “An Addendum Acknowledgement Form, a form of which is incorporated into this RFA only for informational purposes as Attachment 2, will be provided with each addendum.” The RFA Addendum published on May 12, 2014, however, did not include an Addendum Acknowledgement Form.

a. Will the Commission be publishing an Addendum Acknowledgement Form for the May 12, 2014 Addendum, or for any subsequent Addendums?

b. If not, should Applicants utilize RFA Attachment 2 as the Addendum Acknowledgement Form in their RFA Response for all Addendums?

**A.413. The Acknowledgement Forms will be posted in stages.**

**Q.414.** Question and Answer 176 provided that “An Applicant who proposes to develop a gaming facility to be located in the Region 1 Impacted Counties or Region 5 Impacted Counties is permitted to make an Application in the alternative whereby two scenarios would be presented as to the scope, scale and Minimum Capital Investment of the proposed gaming facility dependent on whether a License is awarded for a gaming facility located in the corresponding Region 1 Dominant Counties or Region 5 Dominant Counties.”

Question and Answer 409, however, provided that “Every Application must include a proposal for a Gaming Facility, either as its sole proposal or as one of its binding alternative proposals, that satisfies the Minimum Capital Investment requirement if no License is awarded for another Gaming Facility in the same Region. In addition, if an Application includes binding alternative proposals, the Application must include a proposal that commits to develop a Gaming Facility in accordance with the N.Y. Racing, Pari-Mutuel Wagering and Breeding Law and the RFA that

satisfies the Minimum Capital Investment requirement if a License for another Gaming Facility is awarded in the same Region.”).

Question and Answer 176 suggests that only two proposals are permitted by an Applicant who proposes to develop a Gaming Facility to be located in a Region 1 Impacted County or Region 5 Impacted County: one proposal addressing no License awarded for a Gaming Facility located in the corresponding Region 1 Dominant County or Region 5 Dominant County, and a second proposal addressing the award of a License for a Gaming Facility located in the corresponding Region 1 Dominant County or Region 5 Dominant County.

Question and Answer 409, however, suggests that an Applicant is permitted to have one proposal addressing the scenario where no License is awarded for a Gaming Facility in the same Region, and also multiple other binding alternative proposals (rather than only one binding alternative proposal) addressing the award of a License for another Gaming Facility in the same Region.

If an Applicant has one proposal for a Gaming Facility that satisfies the Minimum Capital Investment requirement if no License is awarded for another Gaming Facility in the same Region:

- a. May the Applicant propose more than one binding alternative proposal, each of which satisfies the Minimum Capital Investment requirement if a License is awarded for another Gaming Facility in the same Region; or
- b. May the Applicant only propose one binding alternative proposal, which satisfies the Minimum Capital Investment requirement if a License is awarded for another Gaming Facility in the same Region.

If an Applicant that proposes to develop a Gaming Facility to be located in a Region 1 Impacted County or Region 5 Impacted County has one proposal for a Gaming Facility that satisfies the Minimum Capital Investment requirement if no License is awarded for a Gaming Facility located in the corresponding Region 1 Dominant County or Region 5 Dominant County:

- c. May the Applicant propose more than one binding alternative proposal, each of which satisfies the Minimum Capital Investment requirement if a License is awarded for a Gaming Facility located in the corresponding Region 1 Dominant County or Region 5 Dominant County; or
- d. May the Applicant only propose one binding alternative proposal, which satisfies the Minimum Capital Investment requirement if a License is awarded for a Gaming Facility located in the corresponding Region 1 Dominant County or Region 5 Dominant County.



**A.414.**

**a. The answer to Question 409 requires that every Application must include a binding proposal. Given that the issuance of more than one License in a Region is specifically contemplated by the Act, an Application may not condition its proposal on being the only licensed Gaming Facility in the Region.**

**b. If an Applicant presents only one proposal, the Applicant will be required to develop such proposal even if a license is issued for another Gaming Facility in the same Region.**

**c. If an Applicant presents binding alternative proposals, the Applicant must include one proposal for if a license is not issued for another Gaming Facility in the same Region and other proposals for if a license is issued for another Gaming Facility in the same Region.**

**d. All binding alternative proposals must, collectively, address the universe of possible facility siting outcomes permitted under the Act. There should be no ambiguity in an Application about which binding alternative proposals apply in each of the possible facility siting outcomes.**

**For example, an Applicant desiring to bid in the alternative with two binding alternative proposals may present in its Application one proposal that applies if a License is issued for another Gaming Facility in the same Region and one proposal that applies if a License is not issued for another Gaming Facility in the same Region.**

**An Applicant may also include a more complicated set of conditions for its binding alternative proposals. However, for every possible facility siting outcome, the Application must include only one proposal for consideration.**

**For instance, in the answer to Question 176, an Application for a Project Site in the Region 1 Impacted Counties could offer three binding alternative proposals:**

- a. one proposal that applies if a license is not issued for another Gaming Facility located in Region 1;**
- b. one proposal that applies if a license is issued for another Gaming Facility located in the Region 1 Dominant Counties; and**

- c. **one proposal that applies if a license is issued for another Gaming Facility that also is located in the Region 1 Impacted Counties.**

**To be consistent with the answer to Question 409. b. 3., an Application presenting binding alternative proposals must unambiguously describe under what circumstances each of the proposals presented would apply.**

**Q.415.** Will the Board and/or the Commission be deliberating on its ultimate recommendations publicly, and will any part of the deliberations be in executive session or otherwise non-public?

**A.415. The Board and Commission will follow the requirements of the Open Meetings Law, Article 7 of the N.Y. Public Officers Law.**

**Q.416.** Does the Board interpret N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1306 to allow it to select replacements to the four entities it is empowered to select in the event any selected Applicant is determined unsuitable by the Commission, withdraws, or is otherwise unable to fulfill conditions precedent to or subsequent to its license award?

**A.416. Yes. The Act demonstrates a legislative intent that there will be up to “four destination resort casinos in upstate New York.” N.Y. Racing, Pari-Mutuel Wagering and Breeding Law §§ 1300.4, 1300.5, 1300.6 and 1300.14. If an Applicant selected by the Board is determined unsuitable by the Commission, withdraws or is otherwise unable to fulfill conditions precedent to or subsequent to its license award, the Board may select a replacement for consideration by the Commission.**

**Q.417.** As noted in Answer to Question 409. c., “The Board anticipates that Applicants’ financing plans, arrangements and agreements will be subject to conditions that are usual and customary for significant projects similar in size and scope to the proposed gaming facilities.”

a. If, consistent with a lender or investor’s usual and customary practice, it requires more certainty with respect to intra-regional competition than is available at the time the upfront license payment is due, may an Applicant condition its payment of the upfront license fee and/or acceptance of a license award on the absence of intra-regional competition from one or more counties within its Region?

b. If the Applicant includes customary financing conditions unrelated to competition in its Application, may the Applicant also condition the payment of the upfront license fee on the satisfaction of those customary financing conditions?

**A.417.**

**a. The answer to Question 409. c. states the extent to which an Application will be non-conforming due to conditions relating to intra-regional competition. A non-conforming Application will be rejected by the Board and will not be considered for a license award.**

**b. The answer to Question 409. c. also states that the Board expects that the financing conditions for a proposed Gaming Facility will be a material consideration in evaluating an Application. Conditioning payment of the upfront license fee on the satisfaction of financing conditions will not receive favorable consideration by the Board.**

**Q.418.** May an Applicant selected by the Board withdraw at any time prior to the award of the license by the Commission? Are there any restrictions on such a withdrawal?

**A.418.** An Applicant may withdraw at any time prior to the award of a Commission license. Once a license has been awarded, however, any licensee failing to begin gaming operations within twenty-four (24) months following license award shall be subject to suspension or revocation of the license and may, after being found by the Commission after notice and opportunity for a hearing, to have acted in bad faith in its Application, be assessed a fine of up to \$50 million. N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1315.3.

**Q.419.** May an Applicant selected by the Board withdraw at any time following the award of the license but prior to the time the upfront license fee is due? Are there any restrictions on such a withdrawal?

**A.419.** See answer to Question 418.

**Q.420.** May an Applicant awarded a license by the Commission with a financing contingency be allowed to defer payment of the upfront license fee if third-party financing is not completed?

**A.420.** See answer to Questions 409. c. and 417. b.

**Q.421.** May an Applicant, instead of two binding alternative proposals, submit one binding and conforming proposal representing its best offer for a viable and sustainable casino resort which includes financing conditions related to the award of a second license in a portion of the same region?

**A.421.** See answer to Question 409. c.

**Q.422.** In connection with Q&A 344 (copied below for reference) could the Siting Board and Gaming Commission please release their list of consultants so applicants can be sure our conflicts check is complete?

**A.422.** See answer to Question 98. a. **Consultants retained by the Gaming Facility Location Board, through the Commission, are:**

- a. **Taft, Stettinius & Hollister LLP**
- b. **Christiansen Capital Advisors, LLC**
- c. **Houlihan Lokey Capital, Inc.**
- d. **Macomber International, Inc.**

**Q.423.** Can you please advise whether applicants are required to submit 20 hard copies and 10 electronic copies (and 2 redacted hard copies and 2 redacted electronic copies) of the Multi-Jurisdictional Personal History Disclosure Form and New York Supplements that are being submitted with the RFA response? Is there some lesser requirement or alternative submission for this personal background information.

**A.423.** **Applicants, including organizational entities and appropriate and necessary individuals who are a party to the organizational entity, are required to submit twenty (20) hard copies and ten (10) electronic copies and redacted hard and electronic copies of the Multi-Jurisdictional Personal History Disclosure Form, New York Supplemental Form and Gaming Facility License Application Form with the Application as set forth in RFA Article IV § B.**

**Q.424.** I wanted to confirm that individuals submitted license Applications in connection with the Request for Applications must submit only one original license form with the NY supplement (and not 20 as is required for the Applicant).

**A.424.** See answer to Question 423.

**Q.425.** Section 1330 of the Upstate NY gaming economic development act requires labor organizations "seeking to represent employees who are employed in a gaming facility by a gaming facility licensee" to register with the commission.

If a construction union anticipates that some of its members will help build the facility, does that union need to register even though the individual union members would be employed by a contractor hired by the gaming facility/developer as opposed to being employed directly by the facility/developer?

**A.425. No. Under N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1330, only labor organizations representing “employees who are employed in a gaming facility by a gaming facility licensee shall register with the commission.”**

**Q.426.** We have a question regarding the submission of Personal History Disclosure Forms. If an Applicant files applications for more than one proposed site, are the principals of that Applicant required to submit Personal History Disclosure Forms and New York Supplements with both applications or will one set of forms suffice?

**A.426. No. One set of forms will suffice. Please clearly note in the Application that the form applies to an additional Application.**

**Q.427.** We have a question regarding the submission of internal controls and security systems as is required in Exhibit VIII.D.1.a. As the Commission is undoubtedly aware, internal controls, surveillance systems and security systems are among the most sensitive documents that a casino operator maintains. If these documents were to be made available to the public, the security of the casino cash handling and other highly sensitive operations would be put at risk. Can the Commission assure the Applicants prior to the submission of the response to the RFA that Exhibit VIII.D.1.a will be exempt from public disclosure under the Freedom of Information Law?

**A.427. As a general matter, the N.Y. Freedom of Information Law is based upon a presumption of access. Stated differently, all records of an agency are available, except to the extent that records or portions thereof fall within one or more grounds for denial appearing in N.Y. Public Officers Law § 87(2)(a) through (2)(l).**

**N.Y. Public Officers Law § 89(5) permits a commercial enterprise required to submit records to a state agency to identify those portions of records considered to be deniable under § 87(2)(d) at the time of their submission. Section 87(2)(d) authorizes an agency to withhold records submitted by a commercial enterprise to the extent that the records**

**“are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise...”**

**If the agency accepts the claim made by that entity, it essentially would agree to keep the records confidential. If a request is later made under the Freedom of Information Law, or if a state agency, on its own initiative, seeks to disclose records that had been accorded protection, it would be**

**required to inform the entity claiming the exemption from disclosure and offer the entity an opportunity to explain why disclosure would "cause substantial injury" to its competitive position. If a judicial proceeding is commenced following the exhaustion of administrative remedies by either a person seeking records claimed to be exempt or by the entity claiming the exemption, it would have to be proven that the records would cause substantial injury to the entity's competitive position if disclosed.**

**The N.Y. Committee on Open Government has opined that the nature of the record, the area of commerce in which a commercial entity is involved and the presence of the conditions described above are key factors used to determine the extent to which disclosure would "cause substantial injury to the competitive position" of a commercial enterprise. Therefore, the proper assertion of §87(2)(d) would be dependent upon the facts and effect of disclosure upon the competitive position of the entity to which the records relate.**

**Given this, it is incumbent upon an Applicant to review the N.Y. Freedom of Information Law and the manner it has been applied to ensure a requested exemption is likely to be honored and upheld.**

**Q.428.** Although the RFA calls for the use of USB flash drives or sets of flash drives, we would inquire whether external hard drives with USB ports would be acceptable? Our concern is that the amount of material contemplated may be of larger size than normal USB flash drives may not be sufficient for the renderings.

**A.428. We will accept an external solid state hard drive as an alternative to a USB flash drive.**

**# # #**

**DOCUMENT PRODUCTION CLARIFICATION – JUNE 19, 2014**



## CLARIFICATION

### **DOCUMENT SUBMISSION**

**(Revised)**

June 19, 2014

The Commission will allow two (2) additional weeks for submission of the Multi Jurisdictional Personal History Disclosure Form (MJP HDF), New York Supplement to the Multi Jurisdictional Personal History Disclosure Form (NYSMJP HDF) and associated fingerprint cards, if necessary. The submission deadline for these forms is now July 14, 2014 at 4:00 p.m. EDT.

Delivery of the MJP HDFs, NYSMJP HDFs and associated fingerprint cards shall be made to:

Gail P. Thorpe, Supervisor of Contract Administration  
New York State Gaming Commission  
One Broadway Center  
Schenectady, New York 12301-7500

Applicants remain required to submit the response to the Request For Application (RFA), Gaming Facility Location Application Form (GFLAF) and all attendant exhibits and supporting documents by the existing submission deadline of **June 30, 2014 at 4:00 p.m. EDT**, as specified in the RFA.

To reconcile the inconsistency between the answer to Question 423 and RFA Article IV §§ B.9 and B.10 regarding the number of copies of the MJP HDF, NYSMJP HDF and GFLAF required to be filed:

The Commission requires twenty (20) copies of each document.

###



**GUIDANCE DOCUMENT – SEQRA – JUNE 20, 2014**



## SEQR ENVIRONMENTAL IMPACT STATEMENTS

June 20, 2014

Applicants for Gaming Facility licenses are encouraged to commence promptly the State Environmental Quality Review (SEQR) process, if they have not yet done so. The Commission is an involved agency in the SEQR process and, as such, provides the following guidance with respect to the environmental impact statement (“EIS”) each Applicant is expected to complete in connection with its proposed Gaming Facility project. This guidance supplements, but does not replace, any guidance of a lead or other involved agency in the SEQR process. Each Applicant is encouraged to conduct a full review of the SEQR statute and regulations, Article 8 (State Environmental Quality Review Act) of the Environmental Conservation Law and 6 NYCRR Part 617, to determine the Applicant’s obligations thereunder.

**An Applicant’s EIS should address the local and regional impacts of the proposed Gaming Facility on:**

1. Traffic and roadway infrastructure;
2. Cultural institutions;
3. Water demand, supply and infrastructure capacity;
4. Waste water production, discharge, and infrastructure capacity;
5. Storm water discharge and management;
6. Electricity demand and infrastructure capacity;

7. Protected habitats and species; and
8. Light pollution.

**An Applicant's EIS should also address the extent to which the Gaming Facility will implement, pursuant to N.Y. Racing, Pari-Mutuel Wagering and Breeding Law Section § 1320.3(c), sustainable development principles, including:**

1. New and renovation construction certified under the appropriate certification category in the Leadership in Energy and Environmental Design Green Building Rating System created by the United States Green Building Council;
2. Efforts to mitigate traffic impacts;
3. Efforts to conserve water and manage storm water;
4. Usage of Energy Star labeled electrical and HVAC equipment and appliances where available;
5. Procuring or generating on-site ten (10) percent of its annual electricity consumption from renewable sources; and
6. Developing an ongoing plan to submeter and monitor all major sources of energy consumption and undertake regular efforts to maintain and improve energy efficiency of buildings in their systems.

###

**ADDITIONAL QUESTIONS AND ANSWERS – JUNE 24, 2014**



**REQUEST FOR APPLICATIONS  
TO DEVELOP AND OPERATE  
A GAMING FACILITY IN NEW YORK STATE**

**June 24, 2014**

**ADDITIONAL QUESTIONS AND ANSWERS**

**Q. 429.** Based upon the Gaming Facility Location Board’s answer to Question 336 contained in the Request for Applications to Develop and Operate a Gaming Facility in New York State – Applicant Conference – Questions and Answers, dated May 2, 2014, Applicant has been working closely with several agencies (such as NYSTA and NYSDOT) regarding technical elements necessary to respond to the speed to market elements of the Application, including seeking technical guidance, review of required permits and approvals relating to such technical elements and a mutual undertaking to work towards completion of the road works in question. On June 16, 2014, the Joint Commission on Public Ethics, the Board and the Commission issued a document entitled “Joint Guidance on Casino Lobbying”. Joint Guidance Item 3 appears to permit less contact with the State Agencies than Answer 336.

In light of this contradiction, is it permissible to continue to discuss technical elements of Applicant’s bid with agencies involved therewith, including obtaining written confirmation that Applicant’s specific roadway designs will conform to the requirements of such agencies and the related permits and approvals, design approvals and agreement on time frames for completion of such projects?

**A. 429.** The Gaming Facility Location Board does not view the answer to Question 336 and Item 3 of the Joint Guidance on Lobbying issued June 16, 2014 to be inconsistent.

**It is permissible for an Applicant to discuss technical elements of its bid with the relevant executive agencies. For example, an Applicant may**

**gather information about an agency's process or an agency's activity in subjects such as transportation studies or environmental rulemaking. The following activities specified in the question are allowable: "seeking technical guidance," "review of required permits and approvals relating to such technical elements" and "obtaining written confirmation that Applicant's specific roadway designs will conform to the requirements of such agencies and the related permits and approvals, design approvals and agreement on time frames for completion of such projects." It is not clear, however, what is meant by seeking "a mutual undertaking to work towards completion of the road works in question."**

**Please note that it is impermissible for an Applicant to make a specific request of an agency, or attempt to influence an agency, to garner such agency's support for the Applicant's proposal generally or to solicit support for an aspect of such proposal to the detriment of another Applicant's proposal.**

**Q. 430.** Number of Copies. RFA Article IV, Section B appears to be unambiguous in requiring “two (2) hard copies of each Background Information Form” and “two (2) electronic copies of each Background Information Form in PDF format submitted via two (2) separate USB flash drives”. The June 16, 2014 Q&A appears to change dramatically this requirement, by increasing the number of copies to twenty (20) hard copies and ten (10) electronic copies. The apparent inconsistencies between the plain text of the RFA and the June 16, 2014 Q&A require reconciliation to avoid unnecessarily, and significantly, increasing the reproduction burden on all entities and parties with limited time before the June 30, 2014 submission deadline, as well as to avoid unnecessarily creating a tremendous amount of paper waste.

Accordingly, we respectfully request clarification of the apparent inconsistency.

**A. 430.** Please see **Clarification on Document Submission, dated June 18, 2014. This document may be found at:**

**[http://gaming.ny.gov/pdf/Document%20Production%20Clarification%20\(revised%20version\),%20June%202019,%202014.pdf](http://gaming.ny.gov/pdf/Document%20Production%20Clarification%20(revised%20version),%20June%202019,%202014.pdf)**

**Q. 431.** Redacting Background Investigation Forms. The June 16, 2014 responses to Questions 423 and 424 also appear to raise for the first time the issue of whether it is necessary to provide redacted copies of Background Investigation Forms. By

their nature, Background Investigation Forms contain primarily confidential and proprietary information in the case of entities and confidential personal information including significant amounts of personally identifiable information in the case of individuals, which must be handled in accordance with all applicable laws.

Based on our understanding of practices in other jurisdictions, we believe that the practice of requiring redaction of information in Background Information Forms in anticipation of wider circulation may be novel. For these and other reasons we seek to confirm:

a. That entities and individuals are expected to submit redacted copies of Background Information Forms; and

b. That there is anticipation of potentially releasing portions of completed Personal History Disclosure Forms to a circulation pool beyond what is otherwise necessary to complete such background investigations in a confidential and restricted manner.

**A. 431. The Board provided a clear intention to treat Applications as public records and will make them available to the public, with applicable exemptions pursuant to the FOIL. See RFA Article IV § F. PUBLIC DISCLOSURE OF APPLICATION MATERIALS. To that end, the Board requested clean and intended redacted materials. This would be consistent with the approach taken by the N.Y. Ad Hoc Committee on the Future of Racing in 2005 when engaged in the intended procurement of the State racing franchise.**

**Q. 432.** The answer to Question 423 uses the phrase “redacted hard and electronic copies of the Background Information Forms”. Does the Commission want traditional “redacted” versions submitted on the front end or a cover letter with references to what we believed to be exempt from disclosure?

**A. 432. The Board respectfully refers the questioner to RFA Article IV §§ B. 5. and F. These sections clearly indicate that both the clean and intended redacted versions must be submitted.**

**Q. 433.** The answer to Question 423 states that “20 hard copies and 10 electronic copies of and redacted hard and electronic copies of the Background Information Forms”. RFA Article IV § B. calls for 2 hard and 2 electronic copies of the Background Information Forms.

Please confirm that the RFA as written is correct and that only two copies of each medium are required.

**A. 433. See Answer to Question 430.**

**###**



**GUIDANCE DOCUMENT – FINGERPRINTING – JUNE 26, 2014**



**REQUEST FOR APPLICATIONS  
TO DEVELOP AND OPERATE  
A GAMING FACILITY IN NEW YORK STATE**

**FINGERPRINT GUIDANCE FOR APPLICANTS**

**June 26, 2014**

Individuals whom the Request For Applications identifies as being required to submit a Multi Jurisdictional Personal History Disclosure Form (MJP HDF) and New York Supplemental Form (NYS) are also required to submit fingerprints. Criminal fingerprint histories will be checked against records of both the N.Y.S. Division of Criminal Justice Services and the Federal Bureau of Investigation (FBI).

**Fingerprint submission.** Fingerprints may be submitted in two manners:

1. Electronic submission through a MorphoTrust USA (formerly known as L-1) fingerprint contractor.

Applicants who will be fingerprinted within the State of New York should schedule an appointment with MorphoTrust USA online at [www.identogo.com](http://www.identogo.com) or by calling (877) 472-6915.

An Applicant must complete the “NYS Request for Live Scan Services - Information Form” and bring it to the fingerprint contractor location with appropriate Accepted Forms of Identification.

This form, which contains the Accepted Forms of Identification, is attached.

2. Physical submission of fingerprint cards.

Applicants who are fingerprinted outside of the State of New York must complete and submit two (2) FBI fingerprint cards with their relevant MJP HDF and NYS. Applicants must use the standard FBI fingerprint cards, which are available from the Commission, and complete both a New York Gaming Commission Card Scan Services - Information Form and New York Gaming Commission Proof of Identification Form and Chart.

The Card Scan Services - Information Form is attached.

The Proof of Identification Form and Chart is attached and may also be found at:

<http://www.gaming.ny.gov/pdf/REVISED%20GAMING%20COMMISSION%20PROOF%20OF%20IDENTIFICATION%20CHECKLIST%201%202014.pdf>

For purposes of physical submission of fingerprint cards, the Applicant shall include copy or copies of the identification used with the Proof of Identification Form and Chart.

Applicants must ensure the appropriate Originating Agency Identification (ORI) number is reflected on each FBI fingerprint submitted. If an Applicant has an FBI fingerprint card with an incorrect ORI number, they may whiteout the incorrect ORI number and write in the appropriate number.

**The appropriate ORI number is: NY922470Z**

If an Applicant is located outside the United States, the Applicant should contact the nearest United States Embassy or consulate to schedule fingerprinting.

The completed fingerprint cards must be mailed, together with a Card Scan Services - Information Form and a Proof of Identification Form and Chart, to:

New York State Gaming Commission  
Attn: Gail P. Thorpe, Supervisor of Contract Administration  
Contracts Office  
One Broadway Center  
Schenectady, NY 12301-7500

**ATTACHMENTS FOLLOW**

## N.Y.S. REQUEST FOR LIVE SCAN SERVICES – INFORMATION FORM

**Instructions:** Complete this form and visit [www.L1enrollment.com](http://www.L1enrollment.com) or call toll free 877-472-6915 to schedule an appointment for fingerprinting. Appointments are required; walk-ins are not accepted. Bring this form and required forms of identification, listed below, to your fingerprinting appointment.

ORI: **NY922470Z** Contributor Agency: **New York State Gaming Commission**

License Type: Commercial Casino

Social Security Number:

Check one:  New Submission  
 Resubmission (if resubmission, list TCN Number here: \_\_\_\_\_ )

Name of Applicant: \_\_\_\_\_  
Last First Middle Initial

Alias / Maiden Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City, State, & Zip: \_\_\_\_\_  
City State Zip Code

Date of Birth: \_\_\_\_\_ Sex:  Male  Female

Age: \_\_\_\_\_ Ethnicity:  Hispanic  Non-Hispanic

Race: \_\_\_\_\_  Unknown

Height: \_\_\_\_\_ Skin Tone: \_\_\_\_\_

Weight: \_\_\_\_\_ Eye Color: \_\_\_\_\_ Hair Color: \_\_\_\_\_

State / Country of Birth: \_\_\_\_\_ Country of Citizenship: \_\_\_\_\_

**Accepted Forms of Identification:** The Applicant *MUST* present two (2) forms of identification, at least one of which must have a photo (see Column A):

<p><u>Column A - Valid Photo Identification:</u></p> <ul style="list-style-type: none"> <li>- U.S. Passport (unexpired )</li> <li>- Permanent Resident Card</li> <li>- Alien Registration Receipt Card</li> <li>- Unexpired Foreign Passport</li> <li>- Driver's License or Photo ID Card (issued by U.S. State or Territory)</li> <li>- Unexpired Employment Authorization</li> <li>- Photo ID Card issued by federal, state, or local govt.</li> </ul>	<p><u>Column B - Valid Supplementary Identification:</u></p> <ul style="list-style-type: none"> <li>- U.S. Military card or draft record</li> <li>- Coast Guard Merchant Mariner Card</li> <li>- U.S. Social Security Card</li> <li>- Original or certified copy of a Birth Certificate issued by authorized U.S. agency with official seal</li> <li>- Certification of Birth Abroad [issued by U.S. Dept. of State with photo (Form I-766, I-688, I-688A or B)]</li> <li>- U.S. Citizen ID Card (Form I-7)</li> </ul>
--	--

**Payment:** If paying by credit card (MasterCard/Visa) payment (\$105.00) must be made when you schedule your fingerprinting appointment, either by telephone or on the web. If paying by personal or business check, certified check, bank check or money order you pay (\$105.00) when you are fingerprinted. The check is payable to **L-1 Solutions**.

# NEW YORK GAMING COMMISSION CARD SCAN SERVICES - INFORMATION FORM

**Instructions:** Complete this form and submit it with two Federal Bureau of Investigation (blue) fingerprint cards and Proof of Identification from the list of acceptable forms of identification.

ORI: NY922470Z

Contributor Agency: New York State Gaming Commission

License Type:

Commercial Casino

Social Security Number:

Check one:  New Submission

Resubmission (if resubmission, list TCN Number here: \_\_\_\_\_ )

Name of Applicant:

\_\_\_\_\_  
Last First Middle Initial

Alias /

Maiden Name:

\_\_\_\_\_

Street Address:

\_\_\_\_\_

City, State, & Zip:

\_\_\_\_\_  
City State Zip Code

Date of Birth: \_\_\_\_\_

Sex:  Male  Female

Age: \_\_\_\_\_

Ethnicity:  Hispanic  Non-Hispanic

Race: \_\_\_\_\_

Unknown

Height: \_\_\_\_\_

Skin Tone: \_\_\_\_\_

Weight: \_\_\_\_\_

Eye Color: \_\_\_\_\_ Hair Color: \_\_\_\_\_

State /  
Country of Birth: \_\_\_\_\_

Country of  
Citizenship: \_\_\_\_\_

**Accepted Forms of Identification:** The Applicant *MUST* present two (2) forms of identification, at least one of which must have a photo (see Column A):

Column A - Valid Photo Identification:

- U.S. Passport (unexpired )
- Permanent Resident Card
- Alien Registration Receipt Card
- Unexpired Foreign Passport
- Driver's License or Photo ID Card (issued by U.S. State or Territory)
- Unexpired Employment Authorization
- Photo ID Card issued by federal, state, or local govt.

Column B - Valid Supplementary Identification:

- U.S. Military card or draft record
- Coast Guard Merchant Mariner Card
- U.S. Social Security Card
- Original or certified copy of a Birth Certificate issued by authorized U.S. agency with official seal
- Certification of Birth Abroad [issued by U.S. Dept. of State with photo (Form I-766, I-688, I-688A or B)]
- U.S. Citizen ID Card (Form I-7)

**You must include a copy or copies of the identification used with the fingerprint cards**

**Payment:** Payment of \$105.00 for Card Scan submission must be included with your fingerprint card and made payable directly to the L-1 Solutions. You may pay by personal or business check, certified check, bank or money order.

# NEW YORK STATE GAMING COMMISSION

## PROOF OF IDENTIFICATION CHECKLIST

\*Appropriate Boxes MUST be checked\*

<u>PRIMARY IDENTIFICATION</u> COLUMN A	<u>SECONDARY IDENTIFICATION</u> COLUMN B	<u>SUPPORT IDENTIFICATION</u> COLUMN C
<input type="checkbox"/> Original or certified copy of a birth certificate issued by the appropriate State Bureau of Vital Statistics or equivalent agency.	<input type="checkbox"/> Current photo driver license or photo ID issued by any state in the United States, US territory, the District of Columbia, or Canadian Province.	<input type="checkbox"/> School Records
<input type="checkbox"/> United States Passport (unexpired or expired).	<input type="checkbox"/> For applicants born before 1961, the following items would be acceptable in this category:	<input type="checkbox"/> Insurance Policy (at least two years old)
<input type="checkbox"/> Original or certified copy of United States Department of State Certification of Birth (issued to United States citizens born abroad).		<input type="checkbox"/> Vehicle Title
<input type="checkbox"/> United States citizenship (naturalization) certificate with identifiable photograph.	<input type="checkbox"/> A) original or certified copy of Form DD-214;	<input type="checkbox"/> Military Records
<input type="checkbox"/> Current United States Immigration and Naturalization Service document with verified date and identifiable photograph.	<input type="checkbox"/> B) original or certified copy of other state or federal governmental record that states name and date of birth (such as United States records or Social Security records)	<input type="checkbox"/> Current Military dependent identification card
<input type="checkbox"/> Unexpired foreign passport (with a United States Visa or unexpired employment authorization card);	<input type="checkbox"/> Current United States military ID card for active duty, reserve or retired personnel with identifiable photograph.	<input type="checkbox"/> Original or certified copy of marriage license or divorce decree
	<input type="checkbox"/> Voter Registration Card	<input type="checkbox"/> Social Security card
	<input type="checkbox"/> ID card used by federal, state, or local government agencies or entities provided it contains a photograph or information such as name, date of birth, sex, height, eye color and address.	<input type="checkbox"/> Pilot's license
	<input type="checkbox"/> School ID card with a photograph	<input type="checkbox"/> Concealed handgun license
	<input type="checkbox"/> Native American tribal document	<input type="checkbox"/> Occupational License from another racing jurisdiction
		<input type="checkbox"/> New driver license temporary receipt
		<input type="checkbox"/> Expired driver license or identification certificate issued by another state, territory, District of Columbia, or Canadian province that is within two years of the expiration date.
		<input type="checkbox"/> A consular document issued by a state or national government.

**PLEASE CHOOSE ONE (\*\*Appropriate Boxes MUST be checked\*\*)**

**Option 1 = One from Column A**

**Option 2 = Two from Column B**

**Option 3 = One from Column B and Two from Column C**

# INSTRUCTIONS FOR COMPLETION OF NEW YORK STATE GAMING COMMISSION PROOF OF IDENTIFICATION

**IMPORTANT: In order to assure that the fingerprint impressions on the fingerprint cards are those of the applicant, this form MUST be complete. Fingerprint cards submitted without this completed form will be returned to the applicant and an occupational license will not be issued.**

## Instructions:

- STEP 1** Provide proper documentation for review to individual taking applicant's fingerprints (according to chart on reverse side- choose one of the three options offered)
- STEP 2** Individual taking applicant's fingerprints MUST indicate (by checking boxes) which identification was presented
- STEP 3** Applicant AND individual taking fingerprints MUST sign AND date "Proof of Identification" form
- STEP 4** Mail "Proof of Identification" form, fingerprint card(s) and license application to the NYS Gaming Commission

Bottom Portion of this form **must** be complete:

### **This portion to be completed by Applicant:**

I, \_\_\_\_\_, certify that the proof of identification indicated on the front side of this form  
(PRINT NAME)  
was presented to establish my identity.

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date

### **This portion to be completed by Person Fingerprinting:**

I, \_\_\_\_\_, certify that proof of identification as indicated on the front side of this form  
(PRINT NAME)  
was presented to me by the above named individual prior to taking applicant's fingerprint impressions.

\_\_\_\_\_  
Signature of Person Fingerprinting

\_\_\_\_\_  
Date

\_\_\_\_\_  
Agency/Title

**ADDITIONAL QUESTIONS AND ANSWERS – JUNE 27, 2014**





**REQUEST FOR APPLICATIONS  
TO DEVELOP AND OPERATE  
A GAMING FACILITY IN NEW YORK STATE**

**ADDITIONAL QUESTIONS AND ANSWERS**

**June 27, 2014**

**Q.434.** The Guidance Document states “the Board prefers the materials to be shipped, in the amounts specified, to the locations on the following page.” Will the Board deem delivery of all copies to the New York State Gaming Commission as non-compliant with the RFA?

**A.434. No. Delivery of all copies of an Application to the Board at the Commission’s offices, so long as received by 4:00 p.m. EDT on Monday, June 30, 2014 will be considered conforming.**

**Q.435.** The Guidance Document states delivery of materials to consultants should be received on or about the time of delivery to the Commission, “but receipt after 4:00 PM EDT at [the consultants’ offices] will not cause an Application to be considered untimely.” At what point subsequent to delivery of the Application to the Commission would delivery to consultants cause an Application to be considered non-conforming?

**A.435. Delivery of Applications to the Gaming Advisory Services consultant and respective subcontractors should strive to be contemporaneous with those delivered to the Board. An Applicant must be able to provide proof that copies were sent to the Gaming Advisory Services consultant and specified subcontractors prior to 4:00 p.m. EDT on June 30, 2014 (e.g., Federal Express or United Parcel Service confirmation).**

**Q.436.** Page 3 of the Guidance Document contains a blank box (4th box down in the Addressee column) for the location of a shipment of 2 hard copies, 2 electronic copies and 2 supplemental USB flash drives. Please provide guidance on where the Board prefers that these copies be shipped.

**A.436. Please see revised Guidance Document, issued by email on Tuesday, June 24, 2014 at 11:39 a.m.**

**Q.437.** The RFA and the Guidance Document have a discrepancy as to the number of electronic copies of the application that is required. Section IV.B.2 of the RFA (page 20) states that 10 electronic copies of the RFA submission are required. The Guidance Document states that 14 electronic copies of the Application are required.

- a. Does the Board consider the Guidance Document an addendum to the RFA with respect to the number of electronic copies of the RFA required?
- b. Does the RFA control as to the number of electronic copies of the RFA submission are required or does the Guidance Document control as to the number of electronic copies of the RFA submission are required?

**A.437.**

**a. No. However, the Board would appreciate Applicants delivering their submissions in accordance with the Application Deliver Preferences (Revised) Guidance released June 24, 2014.**

**b. See answer to Question 437. a.**

**Q.438.** The “Shipment Totals” on the bottom of Page 3 of the Guidance Document states that a total of 15 USB Supplemental Flash Drives are required. The Index on Page 3 totals only 13 USB Supplemental Flash Drives that are required for shipment.

**A.438. See answer to Question 436.**

**Q.439.** The Guidance Document does not provide guidance as to where the 4 sets (2 high quality and 2 medium quality) of images, renderings and schematics (RFA Section IV.B.4) should be submitted.

Can the Board confirm these should be submitted to the Commission?

**A.439. The Board would appreciate Applicants submitting images, renderings and schematics to:**

**New York State Gaming Commission  
Attn: Gail P. Thorpe, Supervisor of Contract Administration  
Contracts Office  
One Broadway Center  
Schenectady, NY 12301-7500**

**Q.440.** The Guidance Document does not provide guidance as to where the 2 redacted hard copies and 2 redacted electronic copies of the application should be submitted.

Can the Board confirm these should be submitted to the Commission?

**A.440. Yes. These redacted documents (hard and electronic copies) must be sent to the Board as per RFA Article IV. § B.5.**

**Q.441.** The Guidance Document provides that certain copies of the Supplemental USB Flash Drives are preferred to be sent to Christiansen Capital Advisors, LLC (2 Supplemental USB Flash Drives) and Macomber International, Inc. (1 Supplemental USB Flash Drive). Question and Answer 48 states that “the Board will take appropriate measures to evaluate the alleged proprietary nature of the model and, if necessary, shield disclosure of a model deemed to be proprietary from any consultant shown to be a competitor of the Applicant’s consultants.”

Delivery directly to consultants that are competitors of the Applicant’s consultants does not seem like a way of shielding disclosure. Can the Board confirm that they will accept delivery of copies of the USB Supplemental Flash Drives that are requested to go to Christiansen Capital Advisors, LLC and Macomber International, Inc.?

**A.441. The Board will accept copies of the USB Supplemental Flash Drives that are requested to go to Christiansen Capital Advisors, LLC, Houlihan Lokey Capital, Inc. and Macomber International, Inc. Please note, however, that the Gaming Advisory Services consultant and its respective subcontractors have been instructed to not open the Application or its contents until authorized to do so by the Board following the Board’s review of any claim made by an Applicant that its consultants are competitors of the Gaming Advisory Services consultant or its respective subcontractors.**

**Q.442.** Is there a specific entrance or area that will be designated for delivery?

**A.442. The Board will accept delivery of the Application at the Commission’s loading dock, located on the south side of the building, accessible from Broadway. As a common landmark, the loading dock is located opposite the signage for Villa Italia Bakery. Questions related to physical delivery of the Application should be directed to Mark Messercola at 518-527-4092. If the loading dock is absent personnel, the Applicant or Applicant’s delivery service should check-in with Security at the ground floor lobby of the Commission office.**

**Q.443.** Will the Board sign an acknowledgement of receipt of documents submitted to the Commission?

**A.443. Yes.**

**Q.444.** Will the Board accept applications on Saturday, June 28th and/or Sunday, June 29th? If so, what hours are acceptable for delivery on these weekend days?

**A.444. No. The Board will accept deliveries on Friday, June 27, 2014, between 8:00 a.m. and 4:00 p.m. Deliveries on Monday, June 30, 2014 may be undertaken beginning at 8:00 a.m.**

**Q.445.** On Monday, June 6, 2014 at 8:59 AM, by way of email, Ms. Thorpe indicated that “[a]n Addendum Acknowledgement Form will be posted shortly.”

How soon this will be posted?

**A.445. Subsequent to this document.**

**Q.446.** Due to the number of copies (both hard and electronic) of the RFA response that are required, multiple days are required for the production of the completed RFA submission in its entirety. If an Addendum Acknowledgement Form is not posted by Wednesday, June 25, 2014 are Applicants free to prepare their own Addendum Acknowledgement Forms to include in the submission?

**A.446. See answer to Question 445.**

**Q.447.** If Applicants are permitted to prepare their own Addendum Acknowledgement Forms, can you please confirm that Addendum Acknowledgement Forms are necessary only for the follow?

a. Addendum Regarding Minority and Women-Owned Business Enterprise dated May 12, 2014;

b. Templates for RFA Exhibit dated June 13, 2014; and

c. The Guidance Document if Question 4(a) above is answered in the affirmative.

**A.447. See answer to Question 445.**

**Q.448.** During Tioga Downs’ call regarding personal history disclosure forms and fingerprints, there was discussion that the New York State Gaming Commission would be obtaining a new Originating Agency Identification (ORI) number for fingerprint submissions.

a. Has this ORI Number been obtained?

b. If it has not been obtained before June 27, 2014, will the Board/Commission accept fingerprint cards with the ORI number blank on the card?

**A.448.**

**a. Yes. The ORI number is NY922470Z.**

**b. The Board would appreciate that Applicants include the ORI number on each fingerprint card.**

**Q.449.** For clarification, are we are required to submit 20 copies of the redacted application and 20 copies of the redacted personal applications and 20 copies of the entity applications?

**A.449. Applicants must submit two (2) identical hard copies of the REDACTED Application, Multi Jurisdictional Personal History Disclosure Form (MJP HDF), New York Supplemental Form (NYSF) and Gaming Facility License Application Form (GFLAF). Applicants must also submit two (2) electronic copies, via two (2) separate USB flash drives, of the REDACTED Application, MJP HDF, NYSF and GFLAF.**

**Q.450.** Should the hard copies and USBs of full and redacted copies of the personal and entity applications all be delivered to the Gaming Commission or should any copies be delivered to any consultant?

**A.450. All copies must be delivered to the Board.**

**Q.451.** Can you please confirm that the Gaming Facility Location Board and Gaming Commission will apply the same Freedom of Information Law standards to corporate information submitted in connection with the RFA, Gaming Facility License Application Forms and related investigations as the Division of Lottery and Racing and Wagering Board applied to corporate information submitted by entities to those agencies?

**A.451. The Board and Commission will adhere to the standards outlined in Freedom of Information Law (N.Y. Public Officers Law Article 6).**

**Q.452.** Specifically, can you please confirm that any category or type of corporate information that the Division of Lottery or Racing and Wagering Board withheld as confidential pursuant to New York's Freedom of Information Law or other laws will

similarly be kept confidential by the Gaming Facility Location Board and Gaming Commission?

**A.452. Please see the answer to Question 451.**

**Q.453.** Can you please confirm that the Gaming Facility Location Board and Gaming Commission will apply the same Freedom of Information Law standards to personal information submitted in connection with the RFA, Multi Jurisdictional Personal History Disclosure Form (MJPHDF), New York Supplement to the Multi Jurisdictional Personal History Disclosure Form (NYSF) and related investigations as the Division of Lottery and Racing and Wagering Board applied to personal information submitted by individuals to those agencies?

**A.453. The Board and Commission will adhere to the standards outlined in Freedom of Information Law (N.Y. Public Officers Law Article 6) and the Personal Privacy Protection Law (N.Y. Public Officers Law Article 6-A).**

**Q.454.** Specifically, can you please confirm that any category or type of personal information, including, but not limited to, personal financial information, that the Division of Lottery or Racing and Wagering Board withheld as confidential pursuant to New York's Freedom of Information Law or other laws will similarly be kept confidential by the Gaming Facility Location Board and Gaming Commission?

**A.454. Please see the answer to Question 453.**

**Q.455.** Is it permissible for an applicant involved in the Gaming Commission's procurement to enter into an agreement with a state agency/authority for reimbursement of that agency/authority's expenses to review, design, implement and construct infrastructure changes to public facilities that are proposed as part of an application for a gaming license?

**A.455. Absent further specification as to the identity of the state agency/authority to be engaged, it would generally be impermissible, as the Board will be retaining the services of multiple state agencies and authorities to assist with the review of Applications.**

**Q.456.** Has the ORI number for the fingerprint cards been obtained?

**A.456. See answer to Question 448. a.**

**Q.457.** The Board's latest guidance does not specifically address the shipping requirements with respect to the Background Investigation Forms (including redacted versions and electronic versions of same). Should all Background

Investigation Forms be submitted to the Gaming Commission, and *only* to the Gaming Commission?

**A.457. Yes. The MJPHDF, New York Supplemental Form and GFLAF must be delivered to the Board at:**

**New York State Gaming Commission  
Attn: Gail P. Thorpe, Supervisor of Contract Administration  
Contracts Office  
One Broadway Center  
Schenectady, NY 12301-7500**

**Q.458.** Based on the guidance document for delivery copies are now being distributed to all consultants direct. Please confirm the we are simple only distributing the RFA response (Exhibit binders and attachments to the consultants) and the 20 copies of the license application is being shipped only to Albany as it has confidential background information that is most likely not pertinent to the individual consultants.

**A.458. See answer to Question 450.**

**Q.459.** Please clarify the anticipated shipping plans for the multijurisdictional forms and NYS supplemental forms due on 7/14/14.

Are these all being delivered to Albany?

**A.459. The MJPHDF, NYSF and GFLAF must be sent to the Gaming Commission by July 14, 2014 at the address below:**

**New York State Gaming Commission  
Attn: Gail P. Thorpe, Supervisor of Contract Administration  
Contracts Office  
One Broadway Center  
Schenectady, NY 12301-7500**

**Q.460.** What is the last date of acceptance for submission of addendums for the application for consideration?

a. Specifically items related to the evolution of financing arrangements as agreements solidly further?

b. Do addendums need to be delivered in the same format as the original package to consultants individually or distributed through a central location?

**A.460. The last date for submission of materials is June 30, 2014, with the following exceptions:**

**a. Financing arrangements shall be full and complete with the submission due June 30, 2014. Any changes or updates must be made to the Board promptly, in writing (and electronically), per RFA Article III § I. The Board may, in its sole discretion, determine to accept the update as an Application amendment.**

**b. The Board would appreciate that any changes or updates to the Application be distributed to the Commission, Gaming Services Advisory consultant and their respective subcontractors as set forth in the Application Delivery Preferences guidance.**

**Q.461.** With the change in delivery, please confirm proof of a landing bill/invoice showing shipment prior to 4pm on 6/30/14 meets the requirement. It is our intent to use an expedited shipping service, but due to the size and weight of the pallets, it still may take up to 5 days to reach the Nevada Location.

**A.461. Delivery of Applications to the Gaming Advisory Services consultant and respective subcontractors should strive to be contemporaneous with those delivered to the Board. An Applicant must be able to provide proof that copies were sent to the Gaming Advisory Services consultant and specified subcontractors prior to 4:00 p.m. EDT on June 30, 2014 (e.g., Federal Express or United Parcel Service confirmation).**

**Q.462.** The Deadline for Questions Guidance Document states that the Board “is sensitive to the fact that addendums to the RFA, released so proximate to the submission deadline, may complicate an Applicant’s ability in doing such.”

a. Does the Board consider the Deadline for Questions Guidance Document to be an addendum to the RFA for which an Addendum Acknowledgement Form is required?

b. Does the Board consider any or all of the other guidance documents released to be addendums to the RFA for which Addendum Acknowledgement Forms are required?

c. Does the Board consider the questions and answers documents released by the Board to be addendums to the RFA for which Addendum Acknowledgement Forms are required?

d. Will the Board accept one Addendum Acknowledgement Form detailing all the guidance documents, addendums, and questions and answers documents received from an Applicant as sufficient compliance with the RFA?



**A.462. An Addendum Acknowledgement Form will be posted shortly.**

**Q.463.** We understand we need to populate the templates provided for Exhibit VIII.A.3 with independent analysis. We would ask for clarification if the revenue projection from Exhibit VIII.A.3 should be the same revenue projection from the report to be completed for the template of Exhibit VIII.A.4 or if the revenue projections in Exhibit VIII.A.4 may be our own projections which may be supported by other empirical data or third-party reports?

**A.463. Yes. The gross gaming revenues determined by the expert in RFA Article VIII § A.3 are intended to be the gross gaming revenues used in the pro-forma financials provided in RFA Article VIII § A.4. If an Applicant believes it will perform better (or worse) than projections determined by its expert, in response to RFA Article VIII § A.4., the Applicant may indicate such belief and the basis for such belief.**

**Q.464.** In preparing our response to the RFA for filing, we have come across certain documents that are exceedingly large. For instance, the tax returns for Saratoga Harness Racing, Inc. for 5 years total over 5,000 pages. With 20 paper copies, that will amount to over 100,000 pages of filing. In response to Question 332, the Commission permitted the filing of a paper summary of environmental reports with the full document only being supplied in electronic format. Will the Commission extend that reasoning to other extremely lengthy documents, such as tax returns?

**A.464. Yes, it is acceptable to submit the tax returns only in electronic format.**

**Q.465.** Answer 430 references the June 18th guidance which simply states "20 copies of each document". So to be clear, based on your answer below and what was sent this morning, can you confirm the following is the correct number and form of applications:

1. 20 hard copies of the RFA submission;
2. 14 usbs containing the RFA;
3. 2 hard copies of the redacted RFA submission;
4. 20 hard copies of the MJPHDF, NYSF and GFLAF;
5. 2 usbs containing electronic copies of the MJPHDF, NYSF and GFLAF;
6. 2 hard copies of the redacted MJPHDF, NYSF and GFLAF
7. 13 usbs with supplemental information;
8. 4 usbs (2 high, 2 low resolution) of all renderings;
9. 1 Original Attachment 1;
10. 1 original Attachment 2 (to be released);

11.1 original attachment 3 by each applicant, manager and each indirect and direct owner.

**A.465. The Board requires Applicants' delivering the following number and form of applications:**

1. **20 hard copies of the Application;**
2. **14 USBs containing the Application;**
3. **2 hard copies of the redacted Application;**
4. **2 USBs containing the redacted Application;**
5. **20 hard copies of the MJPHDF, NYSF and GFLAF;**
6. **10 USBs containing the MJPHDF, NYSF and GFLAF;**
7. **2 hard copies of the redacted MJPHDF, NYSF and GFLAF;**
8. **2 USBs containing the redacted MJPHDF, NYSF and GFLAF;**
9. **13 USBs with supplemental information;**
10. **4 USBs (2 high, 2 low resolution) of all renderings;**
11. **1 Original Attachment 1;**
12. **1 Original Attachment 2 (forthcoming);**
13. **1 Original Attachment 3 by each Applicant, Manager and indirect and direct owner.**

**Recall that a solid state hard drive or drives may be used in lieu of a flash drive.**

**###**

**PROTOCOL FOR APPLICANT PRESENTATIONS – AUGUST 13, 2014**



## **REQUEST FOR APPLICATIONS TO DEVELOP AND OPERATE A GAMING FACILITY IN NEW YORK STATE**

### **PROTOCOL FOR APPLICANT PRESENTATIONS**

**August 13, 2014**

The Gaming Facility Location Board will host a forum for each Applicant to make a mandatory informational presentation of its Application to Members of the New York Gaming Facility Location Board and the public.

#### **Purpose**

The purpose of these forums is to provide the Board and the public explanations of the contents of the proposed projects in each Application.

#### **Meeting Logistics**

Date and time. The public presentations will be conducted on September 8 - 9, 2014. Doors will open on September 8th at 8:30 a.m. and presentations will commence at 9:00 a.m. Doors will open on September 9th at 7:30 a.m. and presentations will commence at 8:00 a.m.

Location. Meeting Room 6 in the Empire State Plaza, Albany, N.Y.

Seating. The facility seats approximately 450 persons. Excepting limited reserved seating for members of the Board, Board's staff and representatives of each Applicant, seating will be on a first-come, first-served basis.

Remote access. Each presentation will be streamed live and archived on the Gaming Commission's Web site ([www.gaming.ny.gov](http://www.gaming.ny.gov)).

#### **Presentation**

Length. Each Applicant should anticipate presenting for 45 minutes, leaving 15 minutes for questions by the Board.

Participation. Each Applicant's presentation group shall be limited to personnel qualified to competently and cogently respond to questions from the Board and expound upon the materials presented.

Equipment. The Board will provide a computer, projector and screen for PowerPoint presentations, along with equipment to display posters and other visual aids necessary for each Applicant's presentation. For purposes of Board preparation, Applicants wishing to make use of PowerPoint must submit the content to be used at the presentation to the Board by Tuesday, September 2, 2014 at 2:00 p.m. EDT via a single flash drive, consistent with previous submission protocols.

Other visual aids. An Applicant may utilize posters and other visual aids, however all materials must be promptly removed or disassembled at the conclusion of their presentation.

Please contact Mark Messercola at 518-527-4092 for delivery instructions for display posters and other visual aids.

## **Decorum**

Applicants. Applicants are instructed to limit their presentations to their own Applications. The Board will not entertain comments about other Applicants or submitted Applications.

Public attendees. No questions from the public will be permitted at this event. Public comment events will take place September 22, 23 and 24.

## **Advance Planning**

Applicants who wish to view Empire State Plaza Meeting Room 6 or the audio/video equipment that will be utilized prior to the presentation dates shall appropriately contact the Board to schedule a date and time to view the room and equipment.

## **Order of Presentation**

Presentations will be grouped by region, and the order of Applicants within each region will be assigned consistent with the order utilized for Applicant Conference.

The schedule of presentation follows.

**September 8, 2014**

<u>Time</u>	<u>Eastern Southern Tier Region</u>
9:00 a.m. to 10:00 a.m.	Traditions Resort & Casino
10:05 a.m. to 11:05 a.m.	Tioga Downs Casino, Racing & Entertainment
11:10 a.m. to 12:10 p.m.	Lago Resort & Casino

<u>Time</u>	<u>Capital Region</u>
1:15 p.m. to 2:15 p.m.	Capital View Casino & Resort
2:20 p.m. to 3:20 p.m.	Hard Rock Rensselaer
3:25 p.m. to 4:25 p.m.	Howe Caverns Resort & Casino
4:30 p.m. to 5:30 p.m.	Rivers Casino & Resort at Mohawk Harbor

**September 9, 2014**

<u>Time</u>	<u>Catskills/Hudson Valley</u>
8:00 a.m. to 9:00 a.m.	Mohegan Sun at The Concord
9:05 a.m. to 10:05 a.m.	The Grand Hudson Resort & Casino
10:10 a.m. to 11:10 p.m.	Hudson Valley Casino & Resort
12:15 p.m. to 1:15 p.m.	Nevele Resort, Casino & Spa
1:20 p.m. to 2:20 p.m.	Montreign Resort Casino
2:25 p.m. to 3:25 p.m.	Sterling Forest Resort or Resorts World Hudson Valley
3:30 p.m. to 4:30 p.m.	The Live! Hotel and Casino New York
4:35 p.m. to 5:35 p.m.	Caesars New York
5:40 p.m. to 6:40 p.m.	Sterling Forest Resort or Resorts World Hudson Valley

**PROTOCOL FOR PUBLIC COMMENT EVENTS – AUGUST 21, 2014**



## PROTOCOL FOR PUBLIC COMMENT EVENTS

**August 21, 2014**

The Gaming Facility Location Board will host one Public Comment Event in each of the three eligible regions.

### **Purpose**

The purpose of the Public Comment Events is to provide members of the public the opportunity to speak about any proposed project(s) within the applicable region.

### **Meeting Logistics**

Time: Each Public Comment Event will commence at 8:00 a.m. and conclude at 8:00 p.m.

### Dates and Locations:

- |                      |   |
|----------------------|---|
| <b>September 22:</b> | <b>Capital Region Public Comment Event</b><br>Holiday Inn Turf<br>205 Wolf Road<br>Albany, New York 12205                     |
| <b>September 23</b>  | <b>Catskills/Hudson Valley Public Comment Event</b><br>The Grandview<br>176 Rinaldi Boulevard<br>Poughkeepsie, New York 12601 |
| <b>September 24</b>  | <b>Eastern Southern Tier Public Comment Event</b><br>Hotel Ithaca<br>222 South Cayuga Street<br>Ithaca, New York 14850        |

Seating: Excepting limited reserved seating for members of the Board and the Board's staff, seating at each event will be on a first-come, first-served basis. Capacity at any given time will be subject to posted building code occupancy restrictions for each space.



Remote access: Each presentation will be streamed live and archived on the Gaming Commission's web page ([www.gaming.ny.gov](http://www.gaming.ny.gov)). Interested parties not wishing to speak are encouraged to watch the presentation via live stream in order to allow maximum occupancy for parties wishing to offer public comments.

## **Public Comments**

Participation: These public comment events are free, open to the public and do not require advance registration.

To allow diverse participation, the Board respectfully requests interested grassroots groups or formally constituted organizations designate a single representative to address the Board to avoid repetition.

Time permitting, additional members of such groups or organizations may address the Board on a first-come, first-served basis.

Length: To ensure fairness, individual comment segments will be limited to five (5) minutes each.

Comment Segment Reservations: Five time slots per hour will be held for speaking time reservations. To reserve a segment for a public comment event, members of the public should email their name, organization (if applicable) and desired time request to the following email addresses, respective to each location:

September 22, Capital Region Event:	<a href="mailto:CapitalRegion@gaming.ny.gov">CapitalRegion@gaming.ny.gov</a>
September 23, Catskills/Hudson Valley Event:	<a href="mailto:CatskillsHV@gaming.ny.gov">CatskillsHV@gaming.ny.gov</a>
September 24, Eastern Southern Tier Event:	<a href="mailto:EasternST@gaming.ny.gov">EasternST@gaming.ny.gov</a>

All reservations will be filled on a first-come, first-served basis and may be requested from August 21 through close of business on September 19.

The balance of time slots will be filled on a first-come, first-served basis, with sign-ups conducted at the meeting event location.

Equipment and visual aids: No attendees may utilize multimedia visual aids. Informational posters and handouts are permitted.

Individuals making use of posters as part of their comment should submit a reduced-size copy of such if intended for inclusion in the formal written record.

Written Submissions: In addition to oral statements, the Board will accept written submissions at the event and up to seven (7) days following the event. Statements received beyond seven (7) days will not be included in the formal record.

All submissions should clearly identify the submitter's name, and affiliation, if any.

Decorum: All attendees are expected to show respect and courtesy to attendees, commentators and Board members.

Disruptions will not be tolerated.

Any person making offensive, insulting, threatening, intimidating or obscene remarks, or who becomes unruly during the Public Comment Event, will be requested to leave at the direction of any Board member. If necessary, the Board may request the assistance of law enforcement for the purpose of maintaining safety, order and decorum.

**# # #**

**GUIDANCE DOCUMENT – APPLICANT PRESENTATION FAQ – AUGUST 28, 2014**



## **REQUEST FOR APPLICATIONS TO DEVELOP AND OPERATE A GAMING FACILITY IN NEW YORK STATE**

### **FREQUENTLY ASKED QUESTIONS REGARDING APPLICANT PRESENTATION EVENT**

AUGUST 28, 2014

This Guidance Document is intended to answer the common questions that have been posed to the Gaming Facility Location Board by various Applicants.

#### **Empire State Plaza**

##### **Q. How do I get to the Empire State Plaza?**

A. Please visit the following webpage for directions:

<http://www.ogs.ny.gov/ESP/Directions.asp>

##### **Q. Where can I park at the Empire State Plaza?**

A. Please visit the following webpage for directions:

<http://www.ogs.ny.gov/BU/BA/Parking/Visitor/>

##### **Q. How do I bring materials for the Applicant Presentation into the Empire State Plaza?**

A. If you are capable of easily carrying your materials, they may be brought in directly from Public Parking via standard elevators. A map of elevator locations at the Empire State Plaza may be found at the following webpage:

[http://www.nyssba.org/clientuploads/nyssba\\_pdf/GR-Empire-State-Plaza.pdf](http://www.nyssba.org/clientuploads/nyssba_pdf/GR-Empire-State-Plaza.pdf)

If the materials require shipping, a requesting Applicant must complete and submit the form appended as Attachment 1. All deliveries and unloading of event materials must take place at P1 North Loading Dock A prior to parking. Vehicles attempting

entry without prior authorization will NOT be allowed access. 48 hours notice is required.

**Q. Can we display our materials on the Empire State Plaza concourse before or after our allotted presentation time?**

A. Please inquire as to whether arrangements may be made by contacting Empire State Plaza Convention Center staff at 518-474-4759 or by electronic mail at [convention.center@ogs.ny.gov](mailto:convention.center@ogs.ny.gov)

**Q. How can we reserve a meeting room to assemble our staff and prepare for the presentation?**

A. Please inquire as to availability directly with Empire State Plaza Convention Center staff at 518-474-4759 or by electronic mail at [convention.center@ogs.ny.gov](mailto:convention.center@ogs.ny.gov)

### **Meeting Room 6**

**Q. Can you provide a schematic as to how Meeting Room 6 will be set for the Applicant Presentation Event?**

A. Yes. Please see Attachment 2 for a schematic.

**Q. How will microphones be arranged?**

A. Please see the schematic appended as Attachment 2.

**Q. Will the presentation be projected on a single screen, or multiple screens in the room?**

A. There will be a single screen utilized. Please see the schematic appended as Attachment 2.

**Q. Will presenters be provided microphones, or a microphone at a podium?**

A. There will be stationery microphones at the head table and one microphone at the lectern. Please see the schematic appended as Attachment 2.

**Q. How many display screens will be used in Meeting Room 6?**

One. Its size is 12' wide x 8' high.

**Q. How many seats will be reserved for our staff?**

A. Sixteen. Four seats will be available at a head table; twelve will be available in two rows located in close proximity to the table. All such seating must be vacated immediately following your presentation.

**Materials Submission Requirements**

**Q. What needs to be submitted and when is the deadline for submission?**

A. As contained in the *Guidance Document: Protocol For Applicant Presentations*, Applicants wishing to make use of PowerPoint or Keynote must submit the content to be used at the presentation to the Board by Tuesday, September 2, 2014 at 2:00 p.m. EDT via a single flash drive.

The purpose of this submission deadline is to ensure compatibility with Gaming Facility Location Board hardware and software. The Gaming Facility Location Board *will* accept submissions after the deadline, but cannot ensure compatibility testing will be conducted in a manner affording the Applicant time to edit or modify the submission if the presentation does not properly function.

Under no circumstances will PowerPoint or Keynote submissions be accepted later than close of business on Friday, September 5, 2014.

**Q. Where do we send the flash drives?**

A. The flash drives should be forwarded or delivered to:

Gail P. Thorpe, Supervisor of Contract Administration  
New York State Gaming Commission  
Contracts Office  
One Broadway Center  
Schenectady, New York 12301-7500

**Q. Can we provide written materials to the Gaming Facility Location Board or public?**

Yes. Handouts are permitted. Applicants should provide the Gaming Facility Location Board no less than five copies. If distribution to the public is anticipated, please be informed Meeting Room 6 holds 450 people.

The Gaming Facility Location Board requires a digital version of all handouts be provided to allow incorporation into the public record.

**Q. Are posters or other visual materials permitted?**

A. Yes. Meeting Room 6 will be equipped with multiple easels. These materials do not have to be provided in advance, however the Gaming Facility Location Board requires a digital version of all visuals utilized be provided to allow incorporation into the public record.

**Hardware and Software**

**Q. What computer equipment and software will be available?**

A. The Gaming Facility Location Board will make available two laptops for presentations. Both will be connected to an A/V projector.

PC: The expected PC will be an HP ProBook 640 G1 running Windows 7 Enterprise. The processor is an Intel Core i5-4300M CPU at 2.60GHz, 2601 Mhz, 2 core(s), 4 logical processor(s). Installed Physical memory: 4.00 GB. Total physical memory: 2.92 GB. Available physical memory: 1.45 GB. Total virtual memory: 5.83 GB. Available virtual memory: 4.30 GB. Page file space: 2.92 GB. Software: Software: Microsoft PowerPoint 2010 via Microsoft Office Professional Plus 2010, version 14.0.7015.1000. The HP PC will connect to the projector via a standard A/V cable.

Mac: The expected Mac will be a MacBook Pro, Mid 2012 with 8 GB 1600 MHz DDR3 operating OS X 10.9.4. Installed on the machine is Microsoft PowerPoint for Mac 2011, version 14.4.3 and Apple Keynote version 6.2.2. The MacBook Pro has a Thunderbolt to HDMI cord connection.

**Q. Are we obligated to use Gaming Facility Location Board equipment?**

Yes.

**Q. May we imbed video in our PowerPoint or Keynote media?**

A. Yes. Audio and visual files may be imbedded. The audio from any multimedia presentation will be carried via the house public address system.

**Q. Will Gaming Facility Location Board staff operate the PowerPoint or Keynote media?**

A. No. Each Applicant must provide staff to operate such equipment. A digital advancement tool (“clicker”) will be provided, enabling remote operation.

**Q. Will there be a confidence screen for the presenter(s)?**

A. No. We will arrange the podium and presenter table angles so that the screen is visible.

**Q. Will there be an opportunity for us to test the Gaming Facility Location Board's equipment designated for use?**

A. No.

### **Miscellaneous**

**Q. How much time do we have to set-up or break down any materials we will be using for our presentation?**

A. There are five minutes between presentations. Applicants should have enough staff to fully set-up or remove their materials well within the intermission. Please be aware that while you are removing your materials, the next scheduled Applicant will be setting up for their presentation. We expect full and complete cooperation between Applicants. Gaming Commission/Facility Location Board staff will be on hand to facilitate transition, but will not be held accountable or responsible for moving Applicant materials.

**Q. Will the public be allowed to ask questions of the Applicants?**

A. No.

**Q. Will the PowerPoint or Keynote materials be visible on the webstream?**

A. Yes. The Web stream will carry, via switcher, feeds of both the presentation room and the A/V presentation.

**Q. Since all of the Applicants in the Catskills/Hudson Valley region will be presenting on September 9th, could Applicants from this region have the ability to edit PowerPoint or Keynote media until 5:00 p.m. on Monday, September 8th?**

A. No. As a potential fourth license may be awarded from applications of any region, late preparation would be unfair.

**###**





**Empire State Plaza  
DELIVERY REQUEST FORM**

Convention & Cultural Events  
Concourse – Room 130  
Empire State Plaza  
Albany, NY 12242

Dean Bennison  
dean.bennison@ogs.ny.gov  
Phone (518) 408-1009  
Fax (518) 473-0558

Completion of this form is required to ensure your delivery/pickup is scheduled with the Empire State Plaza Mail and Freight Security Unit. All deliveries and unloading of event materials must take place at P1 North Loading Dock A prior to parking. Vehicles attempting entry without prior authorization will NOT be allowed access. **48 hours notice is required. Failure to comply with this policy may result in a fee to you or your organization.** Please return this form via email, fax or to the address shown above. Please direct all questions to Dean Bennison.

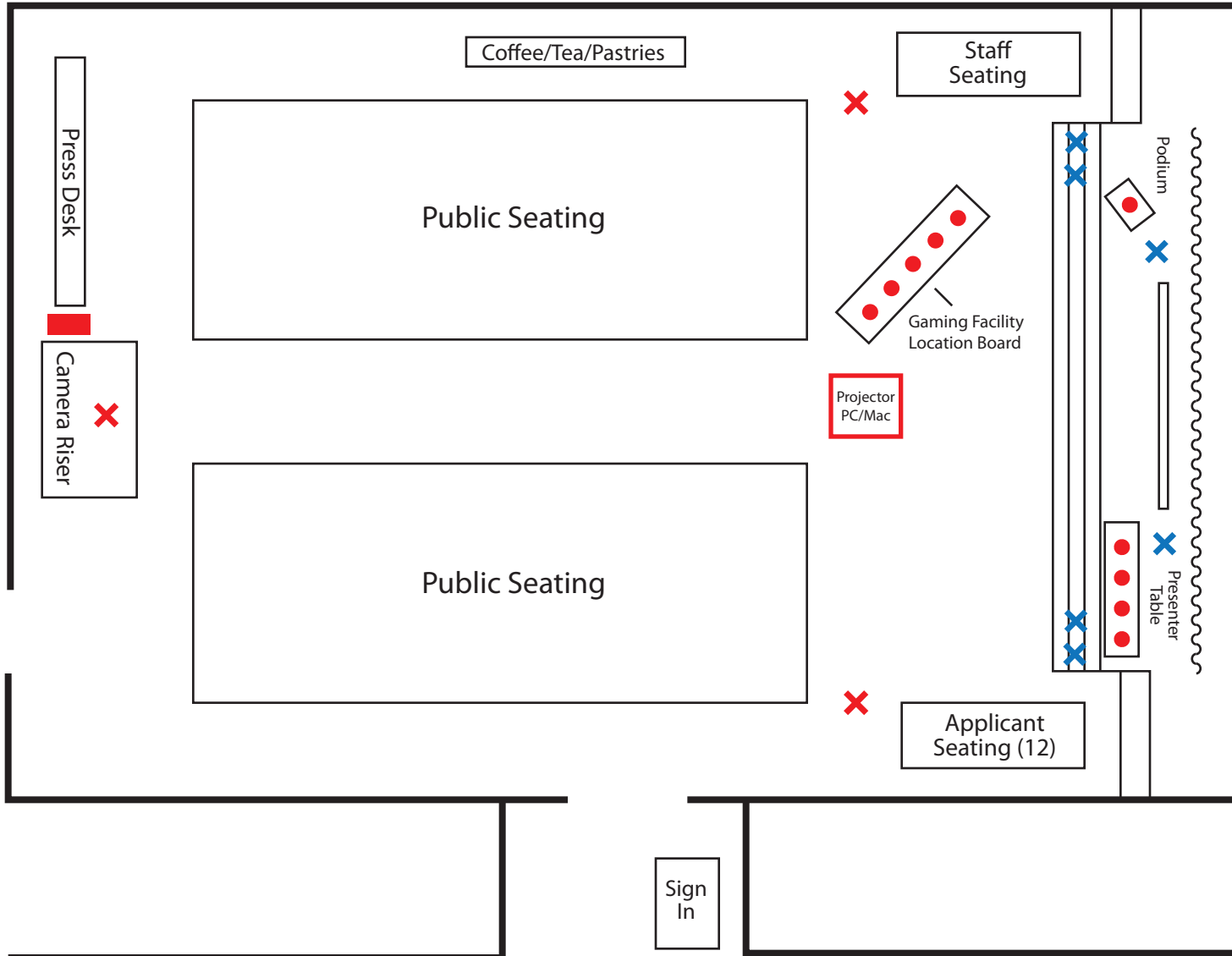
PLEASE TYPE OR PRINT ALL INFORMATION CLEARLY AND PRECISELY  
THIS FORM MAY NOT BE ALTERED – THANK YOU FOR YOUR COOPERATION

Event Name:	Event Date(s):
Exhibitor Business Name:	Phone No.
Delivery Company Name:	Phone No.
Description of Freight:	
Date of Delivery:	Delivery Time:
Return Pickup Date:	Pickup Time:
Event Coordinator:	Phone No.
<b><u>EXACTLY AS IT APPEARS ON DRIVER'S LICENSE</u></b>	
Driver's Name:	
Driver's License ID Number:	Driver State of Origin:
Vehicle Plate Number:	State of Vehicle Registration:
Trailer Plate Number (if applicable):	State of Trailer Registration:

# Meeting Room 6 Layout: September 8-9

Capitol ↑

Main Concourse



- ✗ Webcam
- Microphone
- ✕ Easel
- A/V Mult Box
- ~ Pipe/Drape
- A/V Table w/PC, Mac & Projector

Egg →

**GUIDANCE DOCUMENT – PUBLIC COMMENT EVENT – SEPTEMBER 17, 2014**



## **Request for Applications to Develop and Operate a Gaming Facility in New York State**

### **PROTOCOL AND FREQUENTLY ASKED QUESTIONS REGARDING PUBLIC COMMENT EVENTS**

September 17, 2014

The Gaming Facility Location Board is convening one public comment event in each Region eligible to host a gaming facility. Members of the public are invited to comment on Applicant proposals potentially affecting their Region and community. These public comment events are free, open to the public and do not require advance registration to attend.

Each speaker addressing the Board will be given an individual five-minute speaking slot.

Pursuant to section IV.E of the Request for Applications, Applicants or their representatives are required to attend their respective region's public comment event. Applicants cannot address the Board or make public comments; individuals attending the public comment event cannot pose comments or questions directly to the Applicants or their representatives.

#### **Logistics**

Dates and Times. Public comment events will be conducted in three region-specific locations on September 22, 23 and 24. Doors will open at each location at 7:30 a.m. The Board will receive comments between 8:00 a.m. and 8:00 p.m. There will be two breaks each day: lunch from 12:25 p.m. to 1:00 p.m. and dinner from 5:25 p.m. to 6:00 p.m.

Locations. The Board selected large, accessible venues with ample parking located in counties and municipalities where no casino applicants have proposals. The events will be conducted at:

September 22

Capital Region:  
Holiday Inn Turf  
Stonehenge Room A & D

205 Wolf Road  
Albany

September 23      Catskills/Hudson Valley Region:  
The Grandview  
Banquet Room  
176 Rinaldi Boulevard  
Poughkeepsie

September 24      Eastern Southern Tier Region:  
The Hotel Ithaca Ballroom  
222 South Cayuga Street  
Ithaca

Seating. Excepting limited reserved seating for members of the Board and staff, seating will be on a first-come, first-served basis.

Remote access. Each presentation will be streamed live and archived on the Gaming Commission's Web site ([www.gaming.ny.gov](http://www.gaming.ny.gov)). Members of the public not wishing to comment are encouraged to watch the live stream remotely in order to preserve limited seating for those wishing to comment.

## **Registration**

Pre-Registered Reserved Speaker Check-In. As previously announced publicly, the first five (5) speaking time reservation slots per hour were held at each regional event for individuals to pre-register. All reserved times have been filled.

Pre-registered speakers must check-in at the event table clearly marked "Pre-Registration Reserved Check-In" at least 15 minutes prior to their reserved speaking time. Slots for pre-registrants who do not timely check-in prior to the start of their speaking time will be released to same day on-site registrants.

On-Site Registration. Attendees without previously registered speaking slots may sign up at the event table clearly marked "Walk-In Registration." Speaking slots will be filled on a first come, first served basis.

Each hour, the Board will first call pre-registered speakers, and then same-day registrants in the order of registration. The Board anticipates more people will register to speak than time will allow, thus it is imperative those who sign up to speak on the day of the event remain in the venue so they do not miss their opportunity to speak.

To allow diverse participation, the Board respectfully requests interested grassroots groups or formally constituted organizations designate a single representative to address the Board.

## **Presentation**

Length. Each speaker's comments will be limited to five (5) minutes. There will be a visual counter graphically illustrating time remaining. The Board will adhere to the clock to maximize the number of participants, and asks all speakers to keep remarks to the allotted time.

Visual aids. A speaker may utilize posters and other visual aids, however the assembly of materials will be counted as part of the five (5) minute allotment. All materials must be promptly removed or disassembled at the conclusion of remarks. Individuals making use of posters as part of their comment should submit a reduced-size copy of such if intended for inclusion in the formal written record.

## **Decorum**

Speakers and participants may not disrupt or otherwise attempt to interfere with any individual's opportunity to speak. Disorderly behavior will not be tolerated. Speakers engaging in personal attacks, using inflammatory language or failing to confine remarks to the identified subject or business at hand will be cautioned by the Chairman and given the opportunity to conclude remarks within the designated time limit.

Disruptions. Any person making offensive, insulting, threatening, intimidating or obscene remarks, or who becomes unruly during the Public Comment Event, will be requested to leave at the direction of any Board member. If necessary, the Board will request the assistance of law enforcement for the purpose of maintaining safety, order and decorum.

Signs, Placards, Banners. For public safety purposes, no signs or placards mounted on sticks, posts, poles or similar structures will be allowed. Non-mounted signs, placards, banners, are allowed, but shall not disrupt meetings or interfere with others' visual rights.

## FREQUENTLY ASKED QUESTIONS

### Directions

**Q. How do I get to the Albany Public Comment Event?**

A. Please visit the following webpage for directions:

<http://www.hialbanywolf.com/directions.asp>

**Q. How do I get to the Catskills/Hudson Valley Public Comment Event?**

A. Please visit the following webpage for directions:

<http://www.grandviewevents.com/directions.php#.VBZcMktF3Ro>

**Q. How do I get to the Eastern Southern Tier Public Comment Event?**

A. Please visit the following webpage for directions:

<http://www.thehotelithaca.com/contact.php>

**Q. Will Speakers be provided microphones, or a microphone at a podium?**

A. There will be a wireless microphone on a stand or podium facing the Board at each location.

### Materials Submission Requirements

**Q. I want to submit written comments. Can I do this? How do I do this?**

A. In addition to oral statements, the Board will accept written submissions at the event and up to seven (7) days following the event. Statements received beyond seven (7) days following the event will not be included in the formal record but will be included in the full RFA process record.

All submissions should clearly identify the submitter's name, and affiliation, if any, and be sent to:

Gail P. Thorpe, Supervisor of Contract Administration  
New York State Gaming Commission  
Contracts Office  
One Broadway Center  
Schenectady, New York 12301-7500

Written comments may also be submitted via email to [info@gaming.ny.gov](mailto:info@gaming.ny.gov) or to the applicable RSVP email for each public comment event:

[CapitalRegion@gaming.ny.gov](mailto:CapitalRegion@gaming.ny.gov)

[CatskillsHV@gaming.ny.gov](mailto:CatskillsHV@gaming.ny.gov)

[EasternST@gaming.ny.gov](mailto:EasternST@gaming.ny.gov)

### **Reserved Speaking Segments/Pre-Registration**

**Q. I requested a reserved speaking slot but was not given one. How can I guarantee that my comments will be heard?**

A. All reserved speaking slots (the first 25 minutes of each hour) have been filled. The remaining 35 minutes of each hour are available on the day of the event on a first-come, first-serve basis. As each event is expected to fill up, members of the public are advised to arrive early to sign up. Additionally, please note that the Board is accepting written submissions, as indicated above.

**Q. Can I give my reserved speaking slot to someone else?**

A. Yes, but only in the event the individual seeking to take your spot is affiliated with the same organization as yourself.

**Q. Can you provide a list of those members of the public who have reserved speaking slots?**

A. No.

**Q. Another member of the public and I both have reserved speaking slots at the same event and wish to switch times. Is this allowed?**

A. Yes, but only if both impacted members of the public are present at the “Pre-Registration Reserved Check-In” table at the same time and make the request together.

### **Public Comment Logistics**

**Q. What happens if someone doesn’t use their entire five minute segment?**

A. If someone uses less than their five minute segment, the Board will immediately call the next individual to speak. All speakers should arrive 15 minutes prior to



their scheduled time and not leave the premises until they have made their comment.

The Board will “reset” the start time for speakers at the top of each hour. This will allow the Board to hear as many comments as possible while adhering to the schedule of pre-registered speakers.

**Q. I am an applicant and/or work for an applicant. May I provide comment to the Board?**

A. No. Pursuant to section IV.E of the Request for Applications, Applicants or their representatives are required to attend their respective region’s public comment event. However, they should not expect to address the Board or make public comments.

**Q. During my segment, may I address or question any of the Applicants in attendance at the public comment event?**

A. No. Individuals attending the public comment event cannot pose comments or questions directly to the applicants in attendance.

**###**

**THE UPSTATE GAMING AND ECONOMIC DEVELOPMENT ACT OF 2013**

CHAPTER 174

AN ACT to amend the racing, pari-mutuel wagering and breeding law, the penal law and the state finance law, in relation to commercial gaming; to amend the executive law, the state finance law and the Indian law, in relation to authorizing the settlement of disputes between the Oneida Nation of New York, the state, Oneida county and Madison county; to amend the Indian law and the tax law, in relation to identifying nations and tribes; to amend the tax law and the state finance law, in relation to video lottery gaming; to amend part HH of chapter 57 of the laws of 2013 relating to providing for the administration of certain funds and accounts related to the 2013-14 budget, in relation to the commercial gaming revenue fund; to amend chapter 50 of the laws of 2013 enacting the state operations budget, in relation to commercial gaming revenues; to amend the racing, pari-mutuel wagering and breeding law, in relation to directing the state gaming commission to annually evaluate video lottery gaming; to amend the racing, pari-mutuel wagering and breeding law and the state finance law, in relation to account wagering on simulcast horse races; to repeal section 11 of the executive law relating to fuel and energy shortage state of emergency; and to repeal clause (G) of subparagraph (ii) of paragraph 1 of subdivision b of section 1612 of the tax law relating to vendor's fees

Became a law July 30, 2013, with the approval of the Governor.

Passed by a majority vote, three-fifths being present.

**The People of the State of New York, represented in Senate and Assembly, do enact as follows:**

Section 1. This act shall be known and may be cited as the "upstate New York gaming economic development act of 2013."

§ 2. The racing, pari-mutuel wagering and breeding law is amended by adding a new article 13 to read as follows:

**ARTICLE 13**

**DESTINATION RESORT GAMING**

**Title 1. General provisions**

- 2. Facility determination and licensing**
- 3. Occupational licensing**
- 4. Enterprise and vendor licensing and registration**
- 5. Requirements for conduct and operation of gaming**
- 6. Taxation and fees**
- 7. Problem gambling**
- 8. Miscellaneous provisions**
- 9. Gaming inspector general**

**TITLE 1**

**GENERAL PROVISIONS**

**Section 1300. Legislative findings and purpose.**

- 1301. Definitions.**
- 1302. Auditing duties of the commission.**
- 1303. Equipment testing.**
- 1304. Commission reporting.**

EXPLANATION--Matter in **italics** is new; matter in brackets [-] is old law to be omitted.

1305. Supplemental power of the commission.

1306. Powers of the board.

1307. Required regulations.

1308. Reports and recommendations.

1309. Severability and preemption.

§ 1300. Legislative findings and purpose. The legislature hereby finds and declares that:

1. New York state is already in the business of gambling with nine video lottery facilities, five tribal class III casinos, and three tribal class II facilities;

2. New York state has more electronic gaming machines than any state in the Northeast or Mideast;

3. While gambling already exists throughout the state, the state does not fully capitalize on the economic development potential of legalized gambling;

4. The state should authorize four destination resort casinos in upstate New York;

5. Four upstate casinos can boost economic development, create thousands of well-paying jobs and provide added revenue to the state;

6. The upstate tourism industry constitutes a critical component of our state's economic infrastructure and that four upstate casinos will attract non-New York residents and bring downstate New Yorkers to upstate;

7. The casino sites and the licensed owners shall be selected on merit;

8. Local impact of the casino sites will be considered in the casino evaluation process;

9. Tribes whose gaming compacts are in good standing with the state will have their geographic exclusivity protected by this article;

10. Revenue realized from casinos shall be utilized to increase support for education beyond that of the state's education formulae and to provide real property tax relief to localities;

11. Casinos will be tightly and strictly regulated by the commission to guarantee public confidence and trust in the credibility and integrity of all casino gambling in the state and to prevent organized crime from any involvement in the casino industry;

12. The need for strict state controls extends to regulation of all persons, locations, practices and associations related to the operation of licensed enterprises and all related service industries as provided in this article;

13. The state and the casinos will develop programs and resources to combat compulsive and problem gambling;

14. The state will ensure that host municipalities of casinos are provided with funding to limit any potential adverse impacts of casinos;

15. Political contributions from the casino industry will be minimized to reduce the potential of political corruption from casinos; and

16. As thoroughly and pervasively regulated by the state, four upstate casinos will work to the betterment of all New York.

§ 1301. Definitions. As used in this article the following terms shall, unless the context clearly requires otherwise, have the following meanings:

1. "Affiliate". A person that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, a specified person.

2. "Applicant". Any person who on his or her own behalf or on behalf of another has applied for permission to engage in any act or activity which is regulated under the provisions of this article.

3. "Application". A written request for permission to engage in any act or activity which is regulated under the provisions of this article.

4. "Authorized game". Any game determined by the commission to be compatible with the public interest and to be suitable for casino use after such appropriate test or experimental period as the commission may deem appropriate. An authorized game may include gaming tournaments in which players compete against one another in one or more of the games authorized herein or by the commission or in approved variations or composites thereof if the tournaments are authorized.

5. "Board". The New York state gaming facility location board established by the commission pursuant to section one hundred nine-a of this chapter.

6. "Business". A corporation, sole proprietorship, partnership, limited liability company or any other organization formed for the purpose of carrying on a commercial enterprise.

7. "Casino". One or more locations or rooms in a gaming facility that have been approved by the commission for the conduct of gaming in accordance with the provisions of this article.

8. "Casino key employee". Any natural person employed by a gaming facility licensee, or holding or intermediary company of a gaming facility licensee, and involved in the operation of a licensed gaming facility in a supervisory capacity and empowered to make discretionary decisions which regulate gaming facility operations; or any other employee so designated by the commission for reasons consistent with the policies of this article.

9. "Casino vendor enterprise". Any vendor offering goods or services which directly relate to casino or gaming activity, or any vendor providing to gaming facility licensees or applicants goods and services ancillary to gaming activity. Notwithstanding the foregoing, any form of enterprise engaged in the manufacture, sale, distribution, testing or repair of slot machines within the state, other than antique slot machines, shall be considered a casino vendor enterprise for the purposes of this article regardless of the nature of its business relationship, if any, with gaming facility applicants and licensees in this state.

10. "Close associate". A person who holds a relevant financial interest in, or is entitled to exercise power in, the business of an applicant or licensee and, by virtue of that interest or power, is able to exercise a significant influence over the management or operation of a gaming facility or business licensed under this article.

11. "Commission". The New York state gaming commission.

12. "Complimentary service or item". A service or item provided at no cost or at a reduced cost to a patron of a gaming facility.

13. "Conservator". A person appointed by the commission to temporarily manage the operation of a gaming facility.

14. "Credit card". A card, code or other device with which a person may defer payment of debt, incur debt and defer its payment, or purchase property or services and defer payment therefor, but not a card, code or other device used to activate a preexisting agreement between a person and a financial institution to extend credit when the person's account at the financial institution is overdrawn or to maintain a specified minimum balance in the person's account at the financial institution.

15. "Debt". Any legal liability, whether matured or unmatured, liquidated or unliquidated, absolute, fixed or contingent, including debt convertible into an equity security which has not yet been so converted, and any other debt carrying any warrant or right to subscribe to or purchase an equity security which warrant or right has not yet been exercised.

16. "Encumbrance". A mortgage, security interest, lien or charge of any nature in or upon property.

17. "Executive director". The executive director of the New York state gaming commission.

18. "Family". Spouse, domestic partner, partner in a civil union, parents, grandparents, children, grandchildren, siblings, uncles, aunts, nephews, nieces, fathers-in-law, mothers-in-law, daughters-in-law, sons-in-law, brothers-in-law and sisters-in-law, whether by the whole or half blood, by marriage, adoption or natural relationship.

19. "Game". Any banking or percentage game located within the gaming facility played with cards, dice, tiles, dominoes, or any electronic, electrical, or mechanical device or machine for money, property, or any representative of value which has been approved by the commission.

20. "Gaming" or "gambling". The dealing, operating, carrying on, conducting, maintaining or exposing for pay of any game.

21. "Gaming device" or "gaming equipment". Any electronic, electrical, or mechanical contrivance or machine used in connection with gaming or any game.

22. "Gaming employee". Any natural person, not otherwise included in the definition of casino key employee, who is employed by a gaming facility licensee, or a holding or intermediary company of a gaming facility licensee, and is involved in the operation of a licensed gaming facility or performs services or duties in a gaming facility or a restricted casino area; or any other natural person whose employment duties predominantly involve the maintenance or operation of gaming activity or equipment and assets associated therewith or who, in the judgment of the commission, is so regularly required to work in a restricted casino area that registration as a gaming employee is appropriate.

23. "Gaming facility". The premises approved under a gaming license which includes a gaming area and any other nongaming structure related to the gaming area and may include, but shall not be limited to, hotels, restaurants or other amenities.

24. "Gaming facility license". Any license issued pursuant to this article which authorizes the holder thereof to own or operate a gaming facility.

25. "Gross gaming revenue". The total of all sums actually received by a gaming facility 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; provided further, that the issuance to or wagering by patrons of a gaming facility of any promotional gaming credit shall not be taxable for the purposes of determining gross revenue.

26. "Holding company". A corporation, association, firm, partnership, trust or other form of business organization, other than a natural person, which, directly or indirectly, owns, has the power or right to control, or has the power to vote any significant part of the outstanding voting securities of a corporation or any other form of business organization which holds or applies for a gaming license; provided,

however, that a "holding company", in addition to any other reasonable use of the term, shall indirectly have, hold or own any such power, right or security if it does so through an interest in a subsidiary or any successive subsidiaries, notwithstanding how many such subsidiaries may intervene between the holding company and the gaming facility licensee or applicant.

27. "Host municipality". A city, town or village in which a gaming facility is located or in which an applicant has proposed locating a gaming facility.

28. "Intermediary company". A corporation, association, firm, partnership, trust or other form of business organization, other than a natural person, which is a holding company with respect to a corporation or other form of business organization which holds or applies for a gaming license, and is a subsidiary with respect to a holding company.

29. "Junket". An arrangement intended to induce a person to come to a gaming facility to gamble, where the person is selected or approved for participation on the basis of the person's ability to satisfy a financial qualification obligation related to the person's ability or willingness to gamble or on any other basis related to the person's propensity to gamble and pursuant to which and as consideration for which, any of the cost of transportation, food, lodging, and entertainment for the person is directly or indirectly paid by a gaming facility licensee or an affiliate of the gaming facility licensee.

30. "Junket enterprise". A person, other than a gaming facility licensee or an applicant for a gaming facility license, who employs or otherwise engages the services of a junket representative in connection with a junket to a licensed gaming facility, regardless of whether or not those activities occur within the state.

31. "Junket representative". A person who negotiates the terms of, or engages in the referral, procurement or selection of persons who may participate in, a junket to a gaming facility, regardless of whether or not those activities occur within the state.

32. "Operation certificate". A certificate issued by the commission which certifies that operation of a gaming facility conforms to the requirements of this article and applicable regulations and that its personnel and procedures are sufficient and prepared to entertain the public.

33. "Person". Any corporation, association, operation, firm, partnership, trust or other form of business association, as well as a natural person.

34. "Registration". Any requirement other than one which requires a license as a prerequisite to conduct a particular business as specified by this article.

35. "Registrant". Any person who is registered pursuant to the provisions of this article.

36. "Restricted casino areas". The cashier's cage, the soft count room, the hard count room, the slot cage booths and runway areas, the interior of table game pits, the surveillance room and catwalk areas, the slot machine repair room and any other area specifically designated by the commission as restricted in a licensee's operation certificate.

37. "Qualification" or "qualified". The process of licensure set forth by the commission to determine that all persons who have a professional interest in a gaming facility license, or casino vendor enterprise license, or the business of a gaming facility licensee or gaming vendor, meet the same standards of suitability to operate or conduct business with a gaming facility.

38. "Slot machine". A mechanical, electrical or other device, contrivance or machine which, upon insertion of a coin, token or similar object therein, or upon payment of any consideration whatsoever, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, may deliver or entitle the individual playing or operating the machine to receive cash, or tokens to be exchanged for cash, or to receive merchandise or any other thing of value, whether the payoff is made automatically from the machine or in any other manner, except that the cash equivalent value of any merchandise or other thing of value shall not be included in determining the payout percentage of a slot machine.

39. "Sports wagering". The activity authorized by section one thousand three hundred sixty-seven of this article, provided that there has been a change in federal law authorizing such activity or upon ruling of a court of competent jurisdiction that such activity is lawful.

40. "Subsidiary". A corporation, a significant part of whose outstanding equity securities are owned, subject to a power or right of control, or held with power to vote, by a holding company or an intermediary company, or a significant interest in a firm, association, partnership, trust or other form of business organization, other than a natural person, which is owned, subject to a power or right of control, or held with power to vote, by a holding company or an intermediary company.

41. "Table game". A game, other than a slot machine, which is authorized by the commission to be played in a gaming facility.

42. "Transfer". The sale or other method, either directly or indirectly, of disposing of or parting with property or an interest therein, or the possession thereof, or of fixing a lien upon property or upon an interest therein, absolutely or conditionally, voluntarily or involuntarily, by or without judicial proceedings, as a conveyance, sale, payment, pledge, mortgage, lien, encumbrance, gift, security or otherwise; provided, however, that the retention of a security interest in property delivered to a corporation shall be deemed a transfer suffered by such corporation.

§ 1302. Auditing duties of the commission. The commission shall audit as often as the commission determines necessary, but not less than annually, the accounts, programs, activities, and functions of all gaming facility licensees, including the audit of payments made pursuant to section one thousand three hundred fifty-one of this chapter. To conduct the audit, authorized officers and employees of the commission shall have access to such accounts at reasonable times and the commission may require the production of books, documents, vouchers and other records relating to any matter within the scope of the audit. All audits shall be conducted in accordance with generally accepted auditing standards established by the American Institute of Certified Public Accountants. In any audit report of the accounts, funds, programs, activities and functions of a gaming facility licensee issued by the commission containing adverse or critical audit results, the commission may require a response, in writing, to the audit results. The response shall be forwarded to the commission within fifteen days of notification by the commission.

§ 1303. Equipment testing. Unless the commission otherwise determines it to be in the best interests of the state, the commission shall utilize the services of an independent testing laboratory that has been qualified and approved by the commission pursuant to this article to



perform the testing of slot machines and other gaming equipment and may

also utilize applicable data from the independent testing laboratory, or from a governmental agency of a state other than New York, authorized to regulate slot machines and other gaming equipment.

§ 1304. Commission reporting. The commission shall report monthly to the governor, the senate and the assembly, the senate finance committee and the assembly ways and means committee, and the chairs of the senate racing, gaming and wagering committee and the assembly racing and wagering committee on economic development and emerging technologies on the total gaming revenues, prize disbursements and other expenses for the preceding month and shall make an annual report to the same recipients which shall include a full and complete statement of gaming revenues, prize disbursements and other expenses, including such recommendations as the commission considers necessary or advisable. The commission shall also report immediately to the aforementioned on any matter which requires immediate changes in the laws in order to prevent abuses or evasions of the laws, rules or regulations related to gaming or to rectify undesirable conditions in connection with the administration or operation of gaming in the state.

§ 1305. Supplemental power of the commission. The commission shall have all powers necessary or convenient to carry out and effectuate its purposes including, but not limited to, the power to:

1. execute all instruments necessary or convenient for accomplishing the purposes of this article;

2. enter into agreements or other transactions with a person, including, but not limited to, a public entity or other governmental instrumentality or authority in connection with its powers and duties under this article;

3. require an applicant for a position which requires a license under this article to apply for such license and approve or disapprove any such application or other transactions, events and processes as provided in this article;

4. require a person who has a business association of any kind with a gaming licensee or applicant to be qualified for licensure under this article;

5. determine a suitable debt-to-equity ratio for applicants for a gaming license;

6. deny an application or limit, condition, restrict, revoke or suspend a license, registration, finding of suitability or approval, or fine a person licensed, registered, found suitable or approved for any cause that the commission deems reasonable;

7. monitor the conduct of licensees and other persons having a material involvement, directly or indirectly, with a licensee for the purpose of ensuring that licenses are not issued to or held by and that there is no direct or indirect material involvement with a licensee, by an unqualified or unsuitable person or by a person whose operations are conducted in an unsuitable manner or in unsuitable or prohibited places as provided in this article;

8. gather facts and information applicable to the commission's obligation to issue, suspend or revoke licenses, work permits or registrations for:

(a) a violation of this article or any regulation adopted by the commission;

(b) willfully violating an order of the commission directed to a licensee;

(c) the conviction of certain criminal offenses; or  
CHAP. 174 8

(d) the violation of any other offense which would disqualify such a licensee from holding a license, work permit or registration;

9. conduct investigations into the qualifications of any regulated entity and all applicants for licensure;

10. request and receive from the division of criminal justice services and the federal bureau of investigation, criminal history information as defined in paragraph (c) of subdivision one of section eight hundred forty-five-b of the executive law for the purpose of evaluating applicants for employment by any regulated entity, and evaluating licensees and applicants for licensure under this article;

11. be present, through its agents, at all times, in a gaming facility for the purposes of:

(a) certifying revenue;

(b) receiving complaints from the public relating to the conduct of gaming and wagering operations;

(c) examining records of revenues and procedures and inspecting and auditing all books, documents and records of licensees;

(d) conducting periodic reviews of operations and facilities for the purpose of regulations adopted hereunder; and

(e) exercising its oversight responsibilities with respect to gaming;

12. inspect and have access to all equipment and supplies in a gaming facility or on premises where gaming equipment is manufactured, sold or distributed;

13. seize and remove from the premises of a gaming licensee and impound any equipment, supplies, documents and records for the purpose of examination and inspection;

14. demand access to and inspect, examine, photocopy and audit all papers, books and records of any affiliate of a gaming licensee or gaming vendor whom the commission suspects is involved in the financing, operation or management of the gaming licensee or gaming vendor; provided, however, that the inspection, examination, photocopying and audit may take place on the affiliate's premises or elsewhere as practicable and in the presence of the affiliate or its agent;

15. require that the books and financial or other records or statements of a gaming licensee or gaming vendor be kept in a manner that the commission considers proper;

16. levy and collect assessments, fees, fines and interest and impose penalties and sanctions as authorized by law for a violation of this article or any regulations promulgated by the commission;

17. collect taxes, fees and interest under this article;

18. restrict, suspend or revoke licenses issued under this article;

19. refer cases for criminal prosecution to the appropriate federal, state or local authorities;

20. adopt, amend or repeal regulations for the implementation, administration and enforcement of this article; and

21. determine a suitable duration for each license, registration or finding of suitability or approval.

§ 1306. Powers of the board. The New York state resort gaming facility location board shall select, following a competitive process and subject to the restrictions of this article, no more than four entities to apply to the commission for gaming facility licenses. In exercising its authority, the board shall have all powers necessary or convenient to fully carry out and effectuate its purposes including, but not limited to, the following powers. The board shall:

1. issue a request for applications for zone two gaming facility licenses pursuant to section one thousand three hundred twelve of this article;

2. assist the commission in prescribing the form of the application for zone two gaming facility licenses including information to be furnished by an applicant concerning an applicant's antecedents, habits, character, associates, criminal record, business activities and financial affairs, past or present pursuant to section one thousand three hundred thirteen of this article;

3. develop criteria, in addition to those outlined in this article, to assess which applications provide the highest and best value to the state, the zone and the region in which a gaming facility is to be located;

4. determine a gaming facility license fee to be paid by an applicant;

5. determine, from time to time, whether tribal-state gaming compacts are in or remain in good standing for the purposes of determining whether a gaming facility may be located in areas designated by subdivision two of section one thousand three hundred eleven of this article;

6. determine, with the assistance of the commission, the sources and total amount of an applicant's proposed capitalization to develop, construct, maintain and operate a proposed gaming facility license under this article;

7. have the authority to conduct investigative hearings concerning the conduct of gaming and gaming operations in accordance with any procedures set forth in this article and any applicable implementing regulations;

8. issue detailed findings of facts and conclusions demonstrating the reasons supporting its decisions to select applicants for commission licensure;

9. report annually to the governor, the speaker of the assembly and the temporary president of the senate, its proceedings for the preceding calendar year and any suggestions and recommendations as it shall deem desirable;

10. promulgate any rules and regulations that it deems necessary to carry out its responsibilities;

11. have the power to administer oaths and examine witnesses; and request and receive criminal history information as defined in paragraph (c) of subdivision one of section eight hundred forty-five-b of the executive law of the division of criminal justice services, pursuant to subdivision eight-a of section eight hundred thirty-seven of the executive law, in connection with executing the responsibilities of the board relating to licensing including fingerprinting, criminal history information and background investigations, of entities applying for a gaming facility license. At the request of the board, the division of criminal justice services shall submit a fingerprint card, along with the subject's processing fee, to the federal bureau of investigation for the purpose of conducting a criminal history search and returning a report thereon. The board shall also be entitled to request and receive, pursuant to a written memorandum of understanding filed with the department of state, any information in the possession of the state attorney general relating to the investigation of organized crime, gaming offenses, other revenue crimes or tax evasion. Provided however, the attorney general may withhold any information that (a) would identify a confidential source or disclose confidential information relating to a criminal investigation, (b) would interfere with law enforcement investigations

procedures, that, if disclosed, could endanger the life or safety of any person, or (d) constitutes records received from other state, local or federal agencies that the attorney general is prohibited by law, regulation or agreement from disclosing.

§ 1307. Required regulations. 1. The commission is authorized:

(a) to adopt, amend or repeal such regulations, consistent with the policy and objectives of this article, as amended and supplemented, as it may deem necessary to protect the public interest in carrying out the provisions of this article; and

(b) to adopt, amend or repeal such regulations as may be necessary for the conduct of hearings before the commission and for the matters within all other responsibilities and duties of the commission imposed by this article.

2. The commission shall, without limitation, include the following specific provisions in its regulations in accordance with the provisions of this article:

(a) prescribing the methods and forms of application and registration which any applicant or registrant shall follow and complete;

(b) prescribing the methods, procedures and form for delivery of information concerning any person's family, habits, character, associates, criminal record, business activities and financial affairs;

(c) prescribing such procedures for the fingerprinting of an applicant, employee of a licensee, or registrant, and methods of identification which may be necessary to accomplish effective enforcement of restrictions on access to the casino and other restricted casino areas of the gaming facility;

(d) prescribing the method of notice to an applicant, registrant or licensee concerning the release of any information or data provided to the commission by such applicant, registrant or licensee;

(e) prescribing the manner and procedure of all hearings conducted by the commission or any presiding officer;

(f) prescribing the manner and method of collection of payments of taxes, fees, interest and penalties;

(g) defining and limiting the areas of operation, the rules of authorized games, odds, and devices permitted, and the method of operation of such games and devices;

(h) regulating the practice and procedures for negotiable transactions involving patrons, including limitations on the circumstances and amounts of such transactions, and the establishment of forms and procedures for negotiable instrument transactions, redemptions, and consolidations;

(i) prescribing grounds and procedures for the revocation or suspension of operating certificates, licenses and registrations;

(j) governing the manufacture, distribution, sale, deployment, and servicing of gaming devices and equipment;

(k) prescribing for gaming operations the procedures, forms and methods of management controls, including employee and supervisory tables of organization and responsibility, and minimum security and surveillance standards, including security personnel structure, alarm and other electrical or visual security measures; provided, however, that the commission shall grant an applicant broad discretion concerning the organization and responsibilities of management personnel who are not directly involved in the supervision of gaming operations;

(l) prescribing the qualifications of, and the conditions pursuant to

before the commission or to submit materials on behalf of any applicant or licensee;

(m) prescribing minimum procedures for the exercise of effective control over the internal fiscal affairs of a licensee, including provisions for the safeguarding of assets and revenues, the recording of cash and evidence of indebtedness, and the maintenance of reliable records, accounts, and reports of transactions, operations and events, including reports to the commission;

(n) providing for a minimum uniform standard of accountancy methods, procedures and forms; a uniform code of accounts and accounting classifications; and such other standard operating procedures, as may be necessary to assure consistency, comparability, and effective disclosure of all financial information, including calculations of percentages of profit by games, tables, gaming devices and slot machines;

(o) requiring quarterly financial reports and the form thereof, and an annual audit prepared by a certified public accountant licensed to do business in this state, attesting to the financial condition of a licensee and disclosing whether the accounts, records and control procedures examined are maintained by the licensee as required by this article and the regulations promulgated hereunder;

(p) governing the gaming-related advertising of licensees, their employees and agents, with the view toward assuring that such advertisements are not deceptive; and

(q) governing the distribution and consumption of alcoholic beverages on the premises of the licensee.

3. The commission shall, in its regulations, prescribe the manner and procedure of all hearings conducted by the commission.

§ 1308. Reports and recommendations. The commission shall carry on a continuous study of the operation and administration of casino control laws which may be in effect in other jurisdictions, literature on this subject which may from time to time become available, and federal laws which may affect the operation of casino gaming in this state. It shall be responsible for ascertaining any defects in this article or in the rules and regulations issued thereunder, formulating recommendations for changes in this article. The commission shall make available to the governor and the legislature within its annual report an accounting of all revenues, expenses and disbursements, a review of its licensing and enforcement activities conducted pursuant to section one thousand three hundred forty of this article and shall include therein such recommendations for changes in this article as the commission deems necessary or desirable.

§ 1309. Severability and preemption. 1. If any clause, sentence, subparagraph, paragraph, subdivision, section, article or other portion of this article or the application thereof to any person or circumstances shall be held to be invalid, such holding shall not affect, impair or invalidate the remainder of this article or the application of such portion held invalid to any other person or circumstances, but shall be confined in its operation to the clause, sentence, paragraph, subparagraph, subdivision, section, article or other portion thereof directly involved in such holding or to the person or circumstance therein involved.

2. If any provision of this article is inconsistent with, in conflict with, or contrary to any other provision of law, such provision of this article shall prevail over such other provision and such other provision

shall be deemed to be superseded to the extent of such inconsistency or conflict. Notwithstanding the provisions of any other law to the contra-  
CHAP. 174 12

ry, no local government unit of this state may enact or enforce any ordinance or resolution conflicting with any provision of this article or with any policy of this state expressed or implied herein, whether by exclusion or inclusion. The commission shall have exclusive jurisdiction over all matters delegated to it or within the scope of its powers under the provisions of this article.

## TITLE 2

### FACILITY DETERMINATION AND LICENSING

#### Section 1310. Development zones and regions.

1311. License authorization; restrictions.

1312. Requests for applications.

1313. Form of application.

1314. License applicant eligibility.

1315. Required capital investment.

1316. Minimum license thresholds.

1317. Investigation of license applicants.

1318. Disqualifying criteria.

1319. Investigative hearings.

1320. Siting evaluation.

1321. Intentionally omitted.

§ 1310. Development zones and regions. 1. There are hereby created two development zones to be known as the zone one and zone two. Zone one shall include the city of New York and the counties of Nassau, Putnam, Rockland, Suffolk and Westchester. Zone two shall include all the other counties of the state.

2. Each zone shall be divided into development regions. (a) The three development regions in zone one shall be comprised of the following counties:

(1) Region one shall consist of Putnam, Rockland and Westchester counties;

(2) Region two shall consist of Bronx, Kings, New York, Queens and Richmond counties. No gaming facility shall be authorized in region two; and

(3) Region three shall consist of Nassau and Suffolk counties.

(b) The six development regions in zone two shall be comprised of the following counties:

(1) Region one shall consist of Columbia, Delaware, Dutchess, Greene, Orange, Sullivan and Ulster counties;

(2) Region two shall consist of Albany, Fulton, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie and Washington counties.

(3) Region three shall consist of Clinton, Essex, Franklin, Hamilton, Jefferson, Saint Lawrence and Warren counties;

(4) Region four shall consist of Cayuga, Chenango, Cortland, Herkimer, Lewis, Madison, Oneida, Onondaga, Oswego and Otsego counties;

(5) Region five shall consist of Broome, Chemung (east of State Route 14), Schuyler (east of State Route 14), Seneca, Tioga, Tompkins, and Wayne (east of State Route 14) counties; and

(6) Region six shall consist of Allegany, Cattaraugus, Chautauqua, Chemung (west of State Route 14), Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Schuyler (west of State Route 14), Steuben, Wayne (west of State Route 14), Wyoming, and Yates counties.

§ 1311. License authorization; restrictions. 1. The commission is authorized to award up to four gaming facility licenses, in regions one,

two and five of zone two. The duration of such initial license shall be ten years. The term of renewal shall be determined by the commission. The commission may award a second license to a qualified applicant in no

more than a single region. The commission is not empowered to award any license in zone one. No gaming facilities are authorized under this article for the city of New York or any other portion of zone one.

As a condition of licensure, licensees are required to commence gaming operations no less than twenty-four months following license award. No additional licenses may be awarded during the twenty-four month period, nor for an additional sixty months following the end of the twenty-four month period. Should the state legislatively authorize additional gaming facility licenses within these periods, licensees shall have the right to recover the license fee paid pursuant to section one thousand three hundred six of this article.

This right shall be incorporated into the license itself, vest upon the opening of a gaming facility in zone one or in the same region as the licensee and entitle the holder of such license to bring an action in the court of claims to recover the license fee paid pursuant to section one thousand three hundred fifteen of this article in the event that any gaming facility license in excess of the number authorized by this section as of the effective date of this section is awarded within seven years from the date that the initial gaming facility license is awarded. This right to recover any such fee shall be proportionate to the length of the respective period that is still remaining upon the vesting of such right.

Additionally, the right to bring an action in the court of claims to recover the fee paid to the state on the twenty-fourth day of September, two thousand ten, by the operator of a video lottery gaming facility in a city of more than one million shall vest with such operator upon the opening of any gaming facility licensed by the commission in zone one within seven years from the date that the initial gaming facility license is awarded; provided however that the amount recoverable shall be limited to the pro rata amount of the time remaining until the end of the seven year exclusivity period, proportionate to the period of time between the date of opening of the video lottery facility until the conclusion of the seven year period.

2. Notwithstanding the foregoing, no casino gaming facility shall be authorized:

(a) in the counties of Clinton, Essex, Franklin, Hamilton, Jefferson, Lewis, Saint Lawrence and Warren;

(b) within the following area: (1) to the east, State Route 14 from Sodus Point to the Pennsylvania border with New York; (2) to the north, the border between New York and Canada; (3) to the south, the Pennsylvania border with New York; and (4) to the west, the border between New York and Canada and the border between Pennsylvania and New York; and

(c) in the counties of Cayuga, Chenango, Cortland, Herkimer, Lewis, Madison, Oneida, Onondaga, Oswego and Otsego.

§ 1312. Requests for applications. 1. The board shall issue within ninety days of a majority of members being appointed a request for applications for a gaming facility license in regions one, two and five in zone two; provided, however, that the board shall not issue any requests for applications for any region in zone one; and further provided that the board shall not issue any requests for applications with respect to any gaming facility subsequently legislatively authorized until seven years following the commencement of gaming activities

in zone two. All requests for applications shall include:

(a) the time and date for receipt of responses to the request for applications, the manner they are to be received and the address of the office to which the applications shall be delivered;

CHAP. 174

14

(b) the form of the application and the method for submission;

(c) a general description of the anticipated schedule for processing the application;

(d) the contact information of board employees responsible for handling applicant questions; and

(e) any other information that the board determines.

2. Board activities shall be subject to section one hundred thirty-nine-j and section one hundred thirty-nine-k of the state finance law.

3. Requests for applications pursuant to subdivision one of this section shall be advertised in a newspaper of general circulation and on the official internet website of the commission and the board.

4. The board shall establish deadlines for the receipt of all applications. Applications received after the deadline shall not be reviewed by the board.

§ 1313. Form of application. 1. The commission and the board shall prescribe the initial form of the application for gaming licenses which shall require, but not be limited to:

(a) the name of the applicant;

(b) the mailing address and, if a corporation, the name of the state under the laws of which it is incorporated, the location of its principal place of business and the names and addresses of its directors and such stockholders as to be determined by the commission;

(c) the identity of each person having a direct or indirect interest in the business and the nature of such interest; provided, however, that if the disclosed entity is a trust, the application shall disclose the names and addresses of all beneficiaries; provided further, that if the disclosed entity is a partnership, the application shall disclose the names and addresses of all partners, both general and limited; and provided further, that if the disclosed entity is a limited liability company, the application shall disclose the names and addresses of all members;

(d) an independent audit report of all financial activities and interests including, but not limited to, the disclosure of all contributions, donations, loans or any other financial transactions to or from a gaming entity or operator in the past five years;

(e) clear and convincing evidence of financial stability including, but not limited to, bank references, business and personal income and disbursement schedules, tax returns and other reports filed by government agencies and business and personal accounting check records and ledgers;

(f) information and documentation to demonstrate that the applicant has sufficient business ability and experience to create the likelihood of establishing and maintaining a successful gaming facility;

(g) a full description of the proposed internal controls and security systems for the proposed gaming facility and any related facilities;

(h) the designs for the proposed gaming facility, including the names and addresses of the architects, engineers and designers, and a timeline of construction that includes detailed stages of construction for the gaming facility and non-gaming structures, where applicable, and a proposed date to open for gaming;

(i) the number of construction hours estimated to complete the work;



(j) a description of the ancillary entertainment services and amenities to be provided at the proposed gaming facility;

(k) the number of employees to be employed at the proposed gaming facility, including detailed information on the pay rate and benefits for employees;

15

CHAP. 174

(1) completed studies and reports as required by the commission, which shall include, but not be limited to, an examination of the proposed gaming facility's:

(1) economic benefits to the region and the state;

(2) local and regional social, environmental, traffic and infrastructure impacts;

(3) impact on the local and regional economy, including the impact on cultural institutions and on small businesses in the host municipality and nearby municipalities;

(4) cost to the host municipality, nearby municipalities and the state for the proposed gaming facility to be located at the proposed location; and

(5) the estimated state tax revenue to be generated by the gaming facility;

(m) the names of proposed vendors of gaming equipment;

(n) the location of the proposed gaming facility, which shall include the address, maps, book and page numbers from the appropriate registry of deeds, assessed value of the land at the time of application and ownership interests over the past twenty years, including all interests, options, agreements in property and demographic, geographic and environmental information and any other information requested by the commission;

(o) the type and number of games to be conducted at the proposed gaming facility and the specific location of the games in the proposed gaming facility;

(p) the number of hotels and rooms, restaurants and other amenities located at the proposed gaming facility and how they measure in quality to other area hotels and amenities;

(q) whether the applicant's proposed gaming facility is part of a regional or local economic plan; and

(r) whether the applicant purchased or intends to purchase publicly-owned land for the proposed gaming facility.

2. Applications for licenses shall be public records; provided however, that trade secrets, competitively-sensitive or other proprietary information provided in the course of an application for a gaming license under this article, the disclosure of which would place the applicant at a competitive disadvantage, may be withheld from disclosure pursuant to paragraph (d) of subdivision two of section eighty-seven of the public officers law.

§ 1314. License applicant eligibility. 1. Gaming facility licenses shall only be issued to applicants who are qualified under the criteria set forth in this article, as determined by the commission.

2. As a condition of filing, each potential license applicant must demonstrate to the board's satisfaction that local support has been demonstrated.

3. Within any development region, if the commission is not convinced that there is an applicant that has met the eligibility criteria or the board finds that no applicant has provided substantial evidence that its proposal will provide value to the region in which the gaming facility is proposed to be located, no gaming facility license shall be awarded

in that region.

§ 1315. Required capital investment. 1. The board shall establish the minimum capital investment for a gaming facility by zone and region. Such investment shall include, but not be limited to, a casino area, at least one hotel and other amenities; and provided further, that the board shall determine whether it will include the purchase or lease

CHAP. 174

16

price of the land where the gaming facility will be located or any infrastructure designed to support the site including, but not limited to, drainage, utility support, roadways, interchanges, fill and soil or groundwater or surface water contamination issues. The board may consider private capital investment made previous to the effective date of this section, but may, in its discretion, discount a percentage of the investment made. Upon award of a gaming license by the commission, the applicant shall be required to deposit ten percent of the total investment proposed in the application into an interest-bearing account. Monies received from the applicant shall be held in escrow until the final stage of construction, as detailed in the timeline of construction submitted with the licensee's application and approved by the commission, at which time the deposit plus interest earned shall be returned to the applicant to be applied for the final stage. Should the applicant be unable to complete the gaming facility, the deposit shall be forfeited to the state. In place of a cash deposit, the commission may allow for an applicant to secure a deposit bond insuring that ten percent of the proposed capital investment shall be forfeited to the state if the applicant is unable to complete the gaming facility.

2. Each applicant shall submit its proposed capital investment with its application to the board which shall include stages of construction of the gaming facility and the deadline by which the stages and overall construction and any infrastructure improvements will be completed. In awarding a license, the commission shall determine at what stage of construction a licensee shall be approved to open for gaming; provided, however, that a licensee shall not be approved to open for gaming until the commission has determined that at least the gaming area and other ancillary entertainment services and non-gaming amenities, as required by the board, have been built and are of a superior quality as set forth in the conditions of licensure. The commission shall not approve a gaming facility to open before the completion of the permanent casino area.

3. A licensee who fails to begin gaming operations within twenty-four months following license award shall be subject to suspension or revocation of the gaming license by the commission and may, after being found by the commission after notice and opportunity for a hearing to have acted in bad faith in its application, be assessed a fine of up to fifty million dollars.

4. The board shall determine a licensing fee to be paid by a licensee within thirty days after the award of the license which shall be deposited into the commercial gaming revenue fund. The license shall set forth the conditions to be satisfied by the licensee before the gaming facility shall be opened to the public. The commission shall set any renewal fee for such license based on the cost of fees associated with the evaluation of a licensee under this article which shall be deposited into the commercial gaming fund. Such renewal fee shall be exclusive of any subsequent licensing fees under this section.

5. The commission shall determine the sources and total amount of an applicant's proposed capitalization to develop, construct, maintain and

operate a proposed gaming facility under this article. Upon award of a gaming license, the commission shall continue to assess the capitalization of a licensee for the duration of construction of the proposed gaming facility and the term of the license.

§ 1316. Minimum license thresholds. No applicant shall be eligible to receive a gaming license unless the applicant meets the following crite-

ria and clearly states as part of an application that the applicant shall:

1. in accordance with the design plans submitted with the licensee's application to the board, invest not less than the required capital under this article into the gaming facility;

2. own or acquire, within sixty days after a license has been awarded, the land where the gaming facility is proposed to be constructed; provided, however, that ownership of the land shall include a tenancy for a term of years under a lease that extends not less than sixty years beyond the term of the gaming license issued under this article;

3. meet the licensee deposit requirement;

4. demonstrate that it is able to pay and shall commit to paying the gaming licensing fee;

5. demonstrate to the commission how the applicant proposes to address problem gambling concerns, workforce development and community development and host and nearby municipality impact and mitigation issues;

6. identify the infrastructure costs of the host municipality incurred in direct relation to the construction and operation of a gaming facility and commit to a community mitigation plan for the host municipality;

7. identify the service costs of the host municipality incurred for emergency services in direct relation to the operation of a gaming facility and commit to a community mitigation plan for the host municipality;

8. pay to the commission an application fee of one million dollars to defray the costs associated with the processing of the application and investigation of the applicant; provided, however, that if the costs of the investigation exceed the initial application fee, the applicant shall pay the additional amount to the commission within thirty days after notification of insufficient fees or the application shall be rejected and further provided that should the costs of such investigation not exceed the fee remitted, any unexpended portion shall be returned to the applicant;

9. comply with state building and fire prevention codes;

10. formulate for board approval and abide by an affirmative action program of equal opportunity whereby the applicant establishes specific goals for the utilization of minorities, women and veterans on construction jobs.

§ 1317. Investigation of license applicants. 1. Upon receipt of an application for a gaming facility license, the commission shall cause to be commenced an investigation into the suitability of the applicant. In evaluating the suitability of the applicant, the commission shall consider the overall reputation of the applicant including, without limitation:

(a) the integrity, honesty, good character and reputation of the applicant;

(b) the financial stability, integrity and background of the applicant;

(c) the business practices and the business ability of the applicant to establish and maintain a successful gaming facility;

(d) whether the applicant has a history of compliance with gaming licensing requirements in other jurisdictions;

(e) whether the applicant, at the time of application, is a defendant in litigation involving its business practices;

(f) the suitability of all parties in interest to the gaming facility license, including affiliates and close associates and the financial resources of the applicant; and

CHAP. 174

18

(g) whether the applicant is disqualified from receiving a license under this article; provided, however, that in considering the rehabilitation of an applicant for a gaming facility license, the commission shall not automatically disqualify an applicant if the applicant affirmatively demonstrates, by clear and convincing evidence, that the applicant has financial responsibility, character, reputation, integrity and general fitness as such to warrant belief by the commission that the applicant will act honestly, fairly, soundly and efficiently as a gaming licensee.

2. If the investigation reveals that an applicant has failed to:

(a) establish the applicant's integrity or the integrity of any affiliate, close associate, financial source or any person required to be qualified by the commission;

(b) demonstrate responsible business practices in any jurisdiction; or

(c) overcome any other reason, as determined by the commission, as to why it would be injurious to the interests of the state in awarding the applicant a gaming facility license, the commission shall deny the application, subject to notice and an opportunity for hearing.

3. If the investigation reveals that an applicant is suitable to receive a gaming facility license, the entity shall recommend that the commission commence a review of the applicant's entire application.

§ 1318. Disqualifying criteria. 1. The commission shall deny a license to any applicant who the commission determines is disqualified on the basis of any of the following criteria, subject to notice and an opportunity for hearing:

(a) failure of the applicant to prove by clear and convincing evidence that the applicant is qualified in accordance with the provisions of this article;

(b) failure of the applicant to provide information, documentation and assurances required by this article or requested by the commission, or failure of the applicant to reveal any fact material to qualification, or the supplying of information which is untrue or misleading as to a material fact pertaining to the qualification criteria;

(c) the conviction of the applicant, or of any person required to be qualified under this article as a condition of a license, of any offense in any jurisdiction which is or would be a felony or other crime involving public integrity, embezzlement, theft, fraud or perjury;

(d) committed prior acts which have not been prosecuted or in which the applicant, or of any person required to be qualified under this article as a condition of a license, was not convicted but form a pattern of misconduct that makes the applicant unsuitable for a license under this article; or

(e) if the applicant, or of any person required to be qualified under this article as a condition of a license, has affiliates or close associates that would not qualify for a license or whose relationship with the applicant may pose an injurious threat to the interests of the state in awarding a gaming facility license to the applicant;

(f) any other offense under present state or federal law which indi-

cates that licensure of the applicant would be inimical to the policy of this article; provided, however, that the disqualification provisions of this section shall not apply with regard to any misdemeanor conviction;

(g) current prosecution or pending charges in any jurisdiction of the applicant or of any person who is required to be qualified under this article as a condition of a license, for any of the offenses enumerated in paragraph (c) of subdivision one of this section; provided, however, that at the request of the applicant or the person charged, the commis-

sion may defer decision upon such application during the pendency of such charge;

(h) the pursuit by the applicant or any person who is required to be qualified under this article as a condition of a license of economic gain in an occupational manner or context which is in violation of the criminal or civil public policies of this state, if such pursuit creates a reasonable belief that the participation of such person in gaming facility operations would be inimical to the policies of this article. For purposes of this section, occupational manner or context shall be defined as the systematic planning, administration, management, or execution of an activity for financial gain;

(i) the identification of the applicant or any person who is required to be qualified under this article as a condition of a license as a career offender or a member of a career offender cartel or an associate of a career offender or career offender cartel in such a manner which creates a reasonable belief that the association is of such a nature as to be inimical to the policy of this article. For purposes of this section, career offender shall be defined as any person whose behavior is pursued in an occupational manner or context for the purpose of economic gain, utilizing such methods as are deemed criminal violations of the public policy of this state. A career offender cartel shall be defined as any group of persons who operate together as career offenders;

(j) the commission by the applicant or any person who is required to be qualified under this article as a condition of a license of any act or acts which would constitute any offense under paragraph (c) of subdivision one of this section, even if such conduct has not been or may not be prosecuted under the criminal laws of this state or any other jurisdiction;

(k) flagrant defiance by the applicant or any person who is required to be qualified under this article of any legislative investigatory body or other official investigatory body of any state or of the United States when such body is engaged in the investigation of crimes relating to gaming, official corruption, or organized crime activity; and

(l) failure by the applicant or any person required to be qualified under this article as a condition of a license to make required payments in accordance with a child support order, repay an overpayment for public assistance benefits, or repay any other debt owed to the state unless such applicant provides proof to the executive director's satisfaction of payment of or arrangement to pay any such debts prior to licensure.

§ 1319. Hearings. The commission and the board shall have the independent authority to conduct hearings concerning the conduct of gaming and applicants for gaming facility licenses in accordance with any procedures set forth in this article and any applicable implementing regulations.

§ 1320. Siting evaluation. In determining whether an applicant shall

be eligible for a gaming facility license, the board shall evaluate and issue a finding of how each applicant proposes to advance the following objectives.

1. The decision by the board to select a gaming facility license applicant shall be weighted by seventy percent based on economic activity and business development factors including:

(a) realizing maximum capital investment exclusive of land acquisition and infrastructure improvements;

(b) maximizing revenues received by the state and localities;

CHAP. 174

20

(c) providing the highest number of quality jobs in the gaming facility;

(d) building a gaming facility of the highest caliber with a variety of quality amenities to be included as part of the gaming facility;

(e) offering the highest and best value to patrons to create a secure and robust gaming market in the region and the state;

(f) providing a market analysis detailing the benefits of the site location of the gaming facility and the estimated recapture rate of gaming-related spending by residents travelling to an out-of-state gaming facility;

(g) offering the fastest time to completion of the full gaming facility;

(h) demonstrating the ability to fully finance the gaming facility; and

(i) demonstrating experience in the development and operation of a quality gaming facility.

2. The decision by the board to select a gaming facility license applicant shall be weighted by twenty percent based on local impact and siting factors including:

(a) mitigating potential impacts on host and nearby municipalities which might result from the development or operation of the gaming facility;

(b) gaining public support in the host and nearby municipalities which may be demonstrated through the passage of local laws or public comment received by the board or gaming applicant;

(c) operating in partnership with and promoting local hotels, restaurants and retail facilities so that patrons experience the full diversified regional tourism industry; and

(d) establishing a fair and reasonable partnership with live entertainment venues that may be impacted by a gaming facility under which the gaming facility actively supports the mission and the operation of the impacted entertainment venues.

3. The decision by the board to select a gaming facility license applicant shall be weighted by ten percent based on workforce enhancement factors including:

(a) implementing a workforce development plan that utilizes the existing labor force, including the estimated number of construction jobs a proposed gaming facility will generate, the development of workforce training programs that serve the unemployed and methods for accessing employment at the gaming facility;

(b) taking additional measures to address problem gambling including, but not limited to, training of gaming employees to identify patrons exhibiting problems with gambling;

(c) utilizing sustainable development principles including, but not limited to:

(1) having new and renovation construction certified under the appro-

priate certification category in the Leadership in Energy and Environmental Design Green Building Rating System created by the United States Green Building Council;

- (2) efforts to mitigate vehicle trips;
- (3) efforts to conserve water and manage storm water;
- (4) demonstrating that electrical and HVAC equipment and appliances will be Energy Star labeled where available;
- (5) procuring or generating on-site ten percent of its annual electricity consumption from renewable sources; and

21

CHAP. 174

(6) developing an ongoing plan to submeter and monitor all major sources of energy consumption and undertake regular efforts to maintain and improve energy efficiency of buildings in their systems;

(d) establishing, funding and maintaining human resource hiring and training practices that promote the development of a skilled and diverse workforce and access to promotion opportunities through a workforce training program that:

(1) establishes transparent career paths with measurable criteria within the gaming facility that lead to increased responsibility and higher pay grades that are designed to allow employees to pursue career advancement and promotion;

(2) provides employee access to additional resources, such as tuition reimbursement or stipend policies, to enable employees to acquire the education or job training needed to advance career paths based on increased responsibility and pay grades; and

(3) establishes an on-site child day care program;

(e) purchasing, whenever possible, domestically manufactured slot machines for installation in the gaming facility;

(f) implementing a workforce development plan that:

(1) incorporates an affirmative action program of equal opportunity by which the applicant guarantees to provide equal employment opportunities to all employees qualified for licensure in all employment categories, including persons with disabilities;

(2) utilizes the existing labor force in the state;

(3) estimates the number of construction jobs a gaming facility will generate and provides for equal employment opportunities and which includes specific goals for the utilization of minorities, women and veterans on those construction jobs;

(4) identifies workforce training programs offered by the gaming facility; and

(5) identifies the methods for accessing employment at the gaming facility; and

(g) demonstrating that the applicant has an agreement with organized labor, including hospitality services, and has the support of organized labor for its application, which specifies:

(1) the number of employees to be employed at the gaming facility, including detailed information on the pay rate and benefits for employees and contractors in the gaming facility and all infrastructure improvements related to the project; and

(2) detailed plans for assuring labor harmony during all phases of the construction, reconstruction, renovation, development and operation of the gaming facility.

§ 1321. Intentionally omitted.

### TITLE 3

#### OCCUPATIONAL LICENSING

Section 1322. General provisions.

1323. Key employee licenses.

1324. Gaming employee registration.

1325. Approval, denial and renewal of employee licenses and registrations.

§ 1322. General provisions. 1. It shall be the affirmative responsibility of each applicant or licensee to establish by clear and convincing evidence its individual qualifications, and for a gaming facility license the qualifications of each person who is required to be qualified under this article.

CHAP. 174

22

2. Any applicant, licensee, registrant, or any other person who must be qualified pursuant to this article shall provide all legally required information and satisfy all lawful requests for information pertaining to qualification and in the form specified by regulation. All applicants, registrants, and licensees shall waive liability as to the state, and its instrumentalities and agents, for any damages resulting from any disclosure or publication in any manner, other than a willfully unlawful disclosure or publication, of any material or information acquired during inquiries, investigations or hearings.

3. All applicants, licensees, registrants, intermediary companies, and holding companies shall consent to inspections, searches and seizures while at a gaming facility and the supplying of handwriting exemplars as authorized by this article and regulations promulgated hereunder.

4. All applicants, licensees, registrants, and any other person who shall be qualified pursuant to this article shall have the continuing duty to provide any assistance or information required by the commission, and to cooperate in any inquiry, investigation or hearing conducted by the commission. If, upon issuance of a formal request to answer or produce information, evidence or testimony, any applicant, licensee, registrant, or any other person who shall be qualified pursuant to this article refuses to comply, the application, license, registration or qualification of such person may be denied or revoked.

5. Each applicant or person who must be qualified under this article shall be photographed and fingerprinted for identification and investigation purposes in accordance with procedures set forth by regulation.

6. All licensees, all registrants, and all other persons required to be qualified under this article shall have a duty to inform the commission of any action which they believe would constitute a violation of this article. No person who so informs the commission shall be discriminated against by an applicant, licensee or registrant because of the supplying of such information.

§ 1323. Key employee licenses. 1. No licensee or a holding or intermediary company of a licensee may employ any person as a casino key employee unless the person is the holder of a valid casino key employee license issued by the commission.

2. Each applicant for a casino key employee license must, prior to the issuance of any casino key employee license, produce information, documentation and assurances concerning the following qualification criteria:

(a) Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be lawfully required to establish by clear and convincing evidence the financial stability, integrity and responsibility of the applicant, including but not limited to bank references, business and personal income and disbursements schedules, tax returns and other reports filed with governmental agencies, and business and personal accounting and check



records and ledgers. In addition, each applicant shall, in writing, authorize the examination of all bank accounts and records as may be deemed necessary by the commission.

(b) Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's good character, honesty and integrity. Such information shall include data pertaining to family, habits, character, reputation, criminal history information, business activities, financial affairs, and business, professional and personal associates, covering at least the ten year period imme-

diately preceding the filing of the application. Each applicant shall notify the commission of any civil judgments obtained against such applicant pertaining to antitrust or security regulation laws of the federal government, of this state or of any other state, jurisdiction, province or country. In addition, each applicant shall, upon request of the commission, produce letters of reference from law enforcement agencies having jurisdiction in the applicant's place of residence and principal place of business, which letters of reference shall indicate that such law enforcement agencies do not have any pertinent non-sealed information concerning the applicant, or if such law enforcement agency does have such information pertaining to the applicant, shall specify what that information is. If the applicant has been associated with gaming operations in any capacity, position or employment in a jurisdiction which permits such activity, the applicant shall, upon request of the commission, produce letters of reference from the gaming enforcement or control agency, which shall specify the experience of such agency with the applicant, his or her associates and his or her participation in the gaming operations of that jurisdiction; provided, however, that if no such letters are received from the appropriate law enforcement agencies within sixty days of the applicant's request therefor, the applicant may submit a statement under oath that he or she is or was during the period such activities were conducted in good standing with such gaming enforcement or control agency.

(c) Each applicant employed by a gaming facility licensee shall be a resident of the state prior to the issuance of a casino key employee license; provided, however, that upon petition by the holder of a license, the commission may waive this residency requirement for any applicant whose particular position will require him to be employed outside the state; and provided further that no applicant employed by a holding or intermediary company of a licensee shall be required to establish residency in this state.

(d) For the purposes of this section, each applicant shall submit to the commission the applicant's name, address, fingerprints and written consent for a criminal history information as defined in paragraph (c) of subdivision one of section eight hundred forty-five-b of the executive law, to be performed. The commission is hereby authorized to exchange fingerprint data with and receive criminal history record information from the state division of criminal justice services and the federal bureau of investigation consistent with applicable state and federal laws, rules and regulations. The applicant shall pay the fee for such criminal history information as established pursuant to article thirty-five of the executive law. The state division of criminal justice services shall promptly notify the commission in the event a current or prospective licensee, who was the subject of such criminal history information pursuant to this section, is arrested for a crime or

offense in this state after the date the check was performed.

3. The commission shall deny a casino key employee license to any applicant who is disqualified on the basis of the criteria contained in section one thousand three hundred eighteen of this title, subject to notice and hearing.

4. Upon receipt of such criminal history information, the commission shall provide such applicant with a copy of such criminal history information, together with a copy of article twenty-three-A of the correction law, and inform such applicant of his or her right to seek correction of any incorrect information contained in such criminal history information pursuant to regulations and procedures established by the division of

CHAP. 174

24

criminal justice services. Except as otherwise provided by law, such criminal history information shall be confidential and any person who willfully permits the release of such confidential criminal history information to persons not permitted to receive such information shall be guilty of a misdemeanor.

5. Upon petition by the holder of a license, the commission may issue a temporary license to an applicant for a casino key employee license, provided that:

(a) The applicant for the casino key employee license has filed a completed application as required by the commission;

(b) The petition for a temporary casino key employee license certifies, and the commission finds, that an existing casino key employee position of the petitioner is vacant or will become vacant within sixty days of the date of the petition and that the issuance of a temporary key employee license is necessary to fill the said vacancy on an emergency basis to continue the efficient operation of the casino, and that such circumstances are extraordinary and not designed to circumvent the normal licensing procedures of this article;

6. Unless otherwise terminated pursuant to this article, any temporary casino key employee license issued pursuant to this section shall expire nine months from the date of its issuance.

§ 1324. Gaming employee registration. 1. No person may commence employment as a gaming employee unless such person has a valid registration on file with the commission, which registration shall be prepared and filed in accordance with the regulations promulgated hereunder.

2. A gaming employee registrant shall produce such information as the commission by regulation may require. Subsequent to the registration of a gaming employee, the executive director may revoke, suspend, limit, or otherwise restrict the registration upon a finding that the registrant is disqualified on the basis of the criteria contained in section one thousand three hundred eighteen of this title. If a gaming employee registrant has not been employed in any position within a gaming facility for a period of three years, the registration of that gaming employee shall lapse.

3. No gaming employee registration shall be denied or revoked on the basis of a misdemeanor conviction of any of the offenses enumerated in this article as disqualification criteria or the commission of any act or acts which would constitute any offense under section one thousand three hundred eighteen of this title, provided that the registrant has affirmatively demonstrated the registrant's rehabilitation, pursuant to article twenty-three-A of the correction law.

4. For the purposes of this section, each registrant shall submit to the commission the registrant's name, address, fingerprints and written consent for a criminal history information to be performed. The commis-

sion is hereby authorized to exchange fingerprint data with and receive criminal history information as defined in paragraph (c) of subdivision one of section eight hundred forty-five-b of the executive law from the state division of criminal justice services and the federal bureau of investigation consistent with applicable state and federal laws, rules and regulations. The registrant shall pay the fee for such criminal history information as established pursuant to article thirty-five of the executive law. The state division of criminal justice services shall promptly notify the commission in the event a current or prospective licensee, who was the subject of a criminal history information pursuant to this section, is arrested for a crime or offense in this state after the date the check was performed.

5. Upon receipt of such criminal history information, the Commission shall provide such applicant with a copy of such criminal history information, together with a copy of article twenty-three-A of the correction law, and inform such applicant of his or her right to seek correction of any incorrect information contained in such criminal history information pursuant to regulations and procedures established by the division of criminal justice services. Except as otherwise provided by law, such criminal history information shall be confidential and any person who willfully permits the release of such confidential criminal history information to persons not permitted to receive such information shall be guilty of a misdemeanor.

§ 1325. Approval, denial and renewal of employee licenses and registrations. 1. Upon the filing of an application for a casino key employee license or gaming employee registration required by this article and after submission of such supplemental information as the commission may require, the commission shall conduct or cause to be conducted such investigation into the qualification of the applicant, and the commission shall conduct such hearings concerning the qualification of the applicant, in accordance with its regulations, as may be necessary to determine qualification for such license.

2. After such investigation, the commission may either deny the application or grant a license to an applicant whom it determines to be qualified to hold such license.

3. The commission shall have the authority to deny any application pursuant to the provisions of this article following notice and opportunity for hearing.

4. When the commission grants an application, the commission may limit or place such restrictions thereupon as it may deem necessary in the public interest.

5. After an application for a casino key employee license is submitted, final action of the commission shall be taken within ninety days after completion of all hearings and investigations and the receipt of all information required by the commission.

6. Licenses and registrations of casino key employees and gaming employees issued pursuant to this article shall remain valid for five years unless suspended, revoked or voided pursuant to law. Such licenses and registrations may be renewed by the holder thereof upon application, on a form prescribed by the commission, and payment of the applicable fee. Notwithstanding the forgoing, if a gaming employee registrant has not been employed in any position within a gaming facility for a period of three years, the registration of that gaming employee shall lapse.

8. The commission shall establish by regulation appropriate fees to be paid upon the filing of the required applications. Such fees shall be

deposited into the commercial gaming revenue fund.

TITLE 4

ENTERPRISE AND VENDOR LICENSING AND REGISTRATION

Section 1326. Licensing of vendor enterprises.

1327. Duration and renewal of vendor registration.

1328. Junket operator licensing.

1329. Lobbyist registration.

1330. Registration of labor organizations.

1330-a. Casino gaming expenditures.

§ 1326. Licensing of vendor enterprises. 1. Any business to be conducted with a gaming facility applicant or licensee by a vendor offering goods or services which directly relate to gaming activity, including gaming equipment manufacturers, suppliers, repairers, and

CHAP. 174

26

independent testing laboratories, shall be licensed as a casino vendor enterprise in accordance with the provisions of this article prior to conducting any business whatsoever with a gaming facility applicant or licensee, its employees or agents; provided, however, that upon a showing of good cause by a gaming facility applicant or licensee, the executive director may permit an applicant for a casino vendor enterprise license to conduct business transactions with such gaming facility applicant or licensee prior to the licensure of that casino vendor enterprise applicant under this subdivision for such periods as the commission may establish by regulation.

2. In addition to the requirements of subdivision one of this section, any casino vendor enterprise intending to manufacture, sell, distribute, test or repair slot machines within the state shall be licensed in accordance with the provisions of this article prior to engaging in any such activities; provided, however, that upon a showing of good cause by a gaming facility applicant or licensee, the executive director may permit an applicant for a casino vendor enterprise license to conduct business transactions with the gaming facility applicant or licensee prior to the licensure of that casino vendor enterprise applicant under this subdivision for such periods as the commission may establish by regulation; and provided further, however, that upon a showing of good cause by an applicant required to be licensed as a casino vendor enterprise pursuant to this subdivision, the executive director may permit the casino vendor enterprise applicant to initiate the manufacture of slot machines or engage in the sale, distribution, testing or repair of slot machines with any person other than a gaming facility applicant or licensee, its employees or agents, prior to the licensure of that casino vendor enterprise applicant under this subdivision.

3. Vendors providing goods and services to gaming facility licensees or applicants ancillary to gaming shall be required to be licensed as an ancillary casino vendor enterprise and shall comply with the standards for casino vendor license applicants.

4. Each casino vendor enterprise required to be licensed pursuant to subdivision one of this section, as well as its owners; management and supervisory personnel; and employees if such employees have responsibility for services to a gaming facility applicant or licensee, must qualify under the standards, except residency, established for qualification of a casino key employee under this article.

5. Any vendor that offers goods or services to a gaming facility applicant or licensee that is not included in subdivision one or two of this section including, but not limited to site contractors and subcontractors, shopkeepers located within the facility, gaming schools that

possess slot machines for the purpose of instruction, and any non-supervisory employee of a junket enterprise licensed under subdivision three of this section, shall be required to register with the commission in accordance with the regulations promulgated under this article.

Notwithstanding the provisions aforementioned, the executive director may, consistent with the public interest and the policies of this article, direct that individual vendors registered pursuant to this subdivision be required to apply for either a casino vendor enterprise license pursuant to subdivision one of this section, or an ancillary vendor industry enterprise license pursuant to subdivision three of this section, as directed by the commission. The executive director may also order that any enterprise licensed as or required to be licensed as an ancillary casino vendor enterprise pursuant to subdivision three of this section be required to apply for a casino vendor enterprise license

pursuant to subdivision one of this section. The executive director may also, in his or her discretion, order that an independent software contractor not otherwise required to be registered be either registered as a vendor pursuant to this subdivision or be licensed pursuant to either subdivision one or three of this section.

Each ancillary casino vendor enterprise required to be licensed pursuant to subdivision three of this section, as well as its owners, management and supervisory personnel, and employees if such employees have responsibility for services to a gaming facility applicant or licensee, shall establish their good character, honesty and integrity by clear and convincing evidence and shall provide such financial information as may be required by the commission. Any enterprise required to be licensed as an ancillary casino vendor enterprise pursuant to this section shall be permitted to transact business with a gaming facility licensee upon filing of the appropriate vendor registration form and application for such licensure.

6. Any applicant, licensee or qualifier of a casino vendor enterprise license or of an ancillary casino vendor enterprise license under subdivision one of this section, and any vendor registrant under subdivision five of this section shall be disqualified in accordance with the criteria contained in section one thousand three hundred eighteen of this article, except that no such ancillary casino vendor enterprise license under subdivision three of this section or vendor registration under subdivision five of this section shall be denied or revoked if such vendor registrant can affirmatively demonstrate rehabilitation pursuant to article twenty-three-A of the correction law.

7. No casino vendor enterprise license or ancillary casino vendor enterprise license shall be issued pursuant to subdivision one of this section to any person unless that person shall provide proof of valid business registration with the department of state.

8. For the purposes of this section, each applicant shall submit to the commission the name, address, fingerprints and a written consent for a criminal history information to be performed, for each person required to qualify as part of the application. The commission is hereby authorized to exchange fingerprint data with and receive criminal history record information from the state division of criminal justice services and the federal bureau of investigation consistent with applicable state and federal laws, rules and regulations. The applicant shall pay the fee for such criminal history information as established pursuant to article thirty-five of the executive law. The state division of criminal justice services shall promptly notify the commission in the event a

current or prospective qualifier, who was the subject of a criminal history record check pursuant to this section, is arrested for a crime or offense in this state after the date the check was performed.

9. Subsequent to the licensure of any entity pursuant to subdivision one of this section, including any finding of qualification as may be required as a condition of licensure, or the registration of any vendor pursuant to subdivision three of this section, the executive director may revoke, suspend, limit, or otherwise restrict the license, registration or qualification status upon a finding that the licensee, registrant or qualifier is disqualified on the basis of the criteria set forth in section one thousand three hundred eighteen of this article.

10. After notice and hearing prior to the suspension of any license, registration or qualification issued pursuant to subdivision seven of this section the commission shall have the obligation to prove by substantial evidence that the licensee, registrant or qualifier is  
CHAP. 174 28

disqualified on the basis of the criteria set forth in section one thousand three hundred eighteen of this article.

§ 1327. Duration and renewal of vendor registration. 1. A casino vendor registration shall be effective upon issuance, and shall remain valid for five years unless revoked, suspended, voided by law, limited, or otherwise restricted by the commission. Such registrations may be renewed by the holder thereof upon application, on a form prescribed by the commission, and payment of the applicable fee. Notwithstanding the foregoing, if a vendor registrant has not conducted business with a gaming facility for a period of three years, the registration of that vendor registrant shall lapse.

2. The commission shall establish by regulation reasonable and appropriate fees to be imposed on each vendor registrant who provides goods or services to a gaming facility, regardless of the nature of any contractual relationship between the vendor registrant and gaming facility, if any. Such fees shall be paid to the commission.

§ 1328. Junket operator licensing. 1. No junkets may be organized or permitted except in accordance with the provisions of this article. No person may act as a junket representative or junket enterprise except in accordance with this section.

2. A junket representative employed by a gaming facility licensee, an applicant for a gaming facility license or an affiliate of a gaming facility licensee shall be licensed as a casino key employee; provided, however, that said licensee need not be a resident of this state. No gaming facility licensee or applicant for a gaming facility license may employ or otherwise engage a junket representative who is not so licensed.

3. Junket enterprises that, and junket representatives not employed by a gaming facility licensee or an applicant for a gaming facility license or by a junket enterprise who, engage in activities governed by this section shall be licensed as an ancillary casino vendor enterprise in accordance with subdivision three of section one thousand three hundred twenty-six of this title, unless otherwise directed by the commission; provided, however, that any such junket enterprise or junket representative who has disqualified shall be entitled to establish his or her rehabilitation from such disqualification pursuant to article twenty-three-A of the correction law. Any non-supervisory employee of a junket enterprise or junket representative licensed as an ancillary casino vendor enterprise in accordance with subdivision three of section one thousand three hundred twenty-six of this title shall be registered.

4. Prior to the issuance of any license required by this section, an applicant for licensure shall submit to the jurisdiction of the state and shall demonstrate that he or she is amenable to service of process within this state. Failure to establish or maintain compliance with the requirements of this subdivision shall constitute sufficient cause for the denial, suspension or revocation of any license issued pursuant to this section.

5. Upon petition by the holder of a gaming facility license, an applicant for a casino key employee license intending to be employed as a junket representative may be issued a temporary license by the commission in accordance with regulations promulgated, provided that:

(a) the applicant for licensure is employed by a gaming facility licensee; and

(b) the applicant for licensure has filed a completed application as required by the commission.

29

CHAP. 174

6. The commission shall have the authority to immediately suspend, limit or condition any temporary license issued pursuant to this section, pending a hearing on the qualifications of the junket representative.

7. Unless otherwise terminated, any temporary license issued pursuant to this section shall expire twelve months from the date of its issuance, and shall be renewable by the commission for one additional six month period.

8. Every agreement concerning junkets entered into by a gaming facility licensee and a junket representative or junket enterprise shall be deemed to include a provision for its termination without liability on the part of the gaming facility licensee, if the commission orders the termination upon the suspension, limitation, conditioning, denial or revocation of the licensure of the junket representative or junket enterprise. Failure to expressly include such a condition in the agreement shall not constitute a defense in any action brought to terminate the agreement.

9. A gaming facility licensee shall be responsible for the conduct of any junket representative or junket enterprise associated with it and for the terms and conditions of any junket engaged in on its premises, regardless of the fact that the junket may involve persons not employed by such a gaming facility licensee.

10. A gaming facility licensee shall be responsible for any violation or deviation from the terms of a junket. Notwithstanding any other provisions of this article, the commission may order restitution to junket participants, assess penalties for such violations or deviations, prohibit future junkets by the gaming facility licensee, junket enterprise or junket representative, and order such further relief as it deems appropriate.

11. The commission shall, by regulation, prescribe methods, procedures and forms for the delivery and retention of information concerning the conduct of junkets by gaming facility licensees. Without limitation of the foregoing, each gaming facility licensee, in accordance with the rules of the commission, shall:

(a) Maintain on file a report describing the operation of any junket engaged in on its premises; and

(b) Submit to the commission a list of all its employees who are acting as junket representatives.

12. Each gaming facility licensee, junket representative or junket enterprise shall, in accordance with the rules of the commission, file a

report with the commission with respect to each list of junket patrons or potential junket patrons purchased directly or indirectly by the gaming facility licensee, junket representative or enterprise.

13. The commission shall have the authority to determine, either by regulation, or upon petition by the holder of a gaming facility license, that a type of arrangement otherwise included within the definition of "junket" shall not require compliance with any or all of the requirements of this section. In granting exemptions, the commission shall consider such factors as the nature, volume and significance of the particular type of arrangement, and whether the exemption would be consistent with the public policies established by this article. In applying the provisions of this subdivision, the commission may condition, limit, or restrict any exemption as it may deem appropriate.

14. No junket enterprise or junket representative or person acting as a junket representative may:

CHAP. 174

30

(a) Engage in efforts to collect upon checks that have been returned by banks without full and final payment;

(b) Exercise approval authority with regard to the authorization or issuance of credit;

(c) Act on behalf of or under any arrangement with a gaming facility licensee or a gaming patron with regard to the redemption, consolidation, or substitution of the gaming patron's checks awaiting deposit;

(d) Individually receive or retain any fee from a patron for the privilege of participating in a junket; and

(e) Pay for any services, including transportation, or other items of value provided to, or for the benefit of, any patron participating in a junket.

§ 1329. Lobbyist registration. 1. For purposes of this section, the terms "lobbyist", "lobbying", "lobbying activities" and "client" shall have the same meaning as those terms are defined by section one-c of the legislative law.

2. In addition to any other registration and reporting required by law, each lobbyist seeking to engage in lobbying activity on behalf of a client or a client's interest before the commission shall first register with the secretary of the commission. The secretary shall cause a registration to be available on the commission's website within five days of submission.

§ 1330. Registration of labor organizations. 1. Each labor organization, union or affiliate seeking to represent employees who are employed in a gaming facility by a gaming facility licensee shall register with the commission biennially, and shall disclose such information as the commission may require, including the names of all affiliated organizations, pension and welfare systems and all officers and agents of such organizations and systems; provided, however, that no labor organization, union, or affiliate shall be required to furnish such information to the extent such information is included in a report filed by any labor organization, union, or affiliate with the Secretary of Labor pursuant to 29 U.S.C. § 431 et seq. or § 1001 et seq. if a copy of such report, or of the portion thereof containing such information, is furnished to the commission pursuant to the aforesaid federal provisions. The commission may in its discretion exempt any labor organization, union, or affiliate from the registration requirements of this subdivision where the commission finds that such organization, union or affiliate is not the certified bargaining representative of any employee who is employed in a gaming facility by a gaming facility licensee, is



not involved actively, directly or substantially in the control or direction of the representation of any such employee, and is not seeking to do so.

2. No person may act as an officer, agent or principal employee of a labor organization, union or affiliate registered or required to be registered pursuant to this section if the person has been found disqualified by the commission in accordance with the criteria contained in section one thousand three hundred eighteen of this article. The commission may, for purposes of this subdivision, waive any disqualification criterion consistent with the public policy of this article and upon a finding that the interests of justice so require.

3. Neither a labor organization, union or affiliate nor its officers and agents not otherwise individually licensed or registered under this article and employed by a gaming facility licensee may hold any financial interest whatsoever in the gaming facility or gaming facility licensee whose employees they represent.

31

CHAP. 174

4. The commission may maintain a civil action and proceed in a summary manner, without posting bond, against any person, including any labor organization, union or affiliate, to compel compliance with this section, or to prevent any violations, the aiding and abetting thereof, or any attempt or conspiracy to violate this section.

5. In addition to any other remedies provided in this section, a labor organization, union or affiliate registered or required to be registered pursuant to this section may be prohibited by the commission from receiving any dues from any employee licensed or registered under this article and employed by a gaming facility licensee or its agent, if any officer, agent or principal employee of the labor organization, union or affiliate has been found disqualified and if such disqualification has not been waived by the commission in accordance with subdivision two of this section.

§ 1330-a. Casino gaming expenditures. 1. (a) In addition to any other registration or reporting required by law, any entity licensed under section sixteen hundred seventeen-a of the tax law, or which possesses a pari-mutuel wagering license or franchise awarded pursuant to article two or three of this chapter that makes an expenditure of more than one thousand dollars for any written, typed, or other printed communication, or any internet-based communication, or any television or radio communication, or any automated or paid telephone communications, in support or opposition to any referendum authorized by the state legislature following second passage of a concurrent resolution to amend the state constitution to permit or authorize casino gaming to a general public audience, shall file any reports required pursuant to the election law simultaneously with the gaming commission and shall provide such additional reports as required by the gaming commission. This requirement shall apply irrespective of whether such entity makes such expenditure directly or indirectly via one or more persons. The gaming commission shall promulgate regulations to implement the requirements of this section.

(b) Casino gaming expenditures do not include expenditures in connection with:

(i) a written news story, commentary, or editorial or a news story, commentary, or editorial distributed through the facilities of any broadcasting station, cable or satellite unless such publication or facilities are owned or controlled directly or indirectly by the person making such expenditure; or

(ii) a communication published on the Internet, unless the communication is a paid advertisement.

(c) For purposes of this section, the term "person" shall mean person, group of persons, corporation, unincorporated business entity, labor organization or business, trade or professional association or organization, or political committee.

(d) A knowing or willful violation of the provisions of this section shall subject the person to a civil penalty equal to up to one hundred thousand dollars or the cost of the communication, whichever is greater, imposed by the gaming commission for each violation.

2. A copy of all communications paid for by the casino gaming expenditure, including but not limited to broadcast, cable or satellite schedules and scripts, advertisements, pamphlets, circulars, flyers, brochures, letterheads and other printed matter and statements or information conveyed to one thousand or more members of a general public audience shall be filed with the gaming commission with the statements required this article.

CHAP. 174

32

#### TITLE 5

#### REQUIREMENTS FOR CONDUCT AND OPERATION OF GAMING

Section 1331. Operation certificate.

1332. Age for gaming participation.

1333. Hours of operation.

1334. Internal controls.

1335. Games and gaming equipment.

1336. Certain wagering prohibited.

1337. Gratuities.

1338. Limitation on certain financial access.

1339. Credit.

1340. Alcoholic beverages.

1341. Licensee leases and contracts.

1342. Required exclusion of certain persons.

1343. Exclusion, ejection of certain persons.

1344. List of persons self-excluded from gaming activities.

1345. Excluded person; forfeiture of winnings; other sanctions.

1346. Labor peace agreements for certain facilities

§ 1331. Operation certificate. 1. Notwithstanding the issuance of a license therefor, no gaming facility may be opened or remain open to the public, and no gaming activity, except for test purposes, may be conducted therein, unless and until a valid operation certificate has been issued to the gaming facility licensee by the commission. Such certificate shall be issued by the executive director upon a determination that a gaming facility complies in all respects with the requirements of this article and regulations promulgated hereunder, and that the gaming facility is prepared in all respects to receive and entertain the public.

2. An operation certificate shall remain in force and effect unless revoked, suspended, limited, or otherwise altered by the commission in accordance with this article.

3. It shall be an express condition of continued operation under this article that a gaming facility licensee shall maintain either electronically or in hard copy at the discretion of the gaming facility licensee, copies of all books, records, and documents pertaining to the licensee's operations and approved hotel in a manner and location approved by the commission, provided, however, that the originals of such books, records and documents, whether in electronic or hard copy

form, may be maintained at the offices or electronic system of an affiliate of the gaming facility licensee, at the discretion of the gaming facility licensee. All such books, records and documents shall be immediately available for inspection during all hours of operation in accordance with the rules of the commission and shall be maintained for such period of time as the commission shall require.

§ 1332. Age for gaming participation. 1. No person under the age at which a person is authorized to purchase and consume alcoholic beverages shall enter, or wager in, a licensed gaming facility; provided, however, that such a person may enter a gaming facility by way of passage to another room, and provided further, however, that any such person who is licensed or registered under the provisions of this article may enter a gaming facility in the regular course of the person's permitted activities.

2. Any person disqualified pursuant to subdivision one of this section entitled to funds, cash or prizes from gambling activity shall forfeit same. Such forfeited funds, cash or prizes shall be remitted to the commission and deposited into the commercial gaming revenue fund.

33

CHAP. 174

§ 1333. Hours of operation. 1. Each gaming facility licensed pursuant to this article shall be permitted to operate twenty-four hours a day unless otherwise directed by the commission.

2. A gaming facility licensee shall file with the commission a schedule of hours prior to the issuance of an initial operation certificate. If the gaming facility licensee proposes any change in scheduled hours, such change may not be effected until such licensee files a notice of the new schedule of hours with the commission. Such filing must be made thirty days prior to the effective date of the proposed change in hours.

3. Nothing in this section shall be construed to limit a gaming facility licensee in opening its casino later than, or closing its casino earlier than, the times stated in its schedule of operating hours; provided, however, that any such alterations in its hours shall comply with the provisions of subdivision one of this section and with regulations of the commission pertaining to such alterations.

§ 1334. Internal controls. 1. Each applicant for a gaming facility license shall create, maintain, and file with the commission a description of its internal procedures and administrative and accounting controls for gaming operations that conform to commission regulations and provide adequate and effective controls, establish a consistent overall system of internal procedures and administrative and accounting controls and conform to generally accepted accounting principles, and ensure that gaming facility procedures are carried out and supervised by personnel who do not have incompatible functions. A gaming facility licensee's internal controls shall contain a narrative description of the internal control system to be utilized by the gaming facility, including, but not limited to:

(a) Accounting controls, including the standardization of forms and definition of terms to be utilized in the gaming operations;

(b) Procedures, forms, and, where appropriate, formulas covering the calculation of hold percentages; revenue drop; expense and overhead schedules; complimentary service or item; junkets; and cash equivalent transactions;

(c) Procedures within the cashier's cage for the receipt, storage and disbursal of chips, cash, and other cash equivalents used in gaming; the cashing of checks; the redemption of chips and other cash equivalents used in gaming; the pay-off of jackpots; and the recording of trans-

actions pertaining to gaming operations;

(d) Procedures for the collection and security of moneys at the gaming tables;

(e) Procedures for the transfer and recordation of chips between the gaming tables and the cashier's cage;

(f) Procedures for the transfer of moneys from the gaming tables to the counting process;

(g) Procedures and security for the counting and recordation of revenue;

(h) Procedures for the security, storage and recordation of cash, chips and other cash equivalents utilized in the gaming;

(i) Procedures for the transfer of moneys or chips from and to the slot machines;

(j) Procedures and standards for the opening and security of slot machines;

(k) Procedures for the payment and recordation of slot machine jackpots;

(l) Procedures for the cashing and recordation of checks exchanged by casino patrons;

CHAP. 174

34

(m) Procedures governing the utilization of the private security force within the gaming facility;

(n) Procedures and security standards for the handling and storage of gaming apparatus including cards, dice, machines, wheels and all other gaming equipment;

(o) Procedures and rules governing the conduct of particular games and the responsibility of gaming facility personnel in respect thereto;

(p) Procedures for the orderly shutdown of gaming facility operations in the event that a state of emergency is declared and the gaming facility licensee is unable or ineligible to continue to conduct gaming facility operations during such a state of emergency, which procedures shall include, without limitation, the securing of all keys and gaming assets.

2. No minimum staffing requirements shall be included in the internal controls created in accordance with subdivision one of this section.

§ 1335. Games and gaming equipment. 1. This article shall not be construed to permit any gaming except the conduct of authorized games in a casino in accordance with this article and the regulations promulgated hereunder.

2. Gaming equipment shall not be possessed, maintained or exhibited by any person on the premises of a gaming facility except in a casino or in restricted casino areas used for the inspection, repair or storage of such equipment and specifically designated for that purpose by the gaming facility licensee with the approval of the commission. Gaming equipment that supports the conduct of gaming in a gaming facility but does not permit or require patron access, such as computers, may be possessed and maintained by a gaming facility licensee or a qualified holding or intermediary company of a gaming facility licensee in restricted areas specifically approved by the commission. No gaming equipment shall be possessed, maintained, exhibited, brought into or removed from a gaming facility by any person unless such equipment is necessary to the conduct of an authorized game, has permanently affixed, imprinted, impressed or engraved thereon an identification number or symbol authorized by the commission, is under the exclusive control of a gaming facility licensee or gaming facility licensee's employees, or of any individually qualified employee of a holding company or gaming

facility licensee and is brought into or removed from the gaming facility following twenty-four hour prior notice given to an authorized agent of the commission.

Notwithstanding any other provision of this section, computer equipment used by the slot system operator of a multi-casino progressive slot system to link and communicate with the slot machines of two or more gaming facility licensees for the purpose of calculating and displaying the amount of a progressive jackpot, monitoring the operation of the system, and any other purpose that the commission deems necessary and appropriate to the operation or maintenance of the multi-casino progressive slot machine system may, with the prior approval of the commission, be possessed, maintained and operated by the slot system operator either in a restricted area on the premises of a gaming facility or in a secure facility inaccessible to the public and specifically designed for that purpose off the premises of a gaming facility with the written permission of the commission. Notwithstanding the foregoing, a person may, with the prior approval of the commission and under such terms and conditions as may be required by the commission, possess, maintain or exhibit gaming equipment in any other area of the gaming facility, provided that such equipment is used for nongaming purposes. Notwith-

standing any other provision of this article to the contrary, the commission may, by regulation, authorize the linking of slot machines of one or more gaming facility licensees and slot machines located in casinos licensed by another state of the United States. Wagering and account information for a multi-state slot system shall be transmitted by the operator of such multi-state slot system to either a restricted area on the premises of a gaming facility or to a secure facility inaccessible to the public and specifically designed for that purpose with the written permission of the commission, and from there to slot machines of gaming facility licensees, provided all locations are approved by the commission.

3. Each gaming facility shall contain a count room and such other secure facilities as may be required by the commission for the counting and storage of cash, coins, tokens, checks, plaques, gaming vouchers, coupons, and other devices or items of value used in wagering and approved by the commission that are received in the conduct of gaming and for the inspection, counting and storage of dice, cards, chips and other representatives of value. The commission shall promulgate regulations for the security of drop boxes and other devices in which the foregoing items are deposited at the gaming tables or in slot machines, and all areas wherein such boxes and devices are kept while in use, which regulations may include certain locking devices. Said drop boxes and other devices shall not be brought into or removed from a gaming facility, or locked or unlocked, except at such times, in such places, and according to such procedures as the commission may require.

4. All chips used in gaming shall be of such size and uniform color by denomination as the commission shall require by regulation.

5. All gaming shall be conducted according to rules promulgated by the commission. All wagers and pay-offs of winning wagers shall be made according to rules promulgated by the commission, which shall establish such limitations as may be necessary to assure the vitality of casino operations and fair odds to patrons. Each slot machine shall have a minimum payout of eighty-five percent.

6. Each gaming facility licensee shall make available in printed form to any patron upon request the complete text of the rules of the commis-

sion regarding games and the conduct of gaming, pay-offs of winning wagers, an approximation of the odds of winning for each wager, and such other advice to the player as the commission shall require. Each gaming facility licensee shall prominently post within a casino, according to regulations of the commission such information about gaming rules, pay-offs of winning wagers, the odds of winning for each wager, and such other advice to the player as the commission shall require.

7. Each gaming table shall be equipped with a sign indicating the permissible minimum and maximum wagers pertaining thereto. It shall be unlawful for a gaming facility licensee to require any wager to be greater than the stated minimum or less than the stated maximum; provided, however, that any wager actually made by a patron and not rejected by a gaming facility licensee prior to the commencement of play shall be treated as a valid wager.

8. Testing of slot machines and associated devices. (a) Except as herein provided, no slot machine shall be used to conduct gaming unless it is identical in all electrical, mechanical and other aspects to a model thereof which has been specifically tested and licensed for use by the commission. The commission shall also test or cause to be tested any other gaming device, gaming equipment, gaming-related device or gross-revenue related device, such as a slot management system, electronic

CHAP. 174

36

transfer credit system or gaming voucher system as it deems appropriate. In its discretion and for the purpose of expediting the approval process, the commission may utilize the services of a private testing laboratory that has obtained a plenary license as a casino vendor enterprise to perform the testing, and may also utilize applicable data from any such private testing laboratory or from a governmental agency of a state authorized to regulate slot machines and other gaming devices, gaming equipment, gaming-related devices and gross-revenue related devices used in gaming, if the private testing laboratory or governmental agency uses a testing methodology substantially similar to the methodology approved or utilized by the commission. The commission, in its discretion, may rely upon the data provided by the private testing laboratory or governmental agency and adopt the conclusions of such private testing laboratory or governmental agency regarding any submitted device.

(b) Except as otherwise provided in paragraph (e) of this subdivision, the commission shall, within sixty days of its receipt of a complete application for the testing of a slot machine or other gaming equipment model, approve or reject the slot machine or other gaming equipment model. In so doing, the commission shall specify whether and to what extent any data from a private testing laboratory or governmental agency of a state was used in reaching its conclusions and recommendation. If the commission is unable to complete the testing of a slot machine or other gaming equipment model within this sixty day period, the commission may conditionally approve the slot machine or other gaming equipment model for test use by a gaming facility licensee provided that the commission represents that the use of the slot machine or other gaming equipment model will not have a direct and materially adverse impact on the integrity of gaming or the control of gross revenue. The commission shall give priority to the testing of slot machines or other gaming equipment that a gaming facility licensee has certified it will use in its gaming facility in this state.

(c) The commission shall, by regulation, establish such technical standards for licensure of slot machines, including mechanical and electrical reliability, security against tampering, the comprehensibility of

wagering, and noise and light levels, as it may deem necessary to protect the player from fraud or deception and to insure the integrity of gaming. The denominations of such machines shall be set by the licensee; the licensee shall simultaneously notify the commission of the settings.

(d) The commission shall, by regulation, determine the permissible number and density of slot machines in a licensed gaming facility so as to:

- (1) promote optimum security for gaming facility operations;
- (2) avoid deception or frequent distraction to players at gaming tables;
- (3) promote the comfort of patrons;
- (4) create and maintain a gracious playing environment in the gaming facility; and
- (5) encourage and preserve competition in gaming facility operations by assuring that a variety of gaming opportunities is offered to the public.

Any such regulation promulgated by the commission which determines the permissible number and density of slot machines in a licensed gaming facility shall provide that all casinos shall be included in any calculation of the permissible number and density of slot machines in a licensed gaming facility.

(e) Any new gaming equipment that is submitted for testing to the commission or to a state licensed independent testing laboratory prior to or simultaneously with submission of such new equipment for testing in a jurisdiction other than this state, may, consistent with regulations promulgated by the commission, be deployed by a gaming facility licensee on the casino fourteen days after submission of such equipment for testing. If the gaming facility or casino vendor enterprise licensee has not received approval for the equipment fourteen days after submission for testing, any interested gaming facility licensee may, consistent with commission regulations, deploy the equipment on a field test basis, unless otherwise directed by the executive director.

9. It shall be unlawful for any person to exchange or redeem chips for anything whatsoever, except for currency, negotiable personal checks, negotiable counter checks, other chips, coupons, slot vouchers or complimentary vouchers distributed by the gaming facility licensee, or, if authorized by regulation of the commission, a valid charge to a credit or debit card account. A gaming facility licensee shall, upon the request of any person, redeem that licensee's gaming chips surrendered by that person in any amount over one hundred dollars with a check drawn upon the licensee's account at any banking institution in this state and made payable to that person.

10. It shall be unlawful for any gaming facility licensee or its agents or employees to employ, contract with, or use any skill or barker to induce any person to enter a gaming facility or play at any game or for any purpose whatsoever.

11. It shall be unlawful for a dealer in any authorized game in which cards are dealt to deal cards by hand or other than from a device specifically designed for that purpose, unless otherwise permitted by the rules of the commission.

§ 1336. Certain wagering prohibited. 1. It shall be unlawful for any casino key employee licensee to wager in any gaming facility in this state.

2. It shall be unlawful for any other employee of a gaming facility

licensee who, in the judgment of the commission, is directly involved with the conduct of gaming operations, including but not limited to dealers, floor persons, box persons, security and surveillance employees, to engage in gambling in any gaming facility in which the employee is employed or in any other gaming facility in this state which is owned or operated by the gaming facility licensee or an affiliated licensee.

3. The prohibition against wagering set forth in subdivisions one and two of this section shall continue for a period of thirty days commencing upon the date that the employee either leaves employment with a gaming facility licensee or is terminated from employment with a gaming facility licensee.

§ 1337. Gratuities. 1. It shall be unlawful for any casino key employee or boxman, floorman, or any other gaming employee who shall serve in a supervisory position to solicit or accept, and for any other gaming employee to solicit, any tip or gratuity from any player or patron at the gaming facility where he is employed.

2. A dealer may accept tips or gratuities from a patron at the table at which such dealer is conducting play, subject to the provisions of this section. All such tips or gratuities shall be immediately deposited in a lockbox reserved for that purpose, unless the tip or gratuity is authorized by a patron utilizing an automated wagering system approved by the commission. All tips or gratuities shall be accounted for, and placed in a pool for distribution pro rata among the dealers, with the

CHAP. 174

38

distribution based upon the number of hours each dealer has worked, except that the commission may, by regulation, permit a separate pool to be established for dealers in the game of poker, or may permit tips or gratuities to be retained by individual dealers in the game of poker.

3. Notwithstanding the provisions of subdivision one of this section, a gaming facility licensee may require that a percentage of the prize pool offered to participants pursuant to an authorized poker tournament be withheld for distribution to the tournament dealers as tips or gratuities as the commission by regulation may approve.

§ 1338. Limitation on certain financial access. In order to protect the public interest, the commission shall adopt regulations that include provisions that:

1. limit the number and location of and maximum withdrawal amounts from automated teller machines;

2. prohibit authorized automated teller machines from accepting electronic benefit cards, debit cards, or similar negotiable instruments issued by the state or political subdivisions for the purpose of accessing temporary public assistance;

3. prohibit the use of specified negotiable instruments at gaming facilities and the use of credit cards, debit cards, and similar devices in slot machines or at table games; and

4. prohibit consumers from cashing paychecks at gaming facilities.

§ 1339. Credit. 1. Except as otherwise provided in this section, no gaming facility licensee or any person licensed under this article, and no person acting on behalf of or under any arrangement with a gaming facility licensee or other person licensed under this article, shall:

(a) Cash any check, make any loan, or otherwise provide or allow to any person any credit or advance of anything of value or which represents value to enable any person to take part in gaming activity as a player; or

(b) Release or discharge any debt, either in whole or in part, or make any loan which represents any losses incurred by any player in gaming



activity, without maintaining a written record thereof in accordance with the rules of the commission.

2. No gaming facility licensee or any person licensed under this article, and no person acting on behalf of or under any arrangement with a gaming facility licensee or other person licensed under this article, may accept a check, other than a recognized traveler's check or other cash equivalent from any person to enable such person to take part in gaming activity as a player, or may give cash or cash equivalents in exchange for such check unless:

(a) The check is made payable to the gaming facility licensee;

(b) The check is dated, but not postdated;

(c) The check is presented to the cashier or the cashier's representative at a location in the gaming facility approved by the commission and is exchanged for cash or slot tokens which total an amount equal to the amount for which the check is drawn, or the check is presented to the cashier's representative at a gaming table in exchange for chips which total an amount equal to the amount for which the check is drawn; and

(d) The regulations concerning check cashing procedures are observed by the gaming facility licensee and its employees and agents. Nothing in this subdivision shall be deemed to preclude the establishment of an account by any person with a gaming facility licensee by a deposit of cash, recognized traveler's check or other cash equivalent, or a check which meets the requirements of subdivision seven of this section, or to

preclude the withdrawal, either in whole or in part, of any amount contained in such account.

3. When a gaming facility licensee or other person licensed under this article, or any person acting on behalf of or under any arrangement with a gaming facility licensee or other person licensed under this article, cashes a check in conformity with the requirements of subdivision two of this section, the gaming facility licensee shall cause the deposit of such check in a bank for collection or payment, or shall require an attorney or casino key employee with no incompatible functions to present such check to the drawer's bank for payment, within:

(a) seven calendar days of the date of the transaction for a check in an amount of one thousand dollars or less;

(b) fourteen calendar days of the date of the transaction for a check in an amount greater than one thousand dollars but less than or equal to five thousand dollars; or

(c) forty-five calendar days of the date of the transaction for a check in an amount greater than five thousand dollars.

Notwithstanding the foregoing, the drawer of the check may redeem the check by exchanging cash, cash equivalents, chips, or a check which meets the requirements of subdivision seven of this section in an amount equal to the amount for which the check is drawn; or he or she may redeem the check in part by exchanging cash, cash equivalents, chips, or a check which meets the requirements of subdivision seven of this section and another check which meets the requirements of subdivision two of this section for the difference between the original check and the cash, cash equivalents, chips, or check tendered; or he or she may issue one check which meets the requirements of subdivision two of this section in an amount sufficient to redeem two or more checks drawn to the order of the gaming facility licensee. If there has been a partial redemption or a consolidation in conformity with the provisions of this subdivision, the newly issued check shall be delivered to a bank for

collection or payment or presented to the drawer's bank for payment by an attorney or casino key employee with no incompatible functions within the period herein specified. No gaming facility licensee or any person licensed or registered under this article, and no person acting on behalf of or under any arrangement with a gaming facility licensee or other person licensed under this article, shall accept any check or series of checks in redemption or consolidation of another check or checks in accordance with this subdivision for the purpose of avoiding or delaying the deposit of a check in a bank for collection or payment or the presentment of the check to the drawer's bank within the time period prescribed by this subdivision.

In computing a time period prescribed by this subdivision, the last day of the period shall be included unless it is a Saturday, Sunday, or a state or federal holiday, in which event the time period shall run until the next business day.

4. No gaming facility licensee or any other person licensed or registered under this article, or any other person acting on behalf of or under any arrangement with a gaming facility licensee or other person licensed or registered under this article, shall transfer, convey, or give, with or without consideration, a check cashed in conformity with the requirements of this section to any person other than:

(a) The drawer of the check upon redemption or consolidation in accordance with subdivision three of this section;

(b) A bank for collection or payment of the check;

CHAP. 174

40

(c) A purchaser of the gaming facility license as approved by the commission; or

(d) An attorney or casino key employee with no incompatible functions for presentment to the drawer's bank.

The limitation on transferability of checks imposed herein shall apply to checks returned by any bank to the gaming facility licensee without full and final payment.

5. No person other than a casino key employee licensed under this article or a gaming employee registered under this article may engage in efforts to collect upon checks that have been returned by banks without full and final payment, except that an attorney-at-law representing a gaming facility licensee may bring action for such collection.

6. Notwithstanding the provisions of any law to the contrary, checks cashed in conformity with the requirements of this article shall be valid instruments, enforceable at law in the courts of this state. Any check cashed, transferred, conveyed or given in violation of this article shall be invalid and unenforceable for the purposes of collection but shall be included in the calculation of gross gaming revenue.

7. Notwithstanding the provisions of subdivision two of this section to the contrary, a gaming facility licensee may accept a check from a person to enable the person to take part in gaming activity as a player, may give cash or cash equivalents in exchange for such a check, or may accept a check in redemption or partial redemption of a check issued in accordance with subdivision two of this section, provided that:

(a) (1) The check is issued by a gaming facility licensee, is made payable to the person presenting the check, and is issued for a purpose other than employment compensation or as payment for goods or services rendered;

(2) The check is issued by a banking institution which is chartered in a country other than the United States on its account at a federally chartered or state-chartered bank and is made payable to "cash," "bear-

er," a gaming facility licensee, or the person presenting the check;

(3) The check is issued by a banking institution which is chartered in the United States on its account at another federally chartered or state-chartered bank and is made payable to "cash," "bearer," a gaming facility licensee, or the person presenting the check;

(4) The check is issued by a slot system operator or pursuant to an annuity jackpot guarantee as payment for winnings from a multi-casino progressive slot machine system jackpot; or

(5) The check is issued by an entity that holds a gaming facility license in any jurisdiction, is made payable to the person presenting the check, and is issued for a purpose other than employment compensation or as payment for goods or services rendered;

(b) The check is identifiable in a manner approved by the commission as a check authorized for acceptance pursuant to paragraph (a) of this subdivision;

(c) The check is dated, but not postdated;

(d) The check is presented to the cashier or the cashier's representative by the original payee and its validity is verified by the drawer in the case of a check drawn pursuant to subparagraph one of paragraph (a) of this subdivision, or the check is verified in accordance with regulations promulgated under this article in the case of a check issued pursuant to subparagraph two, three, four or five of paragraph (a) of this subdivision; and

(e) The regulations concerning check-cashing procedures are observed by the gaming facility licensee and its employees and agents. No gaming

facility licensee shall issue a check for the purpose of making a loan or otherwise providing or allowing any advance or credit to a person to enable the person to take part in gaming activity as a player.

8. Notwithstanding the provisions of subdivisions two and three of this section to the contrary, a gaming facility licensee may, at a location outside the gaming facility, accept a personal check or checks from a person for up to five thousand dollars in exchange for cash or cash equivalents, and may, at such locations within the gaming facility as may be permitted by the commission, accept a personal check or checks for up to five thousand dollars in exchange for cash, cash equivalents, tokens, chips, or plaques to enable the person to take part in gaming activity as a player, provided that:

(a) The check is drawn on the patron's bank or brokerage cash management account;

(b) The check is for a specific amount;

(c) The check is made payable to the gaming facility licensee;

(d) The check is dated but not post-dated;

(e) The patron's identity is established by examination of one of the following: valid credit card, driver's license, passport, or other form of identification credential which contains, at a minimum, the patron's signature;

(f) The check is restrictively endorsed "For Deposit Only" to the gaming facility licensee's bank account and deposited on the next banking day following the date of the transaction;

(g) The total amount of personal checks accepted by any one licensee pursuant to this subdivision that are outstanding at any time, including the current check being submitted, does not exceed five thousand dollars;

(h) The gaming facility licensee has a system of internal controls in place that will enable it to determine the amount of outstanding

personal checks received from any patron pursuant to this subdivision at any given point in time; and

(i) The gaming facility licensee maintains a record of each such transaction in accordance with regulations established by the commission.

9. A person may request the commission to put that person's name on a list of persons to whom the extension of credit by a gaming facility as provided in this section would be prohibited by submitting to the commission the person's name, address, and date of birth. The person does not need to provide a reason for this request. The commission shall provide this list to the credit department of each gaming facility; neither the commission nor the credit department of a gaming facility shall divulge the names on this list to any person or entity other than those provided for in this subdivision. If such a person wishes to have that person's name removed from the list, the person shall submit this request to the commission, which shall so inform the credit departments of gaming facilities no later than three days after the submission of the request.

§ 1340. Alcoholic beverages. 1. Notwithstanding any law to the contrary, the authority to grant any license or permit for, or to permit or prohibit the presence of, alcoholic beverages in, on, or about any premises licensed as part of a gaming facility shall exclusively be vested in the commission.

2. Unless otherwise stated, and except where inconsistent with the purpose or intent of this article or the common understanding of usage thereof, definitions contained in the alcoholic beverage control law

CHAP. 174

42

shall apply to this section. Any definition contained therein shall apply to the same word in any form.

3. Notwithstanding any provision of the alcoholic beverage control law to the contrary, the commission shall have the functions, powers and duties of the state liquor authority but only with respect to the issuance, renewal, transfer, suspension and revocation of licenses and permits for the sale of alcoholic beverages at retail for on-premise consumption by any holder of a gaming facility license issued by the commission including, without limitation, the power to fine or penalize a casino alcoholic beverage licensee or permittee; to enforce all statutes, laws, rulings, or regulations relating to such license or permit; and to collect license and permit fees and establish application standards therefor.

4. Except as otherwise provided in this section, the provisions of the alcoholic beverage control law and the rules, regulations, bulletins, orders, and advisories promulgated by the state liquor authority shall apply to any gaming facility holding a license or permit to sell alcoholic beverages under this section.

5. Notwithstanding any provision to the contrary, the commission may promulgate any regulations and special rulings and findings as may be necessary for the proper enforcement, regulation, and control of alcoholic beverages in gaming facilities when the commission finds that the uniqueness of gaming facility operations and the public interest require that such regulations, rulings, and findings are appropriate.

6. Notwithstanding any provision of law to the contrary, any manufacturer or wholesaler licensed under the alcoholic beverage control law may as authorized under the alcoholic beverage control law, sell alcoholic beverages to a gaming facility holding a retail license or permit to sell alcoholic beverages for consumption on the premises issued under this section, and any gaming facility holding a retail license or permit

to sell alcoholic beverages issued under this section may, as authorized under the alcoholic beverage control law, purchase alcoholic beverages from a manufacturer or wholesaler licensed under the alcoholic beverage control law.

7. It shall be unlawful for any person, including any gaming facility licensee or any of its lessees, agents or employees, to expose for sale, solicit or promote the sale of, possess with intent to sell, sell, give, dispense, or otherwise transfer or dispose of alcoholic beverages in, on or about any portion of the premises of a gaming facility, unless said person possesses a license or permit issued under this section.

8. It shall be unlawful for any person holding a license or permit to sell alcoholic beverages under this section to expose, possess, sell, give, dispense, transfer, or otherwise dispose of alcoholic beverages, other than within the terms and conditions of such license or permit, the provisions of the alcoholic beverage control law, the rules and regulations promulgated by the state liquor authority, and, when applicable, the regulations promulgated pursuant to this article. Notwithstanding any other provision of law to the contrary the holder of a license or permit issued under this section may be authorized to provide complimentary alcoholic beverages under regulations issued by the commission.

9. In issuing a casino alcoholic beverage license or permit, the commission shall describe the scope of the particular license or permit, and the restrictions and limitations thereon as it deems necessary and reasonable. The commission may, in a single casino alcoholic beverage license, permit the holder of such a license or permit to perform any or

all of the following activities, subject to applicable laws, rules and regulations:

(a) To sell any alcoholic beverage by the glass or other open receptacle including, but not limited to, an original container, for on-premise consumption within a facility; provided, however, that no alcoholic beverage shall be sold or given for consumption; delivered or otherwise brought to a patron; or consumed at a gaming table unless so requested by the patron.

(b) To sell any alcoholic beverage by the glass or other open receptacle for on-premise consumption within a gaming facility.

(c) To sell any alcoholic beverage by the glass or other open receptacle or in original containers from a room service location within an enclosed room not in a gaming facility; provided, however, that any sale of alcoholic beverages is delivered only to a guest room or to any other room in the gaming facility authorized by the commission.

(d) To possess or to store alcoholic beverages in original containers intended but not actually exposed for sale at a fixed location on a gaming facility premises, not in a gaming facility; and to transfer or deliver such alcoholic beverages only to a location approved pursuant to this section; provided, however, that no access to or from a storage location shall be permitted except during the normal course of business by employees or agents of the licensee, or by licensed employees or agents of wholesalers or distributors licensed pursuant to the alcoholic beverage control law and any applicable rules and regulations; and provided further, however, that no provision of this section shall be construed to prohibit a casino alcoholic beverage licensee from obtaining an off-site storage license from the state liquor authority.

10. The commission may revoke, suspend, refuse to renew or refuse to transfer any casino alcoholic beverage license or permit, and may fine

or penalize the holder of any alcoholic beverage license or permit issued under this section for violations of any provision of the alcoholic beverage control law, the rules and regulations promulgated by the state liquor authority, and the regulations promulgated by the commission.

11. Jurisdiction over all alcoholic beverage licenses and permits previously issued with respect to the gaming facility is hereby vested in the commission, which in its discretion may by regulation provide for the conversion thereof into a casino alcoholic beverage license or permit as provided in this section.

12. (a) Prior to issuing any license under this section, the commission, or its designee, shall consult with the state liquor authority, or its designee, to confirm that such application and such gaming facility conforms with all applicable provisions of the alcoholic beverage control law, and all applicable rules, regulations, bulletins, orders and advisories promulgated by the state liquor authority;

(b) Prior to commencing enforcement actions against any gaming facility licensed under this section, the commission, or its designee, shall consult with the state liquor authority, or its designee, with respect to the application of the applicable provisions of the alcoholic beverage control law, and all applicable rules, regulations, bulletins, orders and advisories promulgated by the state liquor authority on the alleged conduct of such licensee; and

(c) The commission, or its designee, shall consult with the state liquor authority, or its designee, on a regular basis, but no less than once every three months, regarding any pending applications and enforcement matters.

CHAP. 174

44

§ 1341. Licensee leases and contracts. 1. Unless otherwise provided in this subdivision, no agreement shall be lawful which provides for the payment, however defined, of any direct or indirect interest, percentage or share of: any money or property gambled at a gaming facility; any money or property derived from gaming activity; or any revenues, profits or earnings of a gaming facility. Notwithstanding the foregoing:

(a) Agreements which provide only for the payment of a fixed sum which is in no way affected by the amount of any such money, property, revenues, profits or earnings shall not be subject to the provisions of this subdivision; and receipts, rentals or charges for real property, personal property or services shall not lose their character as payments of a fixed sum because of contract, lease, or license provisions for adjustments in charges, rentals or fees on account of changes in taxes or assessments, cost-of-living index escalations, expansion or improvement of facilities, or changes in services supplied.

(b) Agreements between a gaming facility licensee and a junket enterprise or junket representative licensed, qualified or registered in accordance with the provisions this article and the regulations of the commission which provide for the compensation of the junket enterprise or junket representative by the gaming facility licensee based upon the actual gaming activities of a patron procured or referred by the junket enterprise or junket representative shall be lawful if filed with the commission prior to the conduct of any junket that is governed by the agreement.

(c) Agreements between a gaming facility licensee and its employees which provide for gaming employee or casino key employee profit sharing shall be lawful if the agreement is in writing and filed with the commission prior to its effective date. Such agreements may be reviewed

by the commission.

(d) Agreements to lease an approved gaming facility or the land thereunder and agreements for the complete management of all gaming operations in a gaming facility shall not be subject to the provisions of this subdivision.

(e) Agreements which provide for percentage charges between the gaming facility licensee and a holding company or intermediary company of the gaming facility licensee shall be in writing and filed with the commission but shall not be subject to the provisions of this subdivision.

(f) Written agreements relating to the operation of multi-casino or multi-state progressive slot machine systems between one or more gaming facility licensees and a licensed casino vendor enterprise or an eligible applicant for such license, which provide for an interest, percentage or share of the gaming facility licensee's revenues, profits or earnings from the operation of such multi-casino or multi-state progressive slot machines to be paid to the casino vendor enterprise licensee or applicant shall not be subject to the provisions of this subdivision if the agreements are filed with and approved by the commission.

2. Each gaming facility applicant or licensee shall maintain, in accordance with the rules of the commission, a record of each written or unwritten agreement regarding the realty, construction, maintenance, or business of a proposed or existing gaming facility or related facility. The foregoing obligation shall apply regardless of whether the gaming facility applicant or licensee is a party to the agreement. Any such agreement may be reviewed by the commission on the basis of the reasonableness of its terms, including the terms of compensation, and of the qualifications of the owners, officers, employees, and directors of any enterprise involved in the agreement, which qualifications shall be

reviewed according to the standards enumerated in section one thousand three hundred twenty-three of this article. If the commission disapproves such an agreement or the owners, officers, employees, or directors of any enterprise involved therein, the commission may require its termination.

Every agreement required to be maintained, and every related agreement the performance of which is dependent upon the performance of any such agreement, shall be deemed to include a provision to the effect that, if the commission shall require termination of an agreement, such termination shall occur without liability on the part of the gaming facility applicant or licensee or any qualified party to the agreement or any related agreement. Failure expressly to include such a provision in the agreement shall not constitute a defense in any action brought to terminate the agreement. If the agreement is not maintained or presented to the commission in accordance with commission regulations, or the disapproved agreement is not terminated, the commission may pursue any remedy or combination of remedies provided in this article.

For the purposes of this subdivision, "gaming facility applicant" includes any person required to hold a gaming facility license who has applied to the commission for a gaming facility license or any approval required.

3. Nothing in this article shall be deemed to permit the transfer of any license, or any interest in any license, or any certificate of compliance or any commitment or reservation without the approval of the commission.

§ 1342. Required exclusion of certain persons. 1. The commission shall, by regulation, provide for the establishment of a list of persons

who are to be excluded or ejected from any licensed gaming facility. Such provisions shall define the standards for exclusion, and shall include standards relating to persons:

(a) Who are career or professional offenders as defined by regulations promulgated hereunder; or

(b) Who have been convicted of a criminal offense under the laws of any state or of the United States, which is punishable by more than twelve months in prison, or any crime or offense involving moral turpitude.

The commission shall promulgate definitions establishing those categories of persons who shall be excluded pursuant to this section, including cheats and persons whose privileges for licensure or registration have been revoked.

2. Any enumerated class listed in subdivision one of section two hundred ninety-six of the human rights law shall not be a reason for placing the name of any person upon such list.

3. The commission may impose sanctions upon a licensed gaming facility or individual licensee or registrant in accordance with the provisions of this article if such gaming facility or individual licensee or registrant knowingly fails to exclude or eject from the premises of any licensed gaming facility any person placed by the commission on the list of persons to be excluded or ejected.

4. Any list compiled by the commission of persons to be excluded or ejected shall not be deemed an all-inclusive list, and licensed gaming facilities shall have a duty to keep from their premises persons known to them to be within the classifications declared in subdivisions one and two of this section and the regulations promulgated thereunder, or known to them to be persons whose presence in a licensed gaming facility

CHAP. 174

46

would be inimical to the interest of the state or of licensed gaming therein, or both, as defined in standards established by the commission.

5. Prior to placing the name of any person on a list pursuant to this section, the commission shall serve notice of such fact and of the opportunity for a hearing to such person by personal service or by certified mail at the last known address of such person.

6. Within thirty days after service of the petition in accordance with subdivision five of this section, the person named for exclusion or ejection may demand a hearing before the executive director or the executive director's designee, at which hearing the executive director or the executive director's designee shall have the affirmative obligation to demonstrate by substantial evidence that the person named for exclusion or ejection satisfies the criteria for exclusion established by this section and the applicable regulations. Failure to demand such a hearing within thirty days after service shall preclude a person from having an administrative hearing, but shall in no way affect his or her right to judicial review as provided herein.

7. The commission may make a preliminary placement on the list of a person named in a petition for exclusion or ejection pending completion of a hearing on the petition. The hearing on the application for preliminary placement shall be a limited proceeding at which the commission shall have the affirmative obligation to demonstrate by substantial evidence that the person satisfies the criteria for exclusion established by this section and the applicable regulations. If a person has been placed on the list as a result of an application for preliminary placement, unless otherwise agreed by the executive director and the named person, a hearing on the petition for exclusion or ejection shall



be initiated within thirty days after the receipt of a demand for such hearing or the date of preliminary placement on the list, whichever is later.

8. If, upon completion of the hearing on the petition for exclusion or ejection, the executive director determines that the person named therein does not satisfy the criteria for exclusion established by this section and the applicable regulations, the executive director shall issue an order denying the petition. If the person named in the petition for exclusion or ejection had been placed on the list as a result of an application for preliminary placement, the executive director shall notify all gaming facility licensees of the person's removal from the list.

9. If, upon completion of a hearing on the petition for exclusion or ejection, the executive director determines that placement of the name of the person on the exclusion list is appropriate, the executive director shall make and enter an order to that effect, which order shall be served on all gaming facility licensees. Such order shall be subject to review by the commission in accordance with regulations promulgated thereunder, which final decision shall be subject to review pursuant to article seventy-eight of the civil practice law and rules.

§ 1343. Exclusion, ejection of certain persons. 1. A gaming facility licensee may exclude or eject from its gaming facility any person who is known to it to have been convicted of a crime or disorderly conduct committed in or on the premises of any gaming facility.

2. Nothing in this section or in any other law of this state shall limit the right of a gaming facility licensee to exercise its common law right to exclude or eject permanently from its gaming facility any person who disrupts the operations of its premises, threatens the security of its premises or its occupants, or is disorderly or intoxicated.

§ 1344. List of persons self-excluded from gaming activities. 1. The commission shall provide by regulation for the establishment of a list of persons self-excluded from gaming activities at all licensed gaming facilities. Any person may request placement on the list of self-excluded persons by acknowledging in a manner to be established by the commission that the person is a problem gambler and by agreeing that, during any period of voluntary exclusion, the person may not collect any winnings or recover any losses resulting from any gaming activity at such gaming facilities.

2. The regulations of the commission shall establish procedures for placements on, and removals from, the list of self-excluded persons. Such regulations shall establish procedures for the transmittal to licensed gaming facilities of identifying information concerning self-excluded persons, and shall require licensed gaming facilities to establish procedures designed, at a minimum, to remove self-excluded persons from targeted mailings or other forms of advertising or promotions and deny self-excluded persons access to credit, complimentaries, check cashing privileges, club programs, and other similar benefits.

3. A licensed gaming facility or employee thereof acting reasonably and in good faith shall not be liable to any self-excluded person or to any other party in any judicial proceeding for any harm, monetary or otherwise, which may arise as a result of:

(a) the failure of a licensed gaming facility to withhold gaming privileges from, or restore gaming privileges to, a self-excluded person; or

(b) otherwise permitting a self-excluded person to engage in gaming activity in such licensed gaming facility while on the list of self-ex-

cluded persons.

4. Notwithstanding any other law to the contrary, the commission's list of self-excluded persons shall not be open to public inspection. Nothing herein, however, shall be construed to prohibit a gaming facility licensee from disclosing the identity of persons self-excluded pursuant to this section to affiliated gaming entities in this state or other jurisdictions for the limited purpose of assisting in the proper administration of responsible gaming programs operated by such gaming affiliated entities.

5. A licensed gaming facility or employee thereof shall not be liable to any self-excluded person or to any other party in any judicial proceeding for any harm, monetary or otherwise, which may arise as a result of disclosure or publication in any manner, other than a willfully unlawful disclosure or publication, of the identity of any self-excluded person.

§ 1345. Excluded person; forfeiture of winnings; other sanctions. 1. A person who is prohibited from gaming in a licensed gaming facility by any order of the executive director, commission or court of competent jurisdiction, including any person on the self-exclusion list pursuant to subdivision one of section one thousand three hundred forty-four of this title, shall not collect, in any manner or proceeding, any winnings or recover any losses arising as a result of any prohibited gaming activity.

2. For the purposes this section, any gaming activity in a licensed gaming facility which results in a prohibited person obtaining any money or thing of value from, or being owed any money or thing of value by, the gaming facility shall be considered, solely for purposes of this section, to be a fully executed gambling transaction.

3. In addition to any other penalty provided by law, any money or thing of value which has been obtained by, or is owed to, any prohibited

CHAP. 174

48

person by a licensed gaming facility as a result of wagers made by a prohibited person shall be subject to forfeiture following notice to the prohibited person and opportunity to be heard. A licensed gaming facility shall inform a prohibited person of the availability of such notice on the commission's website when ejecting the prohibited person and seizing any chips, vouchers or other representative of money owed by a gaming facility to the prohibited person as authorized by this subdivision. All forfeited amounts shall be deposited into the commercial gaming revenue fund.

4. In any proceeding brought by the commission against a licensee or registrant for a willful violation of the commission's self-exclusion regulations, the commission may order, in addition to any other sanction authorized, an additional fine of double the amount of any money or thing of value obtained by the licensee or registrant from any self-excluded person. Any money or thing of value so forfeited shall be disposed of in the same manner as any money or thing of value forfeited pursuant to subdivision three of this section.

§ 1346. Labor peace agreements for certain facilities. 1. As used in this section:

(a) "Gaming facility" means any gaming facility licensed pursuant to this article or a video lottery gaming facility as may be authorized by paragraph three of subdivision (a) of section one thousand six hundred seventeen-a of the tax law, as amended by section nineteen of the chapter of the laws of two thousand thirteen that added this section licensed by the commission. A gaming facility shall not include any

horse racing, bingo or charitable games of chance, the state lottery for education, or any gaming facility operating pursuant to the federal Indian Gaming Regulatory Act, 25 U.S.C. § 2710 et seq. A gaming facility shall include any hospitality operation at or related to the gaming facility.

(b) "Labor peace agreement" means an agreement enforceable under 29 U.S.C. § 185(a) that, at a minimum, protects the state's proprietary interests by prohibiting labor organizations and members from engaging in picketing, work stoppages, boycotts, and any other economic interference with operation of the relevant gaming facility.

(c) "License" means any permit, license, franchise or allowance of the commission and shall include any franchisee or permittee.

(d) "Proprietary interest" means an economic and non-regulatory interest at risk in the financial success of the gaming facility that could be adversely affected by labor-management conflict, including but not limited to property interests, financial investments and revenue sharing.

2. The state legislature finds that the gaming industry constitutes a vital sector of New York's overall economy and that the state through its operation of lotteries and video lottery facilities and through its ownership of the properties utilized for horse racing by The New York Racing Association Inc. has a significant and ongoing economic and non-regulatory interest in the financial viability and competitiveness of the gaming industry. The state legislature further finds that the award or grant of a license by the commission to operate a gaming facility is a significant state action and that the commission must make prudent and efficient decisions to maximize the benefits and minimize the risks of gaming. The state legislature further recognizes that casino gaming industry integration can provide a vital economic engine to assist, nurture, develop, and promote regional economic development, the state tourism industry and the growth of jobs in the state. Additionally, the

state legislature also finds revenues derived directly by the state from such gaming activity will be shared from gross gaming receipts, after payout of prizes but prior to deductions for operational expenses.

Therefore, the state legislature finds that the state has a substantial and compelling proprietary interest in any license awarded for the operation of a gaming facility within the state.

3. The commission shall require any applicant for a gaming facility license who has not yet entered into a labor peace agreement to produce an affidavit stating it shall enter into a labor peace agreement with labor organizations that are actively engaged in representing or attempting to represent gaming or hospitality industry workers in the state. In order for the commission to issue a gaming facility license and for operations to commence, the applicant for a gaming facility license must produce documentation that it has entered into a labor peace agreement with each labor organization that is actively engaged in representing and attempting to represent gaming and hospitality industry workers in the state. The commission shall make the maintenance of such a labor peace agreement an ongoing material condition of licensure.

A license holder shall, as a condition of its license, ensure that operations at the gaming facility that are conducted by contractors, subcontractors, licensees, assignees, tenants or subtenants and that involve gaming or hospitality industry employees shall be done under a labor peace agreement containing the same provisions as specified above.

4. If otherwise applicable, capital projects undertaken by a gaming

facility shall be subject to article eight of the labor law and shall be subject to the enforcement of prevailing wage requirements by the department of labor.

5. If otherwise applicable, capital projects undertaken by a gaming facility shall be subject to section one hundred thirty-five of the state finance law.

6. If otherwise applicable, any gaming facility entering into a contract for a gaming facility capitol project shall be deemed to be a state agency, and such contract shall be deemed to be a state contract, for purposes of article fifteen-A of the executive law and section two hundred twenty-two of the labor law.

#### TITLE 6

#### TAXATION AND FEES

Section 1348. Machine and table fees.

1349. Regulatory investigatory fees.

1350. Additional regulatory costs.

1351. Tax on gaming revenues; permissive supplemental fee.

1352. Commercial gaming revenue fund.

1353. Determination of tax liability.

1354. Unclaimed funds.

1355. Racing support payments.

§ 1348. Machine and table fees. In addition to any other tax or fee imposed by this article, there shall be imposed an annual license fee of five hundred dollars for each slot machine and table approved by the commission for use by a gaming licensee at a gaming facility; provided, however, that not sooner than five years after award of an original gaming license, the commission may annually adjust the fee for inflation. The fee shall be imposed as of July first of each year for all approved slot machines and tables on that date and shall be assessed on a pro rata basis for any slot machine or table approved for use thereafter.

CHAP. 174

50

Such assessed fees shall be deposited into the commercial gaming revenue fund established pursuant to section one thousand three hundred fifty-two of this article.

§ 1349. Regulatory investigatory fees. The commission may establish fees for any investigation into a violation of this article or regulation promulgated hereunder by a gaming facility licensee to be paid by the gaming facility licensee including, but not limited to, billable hours by commission staff involved in the investigation and the costs of services, equipment or other expenses that are incurred by the commission during the investigation.

§ 1350. Additional regulatory costs. 1. Any remaining costs of the commission necessary to maintain regulatory control over gaming facilities that are not covered by the fees set forth in section one thousand three hundred forty-nine of this title; any other fees assessed under this article; or any other designated sources of funding, shall be assessed annually on gaming licensees under this article in proportion to the number of gaming positions at each gaming facility. Each gaming licensee shall pay the amount assessed against it within thirty days after the date of the notice of assessment from the commission.

2. If the fees collected in section one thousand three hundred forty-nine of this title exceed the cost required to maintain regulatory control, the surplus funds shall be credited in proportional shares against each gaming licensee's next assessment.

§ 1351. Tax on gaming revenues; permissive supplemental fee. 1. For a

gaming facility in zone two, there is hereby imposed a tax on gross gaming revenues. The amount of such tax imposed shall be as follows; provided, however, should a licensee have agreed within its application to supplement the tax with a binding supplemental fee payment exceeding the aforementioned tax rate, such tax and supplemental fee shall apply for a gaming facility:

(a) in region two, forty-five percent of gross gaming revenue from slot machines and ten percent of gross gaming revenue from all other sources.

(b) in region one, thirty-nine percent of gross gaming revenue from slot machines and ten percent of gross gaming revenue from all other sources.

(c) in region five, thirty-seven percent of gross gaming revenue from slot machines and ten percent of gross gaming revenue from all other sources.

§ 1352. Commercial gaming revenue fund. 1. The commission shall pay into an account, to be known as the commercial gaming revenue fund as established pursuant to section ninety-seven-nnnn of the state finance law, under the joint custody of the comptroller and the commissioner of taxation and finance, all taxes and fees imposed by this article; any interest and penalties imposed by the commission relating to those taxes; the appropriate percentage of the value of expired gaming related obligations; all penalties levied and collected by the commission; and the appropriate funds, cash or prizes forfeited from gambling activity.

2. The commission shall require at least monthly deposits by the licensee of any payments pursuant to section one thousand three hundred fifty-one of this article, at such times, under such conditions, and in such depositories as shall be prescribed by the state comptroller. The deposits shall be deposited to the credit of the commercial gaming revenue fund as established by section ninety-seven-nnnn of the state finance law. The commission may require a monthly report and reconciliation statement to be filed with it on or before the tenth day of each

month, with respect to gross revenues and deposits received and made, respectively, during the preceding month.

§ 1353. Determination of tax liability. The commission may perform audits of the books and records of a gaming facility licensee, at such times and intervals as it deems appropriate, for the purpose of determining the sufficiency of tax or fee payments. If a return or deposit required with regard to obligations imposed is not filed or paid, or if a return or deposit when filed or paid is determined by the commission to be incorrect or insufficient with or without an audit, the amount of tax, fee or deposit due shall be determined by the commission. Notice of such determination shall be given to the licensee liable for the payment of the tax or fee or deposit. Such determination shall finally and irrevocably fix the tax or fee unless the person against whom it is assessed, within thirty days after receiving notice of such determination, shall apply to the commission for a hearing in accordance with the regulations of the commission.

§ 1354. Unclaimed funds. Unclaimed funds, cash and prizes shall be retained by the gaming facility licensee for the person entitled to the funds, cash or prize for one year after the game in which the funds, cash or prize was won. If no claim is made for the funds, cash or prize within one year, the funds, cash or equivalent cash value of the prize shall be deposited in the commercial gaming revenue fund.

§ 1355. Racing support payments. 1. If an applicant who possesses a

pari-mutuel wagering franchise or license awarded pursuant to article two or three of this chapter, or who possessed in two thousand thirteen a franchise or a license awarded pursuant to article two or three of this chapter or is an articulated entity or such applicant, is issued a gaming facility license pursuant to this article, the licensee shall:

(a) Maintain payments made from video lottery gaming operations to the relevant horsemen and breeders organizations at the same dollar level realized in two thousand thirteen, to be adjusted annually pursuant to changes in the consumer price index for all urban consumers, as published annually by the United States department of labor bureau of labor statistics;

(b) All racetracks locations awarded a gaming facility license shall maintain racing activity and race dates pursuant to articles two and three of this chapter.

2. If an applicant that does not possess either a pari-mutuel wagering license or franchise awarded pursuant to article two or three of this chapter is issued a gaming facility license pursuant to this article, the licensee shall pay:

(a) an amount to horsemen for purses at the licensed racetracks in the region that will assure the purse support from video lottery gaming facilities in the region to the licensed racetracks in the region to be maintained at the same dollar levels realized in two thousand thirteen to be adjusted by the consumer price index for all urban consumers, as published annually by the United States department of labor bureau of labor statistics; and

(b) amounts to the agricultural and New York state horse breeding development fund and the New York state thoroughbred breeding and development fund to maintain payments from video lottery gaming facilities in the region to such funds to be maintained at the same dollar levels realized in two thousand thirteen to be adjusted by the consumer price index for all urban consumers, as published annually by the United States department of labor bureau of labor statistics.

CHAP. 174

52

#### TITLE 7

#### PROBLEM GAMBLING

Section 1362. Prevention and outreach efforts.

1363. Advertising restrictions.

§ 1362. Prevention and outreach efforts. 1. Each gaming facility licensee, management company, and holding company involved in the application and ownership or management of a gaming facility shall provide to the commission, as applicable, an applicant's problem gambling plan. An applicant's problem gambling plan shall be approved by the commission before the commission issues or renews a license. Each plan shall at minimum include the following:

(a) The goals of the plan and procedures and timetables to implement the plan;

(b) The identification of the individual who will be responsible for the implementation and maintenance of the plan;

(c) Policies and procedures including the following:

(1) The commitment of the applicant and the gaming facility licensee to train appropriate employees;

(2) The duties and responsibilities of the employees designated to implement or participate in the plan;

(3) The responsibility of patrons with respect to responsible gambling;

(4) Procedures for compliance with the voluntary exclusion program;

(5) Procedures to identify patrons and employees with suspected or known problem gambling behavior, including procedures specific to loyalty and other rewards and marketing programs;

(6) Procedures for providing information to individuals regarding the voluntary exclusion program and community, public and private treatment services, gamblers anonymous programs and similar treatment or addiction therapy programs designed to prevent, treat, or monitor problem gamblers and to counsel family members;

(7) Procedures for responding to patron and employee requests for information regarding the voluntary exclusion program and community, public and private treatment services, gamblers anonymous programs and similar treatment or addiction therapy programs designed to prevent, treat, or monitor compulsive and problem gamblers and to counsel family members;

(8) The provision of printed material to educate patrons and employees about problem gambling and to inform them about the voluntary exclusion program and treatment services available to problem gamblers and their families. The applicant shall provide examples of the materials to be used as part of its plan, including, brochures and other printed material and a description of how the material will be disseminated;

(9) Advertising and other marketing and outreach to educate the general public about the voluntary exclusion program and problem gambling;

(10) An employee training program, including training materials to be utilized and a plan for periodic reinforcement training and a certification process established by the applicant to verify that each employee has completed the training required by the plan;

(11) Procedures to prevent underage gambling;

(12) Procedures to prevent patrons impaired by drugs or alcohol, or both, from gambling; and

(13) The plan for posting signs within the gaming facility, containing information on gambling treatment and on the voluntary exclusion program. The applicant shall provide examples of the language and graphics to be used on the signs as part of its plan;

53

CHAP. 174

(d) A list of community, public and private treatment services, gamblers anonymous programs and similar treatment or addiction therapy programs designed to prevent, treat, or monitor problem gamblers and to counsel family members; and

(e) Any other information, documents, and policies and procedures that the commission requires.

2. Each applicant or gaming facility licensee shall submit any amendments to the problem gambling plan to the commission for review and approval before implementing the amendments.

3. Each gaming facility licensee shall submit an annual summary of its problem gambling plan to the commission.

4. Each gaming facility licensee shall submit quarterly updates and an annual report to the commission of its adherence to the plans and goals submitted under this section.

§ 1363. Advertising restrictions. 1. As used in this section:

(a) "advertisement" shall mean any notice or communication to the public or any information concerning the gaming-related business of a gaming facility licensee or applicant through broadcasting, publication or any other means of dissemination, including electronic dissemination. Promotional activities are considered advertisements for purposes of this section.

(b) "direct advertisement" shall mean any advertisement as described

in paragraph (a) of this subdivision that is disseminated to a specific individual or individuals.

2. Advertising shall be based upon fact, and shall not be false, deceptive or misleading, and no advertising by or on behalf of a gaming facility licensee shall:

(a) Use any type, size, location, lighting, illustration, graphic depiction or color resulting in the obscuring of any material fact;

(b) Fail to clearly and conspicuously specify and state any material conditions or limiting factors;

(c) Depict any person under the age of twenty-one engaging in gaming and related activities; or

(d) Fail to designate and state the name and location of the gaming facility conducting the advertisement. The location of the gaming facility need not be included on billboards within thirty miles of the gaming facility.

3. Each advertisement shall, clearly and conspicuously, state a problem gambling hotline number.

4. Each direct advertisement shall, clearly and conspicuously, describe a method or methods by which an individual may designate that the individual does not wish to receive any future direct advertisement.

(a) The described method must be by at least two of the following:

(1) Telephone;

(2) Regular U.S. mail; or

(3) Electronic mail.

(b) Upon receipt of an individual's request to discontinue receipt of future advertisement, a gaming facility licensee or applicant shall block the individual in the gaming facility licensee's database so as to prevent the individual from receiving future direct advertisements within fifteen days of receipt of the request.

5. Each gaming facility licensee or applicant shall provide to the commission at its main office a complete and accurate copy of all advertisements within five business days of the advertisement's public dissemination. Gaming facility licensees or applicants shall discontinue

CHAP. 174

54

the public dissemination upon receipt of notice from the commission to discontinue an advertisement.

6. A gaming facility licensee or applicant shall maintain a complete record of all advertisements for a period of at least two years. Records shall be made available to the commission upon request.

#### TITLE 8

#### MISCELLANEOUS PROVISIONS

Section 1364. Smoking prohibited.

1365. Conservatorship.

1366. Zoning.

1367. Sports wagering.

§ 1364. Smoking prohibited. Smoking shall not be permitted, and no person shall smoke in the indoor areas of facilities licensed pursuant to this article, except that the provisions of section one thousand three hundred ninety-nine-q of the public health law shall be applicable to facilities licensed pursuant to this article.

§ 1365. Conservatorship. 1. Upon revocation or suspension of a gaming facility license or upon the failure or refusal to renew a gaming facility license, the commission may appoint a conservator to temporarily manage and operate the business of the gaming licensee relating to the gaming facility. Such conservator shall be a person of similar experience in the field of gaming management and, in the case of replacing a



gaming facility licensee, shall have experience operating a gaming facility of similar caliber in another jurisdiction, and shall be in good standing in all jurisdictions in which the conservator operates a gaming facility. Upon appointment, a conservator shall agree to all licensing provisions of the former gaming licensee.

2. A conservator shall, before assuming, managerial or operational duties, execute and file a bond for the faithful performance of its duties payable to the commission with such surety and in such form and amount as the commission shall approve.

3. The commission shall require that the former or suspended gaming licensee purchase liability insurance, in an amount determined by the commission, to protect a conservator from liability for any acts or omissions of the conservator during the conservator's appointment which are reasonably related to and within the scope of the conservator's duties.

4. During the period of temporary management of the gaming facility, the commission shall initiate proceedings under this article to award a new gaming facility license to a qualified applicant whose gaming facility shall be located at the site of the preexisting gaming facility.

5. An applicant for a new gaming facility license shall be qualified for licensure under this article; provided, however, that the commission shall determine an appropriate level of investment by an applicant into the preexisting gaming facility.

6. Upon award of a new gaming facility license, the new gaming facility licensee shall pay the original licensing fee required under this article.

§ 1366. Zoning. Notwithstanding any inconsistent provision of law, gaming authorized at a location pursuant to this article shall be deemed an approved activity for such location under the relevant city, county, town, or village land use or zoning ordinances, rules, or regulations.

§ 1367. Sports wagering. 1. As used in this section:

(a) "Casino" means a licensed gaming facility at which gambling is conducted pursuant to the provisions of this article;

55

CHAP. 174

(b) "Commission" means the commission established pursuant to section one hundred two of this chapter;

(c) "Collegiate sport or athletic event" means a sport or athletic event offered or sponsored by or played in connection with a public or private institution that offers educational services beyond the secondary level;

(d) "Operator" means a casino which has elected to operate a sports pool;

(e) "Professional sport or athletic event" means an event at which two or more persons participate in sports or athletic events and receive compensation in excess of actual expenses for their participation in such event;

(f) "Prohibited sports event" means any collegiate sport or athletic event that takes place in New York or a sport or athletic event in which any New York college team participates regardless of where the event takes place;

(g) "Sports event" means any professional sport or athletic event and any collegiate sport or athletic event, except a prohibited sports event;

(h) "Sports pool" means the business of accepting wagers on any sports event by any system or method of wagering; and

(i) "Sports wagering lounge" means an area wherein a sports pool is

operated.

2. No gaming facility may conduct sports wagering until such time as there has been a change in federal law authorizing such or upon a ruling of a court of competent jurisdiction that such activity is lawful.

3. (a) In addition to authorized gaming activities, a licensed gaming facility may when authorized by subdivision two of this section operate a sports pool upon the approval of the commission and in accordance with the provisions of this section and applicable regulations promulgated pursuant to this article. The commission shall hear and decide promptly and in reasonable order all applications for a license to operate a sports pool, shall have the general responsibility for the implementation of this section and shall have all other duties specified in this section with regard to the operation of a sports pool. The license to operate a sports pool shall be in addition to any other license required to be issued to operate a gaming facility. No license to operate a sports pool shall be issued by the commission to any entity unless it has established its financial stability, integrity and responsibility and its good character, honesty and integrity.

No later than five years after the date of the issuance of a license and every five years thereafter or within such lesser periods as the commission may direct, a licensee shall submit to the commission such documentation or information as the commission may by regulation require, to demonstrate to the satisfaction of the executive director of the commission that the licensee continues to meet the requirements of the law and regulations.

(b) A sports pool shall be operated in a sports wagering lounge located at a casino. The lounge shall conform to all requirements concerning square footage, design, equipment, security measures and related matters which the commission shall by regulation prescribe.

(c) The operator of a sports pool shall establish or display the odds at which wagers may be placed on sports events.

(d) An operator shall accept wagers on sports events only from persons physically present in the sports wagering lounge. A person placing a wager shall be at least twenty-one years of age.

CHAP. 174

56

(e) An operator shall not admit into the sports wagering lounge, or accept wagers from, any person whose name appears on the exclusion list.

(f) The holder of a license to operate a sports pool may contract with an entity to conduct that operation, in accordance with the regulations of the commission. That entity shall obtain a license as a casino vendor enterprise prior to the execution of any such contract, and such license shall be issued pursuant to the provisions of section one thousand three hundred twenty-seven of this article and in accordance with the regulations promulgated by the commission.

(g) If any provision of this article or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

4. (a) All persons employed directly in wagering-related activities conducted within a sports wagering lounge shall be licensed as a casino key employee or registered as a gaming employee, as determined by the commission. All other employees who are working in the sports wagering lounge may be required to be registered, if appropriate, in accordance with regulations of the commission.

(b) Each operator of a sports pool shall designate one or more casino

key employees who shall be responsible for the operation of the sports pool. At least one such casino key employee shall be on the premises whenever sports wagering is conducted.

5. Except as otherwise provided by this article, the commission shall have the authority to regulate sports pools and the conduct of sports wagering under this article to the same extent that the commission regulates other gaming. No casino shall be authorized to operate a sports pool unless it has produced information, documentation, and assurances concerning its financial background and resources, including cash reserves, that are sufficient to demonstrate that it has the financial stability, integrity, and responsibility to operate a sports pool. In developing rules and regulations applicable to sports wagering, the commission shall examine the regulations implemented in other states where sports wagering is conducted and shall, as far as practicable, adopt a similar regulatory framework. The commission shall promulgate regulations necessary to carry out the provisions of this section, including, but not limited to, regulations governing the:

(a) amount of cash reserves to be maintained by operators to cover winning wagers;

(b) acceptance of wagers on a series of sports events;

(c) maximum wagers which may be accepted by an operator from any one patron on any one sports event;

(d) type of wagering tickets which may be used;

(e) method of issuing tickets;

(f) method of accounting to be used by operators;

(g) types of records which shall be kept;

(h) use of credit and checks by patrons;

(i) type of system for wagering; and

(j) protections for a person placing a wager.

6. Each operator shall adopt comprehensive house rules governing sports wagering transactions with its patrons. The rules shall specify the amounts to be paid on winning wagers and the effect of schedule changes. The house rules, together with any other information the commission deems appropriate, shall be conspicuously displayed in the sports wagering lounge and included in the terms and conditions of the

account wagering system, and copies shall be made readily available to patrons.

#### TITLE 9

#### GAMING INSPECTOR GENERAL

Section 1368. Establishment of the office of gaming inspector general.

1369. State gaming inspector general; functions and duties.

1370. Powers.

1371. Responsibilities of the commission and its officers and employees.

§ 1368. Establishment of the office of gaming inspector general. There is hereby created within the commission the office of gaming inspector general. The head of the office shall be the gaming inspector general who shall be appointed by the governor by and with the advice and consent of the senate. The inspector general shall serve at the pleasure of the governor. The inspector general shall report directly to the governor. The person appointed as inspector general shall, upon his or her appointment, have not less than ten years professional experience in law, investigation, or auditing. The inspector general shall be compensated within the limits of funds available therefor, provided, however, such salary shall be no less than the salaries of certain state

officers holding the positions indicated in paragraph (a) of subdivision one of section one hundred sixty-nine of the executive law.

§ 1369. State gaming inspector general; functions and duties. The state gaming inspector general shall have the following duties and responsibilities:

1. receive and investigate complaints from any source, or upon his or her own initiative, concerning allegations of corruption, fraud, criminal activity, conflicts of interest or abuse in the commission;

2. inform the commission members of such allegations and the progress of investigations related thereto, unless special circumstances require confidentiality;

3. determine with respect to such allegations whether disciplinary action, civil or criminal prosecution, or further investigation by an appropriate federal, state or local agency is warranted, and to assist in such investigations;

4. prepare and release to the public written reports of such investigations, as appropriate and to the extent permitted by law, subject to redaction to protect the confidentiality of witnesses. The release of all or portions of such reports may be deferred to protect the confidentiality of ongoing investigations;

5. review and examine periodically the policies and procedures of the commission with regard to the prevention and detection of corruption, fraud, criminal activity, conflicts of interest or abuse;

6. recommend remedial action to prevent or eliminate corruption, fraud, criminal activity, conflicts of interest or abuse in the commission; and

7. establish programs for training commission officers and employees regarding the prevention and elimination of corruption, fraud, criminal activity, conflicts of interest or abuse in the commission.

§ 1370. Powers. The state gaming inspector general shall have the power to:

1. subpoena and enforce the attendance of witnesses;

2. administer oaths or affirmations and examine witnesses under oath;

3. require the production of any books and papers deemed relevant or material to any investigation, examination or review;

CHAP. 174

58

4. notwithstanding any law to the contrary, examine and copy or remove documents or records of any kind prepared, maintained or held by the commission;

5. require any commission officer or employee to answer questions concerning any matter related to the performance of his or her official duties. The refusal of any officer or employee to answer questions shall be cause for removal from office or employment or other appropriate penalty;

6. monitor the implementation by the commission of any recommendations made by the state inspector general; and

7. perform any other functions that are necessary or appropriate to fulfill the duties and responsibilities of the office.

§ 1371. Responsibilities of the commission and its officers and employees. 1. Every commission officer or employee shall report promptly to the state gaming inspector general any information concerning corruption, fraud, criminal activity, conflicts of interest or abuse by another state officer or employee relating to his or her office or employment, or by a person having business dealings with the commission relating to those dealings. The knowing failure of any officer or employee to so report shall be cause for removal from office or employ-

ment or other appropriate penalty under this article. Any officer or employee who acts pursuant to this subdivision by reporting to the state gaming inspector general or other appropriate law enforcement official improper governmental action as defined in section seventy-five-b of the civil service law shall not be subject to dismissal, discipline or other adverse personnel action.

2. The commission chair shall advise the governor within ninety days of the issuance of a report by the state gaming inspector general as to the remedial action that the commission has taken in response to any recommendation for such action contained in such report.

§ 3. Section 225.00 of the penal law is amended by adding eighteen new subdivisions 13 through 30 to read as follows:

13. "Authorized gaming establishment" means any structure, structure and adjacent or attached structure, or grounds adjacent to a structure in which casino gaming, conducted pursuant to article thirteen of the racing, pari-mutuel wagering and breeding law, or Class III gaming, as authorized pursuant to a compact reached between the state of New York and a federally recognized Indian nation or tribe under the federal Indian Gaming Regulatory Act of 1988, is conducted and shall include all public and non-public areas of any such building, except for such areas of a building where either Class I or II gaming are conducted or any building or grounds known as a video gaming entertainment facility, including facilities where food and drink are served, as well as those areas not normally open to the public, such as where records related to video lottery gaming operations are kept, except shall not include the racetracks or such areas where such video lottery gaming operations or facilities do not take place or exist, such as racetrack areas or fair-grounds which are wholly unrelated to video lottery gaming operations, pursuant to section sixteen hundred seventeen-a and paragraph five of subdivision a of section sixteen hundred twelve of the tax law, as amended and implemented.

14. "Authorized gaming operator" means an enterprise or business entity authorized by state or federal law to operate casino or video lottery gaming.

15. "Casino gaming" means games authorized to be played pursuant to a license granted under article thirteen of the racing, pari-mutuel wager-

ing and breeding law or by federally recognized Indian nations or tribes pursuant to a valid gaming compact reached in accordance with the federal Indian Gaming Regulatory Act of 1988, Pub. L. 100-497, 102 Stat. 2467, codified at 25 U.S.C. §§ 2701-21 and 18 U.S.C. §§ 1166-68.

16. "Cash equivalent" means a treasury check, a travelers check, wire transfer of funds, transfer check, money order, certified check, cashiers check, payroll check, a check drawn on the account of the authorized gaming operator payable to the patron or to the authorized gaming establishment, a promotional coupon, promotional chip, promotional cheque, promotional token, or a voucher recording cash drawn against a credit card or charge card.

17. "Cheques" or "chips" or "tokens" means nonmetal, metal or partly metal representatives of value, redeemable for cash or cash equivalent, and issued and sold by an authorized casino operator for use at an authorized gaming establishment. The value of such cheques or chips or tokens shall be considered equivalent in value to the cash or cash equivalent exchanged for such cheques or chips or tokens upon purchase or redemption.

18. "Class I gaming" and "Class II gaming" means those forms of gaming

that are not Class III gaming, as defined in subsection eight of section four of the federal Indian Gaming Regulatory Act, 25 U.S.C. § 2703.

19. "Class III gaming" means those forms of gaming that are not Class I or Class II gaming, as defined in subsections six and seven of section four of the federal Indian Gaming Regulatory Act, 25 U.S.C. § 2703 and those games enumerated in the Appendix of a gaming compact.

20. "Compact" or "gaming compact" means the agreement between a federally recognized Indian tribe and the state of New York regarding Class III gaming activities entered into pursuant to the federal Indian Gaming Regulatory Act, Pub. L. 100-497, 102 Stat. 2467, codified at 25 U.S.C. §§ 2701-21 and 18 U.S.C. §§ 1166-68 (1988 & Supp. II).

21. "Gaming equipment or device" means any machine or device which is specially designed or manufactured for use in the operation of any Class III or video lottery game.

22. "Gaming regulatory authority" means, with respect to any authorized gaming establishment on Indian lands, territory or reservation, the Indian nation or tribal gaming commission, its authorized officers, agents and representatives acting in their official capacities or such other agency of a nation or tribe as the nation or tribe may designate as the agency responsible for the regulation of Class III gaming, jointly with the state gaming agency, conducted pursuant to a gaming compact between the nation or tribe and the state of New York, or with respect to any casino gaming authorized pursuant to article thirteen of the racing, pari-mutuel wagering and breeding law or video lottery gaming conducted pursuant to section sixteen hundred seventeen-a and paragraph five of subdivision a of section sixteen hundred twelve of the tax law, as amended and implemented.

23. "Premises" includes any structure, parking lot, building, vehicle, watercraft, and any real property.

24. "Sell" means to sell, exchange, give or dispose of to another.

25. "State gaming agency" shall mean the New York state gaming commission, its authorized officials, agents, and representatives acting in their official capacities as the regulatory agency of the state which has responsibility for regulation with respect to video lottery gaming or casino gaming.

26. "Unfair gaming equipment" means loaded dice, marked cards, substituted cards or dice, or fixed roulette wheels or other gaming equipment

CHAP. 174

60

which has been altered in a way that tends to deceive or tends to alter the elements of chance or normal random selection which determine the result of the game or outcome, or the amount or frequency of the payment in a game.

27. "Unlawful gaming property" means:

(a) any device, not prescribed for use in casino gaming by its rules, which is capable of assisting a player:

(i) to calculate any probabilities material to the outcome of a contest of chance; or

(ii) to receive or transmit information material to the outcome of a contest of chance; or

(b) any object or article which, by virtue of its size, shape or any other quality, is capable of being used in casino gaming as an improper substitute for a genuine chip, cheque, token, betting coupon, debit instrument, voucher or other instrument or indicia of value; or

(c) any unfair gaming equipment.

28. "Video lottery gaming" means any lottery game played on a video lottery terminal, which consists of multiple players competing for a

chance to win a random drawn prize pursuant to section sixteen hundred seventeen-a and paragraph five of subdivision a of section sixteen hundred twelve of the tax law, as amended and implemented.

29. "Voucher" means an instrument of value generated by a video lottery terminal representing a monetary amount and/or play value owed to a customer at a specific video lottery terminal based on video lottery gaming winnings and/or amounts not wagered.

§ 4. The penal law is amended by adding ten new sections 225.55, 225.60, 225.65, 225.70, 225.75, 225.80, 225.85, 225.90 and 225.95 to read as follows:

§ 225.55 Gaming fraud in the second degree.

A person is guilty of gaming fraud in the second degree when he or she:

1. with intent to defraud and in violation of the rules of the casino gaming, misrepresents, changes the amount bet or wagered on, or the outcome or possible outcome of the contest or event which is the subject of the bet or wager, or the amount or frequency of payment in the casino gaming; or

2. with intent to defraud, obtains anything of value from casino gaming without having won such amount by a bet or wager contingent thereon.

Gaming fraud in the second degree is a class A misdemeanor.

§ 225.60 Gaming fraud in the first degree.

A person is guilty of gaming fraud in the first degree when he or she commits a gaming fraud in the second degree, and:

1. The value of the benefit obtained exceeds one thousand dollars; or

2. He or she has been previously convicted within the preceding five years of any offense of which an essential element is the commission of a gaming fraud.

Gaming fraud in the first degree is a class E felony.

§ 225.65 Use of counterfeit, unapproved or unlawful wagering instruments.

A person is guilty of use of counterfeit, unapproved or unlawful wagering instruments when in playing or using any casino gaming designed to be played with, received or be operated by chips, cheques, tokens, vouchers or other wagering instruments approved by the appropriate gaming regulatory authority, he or she knowingly uses chips, cheques, tokens, vouchers or other wagering instruments other than those approved

by the appropriate gaming regulating authority and the state gaming agency or lawful coin or legal tender of the United States of America.

Possession of more than one counterfeit, unapproved or unlawful wagering instrument described in this section is presumptive evidence of possession thereof with knowledge of its character or contents.

Use of counterfeit, unapproved or unlawful wagering instruments is a class A misdemeanor.

§ 225.70 Possession of unlawful gaming property in the third degree.

A person is guilty of possession of unlawful gaming property in the third degree when he or she possesses, with intent to use such property to commit gaming fraud, unlawful gaming property at a premises being used for casino gaming.

Possession of unlawful gaming property in the third degree is a class A misdemeanor.

§ 225.75 Possession of unlawful gaming property in the second degree.

A person is guilty of possession of unlawful gaming property in the second degree when:

1. He or she makes, sells, or possesses with intent to sell, any unlawful gaming property at a casino gaming facility, the value of which exceeds three hundred dollars, with intent that it be made available to a person for unlawful use; or

2. He or she commits possession of unlawful gaming property in the third degree as defined in section 225.70 of this article, and the face value of the improper substitute property exceeds five hundred dollars; or

3. He or she commits the offense of possession of unlawful gaming property in the third degree and has been previously convicted within the preceding five years of any offense of which an essential element is possession of unlawful gaming property.

Possession of unlawful gaming property in the second degree is a class E felony.

§ 225.80 Possession of unlawful gaming property in the first degree.

A person is guilty of possession of unlawful gaming property in the first degree when:

1. He or she commits the crime of unlawful possession of gaming property in the third degree as defined in section 225.70 of this article and the face value of the improper substitute property exceeds one thousand dollars; or

2. He or she commits the offense of possession of unlawful gaming property in the second degree as defined in subdivision one or two of section 225.75 of this article and has been previously convicted within the preceding five years of any offense of which an essential element is possession of unlawful gaming property.

Possession of unlawful gaming property in the first degree is a class D felony.

§ 225.85 Use of unlawful gaming property.

A person is guilty of use of unlawful gaming property when he or she knowingly with intent to defraud uses unlawful gaming property at a premises being used for casino gaming.

Use of unlawful gaming property is a class E felony.

§ 225.90 Manipulation of gaming outcomes at an authorized gaming establishment.

A person is guilty of manipulation of gaming outcomes at an authorized gaming establishment when he or she:

1. Knowingly conducts, operates, deals or otherwise manipulates, or knowingly allows to be conducted, operated, dealt or otherwise manipu-

CHAP. 174

62

lated, cards, dice or gaming equipment or device, for themselves or for another, through any trick or sleight of hand performance, with the intent of deceiving or altering the elements of chance or normal random selection which determines the result or outcome of the game, or the amount or frequency of the payment in a game; or

2. Knowingly uses, conducts, operates, deals, or exposes for play, or knowingly allows to be used, conducted, operated, dealt or exposed for play any cards, dice or gaming equipment or device, or any combination of gaming equipment or devices, which have in any manner been altered, marked or tampered with, or placed in a condition, or operated in a manner, the result of which tends to deceive or tends to alter the elements of chance or normal random selection which determine the result of the game or outcome, or the amount or frequency of the payment in a game; or

3. Knowingly uses, or possesses with the intent to use, any cards, dice or other gaming equipment or devices other than that provided by an



authorized gaming operator for current use in a permitted gaming activity; or

4. Alters or misrepresents the outcome of a game or other event on which bets or wagers have been made after the outcome is made sure but before it is revealed to players.

Possession of altered, marked or tampered with dice, cards, or gaming equipment or devices at an authorized gambling establishment is presumptive evidence of possession thereof with knowledge of its character or contents and intention to use such altered, marked or tampered with dice, cards, or gaming equipment or devices in violation of this section.

Manipulation of gaming outcomes at an authorized gaming establishment is a class A misdemeanor provided, however, that if the person has previously been convicted of this crime within the past five years this crim shall be a class E felony.

§ 225.95 Unlawful manufacture, sale, distribution, marking, altering or modification of equipment and devices associated with gaming.

A person is guilty of unlawful manufacture, sale, distribution, marking, altering or modification of equipment and devices associated with gaming when if he or she:

1. Manufactures, sells or distributes any cards, chips, cheques, tokens, dice, vouchers, game or device and he or she knew or reasonably should have known it was intended to be used to violate any provision of this article; or

2. Marks, alters or otherwise modifies any associated gaming equipment or device in a manner that either affects the result of the wager by determining win or loss or alters the normal criteria of random selection in a manner that affects the operation of a game or determines the outcome of a game, and he or she knew or reasonably should have known that it was intended to be used to violate any provision of this article.

Unlawful manufacture, sale, distribution, marking, altering or modification of equipment and devices associated with gaming is a class A misdemeanor provided, however, that if the person has previously been convicted of this crime within the past five years this crim shall be a class E felony.

§ 5. Section 109-a of the racing, pari-mutuel wagering and breeding law is REPEALED and a new section 109-a is added to read as follows:

§ 109-a. Separate board for facility siting. The commission shall establish a separate board to be known as the New York gaming facility

location board to perform designated functions under article thirteen of this chapter, the following provisions shall apply to the board:

1. The commission shall select five members and name the chair of the board. Each member of the board shall be a resident of the state of New York. No member of the legislature or person holding any elective or appointive office in federal, state or local government shall be eligible to serve as a member of the board.

2. Qualifications of members. Members of the board shall each possess no less than ten years of responsible experience in fiscal matters and shall have any one or more of the following qualifications:

(a) significant service as an accountant economist, or financial analyst experienced in finance or economics;

(b) significant service in an academic field relating to finance or economics;

(c) significant service and knowledge of the commercial real estate

industry; or

(d) significant service as an executive with fiduciary responsibilities in charge of a large organization or foundation.

3. No member of the board:

(a) may have a close familial or business relationship to a person that holds a license under this chapter;

(b) may have any direct or indirect financial interest, ownership, or management, including holding any stocks, bonds, or other similar financial interests in any gaming activities, including horse racing, lottery or gambling;

(c) may receive or share in, directly or indirectly, the receipts or proceeds of any gaming activities, including horse racing, lottery or gambling;

(d) may have a beneficial interest in any contract for the manufacture or sale of gaming devices, the conduct of any gaming activity, or the provision of any independent consulting services in connection with any establishment licensed under this chapter.

4. Board members are entitled to actual and necessary expenses incurred in the discharge of their duties but may not receive compensation for their service on the board.

5. (a) The commission shall provide staff to the board.

(b) The board shall contract with an outside consultant to provide analysis of the gaming industry and to support the board's comprehensive review and evaluation of the applications submitted to the board for gaming facility licenses.

(c) The board may contract with attorneys, accountants, auditors and financial and other experts to render necessary services.

(d) All other state agencies shall cooperate with and assist the board in the fulfillment of its duties under this article and may render such services to the board within their respective functions as the board may reasonably request.

6. Utilizing the powers and duties prescribed for it by article thirteen of this chapter, the board shall select, through a competitive process consistent with provisions of article thirteen of this chapter, not more than four gaming facility license applicants. Such selectees shall be authorized to receive a gaming facility license, if found suitable by the commission. The board may select another applicant for authorization to be licensed as a gaming facility if a previous selectee fails to meet licensing thresholds, is revoked or surrenders a license opportunity.

CHAP. 174

64

§ 6. Subdivision 2 of section 99-h of the state finance law, as amended by section 1 of part V of chapter 59 of the laws of 2006, is amended to read as follows:

2. Such account shall consist of all revenues resulting from tribal-state compacts executed pursuant to article two of the executive law ~~[and]~~, a tribal-state compact with the St. Regis Mohawk tribe executed pursuant to chapter five hundred ninety of the laws of two thousand four and the Oneida Settlement Agreement referenced in section eleven of the executive law.

§ 7. Subdivision 3 of section 99-h of the state finance law, as amended by section 1 of part W of chapter 60 of the laws of 2011, is amended to read as follows:

3. Moneys of the account, following the segregation of appropriations enacted by the legislature, shall be available for purposes including but not limited to: (a) reimbursements or payments to municipal govern-

ments that host tribal casinos pursuant to a tribal-state compact for costs incurred in connection with services provided to such casinos or arising as a result thereof, for economic development opportunities and job expansion programs authorized by the executive law; provided, however, that for any gaming facility located in the city of Buffalo, the city of Buffalo shall receive a minimum of twenty-five percent of the negotiated percentage of the net drop from electronic gaming devices the state receives pursuant to the compact, and provided further that for any gaming facility located in the city of Niagara Falls, county of Niagara a minimum of twenty-five percent of the negotiated percentage of the net drop from electronic gaming devices the state receives pursuant to the compact shall be distributed in accordance with subdivision four of this section, and provided further that for any gaming facility located in the county or counties of Cattaraugus, Chautauqua or Allegany, the municipal governments of the state hosting the facility shall collectively receive a minimum of twenty-five percent of the negotiated percentage of the net drop from electronic gaming devices the state receives pursuant to the compact; and provided further that pursuant to chapter five hundred ninety of the laws of two thousand four, a minimum of twenty-five percent of the revenues received by the state pursuant to the state's compact with the St. Regis Mohawk tribe shall be made available to the counties of Franklin and St. Lawrence, and affected towns in such counties. Each such county and its affected towns shall receive fifty percent of the moneys made available by the state; and provided further that the state shall annually make twenty-five percent of the negotiated percentage of the net drop from all gaming devices the state actually receives pursuant to the Oneida Settlement Agreement confirmed by section eleven of the executive law as available to the county of Oneida, and a sum of three and one-half million dollars to the county of Madison. Additionally, the state shall distribute for a period of nineteen and one-quarter years, an additional annual sum of two and one-half million dollars to the county of Oneida. Additionally, the state shall distribute the one-time eleven million dollar payment received by the state pursuant to such agreement with the Oneida Nation of New York to the county of Madison by wire transfer upon receipt of such payment by the state; and (b) support and services of treatment programs for persons suffering from gambling addictions. Moneys not segregated for such purposes shall be transferred to the general fund for the support of government during the fiscal year in which they are received.

§ 7-a. Subdivision 3 of section 99-h of the state finance law, as amended by section 1 of part QQ of chapter 59 of the laws of 2009, is amended to read as follows:

3. Moneys of the account, following appropriation by the legislature, shall be available for purposes including but not limited to: (a) reimbursements or payments to municipal governments that host tribal casinos pursuant to a tribal-state compact for costs incurred in connection with services provided to such casinos or arising as a result thereof, for economic development opportunities and job expansion programs authorized by the executive law; provided, however, that for any gaming facility located in the city of Buffalo, the city of Buffalo shall receive a minimum of twenty-five percent of the negotiated percentage of the net drop from electronic gaming devices the state receives pursuant to the compact, and provided further that for any gaming facility located in the city of Niagara Falls, county of Niagara a minimum of twenty-five percent of the negotiated percentage of the net

drop from electronic gaming devices the state receives pursuant to the compact shall be distributed in accordance with subdivision four of this section, and provided further that for any gaming facility located in the county or counties of Cattaraugus, Chautauqua or Allegany, the municipal governments of the state hosting the facility shall collectively receive a minimum of twenty-five percent of the negotiated percentage of the net drop from electronic gaming devices the state receives pursuant to the compact; and provided further that pursuant to chapter five hundred ninety of the laws of two thousand four, a minimum of twenty-five percent of the revenues received by the state pursuant to the state's compact with the St. Regis Mohawk tribe shall be made available to the counties of Franklin and St. Lawrence, and affected towns in such counties. Each such county and its affected towns shall receive fifty percent of the moneys made available by the state; and provided further that the state shall annually make twenty-five percent of the negotiated percentage of the net drop from all gaming devices the state actually receives pursuant to the Oneida Settlement Agreement as confirmed by section eleven of the executive law as available to the county of Oneida, and a sum of three and one-half million dollars to the county of Madison. Additionally, the state shall distribute for a period of nineteen and one-quarter years, an additional annual sum of two and one-half million dollars to the county of Oneida. Additionally, the state shall distribute the one-time eleven million dollar payment received by the state pursuant to such agreement with the Oneida Nation of New York to the county of Madison by wire transfer upon receipt of such payment by the state; and (b) support and services of treatment programs for persons suffering from gambling addictions. Moneys not appropriated for such purposes shall be transferred to the general fund for the support of government during the fiscal year in which they are received.

§ 8. Subdivision 3 of section 99-h of the state finance law, as amended by section 23 of part HH of chapter 57 of the laws of 2013, is amended to read as follows:

3. Moneys of the account, following the segregation of appropriations enacted by the legislature, shall be available for purposes including but not limited to: (a) reimbursements or payments to municipal governments that host tribal casinos pursuant to a tribal-state compact for costs incurred in connection with services provided to such casinos or arising as a result thereof, for economic development opportunities and job expansion programs authorized by the executive law; provided, however-

CHAP. 174 66

er, that for any gaming facility located in the county of Erie or Niagara, the municipal governments hosting the facility shall collectively receive a minimum of twenty-five percent of the negotiated percentage of the net drop from electronic gaming devices the state receives pursuant to the compact and provided further that for any gaming facility located in the county or counties of Cattaraugus, Chautauqua or Allegany, the municipal governments of the state hosting the facility shall collectively receive a minimum of twenty-five percent of the negotiated percentage of the net drop from electronic gaming devices the state receives pursuant to the compact; and provided further that pursuant to chapter five hundred ninety of the laws of two thousand four, a minimum of twenty-five percent of the revenues received by the state pursuant to the state's compact with the St. Regis Mohawk tribe shall be made available to the counties of Franklin and St. Lawrence, and affected towns in such counties. Each such county and its affected

towns shall receive fifty percent of the moneys made available by the state; and provided further that the state shall annually make twenty-five percent of the negotiated percentage of the net drop from all gaming devices the state actually receives pursuant to the Oneida Settlement Agreement confirmed by section eleven of the executive law available to the county of Oneida, and a sum of three and one-half million dollars to the county of Madison. Additionally, the state shall distribute, for a period of nineteen and one-quarter years, an additional annual sum of two and one-half million dollars to the county of Oneida. Additionally, the state shall distribute the one-time eleven million dollar payment actually received by the state pursuant to the Oneida Settlement Agreement to the county of Madison by wire transfer upon receipt of such payment by the state; and (b) support and services of treatment programs for persons suffering from gambling addictions. Moneys not segregated for such purposes shall be transferred to the general fund for the support of government during the fiscal year in which they are received.

§ 9. Section 99-h of the state finance law, as amended by chapter 747 of the laws of 2006, is amended by adding a new subdivision 3-a to read as follows:

3-a. Ten percent of any of the funds actually received by the state pursuant to the tribal-state compacts and agreements described in subdivision two of this section that are retained in the fund after the distributions required by subdivision three of this section, but prior to the transfer of unsegregated moneys to the general fund required by such subdivision, shall be distributed to counties in each respective exclusivity zone provided they do not otherwise receive a share of said revenues pursuant to this section. Such distribution shall be made among such counties on a per capita basis, excluding the population of any municipality that receives a distribution pursuant to subdivision three of this section.

§ 10. The state finance law is amended by adding a new section 97-nnnn to read as follows:

§ 97-nnnn. Commercial gaming revenue fund. 1. There is hereby established in the joint custody of the comptroller and the commissioner of taxation and finance an account in the miscellaneous special revenue fund to be known as the "commercial gaming revenue fund".

2. Such account shall consist of all revenues from all taxes and fees imposed by article thirteen of the racing, pari-mutuel wagering and breeding law; any interest and penalties imposed by the New York state gaming commission relating to those taxes; the percentage of the value

of expired gaming related obligations; and all penalties levied and collected by the commission. Additionally, the state gaming commission shall pay into the account any appropriate funds, cash or prizes forfeited from gambling activity.

3. Moneys of the account shall be available as follows, unless otherwise specified by the upstate New York gaming economic development act of two thousand thirteen, following appropriation by the legislature:

a. eighty percent of the moneys in such fund shall be appropriated or transferred only for elementary and secondary education or real property tax relief.

b. ten percent of the moneys in such fund shall be appropriated or transferred from the commercial gaming revenue fund equally between the host municipality and host county.

c. ten percent of the moneys in such fund, as attributable to a

specific licensed gaming facility, shall be appropriated or transferred from the commercial gaming revenue fund among counties within the region, as defined by section one thousand three hundred ten of the racing, pari-mutuel wagering and breeding law, hosting said facility for the purpose of real property tax relief and for education assistance. Such distribution shall be made among the counties on a per capita basis, subtracting the population of host municipality and county.

4. a. As used in this section, the term "base year gaming revenue" shall mean the sum of all revenue generated to support education from video lottery gaming as defined by section sixteen hundred seventeen-a of the tax law in the twelve months preceding the operation of any gaming facility pursuant to either article thirteen of the racing, pari-mutuel wagering and breeding law or pursuant to paragraph four of section one thousand six hundred seventeen-a of the tax law.

b. Amounts transferred in any year to support elementary and secondary education shall be calculated as follows:

(i) an amount equal to the positive difference, if any, between the base year gaming revenue amount and the sum of all revenue generated to support education from video lottery gaming as defined by section sixteen hundred seventeen-a of the tax law in the current fiscal year provided that such positive amount, if any, shall be transferred to the state lottery fund; and

(ii) the amount of revenue collected in the prior state fiscal year, to be distributed pursuant to paragraph a of subdivision three of this section, and in excess of any amounts transferred pursuant to subparagraph (i) of this paragraph in such prior fiscal year, if any.

c. Notwithstanding any provision of law to the contrary, amounts appropriated or transferred from the commercial gaming revenue fund pursuant to subparagraph (ii) of this paragraph shall not be included in: (i) the allowable growth amount computed pursuant to paragraph dd of subdivision one of section thirty-six hundred two of the education law, (ii) the preliminary growth amount computed pursuant to paragraph ff of subdivision one of section thirty-six hundred two of the education law, and (iii) the allocable growth amount computed pursuant to paragraph gg of subdivision one of section thirty-six hundred two of the education law.

5. Notwithstanding the foregoing, monies received pursuant to:

a. sections one thousand three hundred forty-five and one thousand three hundred forty-eight of this article shall be exclusively appropriated to the office of alcoholism and substance abuse services to be used for problem gambling education and treatment purposes.

CHAP. 174

68

b. section one thousand three hundred forty-nine of this article shall be exclusively appropriated to the commission for regulatory investigations.

c. section one thousand three hundred fifty of this article shall be exclusively appropriated to the commission for costs regulation.

§ 11. The penal law is amended by adding a new section 156.40 to read as follows:

§ 156.40 Operating an unlawful electronic sweepstakes.

1. As used in this section the following words and terms shall have the following meanings:

(a) "Electronic machine or device" means a mechanically, electrically or electronically operated machine or device that is owned, leased or otherwise possessed by a sweepstakes sponsor or promoter, or any sponsors, promoters, partners, affiliates, subsidiaries or contractors ther-

eof; that is intended to be used by a sweepstakes entrant; that uses energy; and that displays the results of a game entry or game outcome to a participant on a screen or other mechanism at a business location, including a private club; provided, that an electronic machine or device may, without limitation:

- (1) be server-based;
- (2) use a simulated game terminal as a representation of the prizes associated with the results of the sweepstakes entries;
- (3) utilize software such that the simulated game influences or determines the winning or value of the prize;
- (4) select prizes from a predetermined finite pool of entries;
- (5) utilize a mechanism that reveals the content of a predetermined sweepstakes entry;
- (6) predetermine the prize results and stores those results for delivery at the time the sweepstakes entry results are revealed;
- (7) utilize software to create a game result;
- (8) require deposit of any money, coin or token, or the use of any credit card, debit card, prepaid card or any other method of payment to activate the electronic machine or device;
- (9) require direct payment into the electronic machine or device, or remote activation of the electronic machine or device;
- (10) require purchase of a related product having legitimate value;
- (11) reveal the prize incrementally, even though it may not influence if a prize is awarded or the value of any prize awarded;
- (12) determine and associate the prize with an entry or entries at the time the sweepstakes is entered; or
- (13) be a slot machine or other form of electrical, mechanical, or computer game.

(b) "Enter" or "entry" means the act or process by which a person becomes eligible to receive any prize offered in a sweepstakes.

(c) "Entertaining display" means any visual information, capable of being seen by a sweepstakes entrant, that takes the form of actual game play or simulated game play.

(d) "Prize" means any gift, award, gratuity, good, service, credit or anything else of value, which may be transferred to a person, whether possession of the prize is actually transferred, or placed on an account or other record as evidence of the intent to transfer the prize.

(e) "Sweepstakes" means any game, advertising scheme or plan, or other promotion, which, with or without payment of any consideration, a person may enter to win or become eligible to receive any prize, the determination of which is based upon chance.

2. A person is guilty of operating an unlawful electronic sweepstakes when he or she knowingly possesses with the intent to operate, or place into operation, an electronic machine or device to:

(a) conduct a sweepstakes through the use of an entertaining display, including the entry process or the reveal of a prize; or

(b) promote a sweepstakes that is conducted through the use of an entertaining display, including the entry process or the reveal of a prize.

3. Nothing in this section shall be construed to make illegal any activity which is lawfully conducted as the New York state lottery for education as authorized by article thirty-four of the tax law; pari-mutuel wagering on horse races as authorized by articles two, three, four, five-A, and ten of the racing, pari-mutuel wagering and breeding law; the game of bingo as authorized pursuant to article fourteen-H of the

general municipal law; games of chance as authorized pursuant to article nine-A of the general municipal law; gaming as authorized by article thirteen of the racing, pari-mutuel wagering and breeding law; or pursuant to the federal Indian Gaming Regulatory Act.

Operating an unlawful electronic sweepstakes is a class E felony.

§ 12. The legislature hereby finds that long-standing disputes between the Oneida Nation of New York and the State of New York, Madison County and Oneida County, have generated litigation in state and federal courts regarding property and other taxation, the status of Oneida Nation lands and transfer of such lands to the United States to be held in trust for the Oneida Nation, and that such litigation and disputes have caused decades of unrest and uncertainty for the citizens and residents of the Central New York region of this state. The legislature further finds that it is in the best interests of all citizens, residents and political subdivisions of this state to remove any uncertainty that such litigation or disputes have created regarding the title to and jurisdictional status of land within the state. The legislature recognizes that negotiated settlement of these disputes will facilitate a cooperative relationship between the state, the counties and the Oneida Nation. Therefore, the legislature declares that the following provisions are enacted to implement the settlement agreement that has been negotiated and executed by the governor on behalf of the people of this state.

§ 13. Section 11 of the executive law is REPEALED and a new section 11 is added to read as follows:

§ 11. Indian settlement agreements. 1. Oneida settlement agreement. Notwithstanding any other provision of law, upon filing with the secretary of state, the settlement agreement executed between the governor, the counties of Oneida and Madison, and the Oneida Nation of New York dated the sixteenth day of May, two thousand thirteen, to be known as the Oneida Settlement Agreement, including, without limitation, the provisions contained therein relating to arbitration and judicial review in state or federal courts and, for the sole purpose thereof, a limited waiver of the state's Eleventh Amendment sovereign immunity from suit, shall upon its effective date be deemed approved, ratified, validated and confirmed by the legislature. It is the intention of the legislature in enacting this section to ensure that the settlement agreement shall be fully enforceable in all respects as to the rights, benefits, responsibilities and privileges of all parties thereto.

§ 14. Notwithstanding any inconsistent provision of law, the Nation-State compact entered into by the State on April 16, 1993 and approved by the United States Department of the Interior on June 4, 1993, which  
CHAP. 174 70

approval was published at 58 Fed. Reg. 33160 (June 15, 1993), is deemed ratified, validated and confirmed nunc pro tunc by the legislature.

§ 15. Sections 2 and 3 of the Indian law are renumbered sections 3 and 4 and a new section 2 is added to read as follows:

§ 2. New York state Indian nations and tribes. The term "Indian nation or tribe" means one of the following New York state Indian nations or tribes: Cayuga Nation, Oneida Nation of New York, Onondaga Nation, Poospatuck or Unkechauge Nation, Saint Regis Mohawk Tribe, Seneca Nation of Indians, Shinnecock Indian Nation, Tonawanda Band of Seneca and Tuscarora Nation.

§ 16. The Indian law is amended by adding a new section 16 to read as follows:

§ 16. Indian settlement agreements. Notwithstanding any other provision of law, the provisions of the Oneida Settlement Agreement



referenced in section eleven of the executive law shall be deemed to supersede any inconsistent laws and regulations.

§ 17. Subdivision 18 of section 282 of the tax law, as added by section 3 of part K of chapter 61 of the laws of 2005, is amended to read as follows:

18. "Indian nation or tribe" means one of the following New York state Indian nations or tribes: Cayuga [~~Indian~~] Nation [~~of New York~~], Oneida [~~Indian~~] Nation of New York, Onondaga Nation [~~of Indians~~], Poospatuck or Unkechauge Nation, [~~St.~~] Saint Regis Mohawk Tribe, Seneca Nation of Indians, Shinnecock [~~Tribe~~] Indian Nation, Tonawanda Band of [~~Senecas~~] Seneca and Tuscarora Nation [~~of Indians~~].

§ 18. Subdivision 14 of section 470 of the tax law, as added by section 1 of part K of chapter 61 of the laws of 2005, is amended to read as follows:

14. "Indian nation or tribe." One of the following New York state Indian nations or tribes: Cayuga [~~Indian~~] Nation [~~of New York~~], Oneida [~~Indian~~] Nation of New York, Onondaga Nation [~~of Indians~~], Poospatuck or Unkechauge Nation, [~~St.~~] Saint Regis Mohawk Tribe, Seneca Nation of Indians, Shinnecock [~~Tribe~~] Indian Nation, Tonawanda Band of [~~Senecas~~] Seneca and Tuscarora Nation [~~of Indians~~].

§ 19. Intentionally omitted.

§ 20. Intentionally omitted.

§ 21. Intentionally omitted.

§ 22. Intentionally omitted.

§ 23. Intentionally omitted.

§ 24. Intentionally omitted.

§ 25. Section 104 of the racing, pari-mutuel wagering and breeding law is amended by adding a new subdivision 21 to read as follows:

21. The commission shall promptly make available for public inspection and copying via electronic connection to the commission's website a copy of any report received from the New York state board of elections pursuant to article fourteen of the election law.

§ 26. Section 1617-a of the tax law is amended by adding a new subdivision g to read as follows:

g. Every video lottery gaming license, and every renewal license, shall be valid for a period of five years, except that video gaming licenses issued before the effective date of this subdivision shall be for a term expiring on June thirtieth, two thousand fourteen.

The gaming commission may decline to renew any license after notice and an opportunity for hearing if it determines that:

(1) the licensee has violated section one thousand six hundred seven of this article;

71

CHAP. 174

(2) the licensee has violated any rule, regulation or order of the gaming commission;

(3) the applicant or its officers, directors or significant stockholders, as determined by the gaming commission, have been convicted of a crime involving moral turpitude; or

(4) that the character or fitness of the licensee and its officers, directors, and significant stockholders, as determined by the gaming commission is such that the participation of the applicant in video lottery gaming or related activities would be inconsistent with the public interest, convenience or necessity or with the best interests of video gaming generally.

(h) The gaming commission, subject to notice and an opportunity for hearing, may revoke, suspend, and condition the license of the video

gaming licensee, order the video gaming licensee to terminate the continued appointment, position or employment of officers and directors, or order the video gaming licensee to require significant stockholders to divest themselves of all interests in the video gaming licensee.

§ 27. Clause (G) of subparagraph (ii) of paragraph 1 of subdivision b of section 1612 of the tax law is REPEALED and a new clause (G) is added to read as follows:

(G) Notwithstanding any provision to the contrary, when a vendor track is located within regions one, two, or five of development zone two as defined by section thirteen hundred ten of the racing, pari-mutuel wagering and breeding law, such vendor track shall receive an additional commission at a rate equal to the percentage of revenue wagered at the vendor track after payout for prizes pursuant to this chapter less ten percent retained by the commission for operation, administration, and procurement purposes and payment of the vendor's fee, marketing allowance, and capital award paid pursuant to this chapter and the effective tax rate paid on all gross gaming revenue paid by a gaming facility within the same region pursuant to section thirteen hundred fifty-one of the racing, pari-mutuel wagering and breeding law. The additional commission shall be paid to the vendor track within sixty days after the conclusion of the state fiscal year based on the calculated percentage during the previous fiscal year.

§ 28. Intentionally omitted.

§ 29. Intentionally omitted.

§ 30. The opening paragraph of subparagraph (ii) of paragraph 1 of subdivision b of section 1612 of the tax law, as amended by section 6 of part K of chapter 57 of the laws of 2010, is amended to read as follows:

less a vendor's fee the amount of which is to be paid for serving as a lottery agent to the track operator of a vendor track or the operator of a resort facility:

§ 31. Section 1 of part HH of chapter 57 of the laws of 2013 relating to providing for the administration of certain funds and accounts related to the 2013-14 budget, is amended by adding a new subdivision 39 to read as follows:

39. Commercial gaming revenue fund:

a. Commercial gaming revenue account.

§ 32. Subdivision a of section 1617-a of the tax law, as amended by section 2 of part O-1 of chapter 57 of the laws of 2009, is amended to read as follows:

a. The division of the lottery is hereby authorized to license, pursuant to rules and regulations to be promulgated by the division of the lottery, the operation of video lottery gaming:

CHAP. 174

72

(1) at Aqueduct, Monticello, Yonkers, Finger Lakes, and Vernon Downs racetracks,

(2) or at any other racetrack licensed pursuant to article three of the racing, pari-mutuel wagering and breeding law that are located in a county or counties in which video lottery gaming has been authorized pursuant to local law, excluding the licensed racetrack commonly referred to in article three of the racing, pari-mutuel wagering and breeding law as the "New York state exposition" held in Onondaga county and the racetracks of the non-profit racing association known as Belmont Park racetrack and the Saratoga thoroughbred racetrack,

(3) at facilities established, pursuant to a competitive process to be determined by the state gaming commission within regions one, two, and five of zone two as established by section one thousand three hundred

ten of the racing, pari-mutuel wagering and breeding law following local governmental consultation and consideration of market factors including potential revenue impact, anticipated job development and capital investment to be made. The facilities authorized pursuant to this paragraph shall be deemed vendors for all purposes under this article, and need not be operated by licensed thoroughbred or harness racing associations or corporations.

Such rules and regulations shall provide, as a condition of licensure, that racetracks to be licensed are certified to be in compliance with all state and local fire and safety codes, that the division is afforded adequate space, infrastructure, and amenities consistent with industry standards for such video gaming operations as found at racetracks in other states, that racetrack employees involved in the operation of video lottery gaming pursuant to this section are licensed by the racing and wagering board, and such other terms and conditions of licensure as the division may establish. Notwithstanding any inconsistent provision of law, video lottery gaming at a racetrack pursuant to this section shall be deemed an approved activity for such racetrack under the relevant city, county, town, or village land use or zoning ordinances, rules, or regulations. No entity licensed by the division operating video lottery gaming pursuant to this section may house such gaming activity in a structure deemed or approved by the division as "temporary" for a duration of longer than eighteen-months. Nothing in this section shall prohibit the division from licensing an entity to operate video lottery gaming at an existing racetrack as authorized in this subdivision whether or not a different entity is licensed to conduct horse racing and pari-mutuel wagering at such racetrack pursuant to article two or three of the racing, pari-mutuel wagering and breeding law.

The division, in consultation with the racing and wagering board, shall establish standards for approval of the temporary and permanent physical layout and construction of any facility or building devoted to a video lottery gaming operation. In reviewing such application for the construction or reconstruction of facilities related or devoted to the operation or housing of video lottery gaming operations, the division, in consultation with the racing and wagering board, shall ensure that such facility:

(1) possesses superior consumer amenities and conveniences to encourage and attract the patronage of tourists and other visitors from across the region, state, and nation.

(2) has adequate motor vehicle parking facilities to satisfy patron requirements.

73

CHAP. 174

(3) has a physical layout and location that facilitates access to and from the horse racing track portion of such facility to encourage patronage of live horse racing events that are conducted at such track.

§ 33. Subparagraph (ii) of paragraph 1 of subdivision b of section 1612 of the tax law is amended by adding a new clause (H-1) to read as follows:

(H-1) Notwithstanding clauses (A), (B), (C), (D), (E), (F), (G) and (H) of this subparagraph where the vendor is authorized pursuant to paragraph three of subdivision a of section sixteen hundred seventeen-a of this article, at a rate of forty percent of the total revenue wagered at the facility after payout for prizes. All facilities authorized pursuant to paragraph three of subdivision a of section sixteen hundred seventeen-a of this article shall not be eligible for any vendor's capi-

tal award but are entitled to the vendor's marketing allowance of ten percent authorized by subparagraph (iii) of this paragraph. Facilities authorized by paragraph three of subdivision a of section sixteen hundred seventeen-a of this article shall pay

(i) an amount to horsemen for purses at the licensed racetracks in the region that will assure the purse support from video lottery gaming facilities in the region to the licensed racetracks in the region to be maintained at the same dollar levels realized in two thousand thirteen to be adjusted by the consumer price index for all urban consumers, as published annually by the United States department of labor bureau of labor statistics; and

(ii) amounts to the agricultural and New York state horse breeding development fund and the New York state thoroughbred breeding and development fund to maintain payments from video lottery gaming facilities in the region to such funds to be maintained at the same dollar levels realized in two thousand thirteen to be adjusted by the consumer price index for all urban consumers, as published annually by the United States department of labor bureau of labor statistics.

§ 34. Section 54-1 of the state finance law, as added by section 1 of part J of chapter 57 of the laws of 2011, paragraph b of subdivision 2 as amended by section 1 of part EE of chapter 57 of the laws of 2013, is amended to read as follows:

§ 54-1. State assistance to eligible cities and eligible municipalities in which a video lottery gaming facility is located. 1. Definitions. When used in this section, unless otherwise expressly stated:

a. "Eligible city" shall mean a city with a population equal to or greater than one hundred twenty-five thousand and less than one million in which a video lottery gaming facility is located and operating as of January first, two thousand nine pursuant to section sixteen hundred seventeen-a of the tax law.

b. "Eligible municipality" shall mean a county, city, town or village in which a video lottery gaming facility is located pursuant to section sixteen hundred seventeen-a of the tax law that is not located in a city with a population equal to or greater than one hundred twenty-five thousand.

c. "Newly eligible city" shall mean a city with a population equal to or greater than one hundred twenty-five thousand and less than one million in which a video lottery gaming facility pursuant to section sixteen hundred seventeen-a of the tax law is located and which was not operating as of January first, two thousand thirteen.

d. "Newly eligible municipality" shall mean a county, city, town or village in which a video lottery gaming facility is located pursuant to section sixteen hundred seventeen-a of the tax law that is not located

CHAP. 174

74

in a city with a population equal to or greater than one hundred twenty-five thousand and which was not operating as of January first, two thousand thirteen.

e. "Estimated net machine income" shall mean the estimated full annual value of total revenue wagered after payout for prizes for games known as video lottery gaming as authorized under article thirty-four of the tax law during the state fiscal year in which state aid payments are made pursuant to subdivision two of this section.

2. a. Within the amount appropriated therefor, an eligible city shall receive an amount equal to the state aid payment received in the state fiscal year commencing April first, two thousand eight from an appropriation for aid to municipalities with video lottery gaming facilities.

b. Within the amounts appropriated therefor, eligible municipalities shall receive an amount equal to fifty-five percent of the state aid payment received in the state fiscal year commencing April first, two thousand eight from an appropriation for aid to municipalities with video lottery gaming facilities.

c. A newly eligible city shall receive a state aid payment equal to two percent of the "estimated net machine income" generated by a video lottery gaming facility located in such eligible city. Such state aid payment shall not exceed twenty million dollars per eligible city.

d. A newly eligible municipality shall receive a state aid payment equal to two percent of the "estimated net machine income" generated by a video lottery gaming facility located within such newly eligible municipality as follows: (i) twenty-five percent shall be apportioned and paid to the county; and (ii) seventy-five percent shall be apportioned and paid on a pro rata basis to eligible municipalities, other than the county, based upon the population of such eligible municipalities. Such state aid payment shall not exceed twenty-five percent of an eligible municipality's total expenditures as reported in the statistical report of the comptroller in the preceding state fiscal year pursuant to section thirty-seven of the general municipal law.

3. a. State aid payments made to an eligible city or to a newly eligible city pursuant to ~~[paragraph]~~ paragraphs a and c of subdivision two of this section shall be used to increase support for public schools in such city.

b. State aid payments made to ~~[an]~~ eligible ~~[municipality]~~ municipalities and newly eligible municipalities pursuant to ~~[paragraph]~~ paragraphs b and d of subdivision two of this section shall be used by such eligible municipality to: (i) defray local costs associated with a video lottery gaming facility, or (ii) minimize or reduce real property taxes.

4. Payments of state aid pursuant to this section shall be made on or before June thirtieth of each state fiscal year to the chief fiscal officer of each eligible city and each eligible municipality on audit and warrant of the state comptroller out of moneys appropriated by the legislature for such purpose to the credit of the local assistance fund in the general fund of the state treasury.

§ 35. Section 1 of chapter 50 of the laws of 2013, State Operations budget, is amended by repealing the items hereinbelow set forth in brackets and by adding to such section the other items underscored in this section.

NEW YORK STATE GAMING COMMISSION  
STATE OPERATIONS 2013-14

For payment according to the following schedule:

75

CHAP. 174

	APPROPRIATIONS	REAPPROPRIATIONS
Special Revenue Funds - Other .....	<del>[111,604,700]</del> <u>111,772,700</u>	0
	-----	-----
All Funds .....	<del>[111,604,700]</del> <u>111,772,700</u>	0
	=====	=====

SCHEDULE

ADMINISTRATION OF GAMING COMMISSION PROGRAM ... ~~[1,000,000]~~ 1,168,000

-----  
Special Revenue Funds - Other  
Miscellaneous Special Revenue Fund  
Commercial Gaming Revenue Account

For services and expenses related to the administration and operation of the commercial gaming revenue account, providing that moneys hereby appropriated shall be available to the program net of refunds, rebates, reimbursements and credits. A portion of this appropriation may be used for suballocation to the New York state gaming facility location board or other agencies for services and expenses, including fringe benefits.

Notwithstanding any provision of law to the contrary, the money hereby appropriated may not be, in whole or in part, interchanged with any other appropriation within the state gaming commission, except those appropriations that fund activities related to the administration of gaming commission program.

PERSONAL SERVICE

<u>Personal service--regular</u> .....	<u>100,000</u>
<u>Amount available for personal service</u> .....	<u>100,000</u>

-----

NONPERSONAL SERVICE

<u>Travel</u> .....	<u>10,000</u>
<u>Fringe benefits</u> .....	<u>55,000</u>
<u>Indirect costs</u> .....	<u>3,000</u>

-----

<u>Amount available for nonpersonal service</u> .....	<u>68,000</u>
---	---------------

-----

Special Revenue Funds - Other  
Miscellaneous Special Revenue Fund  
New York State Gaming Commission Account  
CHAP. 174 76

For services and expenses related to the administration and operation of the administration of gaming commission program, providing that moneys hereby appropriated shall be available to the program net of refunds, rebates, reimbursements and credits.

Notwithstanding any provision of law to the contrary, the money hereby appropriated may not be, in whole or in part, interchanged with any other appropriation with-

in the state gaming commission, except those appropriations that fund activities related to the administration of gaming commission program.

Notwithstanding any other provision of law to the contrary, the OGS Interchange and Transfer Authority and the IT Interchange and Transfer Authority as defined in the 2013-14 state fiscal year state operations appropriation for the budget division program of the division of the budget, are deemed fully incorporated herein and a part of this appropriation as if fully stated.

PERSONAL SERVICE

Personal service--regular .....	527,000
Holiday/overtime compensation .....	10,000
	-----
Amount available for personal service .....	537,000
	-----

NONPERSONAL SERVICE

Supplies and materials .....	13,000
Travel .....	80,000
Contractual services .....	99,000
Equipment .....	30,000
Fringe benefits .....	228,000
Indirect costs .....	13,000
	-----
Amount available for nonpersonal service .....	463,000
	-----

§ 36. Section 104 of the racing, pari-mutuel wagering and breeding law is amended by adding a new subdivision 22 to read as follows:

22. The commission shall annually conduct an evaluation of video lottery gaming to consider the various competitive factors impacting such industry and shall consider administrative changes that may be necessary to ensure a competitive industry and preserve its primary function of raising revenue for public education.

§ 37. Clause (H) of subparagraph (ii) of paragraph 1 of subdivision b of section 1612 of the tax law, as amended by chapter 454 of the laws of 2012, is amended to read as follows:

(H) notwithstanding clauses (A), (B), (C), (D), (E), (F) and (G) of this subparagraph, the track operator of a vendor track shall be eligible for a vendor's capital award of up to four percent of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter, which shall be used exclusively for capital project investments to improve the facilities of the vendor track which promote or encourage increased attendance at the video lottery gaming facility including, but not limited to hotels, other lodging facilities, entertainment facilities, retail facilities, dining facilities, events arenas, parking garages and other improvements that enhance facility

amenities; provided that such capital investments shall be approved by the division, in consultation with the state racing and wagering board, and that such vendor track demonstrates that such capital expenditures will increase patronage at such vendor track's facilities and increase the amount of revenue generated to support state education programs. The annual amount of such vendor's capital awards that a vendor track shall be eligible to receive shall be limited to two million five hundred thousand dollars, except for Aqueduct racetrack, for which there shall be no vendor's capital awards. Except for tracks having less than one thousand one hundred video gaming machines, and except for a vendor track located west of State Route 14 from Sodus Point to the Pennsylvania border within New York, each track operator shall be required to co-invest an amount of capital expenditure equal to its cumulative vendor's capital award. For all tracks, except for Aqueduct racetrack, the amount of any vendor's capital award that is not used during any one year period may be carried over into subsequent years ending before April first, two thousand fourteen. Any amount attributable to a capital expenditure approved prior to April first, two thousand fourteen and completed before April first, two thousand sixteen; or approved prior to April first, two thousand eighteen and completed before April first, two thousand twenty for a vendor track located west of State Route 14 from Sodus Point to the Pennsylvania border within New York, shall be eligible to receive the vendor's capital award. In the event that a vendor track's capital expenditures, approved by the division prior to April first, two thousand fourteen and completed prior to April first, two thousand sixteen, exceed the vendor track's cumulative capital award during the five year period ending April first, two thousand fourteen, the vendor shall continue to receive the capital award after April first, two thousand fourteen until such approved capital expenditures are paid to the vendor track subject to any required co-investment. In no event shall any vendor track that receives a vendor fee pursuant to clause (F) or (G) of this subparagraph be eligible for a vendor's capital award under this section. Any operator of a vendor track which has received a vendor's capital award, choosing to divest the capital improvement toward which the award was applied, prior to the full depreciation of the capital improvement in accordance with generally accepted accounting principles, shall reimburse the state in amounts equal to the total of any such awards. Any capital award not approved for a capital expenditure at a video lottery gaming facility by April first, two thousand fourteen shall be deposited into the state lottery fund for education aid; and

§ 38. Item (iii) of clause (I) of subparagraph (ii) of paragraph 1 of subdivision b of section 1612 of the tax law, as added by section 1 of part 0 of chapter 61 of the laws of 2011, is amended to read as follows:

(iii) less an additional vendor's marketing allowance at a rate of ten percent for the first one hundred million dollars annually and eight

CHAP. 174 78

percent thereafter of the total revenue wagered at the vendor track after payout for prizes to be used by the vendor track for the marketing and promotion and associated costs of its video lottery gaming operations and pari-mutuel horse racing operations, as long as any such costs associated with pari-mutuel horse racing operations simultaneously encourage increased attendance at such vendor's video lottery gaming facilities, consistent with the customary manner of marketing comparable operations in the industry and subject to the overall supervision of the division; provided, however, that the additional vendor's marketing



allowance shall not exceed eight percent in any year for any operator of a racetrack located in the county of Westchester or Queens; provided, however, a vendor track that receives a vendor fee pursuant to clause (G) of subparagraph (ii) of this paragraph shall not receive the additional vendor's marketing allowance; provided, however, except for a vendor track located west of State Route 14 from Sodus Point to the Pennsylvania border within New York shall continue to receive a marketing allowance of ten percent on total revenue wagered at the vendor track after payout for prizes in excess of one hundred million dollars annually. In establishing the vendor fee, the division shall ensure the maximum lottery support for education while also ensuring the effective implementation of section sixteen hundred seventeen-a of this article through the provision of reasonable reimbursements and compensation to vendor tracks for participation in such program. Within twenty days after any award of lottery prizes, the division shall pay into the state treasury, to the credit of the state lottery fund, the balance of all moneys received from the sale of all tickets for the lottery in which such prizes were awarded remaining after provision for the payment of prizes as herein provided. Any revenues derived from the sale of advertising on lottery tickets shall be deposited in the state lottery fund.

§ 39. Subdivision a of section 1617-a of the tax law is amended by adding a new paragraph 4 to read as follows:

(4) at a maximum of two facilities, neither to exceed one thousand video lottery gaming devices, established within region three of zone one as defined by section one thousand three hundred ten of the racing, pari-mutuel wagering and breeding law, one each operated by a corporation established pursuant to section five hundred two of the racing, pari-mutuel wagering and breeding law in the Suffolk region and the Nassau region to be located within a facility authorized pursuant to sections one thousand eight or one thousand nine of the racing, pari-mutuel wagering and breeding law. The facilities authorized pursuant to this paragraph shall be deemed vendors for all purposes under this article.

§ 40. Section 1612 of the tax law, as amended by chapter 2 of the laws of 1995, paragraph 1 of subdivision a as amended by chapter 147 of the laws of 2010, subparagraph (A) of paragraph 1 of subdivision a as amended by section 1 of part S of chapter 59 of the laws of 2012, paragraph 2 of subdivision a as amended by section 1 of part P of chapter 61 of the laws of 2011, paragraphs 3, 4 and 5 and the second undesignated and closing paragraph of subdivision a as amended by section 1 of part Q of chapter 61 of the laws of 2011, subdivision 6 as amended by section 1 of part O-1 of chapter 57 of the laws of 2009, the opening paragraph of paragraph 1 of subdivision b as amended by section 1 of part R of chapter 61 of the laws of 2011, subparagraph (ii) of paragraph 1 of subdivision b as amended by section 6 of part K of chapter 57 of the laws of 2010, clause (F) of subparagraph (ii) of paragraph 1 of subdivision b as amended by section 1 of part T of chapter 59 of the laws of 2013, clause

(H) of subparagraph (ii) of paragraph 1 of subdivision b as amended by chapter 454 of the laws of 2012, clause (I) of subparagraph (ii) of paragraph 1 of subdivision b as added by section 1 of part O of chapter 61 of the laws of 2011, paragraphs 2 and 3 of subdivision 6 as amended by section 1 of part J of chapter 55 of the laws of 2013, subdivision c as amended by section 2 of part CC of chapter 61 of the laws of 2005, paragraph 1 of subdivision c as amended by section 2 of part R of chapter 61 of the laws of 2011, subdivision d as amended and subdivision e

as added by chapter 18 of the laws of 2008, subdivisions f and g as amended by chapter 140 of the laws of 2008, paragraph 1 of subdivision f as amended by section 2 of part J of chapter 55 of the laws of 2013, subdivision h as added by section 13 of part A of chapter 60 of the laws of 2012, is amended to read as follows:

§ 1612. Disposition of revenues. a. The division shall pay into an account, to be known as the lottery prize account, under the joint custody of the comptroller and the commissioner, within one week after collection of sales receipts from a lottery game, such moneys necessary for the payment of lottery prizes but not to exceed the following percentages, plus interest earned thereon:

(1) sixty percent of the total amount for which tickets have been sold for a lawful lottery game introduced on or after the effective date of this paragraph, subject to the following provisions:

(A) such game shall be available only on premises occupied by licensed lottery sales agents, subject to the following provisions:

(i) if the licensee does not hold a license issued pursuant to the alcoholic beverage control law to sell alcoholic beverages for consumption on the premises, then the premises must have a minimum square footage greater than two thousand five hundred square feet;

(ii) notwithstanding the foregoing provisions, television equipment that automatically displays the results of such drawings may be installed and used without regard to the square footage if such premises are used as:

(I) a commercial bowling establishment, or

(II) a facility authorized under the racing, pari-mutuel wagering and breeding law to accept pari-mutuel wagers;

(B) the rules for the operation of such game shall be as prescribed by regulations promulgated and adopted by the division, provided however, that such rules shall provide that no person under the age of twenty-one may participate in such games on the premises of a licensee who holds a license issued pursuant to the alcoholic beverage control law to sell alcoholic beverages for consumption on the premises; and, provided, further, that such regulations may be revised on an emergency basis not later than ninety days after the enactment of this paragraph in order to conform such regulations to the requirements of this paragraph; or

(2) sixty-five percent of the total amount for which tickets have been sold for the "Instant Cash" game in which the participant purchases a preprinted ticket on which dollar amounts or symbols are concealed on the face or the back of such ticket, provided however up to five new games may be offered during the fiscal year, seventy-five percent of the total amount for which tickets have been sold for such five games in which the participant purchases a preprinted ticket on which dollar amounts or symbols are concealed on the face or the back of such ticket; or

(3) fifty-five percent of the total amount for which tickets have been sold for any joint, multi-jurisdiction, and out-of-state lottery except  
CHAP. 174

as otherwise provided in paragraph one of subdivision b of this section for any joint, multi-jurisdiction, out-of-state video lottery gaming; or

(4) fifty percent of the total amount for which tickets have been sold for games known as: (A) the "Daily Numbers Game" or "Win 4", discrete games in which the participants select no more than three or four of their own numbers to match with three or four numbers drawn by the division for purposes of determining winners of such games, (B) "Pick 10", offered no more than once daily, in which participants select from a

specified field of numbers a subset of ten numbers to match against a subset of numbers to be drawn by the division from such field of numbers for the purpose of determining winners of such game, (C) "Take 5", offered no more than once daily, in which participants select from a specified field of numbers a subset of five numbers to match against a subset of five numbers to be drawn by the division from such field of numbers for purposes of determining winners of such game; or

(5) forty percent of the total amount for which tickets have been sold for: (A) "Lotto", offered no more than once daily, a discrete game in which all participants select a specific subset of numbers to match a specific subset of numbers, as prescribed by rules and regulations promulgated and adopted by the division, from a larger specific field of numbers, as also prescribed by such rules and regulations and (B) with the exception of the game described in paragraph one of this subdivision, such other state-operated lottery games which the division may introduce, offered no more than once daily, commencing on or after forty-five days following the official publication of the rules and regulations for such game.

The moneys in the lottery prize account shall be paid out of such account on the audit and warrant of the comptroller on vouchers certified or approved by the director or his or her duly designated official.

Prize money derived from ticket sales receipts of a particular game and deposited in the lottery prize account in accordance with the percentages set forth above may be used to pay prizes in such game. Balances in the lottery prize account identified by individual games may be carried over from one fiscal year to the next to ensure proper payout of games.

b. 1. Notwithstanding section one hundred twenty-one of the state finance law, on or before the twentieth day of each month, the division shall pay into the state treasury, to the credit of the state lottery fund created by section ninety-two-c of the state finance law, not less than forty-five percent of the total amount for which tickets have been sold for games defined in paragraph four of subdivision a of this section during the preceding month, not less than thirty-five percent of the total amount for which tickets have been sold for games defined in paragraph three of subdivision a of this section during the preceding month, not less than twenty percent of the total amount for which tickets have been sold for games defined in paragraph two of subdivision a of this section during the preceding month, provided however that for games with a prize payout of seventy-five percent of the total amount for which tickets have been sold, the division shall pay not less than ten percent of sales into the state treasury and not less than twenty-five percent of the total amount for which tickets have been sold for games defined in paragraph one of subdivision a of this section during the preceding month; and the balance of the total revenue after payout for prizes for games known as "video lottery gaming," including any joint, multi-jurisdiction, and out-of-state video lottery gaming, (i) less ten percent of the total revenue wagered after payout for prizes to

be retained by the division for operation, administration, and procurement purposes; (ii) less a vendor's fee the amount of which is to be paid for serving as a lottery agent to the track operator of a vendor track or the operator of any other video lottery gaming facility authorized pursuant to section one thousand six hundred seventeen a of this article:

(A) having fewer than one thousand one hundred video gaming machines,

at a rate of thirty-five percent for the first fifty million dollars annually, twenty-eight percent for the next hundred million dollars annually, and twenty-five percent thereafter of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter;

(B) having one thousand one hundred or more video gaming machines, at a rate of thirty-one percent of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter, except for such facility located in the county of Westchester, in which case the rate shall be thirty percent until March thirty-first, two thousand twelve.

Notwithstanding the foregoing, not later than April first, two thousand twelve, the vendor fee shall become thirty-one percent and remain at that level thereafter; and except for Aqueduct racetrack, in which case the vendor fee shall be thirty-eight percent of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter;

(C) notwithstanding clauses (A) and (B) of this subparagraph, when the vendor track is located in an area with a population of less than one million within the forty mile radius around such track, at a rate of thirty-nine percent for the first fifty million dollars annually, twenty-eight percent for the next hundred million dollars annually, and twenty-five percent thereafter of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter;

(D) notwithstanding clauses (A), (B) and (C) of this subparagraph, when the vendor track is located within fifteen miles of a Native American class III gaming facility at a rate of forty-one percent of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter;

(E) notwithstanding clauses (A), (B), (C) and (D) of this subparagraph, when a Native American class III gaming facility is established, after the effective date of this subparagraph, within fifteen miles of the vendor track, at a rate of forty-one percent of the total revenue wagered after payout for prizes pursuant to this chapter;

(E-1) for purposes of this subdivision, the term "class III gaming" shall have the meaning defined in 25 U.S.C. § 2703(8).

(F) notwithstanding clauses (A), (B), (C), (D) and (E) of this subparagraph, when a vendor track, is located in Sullivan county and within sixty miles from any gaming facility in a contiguous state such vendor fee shall, for a period of six years commencing April first, two thousand eight, be at a rate of forty-one percent of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter, after which time such rate shall be as for all tracks in clause (C) of this subparagraph.

(G) notwithstanding clauses (A), (B), (C), (D), (E) and (F) of this subparagraph, when no more than one vendor track located in the town of Thompson in Sullivan county at the site of the former Concord Resort at which a qualified capital investment has been made and no fewer than one thousand full-time, permanent employees have been newly hired, is located in Sullivan county and is within sixty miles from any gaming

CHAP. 174

facility in a contiguous state, then for a period of forty years the vendor's fee shall equal the total revenue wagered at the vendor track after payout of prizes pursuant to this subdivision reduced by the greater of (i) twenty-five percent of total revenue after payout for prizes for "video lottery games" or (ii) for the first eight years of operation thirty-eight million dollars, and beginning in the ninth year

of operation such amount shall increase annually by the lesser of the increase in the consumer price index or two percent, plus seven percent of total revenue after payout of prizes. In addition, in the event the vendor fee is calculated pursuant to subclause (i) of this clause, the vendor's fee shall be further reduced by 11.11 percent of the amount by which total revenue after payout for prizes exceeds two hundred fifteen million dollars, but in no event shall such reduction exceed five million dollars. Provided, further, no vendor is eligible for the vendor's fee described in this clause who operates or invests in or owns, in whole or in part, another vendor license or is licensed as a vendor track that currently receives a vendor fee for the operation of video lottery gaming pursuant to this article.

Provided, however, that in the case of [~~no more than one vendor track~~] a resort facility located [~~in the town of Thompson~~] in Sullivan county [~~at the site of the former Concord Resort~~] with a qualified capital investment, and one thousand full-time, permanent employees if at any time after three years of opening operations of the licensed video gaming facility [~~or licensed vendor track~~], the [~~vendor track~~] resort facility experiences an employment shortfall, then the recapture amount shall apply, for only such period as the shortfall exists.

For the purposes of this section "qualified capital investment" shall mean an investment of a minimum of six hundred million dollars as reflected by audited financial statements of which not less than three hundred million dollars shall be comprised of equity and/or mezzanine financing as an initial investment in a county where twelve percent of the population is below the federal poverty level as measured by the most recent Bureau of Census Statistics prior to the qualified capital investment commencing that results in the construction, development or improvement of at least one eighteen hole golf course, and the construction and issuance of certificates of occupancy for hotels, lodging, spas, dining, retail and entertainment venues, parking garages and other capital improvements at or adjacent to the licensed video gaming facility or licensed vendor track which promote or encourage increased attendance at such facilities.

For the purposes of this section, "full-time, permanent employee" shall mean an employee who has worked at the video gaming facility[~~r vendor track~~] or related and adjacent facilities for a minimum of thirty-five hours per week for not less than four consecutive weeks and who is entitled to receive the usual and customary fringe benefits extended to other employees with comparable rank and duties; or two part-time employees who have worked at the video gaming facility, vendor track or related and adjacent facilities for a combined minimum of thirty-five hours per week for not less than four consecutive weeks and who are entitled to receive the usual and customary fringe benefits extended to other employees with comparable rank and duties.

For the purpose of this section "employment goal" shall mean one thousand five hundred full-time permanent employees after three years of opening operations of the licensed video gaming facility [~~or licensed vendor track~~].

For the purpose of this section "employment shortfall" shall mean a level of employment that falls below the employment goal, as certified annually by vendor's certified accountants and the chairman of the empire state development corporation.

For the purposes of this section "recapture amount" shall mean the difference between the amount of the vendor's fee paid to a vendor

~~[track]~~ with a qualified capital investment, and the vendor fee otherwise payable to a vendor ~~[track]~~ pursuant to clause (F) of this subparagraph, that is reimbursable by the vendor track to the division for payment into the state treasury, to the credit of the state lottery fund created by section ninety-two-c of the state finance law, due to an employment shortfall pursuant to the following schedule only for the period of the employment shortfall:

(i) one hundred percent of the recapture amount if the employment shortfall is greater than sixty-six and two-thirds percent of the employment goal;

(ii) seventy-five percent of the recapture amount if the employment shortfall is greater than thirty-three and one-third percent of the employment goal;

(iii) forty-nine and one-half percent of the recapture amount if the employment shortfall is greater than thirty percent of the employment goal;

(iv) twenty-two percent of the recapture amount if the employment shortfall is greater than twenty percent of the employment goal;

(v) eleven percent of the recapture amount if the employment shortfall is greater than ten percent of the employment goal.

(G-1) Notwithstanding clause (A) and (B) of this subparagraph, when a video lottery gaming facility is located in either the county of Nassau or Suffolk and is operated by a corporation established pursuant to section five hundred two of the racing, pari-mutuel wagering and breeding law at a rate of thirty-five percent of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter;

(H) Notwithstanding any provision to the contrary, when a vendor track is located within regions one, two, or five of development zone two as defined by section thirteen hundred ten of the racing, pari-mutuel wagering and breeding law, such vendor track shall receive an additional commission at a rate equal to the percentage of revenue wagered at the vendor track after payout for prizes pursuant to this chapter less than ten percent retained by the commission for operation, administration, and procurement purposes and payment of the vendor's fee, marketing allowance, and capital award paid pursuant to this chapter and the effective tax rate paid on all gross gaming revenue paid by a gaming facility within the same region pursuant to section thirteen hundred fifty-one of the racing, pari-mutuel wagering and breeding law. The additional commission shall be paid to the vendor track within sixty days after the conclusion of the state fiscal year based on the calculated percentage during the previous fiscal year.

~~[(H)]~~ (I) notwithstanding clauses (A), (B), (C), (D), (E), (F), and ~~[(G)]~~ (G-1) of this subparagraph, the track operator of a vendor track shall be eligible for a vendor's capital award of up to four percent of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter, which shall be used exclusively for capital project investments to improve the facilities of the vendor track which promote or encourage increased attendance at the video lottery gaming facility including, but not limited to hotels, other lodging facilities, entertainment facilities, retail facilities, dining facilities, events

CHAP. 174 84

arenas, parking garages and other improvements that enhance facility amenities; provided that such capital investments shall be approved by the division, in consultation with the state racing and wagering board, and that such vendor track demonstrates that such capital expenditures will increase patronage at such vendor track's facilities and increase

the amount of revenue generated to support state education programs. The annual amount of such vendor's capital awards that a vendor track shall be eligible to receive shall be limited to two million five hundred thousand dollars, except for Aqueduct racetrack, for which there shall be no vendor's capital awards. Except for tracks having less than one thousand one hundred video gaming machines, each track operator shall be required to co-invest an amount of capital expenditure equal to its cumulative vendor's capital award. For all tracks, except for Aqueduct racetrack, the amount of any vendor's capital award that is not used during any one year period may be carried over into subsequent years ending before April first, two thousand fourteen. Any amount attributable to a capital expenditure approved prior to April first, two thousand fourteen and completed before April first, two thousand sixteen shall be eligible to receive the vendor's capital award. In the event that a vendor track's capital expenditures, approved by the division prior to April first, two thousand fourteen and completed prior to April first, two thousand sixteen, exceed the vendor track's cumulative capital award during the five year period ending April first, two thousand fourteen, the vendor shall continue to receive the capital award after April first, two thousand fourteen until such approved capital expenditures are paid to the vendor track subject to any required co-investment. In no event shall any vendor track that receives a vendor fee pursuant to clause (F) or (G) of this subparagraph be eligible for a vendor's capital award under this section. Any operator of a vendor track which has received a vendor's capital award, choosing to divest the capital improvement toward which the award was applied, prior to the full depreciation of the capital improvement in accordance with generally accepted accounting principles, shall reimburse the state in amounts equal to the total of any such awards. Any capital award not approved for a capital expenditure at a video lottery gaming facility by April first, two thousand fourteen shall be deposited into the state lottery fund for education aid; and

~~(I)~~ (J) Notwithstanding any provision of law to the contrary, free play allowance credits authorized by the division pursuant to subdivision f of section sixteen hundred seventeen-a of this article shall not be included in the calculation of the total amount wagered on video lottery games, the total amount wagered after payout of prizes, the vendor fees payable to the operators of video lottery facilities, vendor's capital awards, fees payable to the division's video lottery gaming equipment contractors, or racing support payments.

(iii) less an additional vendor's marketing allowance at a rate of ten percent for the first one hundred million dollars annually and eight percent thereafter of the total revenue wagered at the vendor track after payout for prizes to be used by the vendor track for the marketing and promotion and associated costs of its video lottery gaming operations and pari-mutuel horse racing operations, as long as any such costs associated with pari-mutuel horse racing operations simultaneously encourage increased attendance at such vendor's video lottery gaming facilities, consistent with the customary manner of marketing comparable operations in the industry and subject to the overall supervision of the division; provided, however, that the additional vendor's marketing

allowance shall not exceed eight percent in any year for any operator of a racetrack located in the county of Westchester or Queens; provided, however, a vendor track that receives a vendor fee pursuant to clause (G) of subparagraph (ii) of this paragraph shall not receive the addi-

tional vendor's marketing allowance

provided, however, a vendor that receives a vendor fee pursuant to clause (G-1) of subparagraph (ii) of this paragraph shall receive an additional marketing allowance at a rate of ten percent of the total revenue wagered at the video lottery gaming facility after payout for prizes. the division shall ensure the maximum lottery support for education while also ensuring the effective implementation of section sixteen hundred seventeen-a of this article through the provision of reasonable reimbursements and compensation to vendor tracks for participation in such program. Within twenty days after any award of lottery prizes, the division shall pay into the state treasury, to the credit of the state lottery fund, the balance of all moneys received from the sale of all tickets for the lottery in which such prizes were awarded remaining after provision for the payment of prizes as herein provided. Any revenues derived from the sale of advertising on lottery tickets shall be deposited in the state lottery fund.

2. As consideration for the operation of a video lottery gaming facility, the division, shall cause the investment in the racing industry of a portion of the vendor fee received pursuant to paragraph one of this subdivision in the manner set forth in this subdivision. With the exception of Aqueduct racetrack or a facility in the county of Nassau or Suffolk operated by a corporation established pursuant to section five hundred two of the racing, pari-mutuel wagering and breeding law or a facility in the county of Nassau or Suffolk operated by a corporation established pursuant to section five hundred two of the racing, pari-mutuel wagering and breeding law, each such track shall dedicate a portion of its vendor fees, received pursuant to clause (A), (B), (C), (D), (E), (F), or (G) of subparagraph (ii) of paragraph one of this subdivision, solely for the purpose of enhancing purses at such track, in an amount equal to eight and three-quarters percent of the total revenue wagered at the vendor track after pay out for prizes. One percent of such purse enhancement amount shall be paid to the gaming commission to be used exclusively to promote and ensure equine health and safety in New York. Any portion of such funding to the gaming commission unused during a fiscal year shall be returned to the video lottery gaming operators on a pro rata basis in accordance with the amounts originally contributed by each operator and shall be used for the purpose of enhancing purses at such track. In addition, with the exception of Aqueduct racetrack, one and one-quarter percent of total revenue wagered at the vendor track after pay out for prizes, received pursuant to clause (A), (B), (C), (D), (E), (F), or (G) of subparagraph (ii) of paragraph one of this subdivision, shall be distributed to the appropriate breeding fund for the manner of racing conducted by such track.

Provided, further, that nothing in this paragraph shall prevent each track from entering into an agreement, not to exceed five years, with the organization authorized to represent its horsemen to increase or decrease the portion of its vendor fee dedicated to enhancing purses at such track during the years of participation by such track, or to race fewer dates than required herein.

3. Nothing in paragraph two of this subdivision shall affect any agreement in effect on or before the effective date of this paragraph, CHAP. 174

except that the obligation to pay funds to the gaming commission to promote and ensure equine health and safety shall supersede any provision to the contrary in any such agreement.



c. 1. The specifications for video lottery gaming, including any joint, multi-jurisdiction, and out-of-state video lottery gaming, shall be designed in such a manner as to pay prizes that average no less than ninety percent of sales.

2. Of the ten percent retained by the division for administrative purposes, any amounts beyond that which are necessary for the operation and administration of this pilot program shall be deposited in the lottery education account.

d. Notwithstanding any law, rule or regulation to the contrary, any successor to the New York Racing Association, Inc. with respect to the operation and maintenance of video lottery gaming at Aqueduct racetrack shall be deemed the successor to the New York Racing Association, Inc. for purposes of being subject to existing contracts and loan agreements, if any, entered into by the New York Racing Association, Inc. directly related to the construction, operation, management and distribution of revenues of the video lottery gaming facility at Aqueduct racetrack.

e. The video lottery gaming operator selected to operate a video lottery terminal facility at Aqueduct will be subject to a memorandum of understanding between the governor, temporary president of the senate and the speaker of the assembly. Notwithstanding subparagraph (i) of paragraph a of subdivision eight of section two hundred twelve of the racing, pari-mutuel wagering and breeding law, the state, pursuant to an agreement with the video lottery gaming operator to operate a video lottery terminal facility at Aqueduct, may authorize, as part of such agreement or in conjunction with such agreement at the time it is executed, additional development at the Aqueduct racing facility. The selection will be made in consultation with the franchised corporation, but is not subject to such corporation's approval. The franchised corporation shall not be eligible to compete to operate or to operate a video lottery terminal facility at Aqueduct. The state will use its best efforts to ensure that the video lottery terminal facility at Aqueduct is opened as soon as is practicable and will, if practicable, pursue the construction of a temporary video lottery terminal facility at Aqueduct subject to staying within an agreed budget for such video lottery terminal facility and subject to such temporary facility not having an adverse impact on opening of the permanent facility at Aqueduct. To facilitate the opening of the video lottery gaming facility at Aqueduct as soon as is practicable, the division of the lottery may extend the term of any existing contract related to the video lottery system.

f. As consideration for the operation of the video lottery gaming facility at Aqueduct racetrack, the division shall cause the investment in the racing industry of the following percentages of the vendor fee to be deposited or paid, as follows:

1. Six and one-half percent of the total wagered after payout of prizes for the first year of operation of video lottery gaming at Aqueduct racetrack, seven percent of the total wagered after payout of prizes for the second year of operation, and seven and one-half percent of the total wagered after payout of prizes for the third year of operation and thereafter, for the purpose of enhancing purses at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course. One percent of such purse enhancement amount shall be paid to the gaming commission to be used exclusively to promote and ensure equine health and safety in New York. Any portion of such funding to the gaming commission unused

during a fiscal year shall be returned on a pro rata basis in accordance with the amounts originally contributed and shall be used for the

purpose of enhancing purses at such tracks.

2. One percent of the total wagered after payout of prizes for the first year of operation of video lottery gaming at Aqueduct racetrack, one and one-quarter percent of the total wagered after payout of prizes for the second year of operation, and one and one-half percent of the total wagered after payout of prizes for the third year of operation and thereafter, for an appropriate breeding fund for the manner of racing conducted at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course.

3. Four percent of the total revenue wagered after payout of prizes to be deposited into an account of the franchised corporation established pursuant to section two hundred six of the racing, pari-mutuel wagering and breeding law to be used for capital expenditures in maintaining and upgrading Aqueduct racetrack, Belmont Park racetrack and Saratoga race course.

4. Three percent of the total revenue wagered after payout for prizes to be deposited into an account of the franchised corporation established pursuant to section two hundred six of the racing, pari-mutuel wagering and breeding law to be used for general thoroughbred racing operations at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course.

5. Paragraphs one, two, three and four of this subdivision shall be known collectively as the "racing support payments".

g. In the event the state elects to construct a video lottery terminal facility at the Aqueduct racetrack, all video lottery terminal revenues payable to the video lottery gaming operator at the Aqueduct racetrack remaining after payment of the racing support payments shall first be used to repay the state's advances for (i) confirmation of the chapter eleven plan of reorganization and cash advances for the franchised corporation's operations following confirmation of the chapter eleven plan of reorganization and (ii) the amount expended by the state to construct such video lottery terminal facility at Aqueduct racetrack pursuant to an agreement with the state. Subparagraphs (i) and (ii) of this paragraph shall be defined as the state advance amount and the amounts payable to the division of the lottery.

h. As consideration for the operation of a video lottery gaming resort facility located in Sullivan county, the division shall cause the investment in the racing industry at the following amount from the vendor fee to be paid as follows:

As amount to the horsemen for purses at a licensed racetrack in Sullivan county and to the agriculture and New York state horse breeding development fund to maintain racing support payments at the same dollar levels realized in two thousand thirteen, to be adjusted by the consumer price index for all urban consumers, as published annually by the United States department of labor bureau of labor statistics. In no circumstance shall net proceeds of the lottery, including the proceeds from video lottery gaming, be used for the payment of non-lottery expenses of the gaming commission, administrative or otherwise.

(f-1) As consideration for operation of video lottery gaming facility located in the county of Nassau or Suffolk and operated by a corporation established pursuant to section five hundred two of the racing, pari-mutuel wagering and breeding law, the division shall cause the in the racing industry of the following percentages of the vendor fee to be deposited or paid as follows:

(1) Two and three tenths percent of the total wagered after payout of

prizes for the purpose of enhancing purses at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course, provided, however, that any amount that is in excess of the amount necessary to maintain purse support from video lottery gaming at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course at the same level realized in in two thousand thirteen, to be adjusted by the consumer price index for all urban consumers, as published annually by the United States department of bureau of labor statistics, shall be instead be returned to the commission.

(2) five tenths percent of the total wagered after payout of prizes for the appropriate breeding fund for the manner of racing at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course, provided, however, that any amount that is in excess of the amount necessary to maintain payments from video lottery gaming at Aqueduct racetrack at the same level realized in in two thousand thirteen, to be adjusted by the consumer price index for all urban consumers, as published annually by the United States department of bureau of labor statistics, shall be instead be returned to the commission.

(3) one and three tenths percent of the total revenue wagered after payout of prizes to be deposited into an account of the franchised corporation established pursuant to section two hundred six of the racing, pari-mutuel wagering and breeding law to be used for capital expenditures in maintaining and upgrading Aqueduct racetrack, Belmont Park racetrack and Saratoga race course, provided, however, that any amount that is in excess of the amount necessary to maintain payments for capital expenditures from video lottery gaming at Aqueduct racetrack at the same level realized in in two thousand thirteen, to be adjusted by the consumer price index for all urban consumers, as published annually by the United States department of bureau of labor statistics, shall be instead be returned to the commission.

(4) Nine tenths percent of the total revenue wagered after payout for prizes to be deposited into an account of the franchised corporation established pursuant to section two hundred six of the racing, pari-mutuel wagering and breeding law to be used for general thoroughbred racing operations at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course, provided, however, that any amount that is in excess of the amount necessary to maintain payments for general thoroughbred racing operations from video lottery gaming at Aqueduct racetrack at the same level realized in in two thousand thirteen, to be adjusted by the consumer price index for all urban consumers, as published annually by the United States department of bureau of labor statistics, shall be instead be returned to the commission.

§ 41. Subdivision a of section 1617-a of the tax law is amended by adding a new paragraph 5 to read as follows:

(5) at a facility established pursuant to a competitive process to be determined by the state gaming commission, established within region three of zone one as established by section one thousand three hundred ten of the racing, pari-mutuel wagering and breeding law, limited to Nassau county. Such facility may only be authorized by the state gaming commission following local governmental consultation and consideration of market factors such as potential revenue impact, job development and capital investment. The facility authorized pursuant to this paragraph shall be deemed a vendor for all purposes under this article, and need not be operated by licensed thoroughbred or harness racing associations

or corporations. The facility authorized pursuant to this paragraph

shall be deemed vendors for all purposes under this article.

§ 42. Section 1612 of the tax law, as amended by chapter 2 of the laws of 1995, paragraph 1 of subdivision a as amended by chapter 147 of the laws of 2010, subparagraph (A) of paragraph 1 of subdivision a as amended by section 1 of part S of chapter 59 of the laws of 2012, paragraph 2 of subdivision a as amended by section 1 of part P of chapter 61 of the laws of 2011, paragraphs 3, 4 and 5 and the second undesignated and closing paragraph of subdivision a as amended by section 1 of part Q of chapter 61 of the laws of 2011, subdivision 6 as amended by section 1 of part O-1 of chapter 57 of the laws of 2009, the opening paragraph of paragraph 1 of subdivision b as amended by section 1 of part R of chapter 61 of the laws of 2011, subparagraph (ii) of paragraph 1 of subdivision b as amended by section 6 of part K of chapter 57 of the laws of 2010, clause (F) of subparagraph (ii) of paragraph 1 of subdivision b as amended by section 1 of part T of chapter 59 of the laws of 2013, clause (H) of subparagraph (ii) of paragraph 1 of subdivision b as amended by chapter 454 of the laws of 2012, clause (I) of subparagraph (ii) of paragraph 1 of subdivision b as added by section 1 of part O of chapter 61 of the laws of 2011, paragraphs 2 and 3 of subdivision 6 as amended by section 1 of part J of chapter 55 of the laws of 2013, subdivision c as amended by section 2 of part CC of chapter 61 of the laws of 2005, paragraph 1 of subdivision c as amended by section 2 of part R of chapter 61 of the laws of 2011, subdivision d as amended and subdivision e as added by chapter 18 of the laws of 2008, subdivisions f and g as amended by chapter 140 of the laws of 2008, paragraph 1 of subdivision f as amended by section 2 of part J of chapter 55 of the laws of 2013, subdivision h as added by section 13 of part A of chapter 60 of the laws of 2012, is amended to read as follows:

§ 1612. Disposition of revenues. a. The division shall pay into an account, to be known as the lottery prize account, under the joint custody of the comptroller and the commissioner, within one week after collection of sales receipts from a lottery game, such moneys necessary for the payment of lottery prizes but not to exceed the following percentages, plus interest earned thereon:

(1) sixty percent of the total amount for which tickets have been sold for a lawful lottery game introduced on or after the effective date of this paragraph, subject to the following provisions:

(A) such game shall be available only on premises occupied by licensed lottery sales agents, subject to the following provisions:

(i) if the licensee does not hold a license issued pursuant to the alcoholic beverage control law to sell alcoholic beverages for consumption on the premises, then the premises must have a minimum square footage greater than two thousand five hundred square feet;

(ii) notwithstanding the foregoing provisions, television equipment that automatically displays the results of such drawings may be installed and used without regard to the square footage if such premises are used as:

(I) a commercial bowling establishment, or

(II) a facility authorized under the racing, pari-mutuel wagering and breeding law to accept pari-mutuel wagers;

(B) the rules for the operation of such game shall be as prescribed by regulations promulgated and adopted by the division, provided however, that such rules shall provide that no person under the age of twenty-one may participate in such games on the premises of a licensee who holds a license issued pursuant to the alcoholic beverage control law to sell

alcoholic beverages for consumption on the premises; and, provided, further, that such regulations may be revised on an emergency basis not later than ninety days after the enactment of this paragraph in order to conform such regulations to the requirements of this paragraph; or

(2) sixty-five percent of the total amount for which tickets have been sold for the "Instant Cash" game in which the participant purchases a preprinted ticket on which dollar amounts or symbols are concealed on the face or the back of such ticket, provided however up to five new games may be offered during the fiscal year, seventy-five percent of the total amount for which tickets have been sold for such five games in which the participant purchases a preprinted ticket on which dollar amounts or symbols are concealed on the face or the back of such ticket; or

(3) fifty-five percent of the total amount for which tickets have been sold for any joint, multi-jurisdiction, and out-of-state lottery except as otherwise provided in paragraph one of subdivision b of this section for any joint, multi-jurisdiction, out-of-state video lottery gaming; or

(4) fifty percent of the total amount for which tickets have been sold for games known as: (A) the "Daily Numbers Game" or "Win 4", discrete games in which the participants select no more than three or four of their own numbers to match with three or four numbers drawn by the division for purposes of determining winners of such games, (B) "Pick 10", offered no more than once daily, in which participants select from a specified field of numbers a subset of ten numbers to match against a subset of numbers to be drawn by the division from such field of numbers for the purpose of determining winners of such game, (C) "Take 5", offered no more than once daily, in which participants select from a specified field of numbers a subset of five numbers to match against a subset of five numbers to be drawn by the division from such field of numbers for purposes of determining winners of such game; or

(5) forty percent of the total amount for which tickets have been sold for: (A) "Lotto", offered no more than once daily, a discrete game in which all participants select a specific subset of numbers to match a specific subset of numbers, as prescribed by rules and regulations promulgated and adopted by the division, from a larger specific field of numbers, as also prescribed by such rules and regulations and (B) with the exception of the game described in paragraph one of this subdivision, such other state-operated lottery games which the division may introduce, offered no more than once daily, commencing on or after forty-five days following the official publication of the rules and regulations for such game.

The moneys in the lottery prize account shall be paid out of such account on the audit and warrant of the comptroller on vouchers certified or approved by the director or his or her duly designated official.

Prize money derived from ticket sales receipts of a particular game and deposited in the lottery prize account in accordance with the percentages set forth above may be used to pay prizes in such game. Balances in the lottery prize account identified by individual games may be carried over from one fiscal year to the next to ensure proper payout of games.

b. 1. Notwithstanding section one hundred twenty-one of the state finance law, on or before the twentieth day of each month, the division shall pay into the state treasury, to the credit of the state lottery fund created by section ninety-two-c of the state finance law, not less than forty-five percent of the total amount for which tickets have been sold for games defined in paragraph four of subdivision a of this

section during the preceding month, not less than thirty-five percent of the total amount for which tickets have been sold for games defined in paragraph three of subdivision a of this section during the preceding month, not less than twenty percent of the total amount for which tickets have been sold for games defined in paragraph two of subdivision a of this section during the preceding month, provided however that for games with a prize payout of seventy-five percent of the total amount for which tickets have been sold, the division shall pay not less than ten percent of sales into the state treasury and not less than twenty-five percent of the total amount for which tickets have been sold for games defined in paragraph one of subdivision a of this section during the preceding month; and the balance of the total revenue after payout for prizes for games known as "video lottery gaming," including any joint, multi-jurisdiction, and out-of-state video lottery gaming, (i) less ten percent of the total revenue wagered after payout for prizes to be retained by the division for operation, administration, and procurement purposes; (ii) less a vendor's fee the amount of which is to be paid for serving as a lottery agent to the track operator of a vendor track:

(A) having fewer than one thousand one hundred video gaming machines, at a rate of thirty-five percent for the first fifty million dollars annually, twenty-eight percent for the next hundred million dollars annually, and twenty-five percent thereafter of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter;

(B) having one thousand one hundred or more video gaming machines, at a rate of thirty-one percent of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter, except for such facility located in the county of Westchester, in which case the rate shall be thirty percent until March thirty-first, two thousand twelve.

Notwithstanding the foregoing, not later than April first, two thousand twelve, the vendor fee shall become thirty-one percent and remain at that level thereafter; and except for Aqueduct racetrack, in which case the vendor fee shall be thirty-eight percent of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter;

(C) notwithstanding clauses (A) and (B) of this subparagraph, when the vendor track is located in an area with a population of less than one million within the forty mile radius around such track, at a rate of thirty-nine percent for the first fifty million dollars annually, twenty-eight percent for the next hundred million dollars annually, and twenty-five percent thereafter of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter;

(D) notwithstanding clauses (A), (B) and (C) of this subparagraph, when the vendor track is located within fifteen miles of a Native American class III gaming facility at a rate of forty-one percent of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter;

(E) notwithstanding clauses (A), (B), (C) and (D) of this subparagraph, when a Native American class III gaming facility is established, after the effective date of this subparagraph, within fifteen miles of the vendor track, at a rate of forty-one percent of the total revenue wagered after payout for prizes pursuant to this chapter;

(E-1) for purposes of this subdivision, the term "class III gaming" shall have the meaning defined in 25 U.S.C. § 2703(8).

(F) notwithstanding clauses (A), (B), (C), (D) and (E) of this subparagraph, when a vendor track, is located in Sullivan county and within sixty miles from any gaming facility in a contiguous state such vendor fee shall, for a period of six years commencing April first, two thousand eight, be at a rate of forty-one percent of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter, after which time such rate shall be as for all tracks in clause (C) of this subparagraph.

(G) notwithstanding clauses (A), (B), (C), (D), (E) and (F) of this subparagraph, when ~~[no more than one vendor track]~~ a resort facility to be operated by other than a presently licensed video lottery gaming operator or any entity affiliated therewith selected by the division following a competitive process located in ~~[the town of Thompson in]~~ Sullivan county ~~[at the site of the former Concord Resort]~~ at which a qualified capital investment has been made and no fewer than one thousand full-time, permanent employees have been newly hired, is located in Sullivan county and is within sixty miles from any gaming facility in a contiguous state, then for a period of forty years the vendor's fee shall equal the total revenue wagered at the vendor track after payout of prizes pursuant to this subdivision reduced by the greater of (i) twenty-five percent of total revenue after payout for prizes for "video lottery games" or (ii) for the first eight years of operation thirty-eight million dollars, and beginning in the ninth year of operation such amount shall increase annually by the lesser of the increase in the consumer price index or two percent, plus seven percent of total revenue after payout of prizes. In addition, in the event the vendor fee is calculated pursuant to subclause (i) of this clause, the vendor's fee shall be further reduced by 11.11 percent of the amount by which total revenue after payout for prizes exceeds two hundred fifteen million dollars, but in no event shall such reduction exceed five million dollars.

Provided, however, that in the case of ~~[no more than one vendor track]~~ a resort facility located ~~[in the town of Thompson]~~ in Sullivan county ~~[at the site of the former Concord Resort]~~ with a qualified capital investment, and one thousand full-time, permanent employees if at any time after three years of opening operations of the licensed video gaming facility ~~[or licensed vendor track]~~, the ~~[vendor track]~~ resort facility experiences an employment shortfall, then the recapture amount shall apply, for only such period as the shortfall exists.

For the purposes of this section "qualified capital investment" shall mean an investment of a minimum of six hundred million dollars as reflected by audited financial statements of which not less than three hundred million dollars shall be comprised of equity and/or mezzanine financing as an initial investment in a county where twelve percent of the population is below the federal poverty level as measured by the most recent Bureau of Census Statistics prior to the qualified capital investment commencing that results in the construction, development or improvement of at least one eighteen hole golf course, and the construction and issuance of certificates of occupancy for hotels, lodging, spas, dining, retail and entertainment venues, parking garages and other capital improvements at or adjacent to the licensed video gaming facility or licensed vendor track which promote or encourage increased attendance at such facilities.

For the purposes of this section, "full-time, permanent employee" shall mean an employee who has worked at the video gaming facility~~[~~7~~]~~ ~~vendor track]~~ or related and adjacent facilities for a minimum of thir-

ty-five hours per week for not less than four consecutive weeks and who is entitled to receive the usual and customary fringe benefits extended to other employees with comparable rank and duties; or two part-time employees who have worked at the video gaming facility, vendor track or related and adjacent facilities for a combined minimum of thirty-five hours per week for not less than four consecutive weeks and who are entitled to receive the usual and customary fringe benefits extended to other employees with comparable rank and duties.

For the purpose of this section "employment goal" shall mean one thousand five hundred full-time permanent employees after three years of opening operations of the licensed video gaming facility [~~or licensed vendor track~~].

For the purpose of this section "employment shortfall" shall mean a level of employment that falls below the employment goal, as certified annually by vendor's certified accountants and the chairman of the empire state development corporation.

For the purposes of this section "recapture amount" shall mean the difference between the amount of the vendor's fee paid to a vendor [~~track~~] with a qualified capital investment, and the vendor fee otherwise payable to a vendor [~~track~~] pursuant to clause (F) of this subparagraph, that is reimbursable by the vendor track to the division for payment into the state treasury, to the credit of the state lottery fund created by section ninety-two-c of the state finance law, due to an employment shortfall pursuant to the following schedule only for the period of the employment shortfall:

(i) one hundred percent of the recapture amount if the employment shortfall is greater than sixty-six and two-thirds percent of the employment goal;

(ii) seventy-five percent of the recapture amount if the employment shortfall is greater than thirty-three and one-third percent of the employment goal;

(iii) forty-nine and one-half percent of the recapture amount if the employment shortfall is greater than thirty percent of the employment goal;

(iv) twenty-two percent of the recapture amount if the employment shortfall is greater than twenty percent of the employment goal;

(v) eleven percent of the recapture amount if the employment shortfall is greater than ten percent of the employment goal.

(G) notwithstanding clauses (A), (B), (C), (D), (E) and (F) of this subparagraph, when no more than one vendor track located in the town of Thompson in Sullivan county at the site of the former Concord Resort at which a qualified capital investment has been made and no fewer than one thousand full-time, permanent employees have been newly hired, is located in Sullivan county and is within sixty miles from any gaming facility in a contiguous state, then for a period of forty years the vendor's fee shall equal the total revenue wagered at the vendor track after payout of prizes pursuant to this subdivision reduced by the greater of (i) twenty-five percent of total revenue after payout for prizes for "video lottery games" or (ii) for the first eight years of operation thirty-eight million dollars, and beginning in the ninth year of operation such amount shall increase annually by the lesser of the increase in the consumer price index or two percent, plus seven percent of total revenue after payout of prizes. In addition, in the event the vendor fee is calculated pursuant to subclause (i) of this clause, the vendor's fee shall be further reduced by 11.11 percent of the amount by



million dollars, but in no event shall such reduction exceed five million dollars.

Provided, however, that in the case of no more than one vendor track located in the town of Thompson in Sullivan county at the site of the former Concord Resort with a qualified capital investment, and one thousand full-time, permanent employees if at any time after three years of opening operations of the licensed video gaming facility or licensed vendor track, the vendor track experiences an employment shortfall, then the recapture amount shall apply, for only such period as the shortfall exists.

For the purposes of this section "qualified capital investment" shall mean an investment of a minimum of six hundred million dollars as reflected by audited financial statements of which not less than three hundred million dollars shall be comprised of equity and/or mezzanine financing as an initial investment in a county where twelve percent of the population is below the federal poverty level as measured by the most recent Bureau of Census Statistics prior to the qualified capital investment commencing that results in the construction, development or improvement of at least one eighteen hole golf course, and the construction and issuance of certificates of occupancy for hotels, lodging, spas, dining, retail and entertainment venues, parking garages and other capital improvements at or adjacent to the licensed video gaming facility or licensed vendor track which promote or encourage increased attendance at such facilities.

For the purposes of this section, "full-time, permanent employee" shall mean an employee who has worked at the video gaming facility, vendor track or related and adjacent facilities for a minimum of thirty-five hours per week for not less than four consecutive weeks and who is entitled to receive the usual and customary fringe benefits extended to other employees with comparable rank and duties; or two part-time employees who have worked at the video gaming facility, vendor track or related and adjacent facilities for a combined minimum of thirty-five hours per week for not less than four consecutive weeks and who are entitled to receive the usual and customary fringe benefits extended to other employees with comparable rank and duties.

For the purpose of this section "employment goal" shall mean one thousand five hundred full-time permanent employees after three years of opening operations of the licensed video gaming facility or licensed vendor track.

For the purpose of this section "employment shortfall" shall mean a level of employment that falls below the employment goal, as certified annually by vendor's certified accountants and the chairman of the empire state development corporation.

For the purposes of this section "recapture amount" shall mean the difference between the amount of the vendor's fee paid to a vendor track with a qualified capital investment, and the vendor fee otherwise payable to a vendor track pursuant to clause (F) of this subparagraph, that is reimbursable by the vendor track to the division for payment into the state treasury, to the credit of the state lottery fund created by section ninety-two-c of the state finance law, due to an employment shortfall pursuant to the following schedule only for the period of the employment shortfall:

(i) one hundred percent of the recapture amount if the employment shortfall is greater than sixty-six and two-thirds percent of the

(ii) seventy-five percent of the recapture amount if the employment shortfall is greater than thirty-three and one-third percent of the employment goal;

(iii) forty-nine and one-half percent of the recapture amount if the employment shortfall is greater than thirty percent of the employment goal;

(iv) twenty-two percent of the recapture amount if the employment shortfall is greater than twenty percent of the employment goal;

(v) eleven percent of the recapture amount if the employment shortfall is greater than ten percent of the employment goal.

(G-1) Notwithstanding clause (A) and (B) of this subparagraph, when a video lottery gaming facility is located in either the county of Nassau or Suffolk and is operated by a corporation established pursuant to section five hundred two of the racing, pari-mutuel wagering and breeding law at a rate of thirty-five percent of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter;

(G-2) Notwithstanding clause (A) and (B) of this subparagraph, when a video lottery gaming facility is located in the county of Nassau established pursuant to a competitive process pursuant to paragraph (5) of section six thousand seventeen-a of this article at a rate of thirty-five percent of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter;

(H) notwithstanding clauses (A), (B), (C), (D), (E), (F) and (G) of this subparagraph, the track operator of a vendor track shall be eligible for a vendor's capital award of up to four percent of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter, which shall be used exclusively for capital project investments to improve the facilities of the vendor track which promote or encourage increased attendance at the video lottery gaming facility including, but not limited to hotels, other lodging facilities, entertainment facilities, retail facilities, dining facilities, events arenas, parking garages and other improvements that enhance facility amenities; provided that such capital investments shall be approved by the division, in consultation with the state racing and wagering board, and that such vendor track demonstrates that such capital expenditures will increase patronage at such vendor track's facilities and increase the amount of revenue generated to support state education programs. The annual amount of such vendor's capital awards that a vendor track shall be eligible to receive shall be limited to two million five hundred thousand dollars, except for Aqueduct racetrack, for which there shall be no vendor's capital awards. Except for tracks having less than one thousand one hundred video gaming machines, each track operator shall be required to co-invest an amount of capital expenditure equal to its cumulative vendor's capital award. For all tracks, except for Aqueduct racetrack, the amount of any vendor's capital award that is not used during any one year period may be carried over into subsequent years ending before April first, two thousand fourteen. Any amount attributable to a capital expenditure approved prior to April first, two thousand fourteen and completed before April first, two thousand sixteen shall be eligible to receive the vendor's capital award. In the event that a vendor track's capital expenditures, approved by the division prior to April first, two thousand fourteen and completed prior to April first, two thousand sixteen, exceed the vendor track's cumulative capital award during the five year period ending April first, two thousand

fourteen, the vendor shall continue to receive the capital award after April first, two thousand fourteen until such approved capital expenditure. CHAP. 174

tures are paid to the vendor track subject to any required co-investment. In no event shall any vendor track that receives a vendor fee pursuant to clause (F) or (G) of this subparagraph be eligible for a vendor's capital award under this section. Any operator of a vendor track which has received a vendor's capital award, choosing to divest the capital improvement toward which the award was applied, prior to the full depreciation of the capital improvement in accordance with generally accepted accounting principles, shall reimburse the state in amounts equal to the total of any such awards. Any capital award not approved for a capital expenditure at a video lottery gaming facility by April first, two thousand fourteen shall be deposited into the state lottery fund for education aid; and

(I) Notwithstanding any provision of law to the contrary, free play allowance credits authorized by the division pursuant to subdivision f of section sixteen hundred seventeen-a of this article shall not be included in the calculation of the total amount wagered on video lottery games, the total amount wagered after payout of prizes, the vendor fees payable to the operators of video lottery facilities, vendor's capital awards, fees payable to the division's video lottery gaming equipment contractors, or racing support payments.

(iii) less an additional vendor's marketing allowance at a rate of ten percent for the first one hundred million dollars annually and eight percent thereafter of the total revenue wagered at the vendor track after payout for prizes to be used by the vendor track for the marketing and promotion and associated costs of its video lottery gaming operations and pari-mutuel horse racing operations, as long as any such costs associated with pari-mutuel horse racing operations simultaneously encourage increased attendance at such vendor's video lottery gaming facilities, consistent with the customary manner of marketing comparable operations in the industry and subject to the overall supervision of the division; provided, however, that the additional vendor's marketing allowance shall not exceed eight percent in any year for any operator of a racetrack located in the county of Westchester or Queens; provided, however, a vendor track that receives a vendor fee pursuant to clause (G) of subparagraph (ii) of this paragraph shall not receive the additional vendor's marketing allowance. In establishing the vendor fee, the division shall ensure the maximum lottery support for education while also ensuring the effective implementation of section sixteen hundred seventeen-a of this article through the provision of reasonable reimbursements and compensation to vendor tracks for participation in such program. Within twenty days after any award of lottery prizes, the division shall pay into the state treasury, to the credit of the state lottery fund, the balance of all moneys received from the sale of all tickets for the lottery in which such prizes were awarded remaining after provision for the payment of prizes as herein provided. Any revenues derived from the sale of advertising on lottery tickets shall be deposited in the state lottery fund.

2. As consideration for the operation of a video lottery gaming facility, the division, shall cause the investment in the racing industry of a portion of the vendor fee received pursuant to paragraph one of this subdivision in the manner set forth in this subdivision. With the exception of Aqueduct racetrack, each such track shall dedicate a portion of its vendor fees, received pursuant to clause (A), (B), (C),

(D), (E), (F), or (G) of subparagraph (ii) of paragraph one of this subdivision, solely for the purpose of enhancing purses at such track, in an amount equal to eight and three-quarters percent of the total

revenue wagered at the vendor track after pay out for prizes. One percent of such purse enhancement amount shall be paid to the gaming commission to be used exclusively to promote and ensure equine health and safety in New York. Any portion of such funding to the gaming commission unused during a fiscal year shall be returned to the video lottery gaming operators on a pro rata basis in accordance with the amounts originally contributed by each operator and shall be used for the purpose of enhancing purses at such track. In addition, with the exception of Aqueduct racetrack, one and one-quarter percent of total revenue wagered at the vendor track after pay out for prizes, received pursuant to clause (A), (B), (C), (D), (E), (F), or (G) of subparagraph (ii) of paragraph one of this subdivision, shall be distributed to the appropriate breeding fund for the manner of racing conducted by such track.

Provided, further, that nothing in this paragraph shall prevent each track from entering into an agreement, not to exceed five years, with the organization authorized to represent its horsemen to increase or decrease the portion of its vendor fee dedicated to enhancing purses at such track during the years of participation by such track, or to race fewer dates than required herein.

3. Nothing in paragraph two of this subdivision shall affect any agreement in effect on or before the effective date of this paragraph, except that the obligation to pay funds to the gaming commission to promote and ensure equine health and safety shall supersede any provision to the contrary in any such agreement.

c. 1. The specifications for video lottery gaming, including any joint, multi-jurisdiction, and out-of-state video lottery gaming, shall be designed in such a manner as to pay prizes that average no less than ninety percent of sales.

2. Of the ten percent retained by the division for administrative purposes, any amounts beyond that which are necessary for the operation and administration of this pilot program shall be deposited in the lottery education account.

d. Notwithstanding any law, rule or regulation to the contrary, any successor to the New York Racing Association, Inc. with respect to the operation and maintenance of video lottery gaming at Aqueduct racetrack shall be deemed the successor to the New York Racing Association, Inc. for purposes of being subject to existing contracts and loan agreements, if any, entered into by the New York Racing Association, Inc. directly related to the construction, operation, management and distribution of revenues of the video lottery gaming facility at Aqueduct racetrack.

e. The video lottery gaming operator selected to operate a video lottery terminal facility at Aqueduct will be subject to a memorandum of understanding between the governor, temporary president of the senate and the speaker of the assembly. Notwithstanding subparagraph (i) of paragraph a of subdivision eight of section two hundred twelve of the racing, pari-mutuel wagering and breeding law, the state, pursuant to an agreement with the video lottery gaming operator to operate a video lottery terminal facility at Aqueduct, may authorize, as part of such agreement or in conjunction with such agreement at the time it is executed, additional development at the Aqueduct racing facility. The selection will be made in consultation with the franchised corporation,

but is not subject to such corporation's approval. The franchised corporation shall not be eligible to compete to operate or to operate a video lottery terminal facility at Aqueduct. The state will use its best efforts to ensure that the video lottery terminal facility at Aqueduct

CHAP. 174 98

is opened as soon as is practicable and will, if practicable, pursue the construction of a temporary video lottery terminal facility at Aqueduct subject to staying within an agreed budget for such video lottery terminal facility and subject to such temporary facility not having an adverse impact on opening of the permanent facility at Aqueduct. To facilitate the opening of the video lottery gaming facility at Aqueduct as soon as is practicable, the division of the lottery may extend the term of any existing contract related to the video lottery system.

f. As consideration for the operation of the video lottery gaming facility at Aqueduct racetrack, the division shall cause the investment in the racing industry of the following percentages of the vendor fee to be deposited or paid, as follows:

1. Six and one-half percent of the total wagered after payout of prizes for the first year of operation of video lottery gaming at Aqueduct racetrack, seven percent of the total wagered after payout of prizes for the second year of operation, and seven and one-half percent of the total wagered after payout of prizes for the third year of operation and thereafter, for the purpose of enhancing purses at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course. One percent of such purse enhancement amount shall be paid to the gaming commission to be used exclusively to promote and ensure equine health and safety in New York. Any portion of such funding to the gaming commission unused during a fiscal year shall be returned on a pro rata basis in accordance with the amounts originally contributed and shall be used for the purpose of enhancing purses at such tracks.

2. One percent of the total wagered after payout of prizes for the first year of operation of video lottery gaming at Aqueduct racetrack, one and one-quarter percent of the total wagered after payout of prizes for the second year of operation, and one and one-half percent of the total wagered after payout of prizes for the third year of operation and thereafter, for an appropriate breeding fund for the manner of racing conducted at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course.

3. Four percent of the total revenue wagered after payout of prizes to be deposited into an account of the franchised corporation established pursuant to section two hundred six of the racing, pari-mutuel wagering and breeding law to be used for capital expenditures in maintaining and upgrading Aqueduct racetrack, Belmont Park racetrack and Saratoga race course.

4. Three percent of the total revenue wagered after payout for prizes to be deposited into an account of the franchised corporation established pursuant to section two hundred six of the racing, pari-mutuel wagering and breeding law to be used for general thoroughbred racing operations at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course.

5. Paragraphs one, two, three and four of this subdivision shall be known collectively as the "racing support payments".

(f-2) As consideration for operation of a video lottery gaming facility located in the county of Nassau established pursuant to a competitive process pursuant to paragraph (5) of section six thousand seventeen a of this article, the division shall cause the in the racing industry of the

following percentages of the vendor fee to be deposited or paid as follows:

(1) Two and three tenths percent of the total wagered after payout of prizes for the purpose of enhancing purses at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course, provided, however, that

any amount that is in excess of the amount necessary to maintain purse support from video lottery gaming at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course at the same level realized in in two thousand thirteen, to be adjusted by the consumer price index for all urban consumers, as published annually by the United States department of bureau of labor statistics, shall be instead be returned to the commission.

(2) five tenths percent of the total wagered after payout of prizes for the appropriate breeding fund for the manner of racing at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course, provided, however, that any amount that is in excess of the amount necessary to maintain payments from video lottery gaming at Aqueduct racetrack at the same level realized in in two thousand thirteen, to be adjusted by the consumer price index for all urban consumers, as published annually by the United States department of bureau of labor statistics, shall be instead be returned to the commission.

(3) one and three tenths percent of the total revenue wagered after payout of prizes to be deposited into an account of the franchised corporation established pursuant to section two hundred six of the racing, pari-mutuel wagering and breeding law to be used for capital expenditures in maintaining and upgrading Aqueduct racetrack, Belmont Park racetrack and Saratoga race course, provided, however, that any amount that is in excess of the amount necessary to maintain payments for capital expenditures from video lottery gaming at Aqueduct racetrack at the same level realized in in two thousand thirteen, to be adjusted by the consumer price index for all urban consumers, as published annually by the United States department of bureau of labor statistics, shall be instead be returned to the commission.

(4) Nine tenths percent of the total revenue wagered after payout for prizes to be deposited into an account of the franchised corporation established pursuant to section two hundred six of the racing, pari-mutuel wagering and breeding law to be used for general thoroughbred racing operations at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course, provided, however, that any amount that is in excess of the amount necessary to maintain payments for general thoroughbred racing operations from video lottery gaming at Aqueduct racetrack at the same level realized in in two thousand thirteen, to be adjusted by the consumer price index for all urban consumers, as published annually by the United States department of bureau of labor statistics, shall be instead be returned to the commission.

g. In the event the state elects to construct a video lottery terminal facility at the Aqueduct racetrack, all video lottery terminal revenues payable to the video lottery gaming operator at the Aqueduct racetrack remaining after payment of the racing support payments shall first be used to repay the state's advances for (i) confirmation of the chapter eleven plan of reorganization and cash advances for the franchised corporation's operations following confirmation of the chapter eleven plan of reorganization and (ii) the amount expended by the state to construct such video lottery terminal facility at Aqueduct racetrack pursuant to an agreement with the state. Subparagraphs (i) and (ii) of

this paragraph shall be defined as the state advance amount and the amounts payable to the division of the lottery.

h. In no circumstance shall net proceeds of the lottery, including the proceeds from video lottery gaming, be used for the payment of non-lottery expenses of the gaming commission, administrative or otherwise.

CHAP. 174

100

§ 43. Section 1001 of the racing, pari-mutuel wagering and breeding law, as added by chapter 363 of the laws of 1984, subdivisions n, o and p as added by chapter 445 of the laws of 1997, is amended to read as follows:

§ 1001. Definitions. As used in this article, the following terms shall have the following meanings:

a. "Simulcast" means the telecast of live audio and visual signals of running, harness or quarter horse races [~~conducted in the state~~] for the purposes of pari-mutuel wagering;

b. "Track" means the grounds or enclosures within which horse races are conducted by any person, association or corporation lawfully authorized to conduct such races in accordance with the terms and conditions of this chapter or the laws of another jurisdiction;

c. "Sending track" means any track from which simulcasts originate;

d. "Receiving track" means any track where simulcasts originated from another track are displayed;

e. "Applicant" means any association [~~or~~], corporation or business entity applying for a simulcast license in accordance with the provisions of this article;

f. "Operator" means any association [~~or~~], corporation or business entity operating a simulcast facility in accordance with the provisions of this article;

g. "Regional track or tracks" means any or all tracks located within a region defined as an off-track betting region, except that for the purposes of section one thousand eight of this article any track located in New York city, or Nassau, Suffolk and Westchester counties, shall be deemed a regional track for all regions located in district one, as defined in this section;

h. "[~~The board~~]Commission" means the state [~~racing and wagering board~~]gaming commission;

i. "Branch office" means an establishment maintained and operated by an off-track betting corporation, where off-track pari-mutuel betting on horse races may be placed in accordance with the terms and conditions of this chapter and rules and regulations issued pursuant thereto;

j. "Simulcast facility" means those facilities within the state that are authorized pursuant to the provisions of this article to display simulcasts for pari-mutuel wagering purposes;

k. "Off-track betting region" means those regions as defined in section five hundred nineteen of this chapter;

l. "Simulcast theater" means a simulcast facility which is also a public entertainment and wagering facility, and which may include any or all of the following: a large screen television projection and display unit, a display system for odds, pools, and payout prices, areas for viewing and seating, a food and beverage facility, and any other convenience currently provided at racetracks and not inconsistent with local zoning ordinances;

m. "Simulcast districts" means one or more of the following named districts comprised of the counties within which pari-mutuel racing events are conducted as follows:

District 1

New York City, Suffolk, Nassau, and

	Westchester counties
District 2	Sullivan county
District 3	Saratoga county
District 4	Oneida county
District 5	Erie, Genesee and Ontario counties
	101
	CHAP. 174

n. "Initial out-of-state thoroughbred track" means the track commencing full-card simulcasting to New York prior to any other out-of-state thoroughbred track after 1:00 PM on any calendar day.

o. "Second out-of-state thoroughbred track" means the track (or subsequent track or tracks where otherwise authorized by this article) conducting full-card simulcasting to New York after the race program from the initial out-of-state thoroughbred track that has commenced simulcasting on any calendar day.

p. "Mixed meeting" means a race meeting which has a combination of thoroughbred, quarter horse, Appaloosa, paint, and/or Arabian racing on the same race program.

q. "Account wagering" means a form of pari-mutuel wagering in which a person establishes an account with an account wagering licensee and subsequently communicates via telephone or other electronic media to the account wagering licensee wagering instructions concerning the funds in such person's account and wagers to be placed on the account owner's behalf.

r. "Account wagering licensee" means racing associations, and corporations; franchised corporations, off-track betting corporations, and commission approved multi-jurisdictional account wagering providers that have been authorized by the commission to offer account wagering.

s. "Dormant account" means an account wagering account held by an account wagering licensee in which there has been no wagering activity for three years.

t. "Multi-jurisdictional account wagering provider" means a business entity domiciled in a jurisdiction, other than the state of New York, that does not operate either a simulcast facility that is open to the public within the state of New York or a licensed or franchised race-track within the state, but which is licensed by such other jurisdiction to offer pari-mutuel account wagering on races such provider simulcasts and other races it offers in its wagering menu to persons located in or out of the jurisdiction issuing such license.

§ 44. Section 1002 of the racing, pari-mutuel wagering and breeding law, as added by chapter 363 of the laws of 1984, subdivision 2 as amended by chapter 18 of the laws of 2008, is amended to read as follows:

§ 1002. General jurisdiction. 1. The [~~state racing and wagering board~~] commission shall have general jurisdiction over the simulcasting of horse races and account wagering within the state, and the [~~board~~] commission may issue rules and regulations in accordance with the provisions of this article.

2. The [~~board~~] commission shall annually submit reports on or before July first following each year in which simulcasting and account wagering is conducted to the director of the budget, the chairman of the senate finance committee and the chairman of the assembly ways and means committee evaluating the results of such simulcasts and account wagering on the compatibility with the well-being of the horse racing, breeding and pari-mutuel wagering industries in this state and make any recommendations it deems appropriate. Such reports may be submitted together with the reports required by subdivision two of section two hundred



thirty-six and subparagraph (iii) of paragraph a and subparagraph (i) of paragraph b of subdivision one of section three hundred eighteen of this chapter.

§ 45. Section 1003 of the racing, pari-mutuel wagering and breeding law, as added by chapter 363 of the laws of 1984, subdivision 1 as separately amended by chapters 2 and 70 of the laws of 1995, paragraph (a) CHAP. 174 102

of subdivision 1 as amended by section 1 of part U of chapter 59 of the laws of 2013, the opening paragraph of paragraph a of subdivision 2 as amended by chapter 538 of the laws of 1999 and subdivision 5 as amended by chapter 287 of the laws of 1985, is amended to read as follows:

§ 1003. Licenses for simulcast facilities. 1. (a) Any racing association or corporation or regional off-track betting corporation, authorized to conduct pari-mutuel wagering under this chapter, desiring to display the simulcast of horse races on which pari-mutuel betting shall be permitted in the manner and subject to the conditions provided for in this article may apply to the [beard] commission for a license so to do. Applications for licenses shall be in such form as may be prescribed by the [beard] commission and shall contain such information or other material or evidence as the [beard] commission may require. No license shall be issued by the [beard] commission authorizing the simulcast transmission of thoroughbred races from a track located in Suffolk county. The fee for such licenses shall be five hundred dollars per simulcast facility and for account wagering licensees that do not operate either a simulcast facility that is open to the public within the state of New York or a licensed racetrack within the state, twenty thousand dollars per year payable by the licensee to the [beard] commission for deposit into the general fund. Except as provided [herein] in this section, the [beard] commission shall not approve any application to conduct simulcasting into individual or group residences, homes or other areas for the purposes of or in connection with pari-mutuel wagering. The board may approve simulcasting into residences, homes or other areas to be conducted jointly by one or more regional off-track betting corporations and one or more of the following: a franchised corporation, thoroughbred racing corporation or a harness racing corporation or association; provided (i) the simulcasting consists only of those races on which pari-mutuel betting is authorized by this chapter at one or more simulcast facilities for each of the contracting off-track betting corporations which shall include wagers made in accordance with section one thousand fifteen, one thousand sixteen and one thousand seventeen of this article; provided further that the contract provisions or other simulcast arrangements for such simulcast facility shall be no less favorable than those in effect on January first, two thousand five; (ii) that each off-track betting corporation having within its geographic boundaries such residences, homes or other areas technically capable of receiving the simulcast signal shall be a contracting party; (iii) the distribution of revenues shall be subject to contractual agreement of the parties except that statutory payments to non-contracting parties, if any, may not be reduced; provided, however, that nothing herein to the contrary shall prevent a track from televising its races on an irregular basis primarily for promotional or marketing purposes as found by the board. For purposes of this paragraph, the provisions of section one thousand thirteen of this article shall not apply. Any agreement authorizing an in-home simulcasting experiment commencing prior to May fifteenth, nineteen hundred ninety-five, may, and all its terms, be extended until June thirtieth, two thousand fourteen; provided, however,

that any party to such agreement may elect to terminate such agreement upon conveying written notice to all other parties of such agreement at least forty-five days prior to the effective date of the termination, via registered mail. Any party to an agreement receiving such notice of an intent to terminate, may request the board to mediate between the parties new terms and conditions in a replacement agreement between the parties as will permit continuation of an in-home experiment until June

thirtieth, two thousand fourteen; and (iv) no in-home simulcasting in the thoroughbred special betting district shall occur without the approval of the regional thoroughbred track.

(b) Any agreement authorizing in-home simulcasting pursuant to this section shall be in writing, and upon written request, a copy shall be provided to the representative horsemen's group of the racing association or corporation that is party to said agreement. Such agreement shall include a categorical statement of new and incremental expenses directly related and attributable to the conduct of in-home simulcasting. The representative horsemen's group may, within thirty days of receiving the agreement, petition the board for a determination as to the appropriateness and reasonableness of any expenses attributed by either the racing association or corporation or the off-track betting corporation.

2. Before it may grant such license, the [~~board~~] commission shall review and approve a plan of operation submitted by such applicant including, but not limited to the following information:

a. A feasibility study denoting the revenue earnings expected from the simulcast facility and the costs expected to operate such facility. No feasibility study shall be received for a simulcast facility that is applying to renew its license. The form of the feasibility study shall be prescribed by the [~~board~~] commission and may include:

- (i) the number of simulcast races to be displayed;
- (ii) the types of wagering to be offered;
- (iii) the level of attendance expected and the area from which such attendance will be drawn;
- (iv) the level of anticipated wagering activity;
- (v) the source and amount of revenues expected from other than pari-mutuel wagering;
- (vi) the cost of operating the simulcast facility and the identification of costs to be amortized and the method of amortization of such costs;
- (vii) the amount and source of revenues needed for financing the simulcast facility;
- (viii) the probable impact of the proposed operation on revenues to local government;

b. The security measures to be employed to protect the facility, to control crowds, to safeguard the transmission of the simulcast signals and to control the transmission of wagering data to effectuate common wagering pools;

c. The type of data processing, communication and transmission equipment to be utilized;

d. The description of the management groups responsible for the operation of the simulcast facility;

e. The system of accounts to maintain a separate record of revenues collected by the simulcast facility, the distribution of such revenues and the accounting of costs relative to the simulcast operation;

f. The location of the facility and a written confirmation from appro-

priate local officials that the location of such facility and the number of patrons expected to occupy such facility are in compliance with all applicable local ordinances;

g. The written agreements and letters of consent between specified parties pursuant to sections one thousand seven, one thousand eight and one thousand nine of this article.

3. Within forty-five days of receipt of the plan of operation provided in subdivision two of this section, the ~~[beard]~~ commission shall issue  
CHAP. 174 104

an order approving the plan, approving it with modifications or denying approval, in which latter case the ~~[beard]~~ commission shall state its reasons therefor. Within such period the ~~[beard]~~ commission may request additional information or suggest amendments. If the ~~[beard]~~ commission fails to approve the plan, the applicant may request a public hearing to be held within thirty days of the issuance of an order denying it. The ~~[beard]~~ commission shall issue its final determination within ten days of such hearing. The applicant may submit an amended application no sooner than thirty days after a denial.

4. No racing association, franchised corporation or corporation or regional off-track betting corporation shall be allowed to operate a simulcast facility except according to the provisions of an approved plan of operation. No change in such plan of operation may occur until an amendment proposing a change to the plan is approved by the ~~[beard]~~ commission. A plan of operation may be amended from time to time at the request of either the operator or the ~~[beard]~~ commission. The operator shall have the right to be heard concerning any amendment to the plan and the ~~[beard]~~ commission shall dispose of such proposed amendments as expeditiously as practicable, but no later than thirty days following submission by the operator or, in the case of amendments proposed by the ~~[beard]~~ commission, objection by the operator.

5. For the purpose of maintaining proper control over simulcasts conducted pursuant to this article, the ~~[state racing and wagering beard]~~ commission shall license any person, association or corporation participating in simulcasting, as the ~~[beard]~~ commission may by rule prescribe, including, if the ~~[beard]~~ commission deem it necessary so to do, any or all persons, associations or corporations who create, distribute, transmit or display simulcast signals. In the case of thoroughbred racing simulcasting or harness racing simulcasting, such licenses shall be issued in accordance with and subject to the provisions governing licenses for participants and employees in article two or article three of this chapter as may be applicable to such type of racing.

§ 46. Section 1012 of the racing, pari-mutuel wagering and breeding law, as amended by chapter 18 of the laws of 2008, subdivision 4-b as added by chapter 402 of the laws of 2011 and subdivision 5 as amended by section 10 of part U of chapter 59 of the laws of 2013, is amended to read as follows:

§ 1012. ~~[Telephone accounts and telephone] Account~~ wagering. ~~[Any regional off-track betting corporation, and any franchised corporation, harness, thoroughbred, quarter horse racing association or corporation licensed to conduct pari-mutuel racing may maintain telephone betting accounts for wagers placed on races and special events offered by such corporation or association.]~~ Racing associations and corporations, franchised corporations, off-track betting corporations and multi-jurisdictional account wagering providers may apply to the commission to be licensed to offer account wagering.

1. Racing associations and corporations, franchised corporations, off-track betting corporations and multi-jurisdictional account wagering providers may form partnerships, joint ventures, or any other affiliations or contractual arrangement in order to further the purposes of this section. Multi-jurisdictional account wagering providers involved in such joint affiliations or contractual arrangements shall follow the same distributional policy with respect to retained commissions as their in-state affiliate or contractual partner.

2. The commission shall promulgate rules and regulations to license and regulate all phases of account wagering.

3. The commission shall specify a non-refundable application fee which shall be paid by each applicant for an account wagering license or renewal thereof.

4. Account wagering licensees shall utilize personal identification numbers and such other technologies as the commission may specify to assure that only the account holder has access to the advance deposit wagering account.

5. Account wagering licensees shall provide for: a. withdrawals from the wagering account only by means of a check made payable to the account holder and sent to the address of the account holder or by means of an electronic transfer to an account held by the verified account holder or b. that the account holder may withdraw funds from the wagering account at a facility approved by the commission by presenting verifiable personal and account identification information.

6. Account wagering licensees may engage in interstate wagering transactions only where there is compliance with chapter fifty-seven of title fifteen of the United States code, commonly referred to as the "interstate horse racing act".

7. The account holder's deposits to the wagering account shall be submitted by the account holder to the account wagering licensee and shall be in the form of one of the following: a. cash given to the account wagering licensee; b. check, money order, negotiable order of withdrawal, or wire or electronic transfer, payable and remitted to the account wagering licensee; or c. charges made to an account holder's debit or credit card upon the account holder's direct and personal instruction, which instruction may be given by telephone communication or other electronic means to the account wagering licensee or its agent by the account holder if the use of the card has been approved by the account wagering licensee.

8. a. Each wager shall be in the name of a natural person and shall not be in the name of any beneficiary, custodian, joint trust, corporation, partnership or other organization or entity.

b. A wagering account may be established by a person completing an application form approved by the commission and submitting it together with a certification, or other proof, of age and residency. Such form shall include the address of the principal residence of the prospective account holder and a statement that a false statement made in regard to an application may subject the applicant to prosecution.

c. The prospective account holder shall submit the completed application to the account wagering licensee. The account wagering licensee may accept or reject an application after receipt and review of the application and certification, or other proof, of age and residency for compliance with this section.

d. No person other than the person in whose name an account has been established may issue wagering instructions relating to that account or

otherwise engage in wagering transactions relating to that account.

9. A wagering account shall not be assignable or otherwise transferable.

10. Except as otherwise provided in this article or in regulations which the commission may adopt pursuant thereto, all account wagers shall be final and no wager shall be canceled by the account holder at any time after the wager has been accepted by the account wagering licensee.

CHAP. 174

106

11. Dormant accounts shall be treated as abandoned property pursuant to section three hundred of the abandoned property law.

12. Account wagering providers must possess appropriate totalizator and accounting controls that will safeguard the transmission of wagering data and will keep a system of accounts which will maintain a separate record of revenues and an accounting of costs relative to the operation of the wagering provider.

13. Wagers placed with the account wagering providers shall result in the combination of all wagers placed with such provider with the wagering pools at the host track so as to produce common pari-mutuel betting pools for the calculation of odds and the determination of payouts from such pools, which payout shall be the same for all winning tickets, irrespective of whether a wager is placed at a host track or at an account wagering provider.

14. Any [~~regional off-track betting corporation and any franchised corporation, harness, thoroughbred, quarter horse racing association or corporation licensed to conduct pari-mutuel racing~~] account wagering licensee may require a minimum account balance in an amount to be determined by such entity.

~~[2.]~~ 15. a. Any regional off-track betting corporation may suspend collection of the surcharge imposed under section five hundred thirty-two of this chapter on winning wagers placed in [~~telephone~~] wagering accounts maintained by such regional corporation.

b. In a city of one million or more any regional off-track betting corporation, with the approval of the mayor of such city, may suspend collection of the surcharge imposed under section five hundred thirty-two of this chapter in winning wagers placed in [~~telephone~~] wagering accounts maintained by such regional corporation.

~~[3. Any telephone account maintained by a regional off-track betting corporation, franchised corporation, harness, thoroughbred, quarter horse association or corporation, with inactivity for a period of three years shall be forfeited and paid to the commissioner of taxation and finance. Such amounts when collected shall be paid by the commissioner of taxation and finance into the general fund of the state treasury.~~

~~4.]~~ 16. The maintenance and operation of such [~~telephone~~] wagering accounts provided for in this section shall be subject to rules and regulations of the [~~state racing and wagering board~~] commission. The [~~board~~] commission shall include in such regulation a requirement that [~~telephone~~] wagering account information pertaining to surcharge and nonsurcharge [~~telephone~~] wagering accounts shall be separately reported.

~~[4-a.]~~ 17. For the purposes of this section, "telephone [~~betting~~] wagering accounts" [~~and "telephone wagering"~~] shall mean and include all those wagers which utilize any wired or wireless communications device, including but not limited to wireline telephones, wireless telephones~~[7]~~ and the internet~~[7]~~ to transmit the placement of wagers on races and special events offered by any regional off-track betting corporation, and any harness, thoroughbred, quarter horse racing association or

corporation licensed or franchised to conduct pari-mutuel racing in [~~New York~~] this state.

[~~4-b.~~] 18. Every racing association, off-track betting corporation, franchised corporation, harness, thoroughbred, quarter horse racing association or corporation or other entity licensed or franchised in this state to conduct pari-mutuel racing and wagering, or authorized to conduct races within the state, which operates [~~an account~~] a wagering [~~platform~~] account for the acceptance of wagers, shall locate the call center where such wagers are received within the state of New York.

107

CHAP. 174

~~[5. The provisions of this section shall expire and be of no further force and effect after June thirtieth, two thousand fourteen.]~~

§ 47. The racing, pari-mutuel wagering and breeding law is amended by adding a new section 1012-a to read as follows:

§ 1012-a. Multi-jurisdictional account wagering providers. A multi-jurisdictional account wagering provider shall only be licensed under the following conditions:

1. the multi-jurisdictional account wagering provider is licensed by the state in which it is located and, if required, by each state in which it operates;

2. the character and the background of the multi-jurisdictional account wagering provider is such that granting the applications for a license is in the public interest and the best interest of honest horse racing;

3. the multi-jurisdictional account wagering provider shall utilize the services of an independent third party to perform identity and verification services with respect to the establishment of wagering accounts for persons who are residents of the state of New York;

4. the commission shall be allowed access to the premises of the multi-jurisdictional account wagering provider to visit, investigate and, place such expert accountants and other persons it deems necessary for the purpose of insuring compliance with the rules and regulations of the commission;

5. if not already registered, the multi-jurisdictional account wagering provider shall agree promptly to take those steps necessary to qualify to do business in New York state, and to maintain such status in good standing throughout the license period;

6. multi-jurisdictional account wagering providers shall pay a market origin fee equal to five per centum on each wager accepted from New York residents. Multi-jurisdictional account wagering providers shall make the required payments to the market origin account on or before the fifth business day of each month and such required payments shall cover payments due for the period of the preceding calendar month; provided, however, that such payments required to be made on April fifteenth shall be accompanied by a report under oath, showing the total of all such payments, together with such other information as the commission may require. A penalty of five per centum and interest at the rate of one per centum per month from the date the report is required to be filed to the date the payment shall be payable in case any payments required by this subdivision are paid when due. If the commission determines that any moneys received under this subdivision were paid in error, the commission may cause the same to be refunded without interest out of any moneys collected thereunder, provided an application therefor is filed with the commission within one year from the time the erroneous payment was made. The commission shall pay into the racing regulation account, under the joint custody of the comptroller and the commission, the total

amount of the fee collected pursuant to this section.

§ 48. Subdivision 2 of section 1017 of the racing, pari-mutuel wagering and breeding law, as amended by chapter 18 of the laws of 2008, is amended to read as follows:

2. a. Maintenance of effort. Any off-track betting corporation which engages in accepting wagers on the simulcasts of thoroughbred races from out-of-state or out-of-country as permitted under subdivision one of this section shall submit to the [beard] commission, for its approval, a schedule of payments to be made in any year or portion thereof, that such off-track corporation engages in nighttime thoroughbred simulcast-  
CHAP. 174 108

ing. In order to be approved by the [beard] commission, the payment schedule shall be identical to the actual payments and distributions of such payments to tracks and purses made by such off-track corporation pursuant to the provisions of section one thousand fifteen of this article during the year two thousand two, as derived from out-of-state harness races displayed after 6:00 P.M. If approved by the [beard] commission, such scheduled payments shall be made from revenues derived from any simulcasting conducted pursuant to this section and section one thousand fifteen of this article.

b. Additional payments. During each calendar year, to the extent, and at such time in the event, that aggregate statewide wagering handle after 7:30 P.M. on out-of-state and out-of-country thoroughbred races exceeds one hundred million dollars, each off-track betting corporation conducting such simulcasting shall pay to its regional harness track or tracks, an amount equal to two percent of its proportionate share of such excess handle. In any region where there are two or more regional harness tracks, such two percent shall be divided between or among the tracks in a proportion equal to the proportion of handle on live harness races conducted at such tracks during the preceding calendar year. Fifty percent of the sum received by each track pursuant to this paragraph shall be used exclusively for increasing purses, stakes and prizes at that regional harness track. For the purpose of determining whether such aggregate statewide handle exceeds one hundred million dollars, all wagering on such thoroughbred races accepted by licensed multi-jurisdictional account wagering providers from customers within New York state shall be excluded.

§ 49. Section 503 of the racing, pari-mutuel wagering and breeding law is amended by adding a new subdivision 12-a to read as follows:

12-a. To enter into, amend, cancel and terminate agreements for the performance among themselves, licensed racing associations and corporations, and multi-jurisdictional account wagering providers, as defined in section one thousand one of this chapter, of their respective functions, powers and duties on a cooperative or contract basis.

§ 50. The racing, pari-mutuel wagering and breeding law is amended by adding a new section 115-b to read as follows:

§ 115-b. Market origin credits. 1. Notwithstanding any other provision of law to the contrary, any racing associations and corporations, franchised corporations, and off-track betting corporations that makes a payment of the regulatory fees imposed by this chapter may reduce such payment by an amount equal to the market origin credit allocated to such racing association or corporation, franchised corporation, or off-track betting corporation by the commission. The commission shall allocate credits in an amount equal to ninety percent of the amount received from the market origin fee paid pursuant to subdivision six of section one thousand twelve-a of this chapter for the period from the sixteenth day

of the preceding month through the fifteenth day of the current month. The commission shall notify participants of allocations on or before the twentieth day of the current month.

2. The commission shall allocate credits to racing associations and corporations, franchised corporations, and off-track betting corporations in the following amounts:

a. Forty percent of the amount received from the market origin fee paid pursuant to subdivision six of section one thousand twelve-a of this chapter to regional off-track betting corporations. Allocations to individual regional off-track betting corporations shall be made based on a ratio where the numerator is the regional corporation's total

109

CHAP. 174

in-state handle for the previous calendar year as calculated by the commission and the denominator is the total in-state handle of all the regional off-track betting corporations for the previous calendar year as calculated by the commission;

b. Fifty percent of the amount received from the market origin fee paid pursuant to subdivision six of section one thousand twelve-a of this chapter to the racing associations and corporations and franchised corporations. Allocations to individual racing associations and corporations and franchised corporations shall be made as follows:

(i) Sixty percent to thoroughbred racing associations and franchised corporations. Five-sixths shall be allocated to a franchised corporation and one-sixth shall be allocated to a thoroughbred racing association.

(ii) Forty percent to harness racing associations and corporations. Allocations to individual harness racing associations and corporations shall be made based on a ratio where the numerator is the association's or corporation's total in-state handle on live racing for the previous calendar year as calculated by the commission and the denominator is the total in-state on live handle for all harness racing associations and corporations for the previous calendar year as calculated by the commission.

3. As a condition for any racing association or corporation or franchised corporation to claim any market origin credits allocated to it, such racing association or corporation or franchised corporation must make payments for moneys otherwise to be used to pay the regulatory fee as follows:

(i) Payment of an amount equal to forty percent of the allocated credits into an account used solely for the purpose of enhancing purses at such racing association or corporation or franchised corporation. Such payment shall be made within five days from receipt of notification of an allocation by the commission of an allocation of market origin credits;

(ii) Payment of an amount equal to twenty percent of the allocated credits to the state's breeding funds. Sixty percent of the payments to the breeding funds shall be allocated to the New York state thoroughbred breeding and development fund corporation established pursuant to section two hundred fifty-two of this chapter, and forty percent to the agriculture and New York state horse breeding development fund established pursuant to section three hundred thirty of this chapter. Such payment shall be made within five days from receipt of notification of an allocation by the commission of an allocation of market origin credits.

4. The commission shall promulgate any rules and regulations necessary for the administration of the market origin credit.



§ 51. Section 99-i of the state finance law, as added by section 26 of part F3 of chapter 62 of the laws of 2003, is amended to read as follows:

§ 99-i. Racing regulation account. 1. There is hereby established in the joint custody of the comptroller and the [~~rac~~ing and waging board] gaming commission a special revenue fund to be known as the "racing regulation account".

2. The racing [~~revenue~~] regulation account shall consist of all money received by the [~~board~~] commission as regulatory fees and market origin fees pursuant to the provisions of the racing, pari-mutuel wagering and breeding law.

CHAP. 174

110

3. Moneys of this account shall be available to the [~~board~~] commission to pay for the costs of carrying out the purposes of the racing, pari-mutuel wagering and breeding law; provided, however, an amount equal to five percent of the amount received by the account from the market origin fee imposed by subdivision six of section one thousand twelve-a of the racing, pari-mutuel wagering and breeding law shall be transferred to the state department of taxation and finance and the department shall deem this transfer as a payment of a pari-mutuel tax.

4. All payments from the fund shall be made on the audit and warrant of the comptroller.

(f) Sections forth through forty-eight of this act shall take effect January 1, 2014; except that the New York state gaming commission may accept and review applications for licenses for account wagering and for multi-jurisdictional account wagering providers commencing on October 1, 2013.

§ 52. This act shall take effect immediately; provided, however, that:

(a) sections one, two, five, nine, ten, twenty-seven and thirty-one of this act shall take effect on the first of January next succeeding the date upon which the people shall approve and ratify amendments to subdivision 1 of section 9 of article I of the constitution by a majority of the electors voting thereon relating to casino gambling in the state;

(b) sections six, seven, fourteen and sixteen of this act shall take effect on the same date as the agreement between the Oneida Nation of New York and the state of New York entered into on the sixteenth day of May, 2013 takes effect; provided, further, that the amendments to subdivision 2 of section 99-h of the state finance law made by section six of this act shall take effect on the same date as the reversion of such section as provided in section 2 of chapter 747 of the laws of 2006, as amended; provided, further, that the amendments to subdivision 3 of section 99-h of the state finance law made by section seven of this act shall be subject to the expiration and reversion of such subdivision as provided in section 3 of part W of chapter 60 of the laws of 2011, as amended when upon such date the provisions of section seven-a of this act shall take effect; provided, further, that the amendments to subdivision 3 of section 99-h of the state finance law made by section seven-a of this act shall be subject to the the expiration and reversion of such section as provided in section 2 of chapter 747 of the laws of 2006, as amended when upon such date the provisions of section eight of this act shall take effect; provided, further, however, that the amendment to section 99-h of the state finance law made by section nine of this act shall not affect the expiration of such section and shall be deemed repealed therewith; provided, further, that the state gaming commission shall notify the legislative bill drafting commission upon the occurrence of such agreement between the Oneida Nation and the state

of New York becoming effective in order that the commission may maintain an accurate and timely effective data base of the official text of the laws of the state of New York in furtherance of effecting the provisions of section 44 of the legislative law and section 70-b of the public officers law;

(c) section 1368 of the racing, pari-mutuel wagering and breeding law, as added by section two of this act, shall take effect upon a change in federal law authorizing the activity permitted by such section or upon a ruling by a court of competent jurisdiction that such activity is lawful. The state gaming commission shall notify the legislative bill drafting commission upon the occurrence of the change in federal law or upon the ruling of a court of competent jurisdiction in order that the

111

CHAP. 174

commission may maintain an accurate and timely effective data base of the official text of the laws of the state of New York in furtherance of effecting the provisions of section 44 of the legislative law and section 70-b of the public officers law;

(d) section thirty-five of this act shall be deemed to have been in full force and effect on and after April 1, 2013;

(e) notwithstanding the foregoing, sections thirty-two, thirty-three, thirty-four, forty-one and forty-two of this act, shall only be effective in the event that an amendment to the constitution to authorize casino gambling is defeated.

(f) section forty through forty-eight of this act shall take effect January 1, 2014; except that the New York state gaming commission may accept and review applications for licenses for account wagering and for multi-jurisdictional account wagering providers commencing on October 1, 2013.

The Legislature of the STATE OF NEW YORK **ss:**

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

DEAN G. SKELOS

Temporary President of the Senate

SHELDON SILVER

Speaker of the Assembly

## CHAPTER 175

AN ACT to amend the racing, pari-mutuel wagering and breeding law, the penal law and the tax law, in relation to commercial gaming; to amend a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, in relation to the effective date of certain provisions thereof; to repeal certain provisions of the racing, pari-mutuel wagering and breeding law relating to the tribes that have gaming compacts with the state; and to repeal certain provisions of the tax law relating to disposition of revenues

Became a law July 30, 2013, with the approval of the Governor. Passed on message of necessity pursuant to Article III, section 14 of the Constitution by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivisions 9 and 15 of section 1300 of the racing, pari-mutuel wagering and breeding law, as added by section 2 of a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, are REPEALED, and subdivisions 10, 11, 12, 13, 14 and 16 are renumbered subdivisions 9, 10, 11, 12, 13 and 14.

§ 2. Subdivision 5 of section 1306 of the racing, pari-mutuel wagering and breeding law, as added by section 2 of a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S.5883 and A.8101, is REPEALED, and subdivisions 6, 7, 8, 9, 10 and 11 are renumbered subdivisions 5, 6, 7, 8, 9 and 10.

§ 3. Subdivision 15 of section 225.00 of the penal law, as added by section 3 of a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, is amended to read as follows:

15. "Casino gaming" means games authorized to be played pursuant to a license granted under article thirteen of the racing, pari-mutuel wagering and breeding law or by federally recognized Indian nations or tribes pursuant to a ~~valid~~ gaming compact reached in accordance with the federal Indian Gaming Regulatory Act of 1988, Pub. L. 100-497, 102 Stat. 2467, codified at 25 U.S.C. §§ 2701-21 and 18 U.S.C. §§ 1166-68.

§ 4. Subdivision (f) of section 52 of a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, is amended and a new subdivision (a-1) is added to read as follows:

EXPLANATION--Matter in italics is new; matter in brackets [-] is old law to be omitted.

of the racing, pari-mutuel wagering and breeding law, as added by section two of this act, shall take effect immediately;

(f) [~~section forty~~] sections forty-three through [~~forty-eight~~] fifty-one of this act shall take effect January 1, 2014; except that the New York state gaming commission may accept and review applications for licenses for account wagering and for multi-jurisdictional account wagering providers commencing on October 1, 2013.

§ 5. The opening paragraph, the second, fourth, fifth undesignated paragraphs and the opening paragraph of the 7th undesignated paragraph of clause (G) of subparagraph (ii) of paragraph 1 of subdivision b of section 1612 of the tax law, as amended by section 40 of a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, are amended to read as follows:

notwithstanding clauses (A), (B), (C), (D), (E) and (F) of this subparagraph, when no more than one vendor track located in the town of Thompson in Sullivan county at the site of the former Concord Resort at which a qualified capital investment has been made and no fewer than one thousand full-time, permanent employees have been newly hired, is located in Sullivan county and is within sixty miles from any gaming facility in a contiguous state, then for a period of forty years the vendor's fee shall equal the total revenue wagered at the vendor track after payout of prizes pursuant to this subdivision reduced by the greater of (i) twenty-five percent of total revenue after payout for prizes for "video lottery games" or (ii) for the first eight years of operation thirty-eight million dollars, and beginning in the ninth year of operation such amount shall increase annually by the lesser of the increase in the consumer price index or two percent, plus seven percent of total revenue after payout of prizes. In addition, in the event the vendor fee is calculated pursuant to subclause (i) of this clause, the vendor's fee shall be further reduced by 11.11 percent of the amount by which total revenue after payout for prizes exceeds two hundred fifteen million dollars, but in no event shall such reduction exceed five million dollars. [~~Provided, further, no vendor is eligible for the vendor's fee described in this clause who operates or invests in or owns, in whole or in part, another vendor license or is licensed as a vendor track that currently receives a vendor fee for the operation of video lottery gaming pursuant to this article.~~]

Provided, however, that in the case of [~~a resort facility~~] no more than one vendor track located in the town of Thompson in Sullivan county at the site of the former Concord Resort with a qualified capital investment, and one thousand full-time, permanent employees if at any time after three years of opening operations of the licensed video gaming facility or licensed vendor track, the [~~resort facility~~] vendor track experiences an employment shortfall, then the recapture amount shall apply, for only such period as the shortfall exists.

For the purposes of this section, "full-time, permanent employee" shall mean an employee who has worked at the video gaming facility, vendor track or related and adjacent facilities for a minimum of thirty-five hours per week for not less than four consecutive weeks and who is entitled to receive the usual and customary fringe benefits extended to other employees with comparable rank and duties; or two part-time employees who have worked at the video gaming facility, vendor track or related and adjacent facilities for a combined minimum of thirty-five hours per week for not less than four consecutive weeks and who are

entitled to receive the usual and customary fringe benefits extended to other employees with comparable rank and duties.

For the purpose of this section "employment goal" shall mean one thousand five hundred full-time permanent employees after three years of opening operations of the licensed video gaming facility or licensed vendor track.

For the purposes of this section "recapture amount" shall mean the difference between the amount of the vendor's fee paid to a vendor track with a qualified capital investment, and the vendor fee otherwise payable to a vendor track pursuant to clause (F) of this subparagraph, that is reimbursable by the vendor track to the division for payment into the state treasury, to the credit of the state lottery fund created by section ninety-two-c of the state finance law, due to an employment shortfall pursuant to the following schedule only for the period of the employment shortfall:

§ 6. Clause (H) of subparagraph (ii) of paragraph 1 of subdivision b of section 1612 of the tax law, as added by section 40 of a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, is REPEALED.

§ 7. Clauses (I) and (J) of subparagraph (ii) of paragraph 1 of subdivision b of section 1612 of the tax law, as added by section 40 of a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, are amended to read as follows:

~~[(I)]~~ (H) notwithstanding clauses (A), (B), (C), (D), (E), (F)~~[7]~~ and ~~[(G-1)]~~ (G) of this subparagraph, the track operator of a vendor track shall be eligible for a vendor's capital award of up to four percent of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter, which shall be used exclusively for capital project investments to improve the facilities of the vendor track which promote or encourage increased attendance at the video lottery gaming facility including, but not limited to hotels, other lodging facilities, entertainment facilities, retail facilities, dining facilities, events arenas, parking garages and other improvements that enhance facility amenities; provided that such capital investments shall be approved by the division, in consultation with the state racing and wagering board, and that such vendor track demonstrates that such capital expenditures will increase patronage at such vendor track's facilities and increase the amount of revenue generated to support state education programs. The annual amount of such vendor's capital awards that a vendor track shall be eligible to receive shall be limited to two million five hundred thousand dollars, except for Aqueduct racetrack, for which there shall be no vendor's capital awards. Except for tracks having less than one thousand one hundred video gaming machines, each track operator shall be required to co-invest an amount of capital expenditure equal to its cumulative vendor's capital award. For all tracks, except for Aqueduct racetrack, the amount of any vendor's capital award that is not used during any one year period may be carried over into subsequent years ending before April first, two thousand fourteen. Any amount attributable to a capital expenditure approved prior to April first, two thousand fourteen and completed before April first, two thousand sixteen shall be eligible to receive the vendor's capital award. In the event that a vendor track's capital expenditures, approved by the division prior to April first, two thousand fourteen and completed prior to April

first, two thousand sixteen, exceed the vendor track's cumulative capital award during the five year period ending April first, two thousand fourteen, the vendor shall continue to receive the capital award after April first, two thousand fourteen until such approved capital expenditures are paid to the vendor track subject to any required co-investment. In no event shall any vendor track that receives a vendor fee pursuant to clause (F) or (G) of this subparagraph be eligible for a vendor's capital award under this section. Any operator of a vendor track which has received a vendor's capital award, choosing to divest the capital improvement toward which the award was applied, prior to the full depreciation of the capital improvement in accordance with generally accepted accounting principles, shall reimburse the state in amounts equal to the total of any such awards. Any capital award not approved for a capital expenditure at a video lottery gaming facility by April first, two thousand fourteen shall be deposited into the state lottery fund for education aid; and

~~[(J)]~~ (I) Notwithstanding any provision of law to the contrary, free play allowance credits authorized by the division pursuant to subdivision f of section sixteen hundred seventeen-a of this article shall not be included in the calculation of the total amount wagered on video lottery games, the total amount wagered after payout of prizes, the vendor fees payable to the operators of video lottery facilities, vendor's capital awards, fees payable to the division's video lottery gaming equipment contractors, or racing support payments.

§ 8. Subparagraph (iii) of paragraph 1 of subdivision b of section 1612 of the tax law, as added by section 40 of a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, is amended to read as follows:

(iii) less an additional vendor's marketing allowance at a rate of ten percent for the first one hundred million dollars annually and eight percent thereafter of the total revenue wagered at the vendor track after payout for prizes to be used by the vendor track for the marketing and promotion and associated costs of its video lottery gaming operations and pari-mutuel horse racing operations, as long as any such costs associated with pari-mutuel horse racing operations simultaneously encourage increased attendance at such vendor's video lottery gaming facilities, consistent with the customary manner of marketing comparable operations in the industry and subject to the overall supervision of the division; provided, however, that the additional vendor's marketing allowance shall not exceed eight percent in any year for any operator of a racetrack located in the county of Westchester or Queens; provided, however, a vendor track that receives a vendor fee pursuant to clause (G) of subparagraph (ii) of this paragraph shall not receive the additional vendor's marketing allowance provided, however, a vendor that receives a vendor fee pursuant to clause (G-1) of subparagraph (ii) of this paragraph shall receive an additional marketing allowance at a rate of ten percent of the total revenue wagered at the video lottery gaming facility after payout for prizes. ~~[the division shall ensure the maximum lottery support for education while also ensuring the effective implementation of section sixteen hundred seventeen-a of this article through the provision of reasonable reimbursements and compensation to vendor tracks for participation in such program. Within twenty days after any award of lottery prizes, the division shall pay into the state treasury, to the credit of the state lottery fund, the balance of all moneys received from the sale of all tickets for the lottery in which~~

~~such prizes were awarded remaining after provision for the payment of prizes as herein provided. Any revenues derived from the sale of advertising on lottery tickets shall be deposited in the state lottery fund.]~~

§ 9. The opening paragraph of paragraph 2 of subdivision b of section 1612 of the tax law, as added by section 40 of a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, is amended to read as follows:

As consideration for the operation of a video lottery gaming facility, the division, shall cause the investment in the racing industry of a portion of the vendor fee received pursuant to paragraph one of this subdivision in the manner set forth in this subdivision. With the exception of Aqueduct racetrack or a facility in the county of Nassau or Suffolk operated by a corporation established pursuant to section five hundred two of the racing, pari-mutuel wagering and breeding law [~~or a facility in the county of Nassau or Suffolk operated by a corporation established pursuant to section five hundred two of the racing, pari-mutuel wagering and breeding law~~], each such track shall dedicate a portion of its vendor fees, received pursuant to clause (A), (B), (C), (D), (E), (F), or (G) of subparagraph (ii) of paragraph one of this subdivision, solely for the purpose of enhancing purses at such track, in an amount equal to eight and three-quarters percent of the total revenue wagered at the vendor track after pay out for prizes. One percent of such purse enhancement amount shall be paid to the gaming commission to be used exclusively to promote and ensure equine health and safety in New York. Any portion of such funding to the gaming commission unused during a fiscal year shall be returned to the video lottery gaming operators on a pro rata basis in accordance with the amounts originally contributed by each operator and shall be used for the purpose of enhancing purses at such track. In addition, with the exception of Aqueduct racetrack or a facility in the county of Nassau or Suffolk operated by a corporation established pursuant to section five hundred two of the racing, pari-mutuel wagering and breeding law, one and one-quarter percent of total revenue wagered at the vendor track after pay out for prizes, received pursuant to clause (A), (B), (C), (D), (E), (F), or (G) of subparagraph (ii) of paragraph one of this subdivision, shall be distributed to the appropriate breeding fund for the manner of racing conducted by such track.

§ 10. Subdivision (f-1) of section 1612 of the tax law, as added by section 40 of a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, is amended to read as follows:

~~[(f-1)]~~ f-1. As consideration for operation of video lottery gaming facility located in the county of Nassau [~~of~~] or Suffolk and operated by a corporation established pursuant to section five hundred two of the racing, pari-mutuel wagering and breeding law, the division shall cause the investment in the racing industry of the following percentages of the vendor fee to be deposited or paid as follows:

~~[(1)]~~ 1. Two and three tenths percent of the total wagered after payout of prizes for the purpose of enhancing purses at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course, provided, however, that any amount that is in excess of the amount necessary to maintain purse support from video lottery gaming at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course at the same level real-

ized ~~[in]~~ in two thousand thirteen, to be adjusted by the consumer price  
CHAP. 175 6

index for all urban consumers, as published annually by the United States department of labor, bureau of labor statistics, shall ~~[be]~~ instead be returned to the commission.

~~[(2)]~~ 2. five tenths percent of the total wagered after payout of prizes for the appropriate breeding fund for the manner of racing at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course, provided, however, that any amount that is in excess of the amount necessary to maintain payments from video lottery gaming at Aqueduct racetrack at the same level realized ~~[in]~~ in two thousand thirteen, to be adjusted by the consumer price index for all urban consumers, as published annually by the United States department of labor, bureau of labor statistics, shall ~~[be]~~ instead be returned to the commission.

~~[(3)]~~ 3. one and three tenths percent of the total revenue wagered after payout of prizes to be deposited into an account of the franchised corporation established pursuant to section two hundred six of the racing, pari-mutuel wagering and breeding law to be used for capital expenditures in maintaining and upgrading Aqueduct racetrack, Belmont Park racetrack and Saratoga race course, provided, however, that any amount that is in excess of the amount necessary to maintain payments for capital expenditures from video lottery gaming at Aqueduct racetrack at the same level realized ~~[in]~~ in two thousand thirteen, to be adjusted by the consumer price index for all urban consumers, as published annually by the United States department of labor, bureau of labor statistics, shall ~~[be]~~ instead be returned to the commission.

~~[(4)]~~ 4. Nine tenths percent of the total revenue wagered after payout for prizes to be deposited into an account of the franchised corporation established pursuant to section two hundred six of the racing, pari-mutuel wagering and breeding law to be used for general thoroughbred racing operations at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course, provided, however, that any amount that is in excess of the amount necessary to maintain payments for general thoroughbred racing operations from video lottery gaming at Aqueduct racetrack at the same level realized ~~[in]~~ in two thousand thirteen, to be adjusted by the consumer price index for all urban consumers, as published annually by the United States department of labor, bureau of labor statistics, shall ~~[be]~~ instead be returned to the commission.

§ 11. The opening paragraph of the first clause (G) of subparagraph (ii) of paragraph 1 of subdivision b of section 1612 of the tax law, as amended by section 42 of a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, is amended to read as follows:

notwithstanding clauses (A), (B), (C), (D), (E) and (F) of this subparagraph, when ~~[a resort facility to be operated by other than a presently licensed video lottery gaming operator or any entity affiliated therewith selected by the division following a competitive process located]~~ not more than one vendor track located in the town of Thompson in Sullivan county at the site of the former Concord resort at which a qualified capital investment has been made and no fewer than one thousand full-time, permanent employees have been newly hired, is located in Sullivan county and is within sixty miles from any gaming facility in a contiguous state, then for a period of forty years the vendor's fee shall equal the total revenue wagered at the vendor track after payout of prizes pursuant to this subdivision reduced by the greater of (i)



twenty-five percent of total revenue after payout for prizes for "video lottery games" or (ii) for the first eight years of operation thirty-

eight million dollars, and beginning in the ninth year of operation such amount shall increase annually by the lesser of the increase in the consumer price index or two percent, plus seven percent of total revenue after payout of prizes. In addition, in the event the vendor fee is calculated pursuant to subclause (i) of this clause, the vendor's fee shall be further reduced by 11.11 percent of the amount by which total revenue after payout for prizes exceeds two hundred fifteen million dollars, but in no event shall such reduction exceed five million dollars. Provided, further, no vendor is eligible for the vendor's fee described in this clause who operates or invests in or owns, in whole or in part, another vendor license or is licensed as a vendor track that currently receives a vendor fee for the operation of video lottery gaming pursuant to this article.

§ 12. The second clause (G) of subparagraph (ii) of paragraph 1 of subdivision b of section 1612 of the tax law, as amended by section 42 of a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, is REPEALED.

§ 13. Clause (G-1) of subparagraph (ii) of paragraph 1 of subdivision b of section 1612 of the tax law, as amended by section 42 of a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, is REPEALED.

§ 14. Paragraph 2 of subdivision b of section 1612 of the tax law, as amended by section 42 of a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, is amended to read as follows:

2. As consideration for the operation of a video lottery gaming facility, the division, shall cause the investment in the racing industry of a portion of the vendor fee received pursuant to paragraph one of this subdivision in the manner set forth in this subdivision. With the exception of Aqueduct racetrack and a facility located in Nassau county authorized pursuant to paragraph five of subdivision a of section one thousand six hundred seventeen-a of this article, each such track shall dedicate a portion of its vendor fees, received pursuant to clause (A), (B), (C), (D), (E), (F), or (G) of subparagraph (ii) of paragraph one of this subdivision, solely for the purpose of enhancing purses at such track, in an amount equal to eight and three-quarters percent of the total revenue wagered at the vendor track after pay out for prizes. One percent of such purse enhancement amount shall be paid to the gaming commission to be used exclusively to promote and ensure equine health and safety in New York. Any portion of such funding to the gaming commission unused during a fiscal year shall be returned to the video lottery gaming operators on a pro rata basis in accordance with the amounts originally contributed by each operator and shall be used for the purpose of enhancing purses at such track. In addition, with the exception of Aqueduct racetrack and a facility located in Nassau county authorized pursuant to paragraph five of subdivision a of section one thousand six hundred seventeen-a of this article, one and one-quarter percent of total revenue wagered at the vendor track after pay out for prizes, received pursuant to clause (A), (B), (C), (D), (E), (F), or (G) of subparagraph (ii) of paragraph one of this subdivision, shall be

distributed to the appropriate breeding fund for the manner of racing conducted by such track.

CHAP. 175

8

Provided, further, that nothing in this paragraph shall prevent each track from entering into an agreement, not to exceed five years, with the organization authorized to represent its horsemen to increase or decrease the portion of its vendor fee dedicated to enhancing purses at such track during the years of participation by such track, or to race fewer dates than required herein.

§ 15. Subdivision (f-2) of section 1612 of the tax law, as added by section 42 of a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, is amended to read as follows:

~~[(f-2)]~~ f-2. As consideration for operation of a video lottery gaming facility located in the county of Nassau established pursuant to a competitive process pursuant to paragraph ~~[(5)]~~ five of subdivision a of section ~~[six]~~ one thousand ~~[seventeen-a]~~ six hundred seventeen-a of this article, the division shall cause the investment in the racing industry of the following percentages of the vendor fee to be deposited or paid as follows:

~~[(1)]~~ 1. Two and three tenths percent of the total wagered after payout of prizes for the purpose of enhancing purses at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course, provided, however, that any amount that is in excess of the amount necessary to maintain purse support from video lottery gaming at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course at the same level realized ~~[in]~~ in two thousand thirteen, to be adjusted by the consumer price index for all urban consumers, as published annually by the United States department of labor, bureau of labor statistics, shall ~~[be]~~ instead be returned to the commission.

~~[(2)]~~ 2. five tenths percent of the total wagered after payout of prizes for the appropriate breeding fund for the manner of racing at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course, provided, however, that any amount that is in excess of the amount necessary to maintain payments from video lottery gaming at Aqueduct racetrack at the same level realized ~~[in]~~ in two thousand thirteen, to be adjusted by the consumer price index for all urban consumers, as published annually by the United States department of labor, bureau of labor statistics, shall ~~[be]~~ instead be returned to the commission.

~~[(3)]~~ 3. one and three tenths percent of the total revenue wagered after payout of prizes to be deposited into an account of the franchised corporation established pursuant to section two hundred six of the racing, pari-mutuel wagering and breeding law to be used for capital expenditures in maintaining and upgrading Aqueduct racetrack, Belmont Park racetrack and Saratoga race course, provided, however, that any amount that is in excess of the amount necessary to maintain payments for capital expenditures from video lottery gaming at Aqueduct racetrack at the same level realized ~~[in]~~ in two thousand thirteen, to be adjusted by the consumer price index for all urban consumers, as published annually by the United States department of labor, bureau of labor statistics, shall ~~[be]~~ instead be returned to the commission.

~~[(4)]~~ 4. Nine tenths percent of the total revenue wagered after payout for prizes to be deposited into an account of the franchised corporation established pursuant to section two hundred six of the racing, pari-mutuel wagering and breeding law to be used for general thoroughbred

racing operations at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course, provided, however, that any amount that is in excess of the amount necessary to maintain payments for general

thoroughbred racing operations from video lottery gaming at Aqueduct racetrack at the same level realized [~~in~~] in two thousand thirteen, to be adjusted by the consumer price index for all urban consumers, as published annually by the United States department of labor, bureau of labor statistics, shall [~~be~~] instead be returned to the commission.

§ 16. Subdivision 6 of section 1340 of the racing, pari-mutuel wagering and breeding law, as added by section 2 of a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, is amended to read as follows:

6. Notwithstanding any provision of law to the contrary, any manufacturer or wholesaler licensed under the alcoholic beverage control law may, as authorized under the alcoholic beverage control law, sell alcoholic beverages to a gaming facility holding a retail license or permit to sell alcoholic beverages for consumption on the premises issued under this section, and any gaming facility holding a retail license or permit to sell alcoholic beverages for consumption on the premises issued under this section may, as authorized under the alcoholic beverage control law, purchase alcoholic beverages from a manufacturer or wholesaler licensed under the alcoholic beverage control law.

§ 17. Paragraph 3 of subdivision a of section 1617-a of the tax law, as amended by section 32 of a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, is amended to read as follows:

(3) at [~~facilities~~] one facility per region established, pursuant to a competitive process to be determined by the state gaming commission within regions one, two, and five of zone two as established by section one thousand three hundred ten of the racing, pari-mutuel wagering and breeding law following local governmental consultation and consideration of market factors including potential revenue impact, anticipated job development and capital investment to be made. The facilities authorized pursuant to this paragraph shall be deemed vendors for all purposes under this article, and need not be operated by licensed thoroughbred or harness racing associations or corporations.

§ 18. Clause (G-1) of subparagraph (ii) of paragraph 1 of subdivision b of section 1612 of the tax law, as added by section 40 of a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, is amended to read as follows:

(G-1) Notwithstanding clause (A) and (B) of this subparagraph, when a video lottery gaming facility is located in either the county of Nassau or Suffolk and is operated by a corporation established pursuant to section five hundred two of the racing, pari-mutuel wagering and breeding law at a rate of thirty-five percent of the total revenue wagered at the vendor [~~track~~] after payout for prizes pursuant to this chapter;

§ 19. Clause (G-2) of subparagraph (ii) of paragraph 1 of subdivision b of section 1612 of the tax law, as added by section 42 of a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, are amended to read as follows:

(G-2) Notwithstanding clause (A) and (B) of this subparagraph, when a

video lottery gaming facility is located in the county of Nassau established pursuant to a competitive process pursuant to paragraph ~~[(5)]~~ five of subdivision a of section ~~[six]~~ one thousand six hundred seventeen-a of this article at a rate of thirty-five percent of the total  
CHAP. 175 10

revenue wagered at the vendor ~~[track]~~ after payout for prizes pursuant to this chapter;

§ 20. Subdivision 1 of section 1311 of the racing, pari-mutuel wagering and breeding law, as added by section 2 of a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, is amended to read as follows:

1. The commission is authorized to award up to four gaming facility licenses, in regions one, two and five of zone two. The duration of such initial license shall be ten years. The term of renewal shall be determined by the commission. The commission may award a second license to a qualified applicant in no more than a single region. The commission is not empowered to award any license in zone one. No gaming facilities are authorized under this article for the city of New York or any other portion of zone one.

As a condition of licensure, licensees are required to commence gaming operations no ~~[less]~~ more than twenty-four months following license award. No additional licenses may be awarded during the twenty-four month period, nor for an additional sixty months following the end of the twenty-four month period. Should the state legislatively authorize additional gaming facility licenses within these periods, licensees shall have the right to recover the license fee paid pursuant to section one thousand three hundred six of this article.

This right shall be incorporated into the license itself, vest upon the opening of a gaming facility in zone one or in the same region as the licensee and entitle the holder of such license to bring an action in the court of claims to recover the license fee paid pursuant to section one thousand three hundred fifteen of this article in the event that any gaming facility license in excess of the number authorized by this section as of the effective date of this section is awarded within seven years from the date that the initial gaming facility license is awarded. This right to recover any such fee shall be proportionate to the length of the respective period that is still remaining upon the vesting of such right.

Additionally, the right to bring an action in the court of claims to recover the fee paid to the state on the twenty-fourth day of September, two thousand ten, by the operator of a video lottery gaming facility in a city of more than one million shall vest with such operator upon the opening of any gaming facility licensed by the commission in zone one within seven years from the date that the initial gaming facility license is awarded; provided however that the amount recoverable shall be limited to the pro rata amount of the time remaining until the end of the seven year exclusivity period, proportionate to the period of time between the date of opening of the video lottery facility until the conclusion of the seven year period.

§ 21. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, takes effect.

The Legislature of the STATE OF NEW YORK SS:

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

DEAN G. SKELOS  
Temporary President of the Senate

SHELDON SILVER  
Speaker of the Assembly

**CONSTITUTIONAL AMENDMENT TO PERMIT CASINOS**



**STATE OF NEW YORK**  
**STATE BOARD OF ELECTIONS**

**FORM OF SUBMISSION OF PROPOSAL NUMBER ONE, AN AMENDMENT**

Authorizing Casino Gaming

The proposed amendment to section 9 of article 1 of the Constitution would allow the Legislature to authorize up to seven casinos in New York State for the legislated purposes of promoting job growth, increasing aid to schools, and permitting local governments to lower property taxes through revenues generated. Shall the amendment be approved?

**ABSTRACT OF PROPOSAL NUMBER ONE, AN AMENDMENT**

The purpose of the proposed amendment to section 9 of article 1 of the Constitution is to allow the Legislature to authorize and regulate up to seven casinos for the legislated purposes of promoting job growth, increasing aid to schools, and permitting local governments to lower property taxes through revenues generated.

**TEXT OF PROPOSAL NUMBER ONE, AN AMENDMENT**

**CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY**

proposing an amendment to subdivision 1 of section 9 of article 1 of the constitution, in relation to casino gambling in the state

Section 1. Resolved (if the Senate concur), That subdivision 1 of section 9 of article 1 of the constitution be amended to read as follows:

1. No law shall be passed abridging the rights of the people peaceably to assemble and to petition the government, or any department thereof; nor shall any divorce be granted otherwise than by due judicial proceedings; except as hereinafter provided, no lottery or the sale of lottery tickets, pool-selling, book-making, or any other kind of gambling, except lotteries operated by the state and the sale of lottery tickets in connection therewith as may be authorized and prescribed by the legislature, the net proceeds of which shall be applied exclusively to or in aid or support of education in this state as the legislature may prescribe, [and] except pari-mutuel betting on horse races as may be prescribed by the legislature and from which the state shall derive a reasonable revenue for the support of government, **and except casino gambling at no more than seven facilities as authorized and prescribed by the legislature** shall

EXPLANATION--Matter in underscored is new; matter in brackets [ ] is old law to be omitted.

-Page 1

hereafter be authorized or allowed within this state; and the legislature shall pass appropriate laws to prevent offenses against any of the provisions of this section.

§ 2. Resolved (if the Senate concur), That the foregoing amendment be submitted to the people for approval at the general election to be held in the year 2013 in accordance with the provisions of the election law.





**Gaming Facility  
Location Board**