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PENNSYLVANIA GAMING CONTROL BOARD

IN RE:

DOCKET No. 1694-2010

APPLICATION OF
BUSHKILL GROUP, INC.
FOR A CATEGORY 3
SLOT MACHINE LICENSE

**BRIEF IN SUPPORT OF SANDS BETHWORKS GAMING, LLC'S
CONTEST OF BUSHKILL GROUP INC.'S APPLICATION
FOR A CATEGORY 3 SLOT MACHINE LICENSE**

Sands Casino Resort Bethlehem (Sands Bethlehem) presents this post-hearing brief.

Sands Bethlehem continues to believe that the applicant least likely to produce new revenue and most likely to cannibalize revenue from existing operators is Fernwood for the following reasons:

1. We agree with Member Trujillo that the statute does not use the phrase "maximize revenue" specifically as respects a Category 3 applicant. However, the statute does use the phrase "maximize net revenue" within the definition of "revenue or tourism enhanced location." In addition, several subsections of 4 Pa. C.S.A. § 1102 focus on revenue including subsection 2, mentioning the purpose to enhance live horse racing and breeding programs

because those activities benefit from the assessments made against gross terminal revenue, subsection 2.1, stating a purpose of table games as “increasing revenues to the Commonwealth,” and subsection (3), stating the purpose of providing a “significant source of new revenue.” Therefore, we believe that a central focus of the statute is increasing new revenue to the Commonwealth, making the focus on the cannibalization of revenue by the Fernwood proposal a particularly relevant question.

2. We also want to reemphasize our response to the questions presented by Members McCabe and Sojka concerning the part of the Sands Bethlehem presentation that focused on the Innovation Group 2003 report to the State Senate and the arguments contrasting Fernwood to Mason Dixon.

3. Consistent with its opening point, Sands Bethlehem used the comparison between Mason Dixon and Fernwood to make the point as between those two applicants Fernwood would not be preferred. Sands Bethlehem did not and does not argue which is the best applicant among the applicants other than Fernwood. In order to make its case against Fernwood, Sands Bethlehem thought it need only show that Fernwood was not the preferred choice as against at least one applicant and not that it was not the preferred applicant among all applicants.

4. The focus of Sands Bethlehem was simply on making the easy to establish contrast between Mason Dixon and Fernwood to show that Fernwood was not the best candidate.

5. What Sands Bethlehem sought to do was present certain historical and logical points evident from the Innovation 2003 Report and indisputable current facts to make its case against Fernwood and to assist the Board in making a decision. In addition, for the reasons stated at greater length beginning at paragraph 21 there is ample statistical evidence based on actual results in the Board’s own records, which the Board is entitled to consider under the well-

known concept of judicial notice, to reject the recently increased per unit projections of Fernwood to \$513.

6. What Sands Bethlehem never thought of doing was retaining yet another expert to hypothesize another set of financial projections for Fernwood or to seek to particularize the financial impact on Sands Bethlehem.

7. Sands Bethlehem chose not to retain an expert to establish projections for the contestants or to particularize the financial impact to Sands Bethlehem from a Fernwood license because projections or predictions of financial impact are at best estimates that would be subject to impeachment because of the very nature of hiring and paying an expert to make financial arguments.

8. Not only did Sands Bethlehem think that that course of action was inadvisable as just presenting the Board with another set of estimates and projections to ponder, but Sands Bethlehem thought it was unnecessary because there were enough historical and current facts that could be easily summarized to demonstrate that the choice should not be Fernwood and that Sands Bethlehem thought would be helpful to the Board.

9. The historical facts and concepts were derived chiefly from the Innovation 2003 Report. Not only do the principals of Innovation have an extensive background in gaming and public accounting, but Sands Bethlehem thought that the fact that the Innovation 2003 Report was prepared for a legislative body as opposed to an applicant for a gaming license gave that report some enhanced credibility.

10. Moreover, the aspects of the 2003 Innovation Report cited by Sands Bethlehem were thought to be logical and indisputable. Consistent with the gravity model consistently used

by Innovation, a location on the Maryland/Pennsylvania Border would have no adverse impact in the Lehigh Valley and in the Poconos.

11. The gravity model used by Innovation is similar to part of Newton's Universal Law of Gravitation in the sense that the attraction factor of a property to a market diminishes in inverse proportion to the distance between the property and the market location. In other words, the closer the property to a market the greater the value of the attraction factor of the property to that market and the farther away the market the lesser the value of the attraction factor of the property to that market in the gravity model formula.

12. Thus, the 2003 Innovation Report coupled with the Innovation 2008 Report on behalf of Fernwood put Fernwood in the unenviable position of being unable without opening itself up to significant impeachment to contradict the twin conclusions of Innovation: one articulated in 2003 that a MD/PA location would not cannibalize revenue from existing locations in the Lehigh Valley and the Poconos and the other articulated in 2008 that 19% of its projected revenue for Fernwood would be cannibalized. Both conclusions followed from the analysis of the consistently applied gravity model.

13. In particular, as to cannibalization, the conclusion of a cannibalization rate of 19% was consistent with the basics of the gravitation methodology and, interestingly, was consistent with the rate of cannibalization predicted by Innovation in the 2003 report discussing another location, (Long Pond), in the Poconos on the revenue prediction for the [so-called Long Pond or] present Mohegan Sun site. In the 2003 Report at page 28, Innovation predicted a reduction in revenue of the [Long Pond site] Mohegan Sun site from \$103 million to \$85 million with the addition of a second location in the Poconos.

14. Rather than attacking the Innovation 2008 Report cannibalization conclusions directly, Fernwood, as we shall see below, simply brought in other experts in 2010 to revisit the cannibalization conclusion.

15. The 2003 Innovation Report also assumed the existence of MD gaming in the future and in doing so assumed 4 locations: three in the Baltimore area and one in Western MD. Like other assumptions of the 2003 Innovation Report, this assumption was right on target: the actual legislation authorized the 4 locations assumed by Innovation in 2003 plus one on the MD Eastern Shore. That fifth location on the Eastern Shore would have little relevance to a PA location on the PA/MD border. Not only that, but the location in Western MD does not even have an applicant.

16. The 2003 Innovation Report also predicted that a site along the PA/MD border would be the most affected by MD gambling and that a location in the Lehigh Valley would be unaffected in any material respect by MD gaming.

17. While the "most affected" conclusion in 2003 would seem to negate the current argument that a site along the PA/MD border would be preferred to a location in the Poconos, there are two reasons that is not so. First, the Innovation prediction of most affected was made at a time when PA gaming did not consider table games. The recent advent of table games has had an indisputable and favorable impact in lessening that effect. The degree of lessening is another prediction that Sands Bethlehem chose not to make because to do so would require it to embark on a journey into a world somewhere between estimation and speculation and because it was not necessary to do so. That journey was not necessary because a location along the MD/PA border was near the densely populated MD and District of Columbia markets and therefore Innovation had predicted In 2003 that even with the impact of MD gaming that a site along the PA/MD

border would still bring in new revenue and even with the impact of MD gaming would still bring in more new revenue than another location in the Poconos. While the Board was entirely within the discretion granted to it in the statute in preferring a location in the Poconos to a location on the PA/MD border in making its Category 2 decisions in 2006 for a number of reasons, e.g., promotion of year-round tourism was another selection criteria for a Category 2 “at large” choice and the applicant selected was an existing tourist location that would have been expected to greatly benefit from the addition of gaming as an amenity, the question presented to the Board in 2010 is entirely different from that presented in 2006. The question presented in 2010 is whether to select Fernwood and thereby to add a third location in the Poconos considering the following circumstances: the existing win-per-slot unit-per day (WPUPD) numbers of the existing Pocono operators are far less than the recently augmented Fernwood projections, the augmented projections come not from a re-evaluation by Innovation but from new expert reports dated October and November 2010, which are discussed below and which surfaced after Penn National arrived as part of the Fernwood team, the indisputable impact of revenue cannibalization from the existing Pocono operators that would logically flow from any decision to place another competitor in the midst of the primary and secondary market areas of the existing operators.

18. There would also be an indisputable adverse impact from another market participant on Sands Bethlehem. Fernwood would focus on North New Jersey and New York. Weidner, the former Chief Operating Officer of Las Vegas Sands not only testified in 2006 to the importance of these markets to Sands Bethlehem, but he also described I-78 as a “straw” from these markets to Bethlehem. Sands Bethlehem was asked the percentage of its business from those markets at the hearing and Bob DeSalvio apologized for not having the percentage

committed to memory, but estimated the proportion of those markets to Sands Bethlehem at 30%. Although Sands Bethlehem has examined that estimate since the hearing, production of those statistics would not be permissible unless the record were opened to allow them. Without running afoul of expanding the record from what was presented at the hearing, Sands Bethlehem believes that it would not violate the general rule of going beyond the record in a brief to say simply that the value of those markets to Sands Bethlehem is at least what it estimated at the hearing.

19. The overlapping market areas were described and depicted in the power point presented by Sands Bethlehem and by Mohegan Sun. Therefore, revenue cannibalization is just a logical fact that flows from those graphical depictions. Hiring two new experts to say there would be no cannibalization, which we mention below, contradicts not only the earlier conclusion of Innovation but also common sense and also draws into question the reliability of the brand new projections of that newly hired help.

20. That brings us to the question asked of Fernwood by Chairman Fajt: what would Fernwood be doing that would cause it to so exceed the revenue currently being received by the existing Poconos operators. Fernwood really had no answer and touting the mettle that Penn National would bring to the table is likewise an insubstantial response to justify the dramatically higher projections.

21. Maintaining the focus of Sands Bethlehem on the facts presented to the Board by Fernwood and those facts within the Board's own revenue compilations, as to which the Board can take judicial notice, we turn first to some matters disclosed in the 2008 Innovation Report.

22. Some pertinent factual statements from the Innovation 2008 Report include: at page 6 the assumption of 500 slots, at page 12 that there is a comparatively small local market

within a 30 minute drive, at page 17 that the existing operators have more access to the North-Eastern PA population densities than Fernwood, at page 17 that the WPUPD for the racino at Monticello in New York was \$100 in 2005, at page 17-18 that the Monticello WPUPD increased to \$140 in 2006 before declining to \$114 for the period in 2007 that was available at the time of its report, at page 18 that the WPUPD for the last 12 months at Monticello prior to the Innovation report was \$132, and at page 39 that the Innovation projection for Fernwood was \$26.9 million for 2009 and \$26.8 million for 2011. As noted below, the Monticello actual results, which are within the New York market that Fernwood would have the Board believe will be among the main determinants driving a WPUPD of \$513, were used by Innovation in arriving at its much lower WPUPD predictions.

23. Using the \$26.9 million projection, the Innovation 2008 projections for Fernwood amounted to a WPUPD of \$147. In the Fernwood power point presentation in October 2008, the Innovation WPUPD projections were presented as \$147 in 2011 increasing to \$149 in 2012, to \$155 in 2012 and to \$160 in 2014. These projections were themselves slightly higher than the actual results for Monticello that Innovation presented in its 2008 report.

24. In 2010, Fernwood increased its WPUPD projections to \$513 in its 2010 public input hearing power point presentation.

25. Also in 2010, Fernwood submitted a Gaming Market Assessment and Economic Impact Report as of October 2010 by David West that at page 5 noted the prior Innovation Report and stated that the purpose of the West report was to revise the Innovation assessment to account for the addition of table games, "new projected casino revenues," the affiliation with Penn National, and the commitment for project funding by Penn National. Thus, the only two

factors that could account for the dramatically higher WPUPD projections were the addition of table games and the association of Penn National.

26. At page 8 the West Report posed the question: "From a consumer behavior perspective, will a Category 3 take market share away from the existing Category 2 casino located in the Poconos?" While not asking or answering the question about the existing Category 1 casino in the Poconos, the West Report answered its own question: "The answer is no. In fact, the exact opposite will occur." Nevertheless, the West Report at page 17 stated that the methodology of Innovation remained "current and relevant," but then stated the "new projected revenues for the casino when stabilized are approximately three times higher than those projected for a 500 slot facility in 2008."

27. Having dispensed with any cannibalization risk in the West Report, Fernwood then reintroduced cannibalization in a new form in the November 8, 2010 report of Christian Capital Advisors. At page 14 of the Christian Capital Advisors Report, the cannibalization rate predicted would be 10.6% in year one and would disappear altogether by year 4.

28. Thus, as noted above, through the utility of introducing two new experts, Fernwood sought to rid itself of the cannibalization problem from the Innovation report without directly attacking the Innovation Report and while validating the Innovation methodology as "current and relevant." Sands Bethlehem believes that the consistent gravitation methodology of Innovation, resulting in the prediction of a similar rate of cannibalization of another location in the Poconos in both its 2003 and 2008 reports, coupled with the common sense conclusion evident from observing the overlapping markets depicted in both the Sands Bethlehem and Mohegan Sun power point presentations should provide more than an ample basis for the Board to give short shrift to the new and improved expert reports of Fernwood.

29. Indeed, a reasonable reader could readily conclude that Fernwood decided to go elsewhere by hiring two additional experts in an effort to neutralize the Innovation 2008 Report. These dramatically different opinions simply highlight the inherent credibility problems of hired experts and serve to authenticate the approach taken by Sands Bethlehem in not going the expert route but choosing instead to focus on historical facts and logical conclusions flowing from indisputable other facts, e.g., the depiction of the overlapping markets.

30. We now turn to historical results within the Board's own records to further highlight the cogency of the question asked by Chairman Fajt of what would explain the dramatic differences between the projections of Penn National on behalf of Fernwood and the actual results of the other Pocono operations. The only answer offered by Penn National was of its participation and its experience. At the very least, the dramatic increase in projections in 2010 amounted to a sufficient reason for the Sands Bethlehem citation to the Bankruptcy Court decision decrying "bidding through projections."

31. We summarize below the WPUPD numbers from the Board's own records and which support the basis for the Chairman's question.

Range of Monthly Average Win Per Slot Unit Per Day

	FY 2008/2009	FY 2009-2010	FY July 2010-Oct.2010 (after table games start)
Sands Bethlehem	\$218-\$297	\$170-\$236	\$229-\$261
Penn National	\$201-\$316	\$239-\$312	\$266-\$313
Mohegan Sun at Pocono Downs	\$204-\$306	\$217-\$295	\$246-\$307
Mt. Airy	\$177-\$229	\$125-\$189	\$164-\$191

32. Thus, the experience of the operators in the Poconos, Penn National's own results and those of Sands Bethlehem draw into question the reliability of the projections for Fernwood even after the increase noted in WPUPD for all four operators after the introduction of table games in July 2010.

33. The July through October 2010 WPUPD results also would include the initial impact of table games on WPUPD for slots based on the advent of table games at Penn National, Mohegan Sun and Mt. Airy in July 2010 and therefore the fiscal year 2010/2011 results to date also neutralize one of the reasons offered by the new West Report, i.e., the authorization of table games, that was used to rationalize the extraordinary difference in projections by Fernwood in 2010 over its projections in 2008.

34. These WPUPD actual results also refute the notion that there is additional capacity in the markets served by the operations in the Poconos and in Bethlehem because if there were insufficient capacity Sands Bethlehem would expect to see the WPUPD actual results in the \$350-\$400 range. The fact that the WPUPD actual results are far less than that threshold means in the experience of Sands Bethlehem that there is sufficient and unused capacity in the current markets.

35. These WPUPD actual results also refute the conclusion of the West Report at page 8 that there is "ample capacity" for additional gaming in the Pocono market.

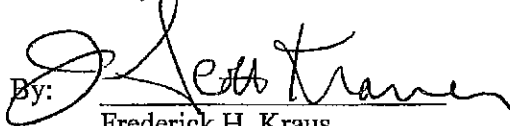
36. There is additional evidence in the Board's own statistical records that refutes the notion of additional capacity in the Poconos. Both Mt. Airy and the Financial Suitability Task produced projections in 2006 were based on Mt. Airy having 5,000 slot machines. The 2010 fiscal reports to date demonstrate that Mt. Airy has just under 2,500 slot machines, which is powerful evidence of what the market capacity is in the Poconos.

37. The West Report also cites at page 8 to the supposed advantages of a cluster affect and cites to the Atlantic City experience in support of that contention. Having spent many years in the Atlantic City market, the principals of Sands Bethlehem would not dispute that the average slot player in Atlantic City visits more than one casino during a casino trip. However, that is because the other casinos are within a short walking distance. We know from the Fernwood website that Mt. Airy is a 30 minute drive. Typical slot customers would not be expected to leave one casino and drive 30 minutes to see another. So Sands Bethlehem thinks that there is absolutely nothing to the argument about a cluster effect.

For all the foregoing reasons, Fernwood should not be the applicant selected by the Board.

DATED: November __, 2010

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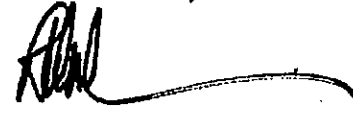
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VERIFICATION

I, Robert DeSalvio, President of Sands Bethworks Gaming, LLC d/b/a Sands Casino Resort Bethlehem, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).



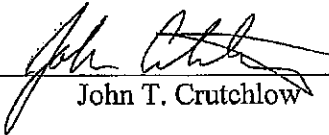
Robert DeSalvio

DATED: November 29, 2010

CERTIFICATE OF SERVICE

I, John T. Crutchlow, hereby certify that on this 29th day of November, 2010, I caused a true and correct copy of the foregoing Brief In Support Of Sands Bethworks Gaming, LLC's Contest Of The Eligibility And Suitability Of Bushkill Group Inc. For A Category 3 Slot Machine License to be served on the following counsel of record via U.S. Mail:

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