

# Akin Gump

STRAUSS HAUER & FELD LLP

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October 1, 2015

VIA EMAIL AND HAND DELIVERY

Ronald F. McGreevy,  
Town Supervisor  
1907 West Tyre Road  
Seneca Falls, NY 13148-9730

Re: *Supplemental SEQRA Submission Regarding Lago Casino and Resort Project*

Dear Mr. McGreevy:

Akin Gump Strauss Hauer and Feld LLP makes this submission to the Town of Tyre (the "Town") on behalf of Dagmar Nearpass, Desiree Dawley and James Dawley in connection with the proposed Lago Casino and Resort development ("Lago" or "Lago Development"). As you are aware, on September 1, 2015, September 9, 2015 and September 24, 2015, BME Associates supplemented the Town's State Environmental Quality Review Act ("SEQRA") record for the Lago Development with additional traffic-related documents and correspondence, including several letters from Wilmot's traffic engineer, McFarland Johnson.

In response to these submissions, we are providing the following materials for the Town Board to consider prior to making its SEQRA determination of significance:

1. **Letter from Gordon T. Stansbury (GTS Consulting) to Ian Shavitz (Akin Gump), dated September 30, 2015.** We have retained GTS Consulting, a firm with over 19 years of experience in traffic engineering and transportation analyses, to review the studies, correspondence and comments concerning the Lago Development's potential traffic impacts and proposed mitigation. Based upon this review, GTS has concluded:

"[T]here are a number of deficiencies with the project's traffic analysis and . . . the results of the impact study are inherently unreliable because of those deficiencies. Failing to apply the seasonal adjustment factors combined with the failure to consider alternative routes to the project site are especially critical when considering the projected impact on northern portions of the Town. Together, these flaws in the analysis may result in large discrepancies in the traffic projections both to the north and around the I-90 access. Further, regardless of the adequacy of the traffic study or the operation of the intersections in direct

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proximity to the project site, . . . introducing a development of this magnitude with the associated traffic that it will generate is likely to result in a significant adverse impact on the environment.”

2. **Map Titled *Old Order Amish, South Clyde District, Origins, Destinations, and Roads Regularly Traveled***. Submissions by BME Associates and discussions at Town Board Meetings, as recent as September 29<sup>th</sup>, have focused on the locations and travel patterns of the South Clyde District Amish, the sizable Amish population located in and around Tyre, and the Lago Development’s impacts on this population. The information presented to the Board has been largely anecdotal and circumstantial, including comparisons of the South Clyde District Amish to other Amish populations in New York, searches for evidence of horse and buggy tracks and imprints on local roads, and randomly-timed videos shot at intersections proximate to the casino site.

To provide the Board with accurate information about the locations and travel patterns of the South Clyde District Amish, and the potential impacts of the Lago Development on this particular Amish population, we have prepared the attached map based upon information provided directly by representatives of the South Clyde District. I am also re-submitting the Declarations of Daniel Schwartz and Jerry Wengerd, which address both Amish travel patterns and the impacts of the Project on the South Clyde District Amish.

The attached map and declarations make clear that, contrary to the information provided to the Town Board, the Amish regularly travel on the network of roads surrounding the casino site in order to attend religious services, farm, shop, and work at businesses that they own. As such, the thousands of additional passenger vehicles, buses, and delivery trucks that will travel to and from the Lago Development constitute a threat to the safety and lifestyle of the South Clyde District Amish.

Finally, the Town Board should also be aware that Alder Road, which has been represented as a roadway that Dan Schwartz and other Amish would use to leave the Schwartz property, is not a viable alternative to Amish travel on Route 414. Access to Alder Road from the Schwartz property requires horse and buggy travel on a narrow unpaved path/road through a heavily wooded area that is not passable during much of the winter or in wet ground conditions, including during the spring snow melt. As such, the Board should not rely on the Amish using Adler Road to avoid casino-generated traffic.

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BME did not provide its various submissions to the Town Board until after the close of the Lago Development's public comment period – including as recently as two days ago. Nonetheless, we have moved expeditiously to prepare and submit these responsive materials in advance of a SEQRA determination of significance. Because the attached materials were provided to the Town Board prior to its determination, they constitute part of the Town's SEQRA record. The Town has adequate time to review and consider the attached materials, especially because I presume that the Town Board will not be making its SEQRA determination prior to the October 8, 2015 public hearings.

Regards,



Ian Shavitz

cc: Adam Cummings, Town Engineer (via email and hand delivery)  
Virginia Robbins, Town Legal Counsel (via email and hand delivery)  
Town Board Members (via hand delivery)



**T Consulting**



1396 White Bridge Road  
Chittenango, NY 13037  
Tel: (315) 391-5110 Fax: (315) 687-6267

September 30, 2015

Akin Gump Strauss Hauer & Feld LLP  
1333 New Hampshire Avenue, N.W.  
Washington, DC 20036-1564

Attn: Mr. Ian A. Shavitz.

**Re: Traffic Peer Review – Proposed Lago Casino & Resort  
NYS Route 414, Town of Tyre, NY**

Dear Mr. Shavitz:

GTS Consulting was retained by Akin Gump Strauss Hauer & Feld LLP to complete a peer review of the traffic study and related correspondence and documents associated with the proposed Lago Casino & Resort (Formerly called Wilmot Resort & Casino) on Route 414 in Tyre, NY. This letter summarizes our review of the overall methodology, standards of practices and conclusions with respect to the potential traffic impacts of the development as well as the potential environmental significance of any such impacts.

With over 19 years of experience in traffic engineering, transportation planning, corridor analysis and alternative studies, GTS Consulting has managed and directed hundreds of projects and studies for both public and private agencies. We have extensive experience in traffic impact studies, signal coordination, municipal reviews, and alternative assessments, and are experts with computer modeling programs such as Synchro, CORSIM and VISSIM.

The following documents were reviewed with regards to traffic impacts:

1. "Traffic Impact Study – Wilmot Resort & Casino" – Dated March 11, 2014 – prepared by McFarland Johnson
2. "Memorandum – Wilmot Casino Project – Whiskey Hill Rd. & Gravel Rd." – Dated April 4, 2014 – prepared by McFarland Johnson
3. NYSDOT Letter – "SEQR Lead Agency Designation" – Dated 4/23/14
4. McFarland Johnson Letter – "Offsite Roadway Mitigation Summary Letter" – Dated August 3, 2015
5. "Review of Traffic Impacts" – Dated August 2015 – prepared by Environmental Resources Management
6. McFarland Johnson Letter – "ERM Report Response Letter" – Dated August 20, 2015
7. Town of Tyre Website – "The Full Environmental Assessment Form completed by Whitetail 414 LLC"
8. Town of Tyre Website – "Completed SEQRA Full Environmental Assessment Form with Negative Declaration"
9. Town of Tyre Website – "SEQRA Review of Potential Impacts – Sept. 17, 2015"



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10. Town of Tyre Website – “NYSDOT Letter Dated September 2, 2015 re Studying Amish Traffic”

After reviewing the above documents, I have concluded that there are a number of deficiencies with the project’s traffic analysis and that the results of the impact study are inherently unreliable because of those deficiencies. Further, regardless of the adequacy of the traffic study or the operation of the intersections in direct proximity to the project site, I believe that introducing a development of this magnitude with the associated traffic that it will generate is likely to result in a significant adverse impact on the environment. The following provides a summary of key issues that bring me to these conclusions.

*Traffic Review Deficiencies*

Lack of Seasonal Adjustment – Base Traffic Volumes

The original traffic counts completed for the project’s traffic impact study were collected in November and December of 2013. The study does not include any adjustment to account for seasonal increases in traffic that may be expected in summer months associated with tourist traffic and the local wineries, Montezuma Wildlife Refuge, historic towns and villages in the immediate area, or the Fingerlakes. This failure to account for seasonal adjustments has been raised in public comments as well as the Environmental Resources Management review letter. It is a fundamental and demonstrable flaw that negates findings in the traffic impact study.

The McFarland Johnson response letter addressing this issue notes that seasonal adjustments from the NYSDOT design manual range from 0.1% to 11.5% for areas moderately affected by the seasons. It further notes that there is significant truck traffic, commuter traffic, and traffic associated with the Petro Plaza and Seneca Meadows Landfill and that since these generators are not impacted by the seasons, no adjustments are necessary. The response states that NYSDOT approved the base volumes without noting any need for adjustment, and further notes that additional counts collected in February/March were consistent with and slightly lower than the original study counts.

McFarland Johnson is incorrect in their decision not to use a seasonal adjustment because of the existing consistent traffic-generating uses around the development site (*i.e.*, truck traffic, commuter traffic, and traffic associated with the Petro Plaza and Seneca Meadows Landfill). While these uses are consistent traffic generators, seasonal attractions draw a significant amount of additional traffic through the project area. The failure to account for seasonal increases in traffic generation is potentially significant and could impact the findings of the study and change the overall improvements that are proposed to mitigate the project.

Looking at the NYSDOT seasonal adjustment factors for roadways in the “Factor Group 40”, which are roadways that are moderately affected by seasonal changes, NYSDOT first uses a factor of 0.950 for a November weekday and 0.877 for a November weekend to convert the counts to an average daily value. The study counts would be divided by these adjustments to develop the average annual daily traffic (AADT) volumes that would be expected on the roadways in the study area. The resulting AADT volumes would then be multiplied by factors of 1.186 for a weekday and 1.248 for a Saturday to develop the traffic volumes that would be expected in July (when there is an increase in traffic due to tourism in the area). Applying these factors would result in a 25% increase in traffic on a weekday and a 42% increase in traffic on Saturday. Given that there are some movements with volume to capacity ratios of 0.75 or higher at the Route 414 / I-90 Exit 41



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**Re: Traffic Peer Review – Proposed Lago Casino & Resort  
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intersection under the mitigated analysis, a potential increase in traffic of 20%-40% could easily push the intersection to failing operations.

### Directional Distribution of Trips Generated

The traffic impact study states that 69% of the traffic generated will access the project site via I-90, 27% will use Route 318 east/west or Route 414 to the south, and only 4% will use Route 414 to the north. This minimal use of Route 414 to the north is noted multiple times through the project documents, primarily as it relates to the potential project's impacts on the Amish population in the area concentrated to the north and impacts on maintaining the Town's rural character. The study noted that the distribution was developed using on-line navigation tools to find the "quickest" route to/from the proposed development.

I believe that in developing the distribution, the study failed to balance the logical use of local roadways versus the fastest routes shown by navigation tools. For example, online mapping to travel from Webster, NY to the site recommends using I-490 to I-90 for a total distance of 53.6 miles that will take 46 minutes. The program does not identify the alternate route of using Route 104 to Route 414 which has a lesser distance of 45.3 miles and only minimally increases travel time by 6 minutes (a 52 minute trip). Similarly, to travel to/from Oswego, the program recommends using Route 34 and I-90 for a distance of 47.9 miles that will take 52 minutes. The alternate route of using Route 104 to Route 414 is virtually the same distance (a distance of 48.9 miles) and again only minimally increases travel time by 6 minutes (a 58 minute trip). A percentage of the patrons of the casino will use different routes that may be slightly longer to avoid toll routes such as I-90. With over 32% of the site generated traffic coming from eastern Rochester and over 13% coming from western Syracuse, the traffic impact study makes the unsubstantiated assumption that none of those trips would use the non-tolled northern Route 104 to access Route 414 and then travel south to the project site. Even a small portion of these trips using Route 104 to Route 414 could double the projected volumes in this area and the potential impact on local residents, including the Amish that reside north of the project site.

### I-90 Toll Operations and Access Review

The traffic impact study initially found that the I-90 toll plaza had capacity to accommodate the proposed development. In the McFarland Johnson mitigation summary letter (8/3/15), there is a revised toll plaza analysis that now recommends an additional toll lane based on revised processing rates used. Neither of these evaluations of the toll plaza incorporates the summer traffic increases which, as stated previously, could increase the traffic volumes in the area by 20%-40%.

In addition, there is no discussion or evaluation of traffic queuing or weaving in the short 450 foot distance between Route 414 and the toll plaza. The mitigated traffic analysis indicates traffic queues in the range of 175-200 feet on the eastbound approach of the I-90 ramps to Route 414. Even without factoring in a seasonal adjustment for summer months, the based queue of 200 feet only leaves 250 feet for vehicles to change lanes while exiting the toll plaza. There is a potential for queues to extend far enough to impact the movement of traffic leaving the toll area. This potential impact has not been evaluated.



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**Re: Traffic Peer Review – Proposed Lago Casino & Resort  
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Failure to Consider Full Build Out

It is noted that there is no discussion found anywhere in the documentation reviewed about the future Lago expansions to include a ballroom and additional casino space, as shown on the site plan in the traffic impact study. As a standard matter of practice, NYSDOT requires that a traffic study include the full buildout potential of a property. It does not appear that McFarland Johnson accounted for this in its traffic analysis.

Traffic Impact Significance

Statements made throughout the analysis of the project’s traffic impacts contend that maintaining the Level of Service of nearby intersections mitigates all traffic impacts and therefore results in no significant environmental impact under SEQRA. The developer’s traffic analyses, however, fail to recognize that Level of Service is only one piece that must be considered when analyzing potential traffic impacts.

For example, imagine a small village that has a two lane main street (one lane per direction) with 500 cars per hour traveling through the village. If a development proposes to add 500 cars but will add one lane per direction, there is no change in Level of Service. Regardless of the traffic impacts being “mitigated”, there are still significant overall impacts to the village in terms of increased traffic volumes, reduced side street gaps, noise and air quality, as well as the physical impacts of now having a 4 lane roadway running through the village instead of a 2 lane roadway.

The proposed Lago Casino & Resort is projected to generate 4,500 vehicles per day visiting the site. Adding the 4,500 cars entering and the 4,500 vehicles exiting results in a total of 9,000 new vehicular trips on the study area roadways each day. The distribution from the traffic impact study (which, as demonstrated above, underestimates traffic from the north) assumes that 69% will use the Thruway, 15% will use Route 318 to the east, 6% will use Route 318 to the west, 6% will use Route 414 to the south and 4% will use Route 414 to the north. The following table shows the daily increase in traffic expected on each roadway studied.

**Daily Traffic Volume Increases by Roadway – Lago Casino & Resort**

Roadway	Existing Daily Volume	Proposed Daily Increase	Percent Increase
I-90	33,000 vehicles	6,210 vehicles	+19%
Route 318 - East	8,000 vehicles	1,350 vehicles	+17%
Route 318 - West	8,400 vehicles	540 vehicles	+6%
Route 414 - South	6,000 vehicles	540 vehicles	+9%
Route 414 - North	2,500 vehicles	360 vehicles	+14%
Route 414 – I-90 to 318	10,500 vehicles	2,430 vehicles	+23%

These are significant overall increases in traffic to a small rural community. As such, it is my opinion that the increase in vehicles alone that the project will generate is likely to have a significant adverse impact on the environment.



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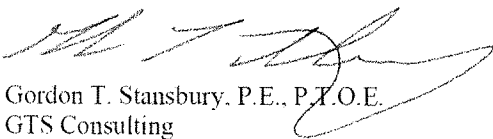
**Re: Traffic Peer Review – Proposed Lago Casino & Resort  
NYS Route 414, Town of Tyre, NY**

*Conclusions*

As noted previously, after reviewing the above documents, I have concluded that there are a number of deficiencies with the project's traffic analysis and that the results of the impact study are inherently unreliable because of those deficiencies. Failing to apply the seasonal adjustment factors combined with the failure to consider alternative routes to the project site are especially critical when considering the projected impact on northern portions of the Town. Together, these flaws in the analysis may result in large discrepancies in the traffic projections both to the north of the project site and around the I-90 access to Rt. 414. Further, regardless of the adequacy of the traffic study or the operation of the intersections in direct proximity to the project site, I believe that introducing a development of this magnitude with the associated traffic that it will generate is likely to result in a significant adverse impact on the environment.

If you have any questions or need additional information, please call.

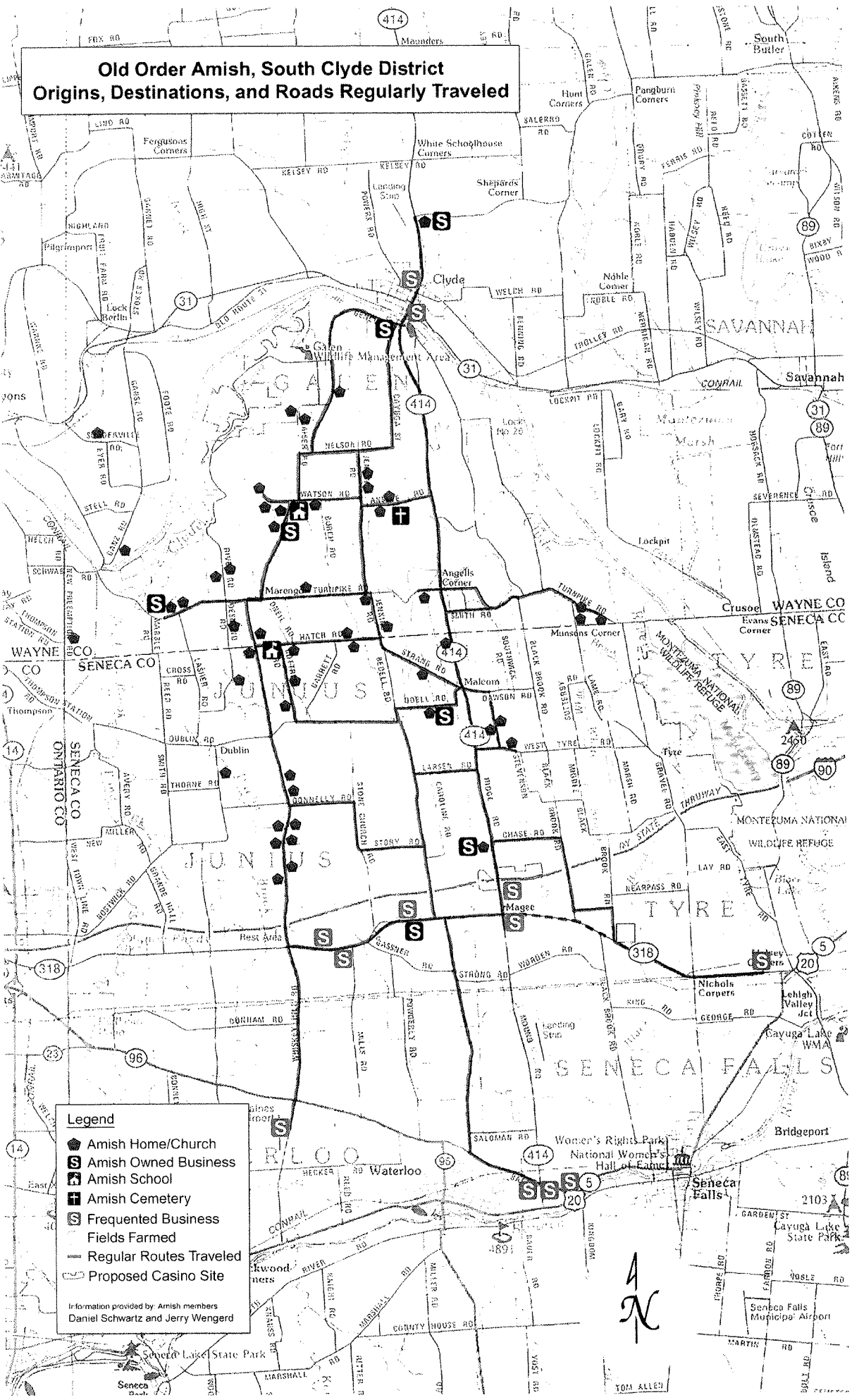
Sincerely,



Gordon T. Stansbury, P.E., P.T.O.E.  
GTS Consulting



# Old Order Amish, South Clyde District Origins, Destinations, and Roads Regularly Traveled



**Legend**

- 🏠 Amish Home/Church
- 🏢 Amish Owned Business
- 🎓 Amish School
- ⛪ Amish Cemetery
- 🏪 Frequented Business
- 🌾 Fields Farmed
- 🛣️ Regular Routes Traveled
- 🎰 Proposed Casino Site

Information provided by Amish members  
Daniel Schwartz and Jerry Wengerd



TOM ALLED

## DECLARATION OF DAN SCHWARTZ

I, Dan Schwartz, make this declaration on behalf of myself and other members of the Amish Community that live near or use the roads surrounding the proposed Lago Casino and Resort. I declare and state as follows:

1. I am a member of the South Clyde District of the Old Order Amish. Members of our Amish Community live a quiet and peaceful life in accordance with the teachings of the Old Order Amish.

2. I live at 1070 Rt. 414, Waterloo, New York. I have lived with my family at this property since 2007. My family and I have a certified organic dairy farm, where milk is picked up every two days. We also engage in carpentry and run a machine repair shop where we fabricate machinery. The driveway to my home is across the street from the Casino entrance.

### BACKGROUND

3. Members of the Amish Community chose to live in Tyre because the land is good for farming and raising livestock and the rural character of the area fits with our lifestyle based upon the teaching of the Old Order Amish.

4. We had to move away from our ancestors' long-held settlements once before in Pennsylvania due to rising costs and unavailability of suitable farm land as a result of development.

5. Amish communities are divided into Districts. Our District consists of Tyre, New York and the neighboring areas of Galen and Junius. This eight mile radius is home to approximately 60 families, totaling about 350 Amish people.

6. We do not have a central church. We hold weekly religious services each Sunday in Amish family homes within our very rural District. The location of our Sunday services

rotates to a different family's home each week. For our Sunday services, members of our Community arrive in the morning and depart at the end of the day, all according to the teaching of the Old Order Amish.

7. We also congregate for weddings (on Thursdays), funerals, barn raisings, and when ministers from outside our District visit. All of these gatherings are central to our culture and are part of living by the teaching of the Old Order Amish.

8. We also have special events where Amish people come to our District from all over the state. For example, on August 7, 2015, Amish educators from all over New York will come to Tyre for an annual teachers meeting.

9. Amish members of our community make a living by farming, performing carpentry at peoples' homes, building furniture and other items that we sell out of our homes, and selling produce at roadside produce stands. Our way of life is well known to non-Amish residents of the area and to local elected officials. We contribute to the Community by paying property and sales taxes.

#### **OUR TRANSPORTATION**

10. We do not drive motorized vehicles, but instead, use horses and buggies for transportation. We drive our horses and buggies on public roads. Our travel on local roads is well known to local residents of the area.

11. We frequently travel on the rural roads that surround and are located near the casino. These roads include Route 414, Chase Road, Larson Road, Route 318, Bedell Road, Blackbrook Road, and Birdsey Road.

12. Our men, women and children travel by horse and buggy to Sunday services, weddings, funerals, barn-raising, our farming fields, our carpentry job sites, and all of our other local gatherings and celebrations. Some of our larger families need multiple horses and buggies.

13. Amish farmers also use horses to move farm equipment from field to field on Tyre's local roads. We also use local roads to travel to and from local supply stores.

14. We are on the roads with our horses and buggies at all times of day, every day, to work, worship, attend school or gather together. Travel by horse and buggy means that we travel at low speeds that are only safe when drivers are aware of and anticipate our presence well beyond the signs that may appear on some parts of roads.

#### **DANGERS FROM THE CASINO**

15. The building and operation of the casino will threaten our safety.

16. The local roads around the casino site that we must regularly use have many curves and hills. Out of town drivers coming to or leaving the casino will not know that a buggy could be around a curve or over a hill. Mere signs will not protect our people's horses and buggies from being hit by casino patrons who are not familiar with us being on the roads.

17. Out of town drivers are not aware of the slow speed at which horses and buggies move. We are concerned that this could result in vehicles colliding with our buggies from behind. We are not protected by steel car bodies and these collisions will likely injure our people and kill our horses, as well as injure the drivers of the cars.

18. The new casino will be located on Route 414, which is a road that I use or must cross on a regular basis, given that I live directly on Route 414.

19. Members of our Community live on both sides of Route 414, so some members of our Community will always need to cross Route 414 to attend Sunday services or other Community gatherings at Amish homes.

20. We also travel on Route 414 and the surrounding rural roads to move to and from fields for farming, to perform carpentry work at peoples' homes, to work at our produce stands, and to reach our children's school house.

21. The casino will require widening some roads in Tyre, which also presents safety hazards to Amish traveling by horse and buggy.

22. Most roads in Tyre are one lane in each direction, with a few single lane bridges. Widening roads to multiple lanes in each direction are more dangerous because drivers will speed more and be less cautious. Fast cars passing our horses also can scare our horses putting the buggy driver and passengers in additional danger.

23. The presence of more cars on the roads that we use every day will be dangerous for the Amish Community. It will be even more dangerous because the drivers of these cars will be from outside of the area and they will not know that our horses and buggies will be on the roads.

### **THE CASINO THREATENS OUR LIFESTYLE**

24. A big new casino with a resort, restaurants, a theater, parking garages, and parking lots will destroy the rural character and peacefulness of Tyre that caused the Amish to move here nearly 20 years ago.

25. There will be thousands of new cars on the roads that we must use every day, making it even more difficult for us to use our horses and buggies, forcing us to avoid making trips on public roads due to safety threats, and threatening our very way of life.

26. The casino will also cause more people and businesses to move to Tyre. This will take even more farmland from Tyre, also threatening our way of life.

27. It is not so easy to move an entire Amish community from one location where it can live according to the teaching of the Old Order Amish to another rural location.

28. If the Casino is built, I will be forced to move from my home. The safety issues and change in rural character of Tyre may force members of the Amish Community to leave Tyre forever.

29. Our Amish families should not have to be separated from their homes in Tyre when we just want to continue our simple, religious way of life. Our serious worries do not seem to matter to people who approved the casino location. Local officials have ignored our opposition to the casino.

30. The Amish do not generally participate publicly in government matters. Because the casino could harm our Community Lynn Barbuto, who is non-Amish, has acted as our representative and spokesperson. We greatly appreciate Ms. Barbuto's willingness to serve in these roles. She has traveled to governmental meetings and voiced our concerns on our behalf.

Dan Schwartz  
Dan Schwartz

8/5/2015  
Date

## DECLARATION OF JERRY WENGERD

I, Jerry Wengerd, make this declaration on behalf of myself and other members of the Amish Community that live near or use the roads surrounding the proposed Lago Casino and Resort. I declare and state as follows:

1. I am a member of the South Clyde District of the Old Order Amish. Members of our Amish Community live a quiet and peaceful life in accordance with the teachings of the Old Order Amish.

2. I live at 10650 Wheeler Road, Clyde, New York. I have lived with my family at this property since 1998. My family and I farm the land, harvest produce, and build chairs in a shop at our home.

### BACKGROUND

3. Members of the Amish Community chose to live in Tyre because the land is good for farming and raising livestock and the rural character of the area fits with our lifestyle based upon the teaching of the Old Order Amish.

4. We had to move away from our ancestors' long-held settlements once before in Pennsylvania due to rising costs and unavailability of suitable farm land as a result of development.

5. Amish communities are divided into Districts. Our District consists of Tyre, New York and the neighboring areas of Galen and Junius. This eight mile radius is home to approximately 60 families, totaling about 350 Amish people.

6. We do not have a central church. We hold weekly religious services each Sunday in Amish family homes within our very rural District. The location of our Sunday services rotates to a different family's home each week. For our Sunday services, members of our

Community arrive in the morning and depart at the end of the day, all according to the teaching of the Old Order Amish.

7. We also congregate for weddings (on Thursdays), funerals, barn raisings, and when ministers from outside our District visit. All of these gatherings are central to our culture and are part of living by the teaching of the Old Order Amish.

8. We also have special events where Amish people come to our District from all over the state. For example, on August 7, 2015, Amish educators from all over New York will come to Tyre for an annual teachers meeting.

9. Amish members of our community make a living by farming, performing carpentry at peoples' homes, building furniture and other items that we sell out of our homes, and selling produce at roadside produce stands. Our way of life is well known to non-Amish residents of the area and to local elected officials. We contribute to the Community by paying property and sales taxes.

### **OUR TRANSPORTATION**

10. We do not drive motorized vehicles, but instead, use horses and buggies for transportation. We drive our horses and buggies on public roads. Our travel on local roads is well known to local residents of the area.

11. We frequently travel on the rural roads that surround and are located near the casino. These roads include Route 414, Chase Road, Larson Road, Route 318, Bedell Road, Blackbrook Road, and Birdsey Road.

12. Our men, women and children travel by horse and buggy to Sunday services, weddings, funerals, barn-raisings, our farming fields, our carpentry job sites, and all of our other local gatherings and celebrations. Some of our larger families need multiple horses and buggies.