

IOWA RACING AND GAMING COMMISSION
6200 PARK AVENUE, SUITE 100
DES MOINES, IOWA 50321

PETITION BY RIVERSIDE CASINO AND)	
GOLF RESORT, LLC, AND)	
WASHINGTON COUNTY RIVERBOAT)	
FOUNDATION, INC.)	
FOR A DECLARATORY ORDER)	MOTION FOR STAY PURSUANT
THAT THE IOWA RACING AND)	TO IOWA CODE § 17A.19(5)(a)
GAMING COMMISSION LACKS)	(DECLARATORY ORDER)
AUTHORITY TO ISSUE A GAMBLING)	
GAMES LICENSE IN LINN COUNTY)	
UNDER IOWA CODE § 99F.7(11))	

Riverside Casino and Golf Resort, LLC (“Riverside”), and Washington County Riverboat Foundation, Inc. (“WCRF”), by and through undersigned counsel, hereby file this motion to request, pursuant to Iowa Code § 17A.19(5)(a), that the Iowa Racing and Gaming Commission stay issuance of the license to the Linn County Gaming Association, Inc. (“LCGA”) and the Cedar Rapids Development Group, LLC (“CRDG”).

In support of this motion, Riverside and WCRF state:

1. Contemporaneous with the filing of this Motion for Stay, Riverside and WCRF have filed a Petition for Judicial Review seeking review by the district court of the IRGC’s decision to decline to address the substantive issues presented by Riverside and WCRF’s Petition for Declaratory Order.

2. Rather than ruling on the substance of the Petition for Declaratory Order, on February 6, 2025, the Iowa Racing and Gaming Commission (“IRGC”) awarded a gambling games license to LCGA and CRDG for the Cedar Crossing Casino and Entertainment Center in Linn County (the “Linn County Casino”).

3. Pursuant to Iowa Code § 17A.19(5)(a), Riverside and WCRF request a stay of the formal issuance of a gambling games license in Linn County by the IRGC until the district court can review the decision by the IRGC.

4. As summarized in the Petition, the IRGC's decision to decline to issue a declaratory order should be reversed for multiple reasons under Iowa Code § 17A.19(10).

5. Riverside and WCRF seek an immediate stay of the IRGC's award of the gambling games license pursuant to Iowa Code § 17A.19(5)(b), which provides in pertinent part that a party may seek a stay "during the pendency of judicial review." For clarity, while the IRGC has voted to approve of the application by LCGA and CRDG for a gambling games license in Linn County, Riverside and WCRF seek to stay the actual issuance and effectiveness of the purported gambling games license, to the extent that it exists, and any and all actions or activities in reliance on the license of the vote to approve of the application for a license.

6. A stay is necessary and appropriate under the factors set forth in Iowa Code 17A.19(5)(c).

7. For the reasons discussed in the Petition for Judicial Review, and in the prior submissions to the IRGC by Riverside and WCRF, the Plaintiffs are likely to succeed on the merits and obtain a court order reversing or vacating the decision by the IRGC to decline to issue a substantive ruling on the Petition for Declaratory Order, and reversing or vacating the conclusion by the IRGC that it has authority to issue a gambling games license in Linn County under Iowa Code § 99F.7(11).

8. Iowa Code § 99F.7(11) bars awards of gambling games licenses in counties unless specific referendum requirements are satisfied. The county electorate must first "approve

the conduct of gambling games”; then, once eight years have passed, the county electorate must pass a second “proposition requiring the approval or defeat of gambling games.”

9. Public Measure G plainly did not comply with this requirement. It asked that voters authorize the continuation of gambling games, rather than gambling games simpliciter, and stated that gambling games would end should the measure fail. But Linn County never had licensed gambling games in operation, and a ballot measure calling for the extension of nonexistent gambling games does not comply with the statute. Moreover, the measure only requested approval of gambling games with no wager or loss limits, a subset of gambling games.

10. Indeed, one of Iowa’s leading election law litigators, Alan Ostergren, is coincidentally an IGRC commissioner. In dissent from a related decision on an application for a declaratory order, he explained that Public Measure G unambiguously did not satisfy the electoral approval requirements of Iowa Code § 99F.7(11).

11. Further, Iowa Administrative Code Rule 491-1.7(9) requires the IRGC to consider the effect of a new license on existing licensees. Iowa’s gaming market is not a free market. In 2014 and 2017, the IRGC rejected Linn County license applications in large part due to the catastrophic effects that a license would pose for nearby casinos. But here, the IRGC did not meaningfully consider this effect—even though the studies that the IRGC commissioned itself, from Marquette Advisors and The Innovation Group, found that the Iowa gaming market is saturated, that Linn County is not an underserved market, and that the Linn County Casino will derive the majority of its revenue from existing casinos, causing massive losses to incumbents’ investments.

12. Second, the Plaintiffs will suffer irreparable injury without a stay. As the IRGC’s own studies found, the license grant will cost Riverside tens of millions of dollars in annual

revenue, an enormous harm. As explained in the affidavit of Karlyn Ollendick, this will require Riverside to enact major changes, including layoffs of up to 200 workers and reductions in long-term capital expenditure. (*See* Affidavit of Karlyn Ollendick, Feb. 6, 2025.) Given the size of these changes, absent a stay, they will not be able to all wait for the end of litigation. (*See id.*) Similar efforts will be required at the many Washington County nonprofits reliant on WCRF funds for their ongoing operations. (*See id.*) Further, Riverside's parent, Elite Casino Resorts, Inc., is owned by over 1,200 Iowan shareholders across 46 counties, and their shares will experience immediate and significant declines in value absent a stay. (*See id.*)

13. The Plaintiffs will likely have no damages remedy against the IRGC for these harms even if and when the IRGC's license is eventually vacated. The IRGC will likely assert that sovereign immunity bars any potential claim in tort or restitution. A stay is thus necessary to preserve an adequate remedy. *See Entergy, Arkansas, Inc. v. State of Nebraska*, 210 F.3d 887, 899-900 (8th Cir. 2000) (explaining that irreparable harm occurs when money damages are unrecoverable due to sovereign immunity); *Anderson v. State*, 2 N.W.3d 807, 812-13 (Iowa 2024) (explaining that the state is immune from damages claims unless the state has waived said immunity).

14. A stay will also avoid harm to the public and the rule of law. Absent a stay, on information and belief, CRDG will, on the purported strength of the just-issued license, commence construction on the Linn County Casino immediately. LCGA and CRDG want to be able to claim that construction is underway in the status quo, so the courts should not stop it.

15. There is precedent for CRDG's anticipated actions. The same management and investors who are behind the CRDG Casino project were also the driving force behind the construction of a land-based casino in downtown Sioux City in 2013. There was litigation about

the validity of the gambling games license in that case as well. While that litigation was going on, those developers moved as quickly as they could to construct the casino on the strength of the license in question. Then, in proceedings about whether the IRGC's licensing decision should be stayed, they argued that it was too late for a stay because the casino had been partially built. The developers even attached photographs of the construction in progress to illustrate their point.

16. The IRGC should not let the developers build their way out of a license infirmity. In the likely event that the license is revoked, the work on the Linn County Casino would constitute pure economic waste of benefit to no party, and saddle Linn County with a worthless project. And the waste could be considerable by the end of litigation—regardless of this Court's ruling, this case will likely find its way to the Iowa Supreme Court. A stay will preserve the true status quo to allow the courts time to correctly resolve the rights of the parties.

17. Third, a stay will not harm the adverse party, the IRGC, or the public interests allegedly justifying the IRGC's actions. The IRGC, as a public body, has no legitimate interest in anything but the correct application of the statutes and regulations it administers. A stay will allow the courts time to implement, rather than to hinder, the IRGC's mission, by ensuring its compliance with the law.

18. Even as to non-parties, a stay strongly favors the public interest. The worst-case scenario for Linn County would be a partially-built, unfinished casino reliant on an invalid license. That result is not only possible absent a stay, but probable, given the likelihood that CRDG will soon begin construction. A stay will also prevent third parties from erroneously relying on the disputed Linn County license in their future planning and operations. Even as to CRDG's pure economic interest, the primary interest behind CRDG, Peninsula Pacific

Entertainment, has worked towards a Linn County casino for a decade. The length of the potential delay here is minor in comparison.

WHEREFORE, for the reasons stated, the IRGC should issue a stay of its award of a gambling games license for the Linn County Casino on February 6, 2025, staying the issuance and effectiveness of any purported license, and staying all actions and activities in reliance on the purported license. The IRGC should grant other relief as warranted under the circumstances.

Respectfully submitted,

THE WEINHARDT LAW FIRM

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