

SOAH DOCKET NO. 476-04-5361

IN THE MATTER OF § BEFORE THE STATE OFFICE  
AN APPLICATION FOR A CLASS 2 § OF  
HORSE RACETRACK LICENSE §  
IN WEBB COUNTY, TEXAS § ADMINISTRATIVE HEARINGS

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<b>AN APPLICATION FOR A CLASS 2</b>	§	<b>OF</b>
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**PROPOSAL FOR DECISION**

Laredo Race Park LLC (“Laredo Race Park”) and LRP Group, Ltd. (“LRP Group” or “Laredo Downs”) filed applications for a Class 2 horse racetrack license in Webb County, Texas with the Texas Racing Commission (“Commission”). After performing an initial review of the applications, the Commission’s Executive Secretary notified the applicants that their applications were complete and referred the matter to the State Office of Administrative Hearings (SOAH) for hearing. After reviewing the evidence, the Administrative Law Judges (ALJs) find that both applicants have demonstrated that they are qualified to receive a license. From an economic standpoint, however, there was insufficient evidence that Webb County could support two racetracks. For the reasons set forth below, the ALJs recommend that Laredo Race Park’s application be conditionally granted, subject to resolving the ownership issue discussed below, and that LRP Group’s application be denied.

**I. PROCEDURAL HISTORY, OVERVIEW, AND SUMMARY OF FINDINGS**

**A. Procedural History**

On January 29, 2004, each applicant filed an application for a Class 2 horse racetrack license in Webb County, Texas, with the Commission. Laredo Race Park was notified that its application had been certified as complete by the Executive Secretary on February 11, 2004. LRP Group was notified, on the same day, that its application was incomplete due to the lack of a traffic study and additional information regarding ownership and background. After receiving additional information from LRP Group, the Executive Secretary notified LRP Group that its application was certified as complete on March 15, 2004.

On May 3, 2004, Staff filed a request to docket the case for hearing at SOAH to consider the two applications for a Class 2 horse racetrack license. No intervenors protested either application.<sup>1</sup>

On March 27, 2006, a hearing on the merits was convened before ALJs Suzanne Marshall and Kerry D. Sullivan. Rhonda Fritsche, Assistant General Counsel, represented the Commission's Staff. Rex Van Middlesworth, Lino Mendiola, III, and Meghan Griffiths, attorneys, represented Applicant Laredo Race Park Group. William Moltz, James McNally, Jr., David Duggins, Robert Soza, Janessa Glenn, Steven Ramon, and Corby Brooks, attorneys, represented Applicant LRP Group. The hearing concluded on April 7, 2006. After the close of evidence, the parties were allowed to submit closing arguments and briefs in writing. The record originally closed on July 21, 2006, but was re-opened for the parties to provide additional briefing on the issue of whether the Commission has authority to exempt LRP Group from the Commission's requirements relating to the required number of stalls. The record finally closed on August 25, 2006.

## **B. Classes of Racetracks**

Texas law authorizes four classes of racetracks in the state.<sup>2</sup> The class rating of a racetrack is determined by, among other things, how often live races can be held, the population of the county in which the track is located, and the type of track operator, *i.e.*, including an association or nonprofit. A Class 2 racetrack is entitled to conduct 60 days of live racing in a calendar year, the actual number of which is determined by the Commission.<sup>3</sup> Live race dates are calculated separately

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<sup>1</sup> The parties represented to the ALJs that four outcomes were possible as a result of this hearing: (1) Laredo Race Park should receive a license; (2) LRP Group should receive a license; (3) both applicants should receive a license; or (4) neither applicant should receive a license. Because of this scenario, each applicant offered evidence to support its individual claim for a license, as well as evidence to show why the other applicant should not receive a license. Nothing in the record indicates that the Commission could not issue more than one license for a Class 2 horse racetrack in the same county.

<sup>2</sup> TEX. REV. CIV. STAT. ANN. art. 179e, § 6.04 (Vernon Supp. 2005) ("Texas Racing Act" or "Act").

<sup>3</sup> *Id.*

from simulcast race dates.<sup>4</sup> The number of allowable race dates refers only to live race dates; simulcast races can occur on other dates as approved by the Commission. Both applicants propose to conduct live racing and simulcast racing.

### C. Application for Racetrack License

The procedures governing the application for a racetrack license are found in Section 6.03 of the Act and 16 TEX. ADMIN. CODE (“TAC”) §§ 307 and 309. An applicant bears the burden of proving compliance with the Act and the Commission’s rules. An applicant who does not demonstrate compliance is not eligible for a license. The burden of proof is on an applicant to show compliance with the Act and with the rules of the Commission. The Commission is required to give additional weight to evidence concerning an applicant who has experience operating a horse racetrack licensed under the Act.<sup>5</sup>

The Commission may issue a racetrack license to a qualified person if it finds that the conduct of race meetings at the proposed track will be in the public interest, the licensee complies with all zoning laws, the Racing Act and rules adopted by the Commission, and if the Commission finds by clear and convincing evidence that the applicant will comply with all criminal laws of this state. In determining whether to grant or deny an application for any class of racetrack license, the Commission may consider the following factors:

1. the applicant's financial stability;
2. the applicant's resources for supplementing the purses for races for various breeds;
3. the location of the proposed track;
4. the effect of the proposed track on traffic flow;
5. facilities for patrons and occupational licensees;
6. facilities for race animals;

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<sup>4</sup> “Simulcast” means “the telecast or other transmissions of live audio and visual signals of a race, transmitted from a sending track to a receiving location, for the purpose of wagering conducted on the race at the receiving location.” §1.03(61) of the Act.

<sup>5</sup> §§ 6.03(g) and (h).

7. availability to the track of support services and emergency services;
8. the experience of the applicant's employees;
9. the potential for conflict with other licensed race meetings;
10. the anticipated effect of the race meeting on the greyhound or horse breeding industry in this state; and
11. the anticipated effect of the race meeting on the state and local economy from tourism, increased employment, and other sources.<sup>6</sup>

Additionally, the Commission may consider numerous additional factors and circumstances which may warrant denial of a license, as set forth in Section 6.06 of the Act. Those that were raised by the applicants in this proceeding include:

\*\*\*\*\*

(a)(4) the applicant is unqualified, by experience or otherwise, to perform the duties required of a licensee under this Act;

(a)(5) the applicant failed to answer or falsely or incorrectly answered a question in an application;

\*\*\*\*\*

(a)(17) the applicant fails to fully disclose the true owners of all interests, beneficial or otherwise, in a proposed racetrack facility.

\*\*\*\*\*

(b) A person may not own more than a five percent interest in more than two racetracks licensed under this Act.

#### **D. Overview**

The two applications differ significantly. Laredo Race Park's proposed facility would be located on Mines Road ("FM 1472") about 11.5 miles northwest of the center of Laredo. LRP

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<sup>6</sup> §§ 6.03 and 6.04 of the Act. The statute requires that the Commission finding on compliance with criminal laws must be by a "clear and convincing" standard. Additionally, the Commission may consider other factors in determining whether to deny a license, as set forth in § 6.06 of the Act.

Group's site is located on U.S. Highway 59 about five miles east of IH-35, closer to the geographic center of Laredo. (A map identifying the proposed sites is attached as Attachment 1 to this PFD.) The suitability and merits of these sites was a major issue in this proceeding. Subissues included travel time, access to the sites, and the proximity of Laredo Race Park's site to cattle fever tick quarantine zones.

The planned simulcasting accommodations of each applicant are comparable and clearly adequate. Laredo Race Park, however, has proposed more extensive (and more expensive) facilities geared toward live racing than LRP Group. These include air-conditioned viewing areas, more stalls for racehorses, and sleeping accommodations for up to 300 horsemen.

Another major issue was whether: (1) Laredo Race Park's facilities are "overbuilt," and not economically viable for the expected customer base, or (2) LRP Group's facilities are "underbuilt" to the point that they would not attract enough live race patrons and horsemen to succeed.

Other issues were whether Laredo Race Park's application violates the Commission's rule limiting the number of racetracks a person may own, potential complications relating to LRP Group's ability to sell alcoholic beverages because one of its major investors also owns a beer distributorship, and the comparative experience and financial stability of the applicants.

The ALJs find that both applicants have demonstrated that they are qualified to receive licenses. From an economic standpoint, however, it is not clear that either racetrack would be able to operate profitably. The ALJs find it is highly unlikely that the Webb County area could support two racetracks. Accordingly, the ALJs believe a determination must be made regarding which of these two qualified applicants should receive a license.

Although both facilities present strengths and weaknesses, the ALJs find that an overall assessment of the statutory considerations favors the Laredo Race Park Application. As addressed in the key findings below and in more detail throughout this PFD, the ALJs find the Laredo Race



Park application superior to LRP Group's proposal with respect to most of the factors identified by the Legislature. These include financial stability and resources for supplementing purses; effect on traffic flow; facilities for patrons and occupational licensees; and effect on the horse breeding industry and the state and local economy. These advantages combine to outweigh the LRP Group's primary advantage, which is closer proximity to commercial and population centers. Accordingly, the ALJs recommend that Laredo Race Park's application be conditionally granted, subject to resolving the ownership issue, and that LRP Group's application be denied.

#### **E. Key Findings**

1. **The two racetrack limitation.** Section 6.06(h) of the Texas Racing Act ("Act")<sup>7</sup> does not preclude Laredo Race Park, whose parent company owns two other racetracks in Texas, from applying for a license for a third track, so long as the parent company obtains Commission approval of the sale of one of its tracks before, or simultaneously with, Commission approval of this application.
2. **LRP Group's sale of alcohol.** It appears likely that a satisfactory arrangement could be reached to allow LRP Group to sell alcoholic beverages at its track. That determination would be made by the Texas Alcoholic Beverage Commission ("TABC") and should not inhibit issuance of a racetrack license to LRP Group.
3. **Experience of employees.** Laredo Race Park would use the management team from Sam Houston Race Park.<sup>8</sup> LRP Group would use the management team from Retama Park. Both applicants have adequate prior successful experience in the operation of a racetrack; however, the Laredo Race Park management team's broader base of experience from a number of racetracks gives it an advantage in this area.
4. **Facilities for patrons and licensees.** Both applications satisfy the regulations regarding facilities for patrons and licensees. The proposed simulcasting facilities are comparable. Laredo Race Park's proposed facilities for live race patrons and licensees are superior to those proposed by LRP Group. In particular, Laredo Race Park will have air-conditioned viewing areas for patrons and sleeping accommodations for up to 300 horsemen.

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<sup>7</sup> Tex.Rev.Civ.Stat. Ann. art. 179(e).

<sup>8</sup> Sam Houston Race Park is sometimes abbreviated in this PFD as "SHRP".

5. **Facilities for racehorses.** If a license is issued to it, LRP Group should be granted a partial exemption to the Commission's rule to allow it to construct only 600 stalls as opposed to the 800 stalls otherwise required. Based on this exemption, the facilities for racehorses appear to be comparable and adequate. Laredo Race Park, however, met the requirements of this issue in a more detailed and straightforward manner.
6. **Financial Stability and resources to supplement purses.** Both applicants have sufficient financial resources available to construct the racetrack facilities and begin operations. However, the partnership arrangement of LRP Group is less stable than that of Laredo Race Park. Because not all partners are required to contribute to cash calls and can exit the partnership at any time, ownership stability and, ultimately, financial stability, could become an issue.

The greater expense associated with construction of the Laredo Race Park track (\$24.7 million versus \$12.7 million for LRP Group, excluding land) does not render Laredo Race Park less financially stable. Laredo Race Park's funding sources and the benefits that will accrue from the additional expenditures, overcome the potential concern.

7. **Location.** LRP Group's site has the significant advantage of closer proximity to the population and entertainment centers of Laredo. This is a particular advantage with respect to simulcast patrons, upon whom both applicants rely heavily. These individuals will find other outlets for their gaming dollars if inconvenienced.

This advantage is offset to some extent, however, because Laredo Race Park will be located on a four lane road with adequate capacity. Laredo Downs would be located on a two lane road that becomes congested during periods of heavy use. Plans to widen the road in front of the LRP site are indefinite.

Other factors included within the location issue include the impact, if any, of the proximity of the Tick Eradication Quarantine Area (TEQA) to the Laredo Race Park site and the availability of utilities. Laredo Race Park has taken appropriate and effective precautions that render fever tick infestation highly unlikely at its facility, although it remains a remote possibility at both sites. Access to utilities will be easier for LRP Group, but they are reasonably available to both applicants.

8. **Economic effect of race meetings.** Both facilities would have a positive economic effect on the state and local economies and the breeding industries if constructed and operated as projected. Laredo Race Park's facilities would have a somewhat greater impact, particularly during construction, and are better equipped than LRP Group's un-air conditioned and smaller facilities to attract tourists for live racing.

9. **The two track option.** Although the parties suggested each applicant could receive a license for a racetrack in Webb County, this scenario does not appear to be viable. It is unclear that either facility can be operated profitably on a stand-alone basis. It is highly unlikely that both competing facilities could be economically viable in the Webb County market because this would entail splitting the simulcasting revenue that is vital to each of them.

## II. JURISDICTION AND NOTICE

The parties stipulated to jurisdiction and the receipt of proper notice in the proceeding. Therefore, those matters are set out in the proposed findings of fact and conclusions of law without further discussion here.

## III. COMPLIANCE WITH RACING ACT, COMMISSION RULES, AND OTHER LAWS

An applicant must show compliance with the Texas Racing Act, the Commission's rules, applicable zoning laws, and the criminal laws of Texas to be eligible for a license.<sup>9</sup> Each applicant contends its application meets these requirements and that the competing application falls short. More specifically, Laredo Race Park asserts that LRP Group's post-application changes in ownership violate Commission rules; that LRP Group's application violates a variety of statutory and regulatory provisions; that it was incomplete; and that revised plans submitted at hearing violate the Commission's rule restricting application amendments. LRP Group asserts that Laredo Race Park's application violates the statutory prohibition against owning a significant interest in more than two racetracks licensed under the Act and that it failed in its burden of proof in several respects, including a required traffic study, necessary utilities, zoning, and market profile.

Staff asserts that both applications fall short in more limited respects – LRP's, for failing to include the required number of stalls, and Laredo Race Park's, for violating the ownership

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<sup>9</sup> §§ 6.03(g) and 6.04(a) of the Act.

restriction. As addressed below, the ALJs find that both applications satisfy the statutory and regulatory requirements.

**A. LRP Group Application.**

**1. LRP's Post-application Changes in Ownership Percentages**

Laredo Race Park asserts that LRP Group has changed its proposed ownership structure for the racetrack since filing this application without amending its application (which would be prohibited) or otherwise obtaining Commission approval. These changes result from cash calls the partnership has issued and to which only some partners responded. Based on the partnership agreement, the partners' ownership percentage is tied to the amount of their investment, resulting in increased percentage ownership for the partners who responded to the cash calls and decreased percentage ownership for those who did not respond. The biggest change has been with the general partner, Muy Buena Suerte, Ltd., a partnership of the LaMantia family, whose ownership interest has risen from **REDACTED INFORMATION**.<sup>10</sup> There are no new partners, no partners have withdrawn, and no partner's percentage interest has risen from below 5% ownership to above 5% ownership (which would trigger additional reporting requirements).<sup>11</sup>

LRP Group and the Staff assert that the relatively minor variations in ownership percentage among the same set of owners do not rise to the level of an application amendment or otherwise violate the Commission rules. Staff categorizes the changes as a "minor modification" to the information originally provided in the application that must merely be reported to the Commission.<sup>12</sup>

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<sup>10</sup> LRP Group Ex. 35 (Application) at Tab 1, p. 2; LRP Group Ex. 59 (G. LaMantia Direct) at GL-4.

<sup>11</sup> LRP Group Ex. 35 (Application) Section 1 (Ownership and Background Information) p. 3-R.

<sup>12</sup> Staff Reply Brief, pp. 5-6.

The ALJs concur with LRP Group and Staff that these minor adjustments in ownership interest do not constitute impermissible amendments to the application. As discussed in Section III (a)(4), Commission Rule 309.3(e) authorizes an applicant to make changes and corrections to an application that do not constitute formal amendments. LRP Group's adjustments fit that provision. Although the changes should have been reported to the Executive Director in writing, the Commission is aware of them through its participation in the hearing, and Staff does not find them problematic.<sup>13</sup>

## 2. TABC Issue

Laredo Race Park asserts that LRP Group's application violates provisions in the Texas Alcoholic Beverage Code that it believes prohibit Steve and Greg LaMantia, as owners and employees of a beer distributorship and Class B Wholesaler, from directly or indirectly owning an interest in LRP Group because alcoholic beverages would be sold at the track.

The LaMantias own Muy Buena Suerte, the largest partner in LRP Group. In addition, Steve LaMantia is an owner, officer, and employee of L&F Distributors, another licensed beer distributor and Class B Wholesaler.<sup>14</sup> LRP Group plans to sell alcoholic beverages at the track, and any prohibition against its doing so would seriously impact the economic feasibility of the track.<sup>15</sup>

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<sup>13</sup> As observed by Staff, if a license were granted to LRP Group, however, Commission Rule 309.151 would require prior approval from the Commission for any changes in an ownership interest. Consequently, every cash call ignored by an LRP Group partner that results in a redistribution of an ownership interest would require pre-approval by the Commission. Section 309.151 applies to existing licensees but not applicants for new licenses.

<sup>14</sup> Tr. Vol. 6, pp. 264-65, 272.

<sup>15</sup> The Racing Commission's Director of Racing testified that he does not know of any racetracks that do not sell alcoholic beverages, that alcoholic beverages are a big part of the business, and that the inability to offer alcoholic beverages would affect the financial viability of a racetrack. Tr. Vol. 10, p. 89. LRP Group witness Bryan Brown acknowledged that all tracks sell alcoholic beverages and that he "wouldn't want to try" to operate a track that could not sell alcoholic beverages. Tr. Vol. 9, p. 49. Steve LaMantia also testified that it is important that alcoholic beverages be served and that it would be difficult for a track to survive without doing so. Tr. Vol. 7, p. 62.

Laredo Race Park insists that the relationships among these entities violate the provisions of Section 102.11 of the Texas Alcoholic Beverage Code, which prohibits a distributor from “directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member,” owning “any interest in the business or premises of a retail dealer of beer.” Laredo Race Park claims that a number of other provisions of the Texas Alcoholic Beverage Code would also be violated by this relationship.<sup>16</sup> Don Walden, an attorney, testified that the proposal for an owner, officer, and employee of a distributorship to own the premises of a retail dealer of beer was a clear violation of state law.<sup>17</sup>

LRP Group, however, responded with competing expert testimony offered by Gordon Johnson, also an attorney, who stated that the TABC typically takes a flexible approach in working with businesses to resolve potential violations of the tiered ownership provisions. Mr. Johnson testified that he has successfully resolved numerous issues of this type on behalf of clients.<sup>18</sup> These have included the following:

- (a) The TABC allowed members of the manufacturing tier to buy ads from the owners of retail premises, technically a violation of the Alcoholic Beverage Code, so long as an independent concessionaire runs the retail sales. (This was done for 15 years with permission of the TABC prior to codification of the practice.)
- (b) The TABC allowed a brewery to pay the Dallas Cowboys to be its “official beer,” despite the fact that some owners of the Cowboys also held a retail license, so long as the Cowboys established an “executive committee” not including any of its owners who had an interest in the retail licensee to run liquor sales.

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<sup>16</sup> Laredo Race Park cites these additional provisions it asserts would be violated: TEX. ALCO. BEV. CODE ANN. §§ 102.01(e) – “[n]o permittee may own the premises, fixtures, or equipment of a permittee of a different level.”; 102.03(b) – Class B wholesaler (among others) may not (directly or indirectly) “own an interest of any kind in the premises where a . . . mixed beverage permittee conducts his business.”; 102.04(b)(1) – Class B wholesaler (among others) or employees may not “have a direct or indirect interest in the . . . premises . . . of a mixed beverage establishment.”; 102.07(a)(1) – Class B wholesaler (among others) or employees may not “own or have a direct or indirect interest in the . . . premises . . . of a retailer.” (Vernon 1995 & Supp. 2005).

<sup>17</sup> Laredo Race Park Ex. 70 (Walden Responsive) pp. 3-4.

<sup>18</sup> LRP Group Ex. 64 (Johnson Rebuttal).

- (c) The TABC allowed a private golf course to receive a retail permit despite that some of its owners were liquor distributors – again upon the establishment of an “executive committee” of other owners to run the alcohol operations.
- (d) The TABC regularly allows distributors to lease skyboxes, which are licensed retail premises, so long as they do not control what liquor is sold there.
- (e) The TABC allowed a brewery to lease a retail-licensed bar at American Airlines Center in Dallas, provided that the brewer hired an independent concessionaire to run it and agreed to offer products of other breweries in a percentage mimicking sales in the surrounding area.<sup>19</sup>

*Analysis.* The tiered restrictions set out in the Alcoholic Beverage Code would plainly require resolution before LRP Group could sell alcoholic beverages at the track. It does appear, however, that the TABC takes a practical approach toward these issues and works with licensees in order to resolve conflicts where possible. Ultimately, authorization to sell alcoholic beverages will be up to the TABC, but it appears likely that a satisfactory arrangement could be reached to allow LRP Group to sell alcoholic beverages at its track. To the extent the arrangements made between the TABC and LRP Group impacted the business structure of LRP Group or otherwise required Racing Commission approval, LRP Group would be required to return to the Racing Commission with requested changes. The ALJs do not believe, however, that LRP Group should be faulted for seeking its racing license prior to working with the TABC regarding a solution to this problem.<sup>20</sup>

### 3. Required Number of Stalls

Commission Rule 309.243 requires that “[a]n association shall provide a sufficient number of stalls to house twice the anticipated number of starters per week of races.” This rule requires Laredo Downs to have as many as 800 stalls.<sup>21</sup> LRP Group, however, requests an exemption from

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<sup>19</sup> LRP Group Ex. 64 (Johnson Rebuttal) p. 3-5; Tr. Vol. 9 pp. 363-65.

<sup>20</sup> See *Texas–New Mexico Power Company v. Texas Industrial Energy Consumers*, 806 S.W.2d 230, 232 (Tex. 1991) (“Shuffling citizens in such an endless, inefficient circle from one agency to the next in search of permits, licenses, and stamps of approval that cannot be issued until some other office acts represents government at its worst.”).

<sup>21</sup> LRP Group Ex. 61(Brown Direct) p. 19. LRP Group proposes separate quarter horse and thoroughbred meets. The quarter horses would run a total of 19 days on Fridays, Saturdays, Sundays, and Presidents Day (Monday) from mid-January through most of February. The proposed thoroughbred season would be a total of eight racing days on two consecutive weeks in mid July, with racing on Thursday through Sunday. Accordingly, for the second week of live racing, there would be four days of racing (Sunday, Thursday, Friday, and Saturday). Both meets would run ten races

this rule, pursuant to Commission Rule 309.102, adopted in 1999. That provision sets out procedures for an association to request exemption from compliance with certain requirements of the Commission's rules, including the subchapter containing the stall rule.

Pursuant to the requested exemption, LRP Group proposes to construct only 240 stalls.<sup>22</sup> The basis for this request was provided by Bryan P. Brown, president and CEO of Retama Park Management Company, which manages Retama Park in San Antonio, and would also manage Laredo Downs. According to Mr. Brown, many of the horses that would run at Laredo Downs are located at Retama or at regional farms, so that the distance to transport the horses to Laredo Downs would "not be great."<sup>23</sup> More specifically, it would be about a three hour trip from Retama to Laredo Downs.<sup>24</sup> Mr. Brown also testified that Retama Park, a much larger Class 1 track, never has more than 600 stalls filled.<sup>25</sup>

Mr. Brown also stated that trainers have far less desire to transport their entire stable to a track for a short meet due to the expense involved.<sup>26</sup> LRP Group asserts that control of costs is critical to the success of horse racing in Texas, and that the requested exemption would save approximately \$4 million<sup>27</sup> in unnecessary costs.

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per day. [LRP Group Ex. 46 (Christopher Direct) attachment LC-2]. With a field of ten horses estimated for each race, the rule would require 600 stalls for the Quarter horse meet and 800 stalls for the shorter Thoroughbred meet.

<sup>22</sup> Laredo Race Park asserts that LRP Group has never formally requested a waiver to the stalls requirement, which it believes precludes the approval of an exemption in this proceeding. LRP Group has, in fact, never formally filed for an exemption, and has not been clear on the formal process by which it believed it would obtain one. Nevertheless, request for exemption is noted in the application and Mr. Brown testified in support of it in his prefiled testimony, explained his rationale for it, and was extensively cross-examined on the issue. Commission staff supported consideration of the exemption request in this proceeding throughout the prehearing process, and the ALJs ruled in Order No. 10 that the exemption request could be considered in this proceeding.

<sup>23</sup> LRP Group Ex. 70 (Brown Rebuttal) p. 4-5.

<sup>24</sup> Tr. vol 9, p. 48.

<sup>25</sup> LRP Group Ex. 70 (Brown Rebuttal) pp. 16-17.

<sup>26</sup> LRP Group Ex. 70 (Brown Rebuttal) p. 5; Tr. 9, p. 56.

<sup>27</sup> Laredo Race Park Ex. 37.



Under these circumstances, LRP Group asserts that the Commission's stall rule is economically infeasible and that an exemption from its requirements should be granted. In any event, Steve LaMantia testified that LRP Group would comply with the stall rule if the Commission denied the exemption. Laredo Downs architect Guillermo Cavazos offered revised plans that he testified would accommodate up to 800 stalls at the proposed site.<sup>28</sup>

Laredo Race Park argues that the requested exemption is not allowed pursuant to the regulations. It reiterates the contentions it raised earlier in support of its motion for summary denial of LRP Group's application – that the exemption may only be requested by an “association,” and that the term “association” is defined to include only persons “licensed” under the Act. Based on these arguments, Laredo Race Park asserts that the requested exemption does not apply to applicants that have not yet become licensed.

Laredo Race Park also takes up a point first raised in Staff's post-hearing brief<sup>29</sup> that Section 6.04(d) of the Act, as amended in 1991, sets out special provisions that apply only to Class 4 racetrack license applications. Under that section, the Commission may waive or defer compliance with its standards regarding the physical facilities or operations when considering an application for a Class 4 racetrack license. Laredo Race Park observes that the Act contains no similar provisions for considering a Class 1, 2, or 3 license. Laredo Race Park asserts that, by expressing the authority of the Commission to waive requirements for Class 4 applicants, the Legislature has, by implication, excluded the Commission from waiving requirements for other classes of applicants.

In any event, even if the regulatory framework provided a means for LRP Group to seek an exemption in this licensing proceeding, Laredo Race Park and Commission staff assert that no exemption has been shown to be appropriate here. John Ferrara, Director of Racing for the Commission, testified as follows:

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<sup>28</sup> LRP Group Ex. 65 (Cavazos Rebuttal) p. 5.

<sup>29</sup> Staff Initial Brief, pp. 11-12. As addressed below, Staff has subsequently clarified that it does believe that an exemption may potentially be obtained by a Class 2 applicant.

It would be difficult to recommend a full exemption of Rule 309.243(a). Most horsemen, for economic reasons, have traditionally attempted to run more than one horse during the week or weekend. With the distance between the proposed site and training centers, such as the Retama Training Center, it does not seem feasible to travel back and forth to the track on a daily basis. Typically, the horsemen seek permission to stable on the grounds the entire week or weekend. Under these conditions, the proposed number of 240 stalls would not be sufficient. The proposed number of stalls is actually only 40% of the stalls required for the quarter horse meet and only 30% of the stalls required for the thoroughbred meet. Because of the dramatic difference between the stalls required and actually provided, in addition to the applicant's failure to demonstrate that the required number of stalls is economically or geographically infeasible or unnecessary due to new technology or an innovative construction or design of the racetrack, this waiver should not be considered.<sup>30</sup>

Laredo Race Park added that LRP Group's deficiency in stalls threatens its ability to fill a daily race card. Ann McGovern, Laredo Race Park's Vice President of Operations, testified that failure to house a sufficient number of horses on the track could result in an insufficient number of starters. She stated that, because horses can scratch, it is possible that there will not be enough horses nearby to fill the races when trainers are required to transport them daily. Ms. McGovern also testified that horses vary widely in temperament and many horses need time to calm before the races and to train on the surface.<sup>31</sup> Accordingly, Laredo Race Park urges that LRP Group's business plan would ignore the Commission rules, violate sound business judgment, and shift costs to horsemen who must find alternative stabling facilities, rather than the free stables provided when horses stable at the venue where they are racing.<sup>32</sup>

***Analysis.*** The ALJs recommend that, if a permit is issued to LRP Group, the Commission should also grant a partial exemption requiring LRP Group to construct 600 stalls rather than the 800

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<sup>30</sup> Commission Ex. 5 (Ferrara Responsive) p. 4 citing 16 TAC § 309.102(b).

<sup>31</sup> Laredo Race Park Ex. 1 (McGovern Direct) pp. 6-7.

<sup>32</sup> Tr. Vol. 9, p. 56.

required by the rule. The authority to grant an exemption in this permitting proceeding is addressed first, followed by consideration of the factual merits of the request.

The ALJs reaffirm their early earlier determination set out in Order No. 10 of this proceeding. The ALJs there determined:

The Commission has historically interpreted its rules to allow applicants to request exemptions in their applications. The Commission's interpretation of its rule is entitled to deference. In the ALJs' view, this interpretation also works the most efficient and logical result. It would be highly inefficient<sup>33</sup> and even deceptive to require an applicant with every intention of obtaining an exemption from a requirement to nevertheless present and defend its application as though it would comply with it, and to then separately file for an exemption. It is more efficient and appropriate for the applicant to be forthcoming with the exemption request in its application so that the implications of the request, if any, can be assessed at the licensing hearing. Aside from the reasonableness of the result, this approach is also consistent with wording of the rules in that, when an applicant seeks an exemption as part of the application, the applicant would become a licensed association simultaneously with the Commission's ruling on the exemption.<sup>34</sup>

Nevertheless, the ALJs acknowledge that provisions of Section 6.04(d) of the Act, raised in the post-hearing briefs, cast some doubt on this assessment for the reasons set out by Laredo Race Park and summarized above. As LRP Group points out, however, that specific authorization of exemptions for Class 4 tracks was enacted in 1991, when the Legislature created the Class 4 category of racetrack. This was after the Commission had adopted its exemption rule and made it available to several new applicants in a group of permits issued on the same day in 1989. One of those exemptions, in fact, provided a four year deferral of the stalls rule.<sup>35</sup>

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<sup>33</sup> The ALJs note that the inefficiency would be heightened with respect to large physical facilities such as hundreds of stalls in that there would seem to be no reason to apply for an exemption after the unnecessary stalls have already been constructed.

<sup>34</sup> Order No. 10, pp. 3-4.

<sup>35</sup> See *In the Matter of the Application of Lubbock Downs, Inc. for a Class 2 Pari-Mutual Racetrack License*, Commission Decision, June 19, 1989 (stalls exemption for four year initial phase of license); *In the Matter of the Application of Longhorn Downs, Inc. for a Class 2 Pari-Mutuel Racetrack License for Blanco County*, Commission Decision, June 19, 1989; *In the Matter of the Application of South Texas Race Assoc., Inc./La Bahia Downs for a Class*

The Legislature is presumed to enact legislation “with full knowledge of the existing condition of the law unless the contrary is clearly indicated.”<sup>36</sup> This includes the construction placed on a statute by administrative officers.<sup>37</sup> Although it is not entirely clear the extent to which these maxims apply to an agency’s working interpretation of its rules in uncontested licensing proceedings, the circumstances here suggest that the purpose of the new provision was to spell out waiver rights for the newly created Class 4 facilities rather than to prohibit the practice of granting exemptions to the other classes of applicants.

Additionally, the Commission’s past interpretation of its rules is entitled to deference. The Commission has long interpreted its exemption rule as being available to new applicants, and Commission staff – including the Executive Secretary – maintained that interpretation throughout the extended prehearing process for these applications. The ALJs believe that interpretation is reasonable and that to change it now and declare an exemption unavailable at the end of this process would be both inefficient and unfair to LRP Group.

Turning to the substantive merits of the exemption request, the ALJs believe it would be appropriate to grant LRP Group some limited amount of relief from the otherwise required number of stalls. As noted above, the required number of stalls is connected to the number of days of racing per week, the number of races per day, and the expected number of starters per race. LRP Group proposes separate quarter horse and thoroughbred meets.

In light of LRP Group’s proposal for a very short thoroughbred season and plan not to have overnight sleeping accommodations for horsemen, the ALJs accept in part Mr. Brown’s opinion that many trainers would simply transport their horses without stabling them at the site. Retama’s need

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*2 Pari-Mutuel Racetrack License*, Commission Decision , June 19, 1989; *In the Matter of the Application of Heart of Texas Racing, Inc. for a Class 2 Pari-Mutuel Racetrack License*, Commission Decision, June 19, 1989.

<sup>36</sup> *Allen Sales and Servicenter, Inc v. Ryan*, 525 S.W.2d 863, 866 (Tex. 1975)

<sup>37</sup> *Federal Crude Oil Co. v. Yount-Lee Oil Co.*, 52 S.W.2d 56, 62 (Tex. 1932).

for 600 or fewer stalls is also instructive. The ALJs find that the application of the stall rule would likely yield more required stalls than would actually be used. The ALJs conclude that a limited exemption from the stalls requirement is appropriate and consistent with Mr. Ferrara's concern about granting LRP Group a "full exemption" from the rule.

Additionally, as addressed in Section VII, the potential financial profitability of either track appears to be far from certain. Accordingly, the ALJs concur with LRP Group's view that unnecessary expenses must be avoided and that it is, therefore, economically infeasible to construct 200 unnecessary stalls at the track, thus satisfying the requirements for an exemption.

The ALJs recommend only a limited exemption to the stalls rule in light of the legitimate concerns identified by Mr. Ferrara and Ms. McGovern (that many trainers would prefer to bring their entire barn for the week and the lack of horses on hand could result in difficulty filling race cards), which convince the ALJs that it would be imprudent to grant the entire exemption request. Accordingly, the ALJs believe the exemption should be limited to the two hundred extra stalls otherwise required for the two week thoroughbred racing season, thus requiring the construction of 600 stalls at the track.<sup>38</sup>

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<sup>38</sup> The ALJs also note that the actual racing dates approved by the Commission would impact the number of stalls required. For example, if the Commission were to require a three week thoroughbred racing season rather than two weeks with racing on three days per week rather than four, the construction of 600 stalls would meet the regulatory requirement without the need for an exemption.

#### 4. LRP's Initial Failure to Address Required Facilities in its Application.

Laredo Race Park asserts that LRP Group's application was deficient because it failed to include a postmortem area, isolation area, treatment area, and maintenance area, all in violation of Commission rules. It is undisputed that LRP Group's initial application failed to include these facilities, or that they are required to be addressed in the application.<sup>39</sup> Laredo Race Park asserts that Mr. Brown's testimony that he simply neglected to check the requirements of Rule 309 does not cure this deficiency. The application form specifically required "a description of the facilities for race animals . . . sufficient to ensure compliance with Texas Commission Rules Chapter 309"<sup>40</sup> and that failure to answer questions in the application constitutes grounds for refusing to issue a license under Section 6.06(a)(5) of the Act.

LRP Group's witness Mr. Brown testified about the omission of these required facilities from LRP Group's application. He reviewed the following information requested in Item 4 of the Commission's application form:

Facilities for Race Animals and Licensees. Provide a description of the facilities for race animals and licensees and the plan to maintain these facilities, sufficient to ensure compliance with Texas Commission Rules Chapter 309, including but not limited to facilities for housing race animals, obtaining test specimens, lockout and pre-race holding area and paddock, racetrack chaplain, lounge areas, jockeys, racing officials, Commission and the Department of Public Safety employees.<sup>41</sup>

Mr. Brown provided the information relating to the items specifically identified in the question, but he overlooked the "but not limited to" advisory and failed to check for the other facilities required by Chapter 309 of the Commission's Rules. Accordingly, LRP Group failed to

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<sup>39</sup> Section 305.253(a), 309.207, 309.251(a), 309.252(a) of the Rules.

<sup>40</sup> Laredo Race Park Ex. 23 (Laredo Race Park Application) at 17; LRP Group Ex. 35 (LRP Group Application), at Section II. (Site and Facilities) p. 18 (LRP 000070).

<sup>41</sup> LRP Group Ex. 35, p. 18.

describe a postmortem area, isolation area, treatment area, and maintenance area, all of which are required by that Chapter.

Mr. Brown explained that he never intended to construct a racetrack without these facilities, but he simply overlooked them because they weren't itemized.<sup>42</sup> These facilities were ultimately included in the rebuttal testimony of Mr. Brown and the track architect, Mr. Cavazos.<sup>43</sup> LRP Group argues that the provision of this "clarifying detail" should be allowed and does not constitute an improper amendment to its application.

Commission Staff concurs with this assessment. Staff notes that the Commission's prior Executive Secretary issued a letter to both applicants recognizing their respective applications as "complete,"<sup>44</sup> and Staff believes that both applications "contain all of the information required for evaluation by statute and rule" and that arguments that either of the applications is incomplete should be disregarded.<sup>45</sup>

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<sup>42</sup> Tr. Vol. 9, pp. 53-55

<sup>43</sup> LRP Group Ex. 70 (Brown Rebuttal) pp. 5-7, LRP Group Ex. 65 (Cavazos Rebuttal) p. 4.

<sup>44</sup> Commission Rule 309.3(d) provides as follows:

Review of Application Documents.

(1) Not later than the 15th day after the last day of an application period, the executive secretary shall review each application submitted to determine whether the application contains all the required information.

(2) If the executive secretary determines that the application does not contain all the required information, the executive secretary shall notify the applicant in writing and state the nature of the deficiency in the application. The applicant shall submit the documents necessary to complete the application within 30 days from the date the applicant is notified of the deficiency. If the applicant fails to submit the requested documents on or before the 30th day, the Commission may elect to not consider the application.

(3) When the executive secretary determines that an application contains all the information required by this chapter, the executive secretary shall notify the applicant in writing that the application is complete.

<sup>45</sup> Staff Reply Brief, p. 9

*Analysis.* The ALJs do not believe the inadvertent omission of these facilities from the initial information provided is fatal to LRP Group's application. The application was declared complete by the Executive Secretary, and these items have now been identified and included in the record for consideration. While allowing these changes in LRP Group's proposal pushes the envelope on the sort of additional information that can be added without the need for a formal application amendment, the ALJs concur with Staff that the information should be allowed and considered in this proceeding. Otherwise, an inadvertence inspired, though not excused, by the application form, and apparently not noticed in the former Executive Secretary's initial review of the application, would be raised to the level of a fatal defect. The ALJs agree with Commission staff that this sort of procedural trap should not be read into the regulations.

This issue does, however, highlight the lack of detailed planning in LRP Group's application with respect to live race facilities for horses, as discussed in more detail in Subsection 5, below, and Section VII. This oversight should be considered in conjunction with the application's increase in the number of horse stalls from 240 to 600 or 800, as addressed in Subsection 3 above. These changes and additions to the application make more difficult the task of determining whether the size of LRP Group's 125 acre site is sufficient for all of the required facilities. This issue is also addressed in Section VI.

## **5. LRP Group's Revised Architectural Plans**

Laredo Race Park complains that revised and more detailed plans submitted by LRP Group in its rebuttal testimony are inconsistent with its original plans and would amend LRP Group's application. In addition to revisions to the number of stalls and the addition of maintenance, postmortem, isolation and treatment facilities, addressed in Subsections 3 and 4, above, Laredo Race Park complains that Mr. Cavazos also revised sight-line errors. They point out that, in his original



design, the paddock and jockeys' room significantly blocked the view of the front side chute<sup>46</sup> and the barns obstructed the view of the starting gate from the backside chute. The additional barns and other required facilities are addressed in Subsection 3 above, and Section VI, in which the ALJs find that the alternative proposal for 600 stalls should be accepted and appears to fit appropriately on the site. The ALJs find that the revisions to improve the sight lines do not rise to the level of an application amendment. They do, however, add to the general impression that LRP Group's initial application was rather hurriedly and imprecisely put together.<sup>47</sup>

#### **6. Omission of Traffic Study and Ownership information.**

Laredo Race Park continues to assert that LRP Group's application, as initially filed, was fatally defective in that it lacked the required traffic study and failed to include the necessary personal information regarding four of LRP Group's partners. For these reasons, Laredo Race Park asserts that LRP Group's application was not materially complete by the deadline of January 29, 2004. The ALJs disagree. As set out in the ALJs' order denying summary disposition on this basis, Commission Rule 309.3(d)(2) establishes a procedure for the Commission's Executive Secretary to review applications for completeness, notify applicants of deficiencies, and allow applicants to submit documents necessary to complete the application. This is the procedure followed in this proceeding with respect to those issues, pursuant to which LRP Group submitted the requested traffic flow study and personal information regarding four of its owners.

Laredo Race Park submits, however, that the Commission rule should be construed as accommodating this process only if the application originally submitted was materially complete.

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<sup>46</sup> Laredo Race Park Ex. 64 (Wilson Responsive) pp. 3-4.

<sup>47</sup> This is at least partly explained by the fact that Laredo Race Park initiated the Commission's decision to open up an application period for a Webb County racetrack. Mr. Brown first became aware of this opportunity in September or October 2003, and the application was required to be filed by January 29, 2004. It is apparent that this was a challenging time line within which to gather the required investors and experts and prepare an adequate application.

Because LRP Group's original application failed to include this information, Laredo Race Park submits that it was fatally defective.

In the ALJs' view, the rule simply does not make the distinction suggested by Laredo Race Park, and the ALJs believe it would be inappropriate to infer such a distinction in this case. No party was unfairly prejudiced by this process, and there is no indication that it was employed in bad faith or for tactical advantage. Under these circumstances, it would be inappropriate to infer the requirement suggested by Laredo Race Park or to disallow the internal application review process followed by the Commission in accordance with its rule prior to the referral of the applications to SOAH.

## **B. Laredo Race Park**

### **1. Limitation on Ownership of Other Tracks.**

Section 6.06(h) of the Act provides that "[a] person may not own more than a five percent interest in more than two racetracks licensed under this Act." It is undisputed that, as of the time of the hearing, Laredo Race Park's parent company, MAXXAM, Inc., already owned more than a five percent interest in two licensed Texas racetracks (Sam Houston Race Park and Valley Race Park). Relying on Section 6.03 of the Act, LRP Group contends that Laredo Race Park's application must be denied because it failed to meet the ownership requirements of Section 6.06(h) at the time of the hearing.

Section 6.03 provides in part:

The burden of proof is on the applicant to show compliance with this Act and with the rules of the commission. An applicant who does not show the necessary compliance is not eligible for a license under this article.<sup>48</sup>

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<sup>48</sup> Act § 6.03(g).

LRP Group also cites Section 6.04 of the Act, which provides that the Commission “may issue a racetrack license to a qualified person.” Because the Commission’s decision on this matter must be based on the evidentiary record and matters officially noticed,<sup>49</sup> LRP Group argues that Laredo Race Park has failed to show itself qualified to receive a license. Finally, LRP Group contends that issuing a license to Laredo Race Park with a condition that MAXXAM sell its interests in one of its other two tracks would present finality problems with respect to the Commission’s order.<sup>50</sup>

Laredo Race Park responds that it would never simultaneously own more than two racetracks because the prohibition relates to ownership of more than two “facilities,” not mere licenses. This, it asserts, is because the term “racetrack” is defined in the Act as a “facility that is licensed under this Act for the conduct of pari-mutuel wagering on greyhound racing or horse racing.”<sup>51</sup> Laredo Race Park asserts that, until the track is constructed, possession of a license cannot be equated with ownership of a facility, and that when the Legislature intended to limit the ability of the Racing Commission to award a license to an applicant, it specifically said so in the Racing Act.<sup>52</sup> Instead, Laredo Race Park asserts that the prohibition is directed at ownership of physical tracks and does not serve to disqualify the owner of two racetracks from eligibility to receive a license. Accordingly, Laredo Race Park believes it would be consistent with the Act for it to receive its license while it still owns two other tracks as long as it sells one of them, as it has committed to do prior to constructing its Laredo racetrack.

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<sup>49</sup> TEX. GOV’T. CODE § 2001.141(c)

<sup>50</sup> A final administrative order must leave nothing open to dispute, although certain, limited, conditions may be imposed in a final order. See *Walker Creek Homeowners Association of Ellis County v. Texas Department of Health Resources*, 581 S.W.2d 196, 198 (Tex. App.—Austin 1979, *no writ*).

<sup>51</sup> § 1.03(25) of the Act.

<sup>52</sup> Laredo Race Park points out other sections of the Act, in which there is explicit language prohibiting the Racing Commission from issuing a license in certain circumstances. For example, Section 6.06(c) states that a license “may not be issued” to an out-of-state corporation. Section 6.06(a) identifies 17 separate grounds for the Commission to “refuse to issue a racetrack license.”

Laredo Race Park also asserts that an interpretation that an owner of two racetracks could not receive a license to construct a third would present practical difficulties because such an owner would be required to divest its interest in one of its racetracks before knowing whether the Commission would issue a license for the new one. If the request for the new license were denied, the applicant could be left with only one racetrack. Laredo Race Park asserts requiring such a leap of faith by applicants would serve no legitimate purpose and is not required or intended by the regulations.

Finally, Laredo Race Park asserts that it expects that its parent company's sale of Valley Race Park will be completed and approved by the Commission before or at the same time as the issuance of the final order in this case. It has entered into a non-binding letter agreement with a potential buyer of Valley Race Park and, subsequent to the close of the hearing, the buyer has now apparently submitted the required forms for a Department of Public Safety (DPS) background check.<sup>53</sup> DPS's review, however, could apparently take anywhere from one to six months,<sup>54</sup> at which point the Commission could consider the proposed transfer of the Valley Race Park license to the buyer. Under these circumstances, Laredo Race Park asserts that any concerns regarding the two ownership requirements or the finality of the Commission's order could be resolved by the Commission's taking official notice of its approval of the sale in the final order issued in this matter.

Staff takes a middle ground on this issue. It joins LRP Group in strongly disagreeing with Laredo Race Park's assertion that the same owner could simultaneously hold more than two licenses as long as no more than two of the facilities have actually been built. As addressed below, however, Staff believes Laredo Race Park can potentially satisfy the ownership requirement by concluding the sale and obtaining Commission approval prior to issuance of the final decision in this matter.

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<sup>53</sup> Laredo Race Park and Staff both make this observation in their Replies to Closing Arguments.

<sup>54</sup> Tr. V. 10, p. 67-68.

Staff and LRP Group both urge that Laredo Race Park's perceived distinction between a "facility" and a "license" should be rejected. Staff asserts that a "racetrack" under the Act is a licensed facility and that the facility and the licensee may not be segregated during the application process. Staff asserts that the Act and the rules do not allow a racetrack applicant to be licensed without a proposed facility, and that every facility that holds live racing must be licensed.<sup>55</sup>

Staff urges that the purpose of holding a racetrack license is to conduct live racing. It observes that holding a "paper license" does not promote racing, provide jobs, generate income, create tax revenue, or serve the public interest for which the Commission granted the license. Staff asserts that the horse racing industry in Texas does not need another racetrack licensee that does not construct its proposed facility and hold live racing.

Staff does assert, however, that Laredo Race Park may *apply* for an additional license, even though its parent owns a five percent interest in two licensed racetracks and that the Commission may even *award* a license to Laredo Race Park under these circumstances, but only subject to the condition precedent that Laredo Race Park divest itself of one of its current holdings prior to formal issuance of the final written order awarding the racetrack license.

***Analysis.*** The ALJs are generally persuaded by Staff's approach to this issue, which Laredo Race Park accepts as an alternative to its primary contention that there are no limits to the number of licenses an owner may hold. The ALJs acknowledge that Laredo Race Park's interpretation of the ownership requirements is consistent with a literal reading of the statute. Setting aside policy implications for the moment, the statutory definition of "racetrack" and the normal meaning of the terms "license" and "facility" could indicate that possession of a bare license prior to construction of a physical racetrack does not violate the prohibition against an individual owning more than two racetracks. It is also possible, however, that the statutory

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<sup>55</sup> An application for a racetrack license requires a specific site to be dedicated prior to approval for licensure by the Commission. Act Section 6.03(a)(4).

definition of a racetrack as a “facility that is licensed ” is meant to include *planned* facilities that have been licensed but not yet constructed. But this broader interpretation departs from the literal meaning of the terms employed by the Legislature and fails to account for the fact that the Legislature could have prohibited ownership of more than two licenses (rather than racetracks) if that were the intention.

The policy considerations regarding this issue are important, however, and cut in both directions. In that the Legislature has determined it is appropriate for a person to own two racetracks, it would seem gratuitously bureaucratic to require an otherwise qualified applicant to reduce its ownership to one track as a prerequisite to applying for another license that it may or may not receive.

On the other hand, the ALJs are also persuaded by Staff’s contention that licenses should be connected to physical facilities that will actually be constructed. Allowing racetrack owners to speculate with an unlimited number of paper licenses would not be in the public interest.<sup>56</sup> Issuing a license to an applicant that could not build its facility until it sold an existing track would be especially inappropriate here, where there is intense competition between rival applicants for a license in a geographic area that appears capable of supporting one track at best.

Based on these considerations, and returning to the provisions on which LRP Group bases its contentions, the ALJs concur with Commission Staff that Laredo Race Park may “show compliance” with the ownership limitation based on the testimony offered at hearing that it would sell Valley Race Park, and as confirmed by Commission approval of the sale prior to or simultaneous with the issuance of the final order in this proceeding, which should officially notice that approval. At that point, Laredo Race Park would be “qualified” for licensure.<sup>57</sup> The ALJs acknowledge

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<sup>56</sup> As addressed in Section XIV, for the Commission to issue a license to either applicant, it must find “that the conduct of race meetings at the proposed track and location will be in the public interest. . . .” Act § 6.04(a).

<sup>57</sup> The ALJs, of course, make no recommendation regarding approval or disapproval of the sale of Valley Race Park. That matter has not been referred to SOAH, the DPS has not completed the required background check, and the terms of the sale and any potential issues of concern have not been identified.

that this approach effectively shields any pertinent issues relating to the sale of Valley Race Park from consideration in this proceeding. It appears unlikely, however, that any such details would be relevant here, so long as MAXXAM retains no more than five percent ownership in that track.<sup>58</sup>

## 2. Evidentiary Issues

LRP Group asserts that Laredo Race Park's application must be denied because it failed to submit competent evidence on several requirements of the Texas Racing Act, Commission rules, and the Commission's Application Form. The asserted omissions relate to the required traffic study, necessary utilities, zoning, and market profile. The ALJs disagree. These items were all addressed in Laredo Race Park's application and, as with LRP Group, the Commission's Executive Secretary certified that Laredo Race Park's application was complete.<sup>59</sup> The entire application, including these sections, was admitted into the record as a pleading, and these sections were also separately admitted, with or without restrictions. Additionally, during the hearing, Laredo Race Park submitted additional evidence addressing these elements of proof.<sup>60</sup>

The ALJs also reject LRP Group's contention that some of the proof regarding these matters was not admitted without restriction until Laredo Race Park's rebuttal case. The evidentiary rulings on these matters were made during the hearing and will not be revisited here except to

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<sup>58</sup> LRP Group argues that, even after the sale of Valley Race Park is completed and approved, Section 6.06(h) of the Act still prohibits the award of the Laredo license to Laredo Race Park because SHRP would have a management contract for Valley Race Park under the proposed terms of the sale. The ALJs concur with Laredo Race Park, however, that only ownership and not management relationships that are restricted by Section 6.06(h). Otherwise, as Laredo Race Park observes, LRP Group would potentially run afoul of this restriction by virtue of its ownership in Retama and proposed management arrangement with Valle de los Tesoros in Harlingen. (Laredo Race Park Ex. 25). Nevertheless, if, upon review of the proposed sale of Valley Race Park, the Commission determines that transaction raises issues that should be addressed in a hearing prior to final resolution, the Commission could continue final consideration of the Laredo Race Park application and refer issues relating to the proposed sale to SOAH for a hearing.

<sup>59</sup> In contrast with LRP Group's application, this was apparently done without the issuance of an initial notice of deficiency issued by the Executive Secretary.

<sup>60</sup> See Laredo Race Park Ex. 7 (Heath Direct; Laredo Race Park Ex. 20 (Puig rebuttal); Tr. Vol. 6, p. 12, Tr. Vol. 10 p. 230.

observe that LRP Group benefitted at least as much as Laredo Race Park on such matters. LRP Group was allowed to present evidence to address its postmortem, isolation, treatment, and maintenance areas in its rebuttal case even though those matters were completely overlooked in its application and direct case testimony.

#### **IV. EXPERIENCE OF EMPLOYEES**

##### **A. Laredo Race Park**

##### **1. The Laredo Race Park Management Team is Experienced in Operating a Racetrack**

##### **a. Team Members**

The Laredo Race Park will be operated by the same personnel that owns and manages Sam Houston Race Park (SHRP) in Houston, Texas, and Valley Race Park, a greyhound track in Harlingen, Texas.<sup>61</sup> The nucleus of the management team is Robert Bork, Ann McGovern, and Robert Vitek.

Robert Bork is the General Manager and President of Sam Houston Race Park. He will serve as the Laredo Race Park President. He has over 37 years of experience in operating a racetrack.<sup>62</sup> He has managed the Arlington Heights, Philadelphia Park, and Garden State Park racetracks, in addition to SHRP.<sup>63</sup>

Ann McGovern serves as the Vice-President of Operations for Sam Houston Race Park and will serve in that same capacity for Laredo Race Park. She is responsible for managing the operations of the racing facility. Ms. McGovern has been involved in the racing industry for over

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<sup>61</sup> Sam Houston Race Park is a Class 1 horse racetrack.

<sup>62</sup> Laredo Race Park Ex. 6 (Bork Direct) p. 2; Tr. Vol. 3, pp. 196-197.

<sup>63</sup> Laredo Race Park Ex. 6 (Bork Direct) p. 3.



twenty-two years.<sup>64</sup> She completed the Racetrack Industry program at the University of Arizona in 1983 and became the Assistant Director of Public Relations and Marketing for Louisiana Downs in Bossier City, Louisiana. She was the Director of Operations at Remington Park in Oklahoma City and joined Sam Houston Race Park in 1994 as the Vice President of Operations.<sup>65</sup>

As Vice President of Operations for Sam Houston Race Park, Ms. McGovern oversees mutuels, admissions, track maintenance, racing, food and beverage services, retail sales, parking, security, and facilities management. She works with the Racing Secretary to balance purse funds for horsemen and ensure that the distribution of handle complies with Commission requirements. She communicates with horsemen and jockeys when problems arise, oversees the racing surface to ensure that it is safe and consistent, and manages the grandstand and stable area facilities at the racetrack.<sup>66</sup>

Mr. Vitek serves as the Vice President of Finance and Chief Financial Officer for SHRP and General Manager of Valley Race Park. Mr. Vitek is a certified public accountant with eleven years' experience in the Texas racing industry.<sup>67</sup> Mr. Vitek was part of the same management team that took over the operations of Valley Race Park, Inc. (formerly known as Ladbroke Racing Corp.), a greyhound racing facility in Harlingen, Texas, that originally opened in 1990 and closed

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<sup>64</sup> Laredo Race Park Ex. 1 (McGovern Direct) p. 2.

<sup>65</sup> She is a member of a number of racing and civic organizations, including the Houston Equine Research Organization ("HERO"), Board of Directors of the Animal Welfare Council, Adopt-a-Horse program, Texas Quarter Horse Association ("TQHA"), the Horsemen's Benevolent and Protective Association ("HBPA"), Sam Houston Race Park's Chaplaincy, and the Cy-Fair Houston Chamber of Commerce. She also works with Texas A&M University to develop education seminars for track employees. *Id.*

<sup>66</sup> Laredo Race Park Ex. 1 (McGovern Direct) p. 3. "Generally speaking, it is my job . . . to keep the day-to-day operations of the track running smoothly."

<sup>67</sup> He is director and treasurer of the Houston Equine Research Organization ("HERO"), an organization that provides scholarship funds for veterinary research.

in 1995. After opening for horse and dog simulcast racing in March 2000 and live greyhound racing in December 2000, the track's handle<sup>68</sup> has increased from \$17.5 million 1995 to \$24 million in 2004.<sup>69</sup> Prior to that he was Vice-President and Chief Financial Officer of an operating subsidiary of WEDGE Group, Inc. And served as the Financial Officer for Fare Farms, Inc. An organizations with thoroughbred breeding and racing operations in Lexington, Kentucky, England and France.<sup>70</sup>

Kim Pomposelli, Sam Houston Race Park's Director of Mutuels, will become Laredo Race Park's Director of Mutuels. Her responsibilities include ensuring the accuracy and safety of betting pools for all live and simulcast races.<sup>71</sup> In addition, Dwight Berube, Director of Food Service for Sam Houston Race Park, will oversee the restaurant, concessions and catering services for Laredo Race Park.<sup>72</sup> David Hawes, Sam Houston Race Park's Director of Marketing, is anticipated to assist in marketing the Laredo Race Park. Mr. Hawes joined the SHRP in 2005 and has experience in marketing.<sup>73</sup> Eric Johnston, Racing Secretary, will also be part of the management team.<sup>74</sup> Mr. Johnston has worked for SHRP since 1994.<sup>75</sup> He has experience in overseeing facing offices, the starting gate, and jockey room operations. He has also designed written competitive stakes schedules and conditions forecasts, and has balanced purse funds. He has experience in

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<sup>68</sup> "Handle" refers to the total amount of wagers on live and simulcast racing. Laredo Race Park Ex.4 (Vitek Direct), p. 8

<sup>69</sup> Laredo Race Park Ex. 4 (Vitek Direct), pp. 11-12.

<sup>70</sup> Laredo Race Park Ex. 4 (Vitek Direct), p. 3

<sup>71</sup> Ms. Pomposelli also oversees the mutuels department at Valley Race Park. *Id.* at 19-20. She has worked in the racing industry for over twenty years, including the Birmingham Race Course, Trinity Meadows, Raleigh Park and Bandera Downs. *See also* Laredo Race Park Ex. 6 (Bork Direct) at Ex. BB-03.

<sup>72</sup> Laredo Race Park Ex. 1 (McGovern Direct) p. 18. Mr. Berube has more than thirty years' experience in food and beverage operations. *Id.* at 19.

<sup>73</sup> *Id.* at 20-21.

<sup>74</sup> Laredo Race Park Ex. 6 (Bork Direct), p. 9.

<sup>75</sup> Laredo Race Park Application, Laredo Race Park Ex. 23 at Ex. R. p. 2.

communicating with horsemen. According to Ms. McGovern, these individuals are very experienced and have assisted her in making sure that the daily operations of SHRP run smoothly.<sup>76</sup>

### **b. Reputation of Team Members**

Christopher Scherf provided testimony in support of the Laredo Race Park management team.<sup>77</sup> Mr. Scherf is the Chief Executive Officer of the TRA. He has over twenty-five years' experience in the thoroughbred racing and pari-mutuel wagering industry.<sup>78</sup> He is familiar with Robert Bork and Ann McGovern and believes them to be two of the most skilled and well-respected racing executives in the industry.<sup>79</sup> Mr. Scherf testified that they have played key roles in ensuring racing quality in Texas and have successfully operated racetracks in Texas.

As noted by Mr. Scherf, Mr. Bork was involved in the creation of Equibase, a database that maintains and disseminates information on the performance of horses, improving the quality and amount of information available to patrons.<sup>80</sup> Mr. Bork chaired the "1995 Committee," a group that addressed merged pool simulcasting.<sup>81</sup> He has also played a leadership role in the Thoroughbred Racing Protective Bureau, an investigative agency formed to respond to integrity issues in the racing industry.<sup>82</sup> According to Mr. Scherf, Mr. Bork worked hard at Sam Houston

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<sup>76</sup> "Their efforts affect the profitability and reputation of Sam Houston Race Park as a multi-purpose business and entertainment center. I expect their talents will also benefit Laredo Race Park, making the proposed racetrack a pleasant place for patrons, businessmen and racing industry professionals." *Id.* at 22.

<sup>77</sup> Laredo Race Park Ex. 2 (Scherf Direct). The Thoroughbred Racing Associations ("TRA") is an organization of member racing associations and is instrumental in establishing programs beneficial to the racing industry. *Id.* at 2.

<sup>78</sup> *Id.* at 1.

<sup>79</sup> *Id.* at 4.

<sup>80</sup> *Id.* at 5.

<sup>81</sup> Mr. Bork continues to chair that committee, now known as the "2020 Committee." *Id.* at 6.

<sup>82</sup> *Id.* at 6-7.

Race Park to make it a successful operation and was extremely successful in promoting simulcasting events at the park.

Mr. Scherf has known Ann McGovern since the 1980s. He said that she was well-respected and exceedingly capable at managing a racetrack facility's operations.<sup>83</sup> Mr. Scherf was very complimentary about Ms. McGovern's management of Sam Houston Race Park during financially troubled times when she proved herself to be a strong leader. He noted that she is one of the few women in upper management at racetracks. She also participates in TRA's 2020 Committee, the successor to the "1995 Committee" that Mr. Bork chairs.

## **2. Operating Strategy of the Management Team**

Mr. Bork testified that the operating strategy by management for Laredo Race Park will be guided by two goals: (1) to increase the quality of racing in Texas, and (2) to conduct increasingly profitable operations. The first goal will be achieved through steady increases in purse funding and payments, an attractive racing schedule and featured stakes races and maintaining positive relationships with owners, trainers and breeders. The second objective will be achieved by using profits to provide a return on invested capital and to fund improvement and expansion in the facilities and attractions, while keeping tight control over expenses.<sup>84</sup> In addition, the track will have charitable events, just as the management team does at SHRP and Valley Race Park.<sup>85</sup>

Mr. Bork believes that the experience from SHRP is particularly significant in terms of an operating strategy for Laredo Race Park. The principal sources of revenue are: (1) net pari-mutuel commissions earned through live thoroughbred and quarter horse racing and (2) simulcast racing as both a guest and host track. Other sources of revenue come from food and beverage sales, admission

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<sup>83</sup> *Id.* at 8.

<sup>84</sup> Laredo Race Park Ex. 6 (Bork Direct) p. 13.

<sup>85</sup> Tr. Vol. 3 (Bork Re-Direct) pp. 189-190.

and parking fees, and other miscellaneous items.<sup>86</sup> In addition, efforts will be made to develop the park as an entertainment center by incorporating concert series, promotional events, expanded forms of dining experiences, and other group events into the regular racing program.<sup>87</sup>

When Mr. Bork joined SHRP, its initial racing program and operating profile was based almost entirely on live racing. It was assumed that the handle from live racing would fund required purses on an ongoing basis, and that the operating revenues from commissions on live handle were sufficient to support operations. However, neither assumption proved to be correct. The racing patrons did not wager amounts sufficient to provide the purses necessary to support quality racing, and the low handle adversely affected the track's finances. When Mr. Bork assumed management responsibility, the operating strategy changed its focus to guest simulcasting, which was still in its infancy throughout the industry. Simulcasting allowed the patrons to have exposure to national quality racing, and its handle provided a build-up of purse accounts that could be used to supplement future purses.<sup>88</sup>

As a result of the efforts of Mr. Bork and the management team, the guest simulcasting at SHRP increased from negligible amounts in 1994 to \$82 million in 1995 to \$117.5 million in 2004. Management worked hard to increase purses, dramatically improving the racing product for both breeds. The team has worked with horsemen's organizations in joint marketing, attracting better stables and developing signature events.<sup>89</sup>

Mr. Bork highlighted the success of Sam Houston Race Park, asserting that in 2004, the park conducted 72 days of live thoroughbred racing and 95 days of live quarter horse racing, producing

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<sup>86</sup> Laredo Race Park Ex. 6 (Bork Direct), p. 12.

<sup>87</sup> *Id.*; see also Tr. Vol 3 (Bork Cross), pp. 167-68. “[We] ant to be a part of the community. And to be part of the community, you have to be active into the community and bring people out to the facility.” The Commission requires to charity days per year. The track would chose a charity in the Laredo area.

<sup>88</sup> Laredo Race Park Ex. 6 (Bork Direct), pp. 15-16. “Simulcasting” refers to the transmission of a TV signal from one track to another for the purpose of wagering at the receiving tracks on races run live at the sending track.

<sup>89</sup> *Id.* at 22.

an “on-track” handle of \$136,972,787. The export handle for 2004 totaled \$173,734,787. Additionally, total attendance was up by 10.98 per cent from 647,945 in 2003 to 719,070 in 2004.<sup>90</sup>

Due to the monies received through simulcasting, SHRP was able to resist the trend toward shorter meets. Additional monies were able to be used in advertising and promotional campaigns to increase attendance for live racing. Fan education was emphasized in order to convert attendance growth into handle growth. The track also participated in several charitable events. Further, the track broadened its entertainment appeal by offering country and western concerts. SHRP attracted a series of high-tech trade shows to use its facility.

Another change made at SHRP was to adjust the thoroughbred racing program to a winter schedule, attracting fuller fields and a higher quality of racing from horses recruited from northern tracks. The management team reached out to Texas breeders and owners to encourage them to “race at home.”<sup>91</sup> The team invested in a quality racetrack surface that was designed by Dennis Moore, a respected consultant in the industry. SHRP has a history of safety and consistency on both the dirt and turf tracks.

### **3. Experience in Constructing and Opening Racetracks**

Mr. Bork was directly involved in the development and construction of Philadelphia Park.<sup>92</sup> Mr. Bork has had experience in communicating the design needs of a racetrack to an architect<sup>93</sup> As noted by Mr. Bork, constructing a new racetrack involves many decisions regarding construction, furniture, fixtures, equipment within the facility including finishes and equipment for the track, such

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<sup>90</sup> *Id.* at 10. Mr. Brown of LRP Group disputed Mr. Bork’s assertions related to total attendance increasing at SHRP. He noted that SHRP had 41 more live race dates in 2004 as compared to 2003 due to the Breeder’s Cup being held at Lone Star Park that year, affecting the other tracks’ racing schedules and attendance. *See* LRP Group Ex. 7 (Brown Responsive), pp. 2-3.

<sup>91</sup> *Id.* at 17-18.

<sup>92</sup> Tr. Vol. 6 (Bork Cross), p. 81. Philadelphia Park is located in Bensalem, Pennsylvania, and it is a thoroughbred track.

<sup>93</sup> Tr. Vol. 3 (Bork Cross), p. 161.

as trucks, tractors and graders.<sup>94</sup> He testified that experience is important in these types of capital investments because they ultimately determine the quality of the facility.<sup>95</sup>

Mr. Bork and Mr. Vitek were involved in the renovation and reopening of Valley Race Park. Valley Race Park had been closed for five years when Mr. Bork urged the directors of MAXXAM, to provide the capital investment needed to renovate and re-open the track. The MAXXAM board agreed. After renovations were completed, Valley Race Park re-opened in 2000 and continues its operations today.<sup>96</sup>

#### **4. Experience in Marketing in a Border Area**

Mr. Bork testified that Valley Race Park heavily marketed the greyhound track across the border into Mexico, and has successfully in attracted people from across the border to attend the track.<sup>97</sup> Part of the marketing efforts included sending employees to trade shows and other events held in Mexico, advertising heavily in newspapers across the border, utilizing television and radio across the border, and distributing mailings and brochures that advertise the track.<sup>98</sup>

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<sup>94</sup> Tr. Vol. 6 (Bork Direct), pp. 180-81.

<sup>95</sup> Tr. Vol. 6 (Bork Direct), pp. 181-82.

<sup>96</sup> As discussed in Section \_\_\_\_\_, one of the two tracks, SHRP or Valley Race Park, would have to be sold before Laredo Race Park can receive a license.

<sup>97</sup> Tr. Vol. 3 (Bork Cross), p. 164. According to Mr. Bork, Valley Race Park showed an increase in its attendance and handle.

<sup>98</sup> *Id.* at 191-92.

**B. LRP Group****1. The LRP Group Management Team is Experienced in Operating a Racetrack****a. Team Members**

LRP Group has contracted with Retama Entertainment Group, Inc., to manage and operate Laredo Downs.<sup>99</sup> Retama Entertainment Group currently manages Retama Park, a Class 1 racetrack located near San Antonio. The Retama Entertainment Group management team consists of: Bryan Brown, Lisa Medrano, Steven Ross, Angela Cooper,<sup>100</sup> Richard Cole,<sup>101</sup> Doug Vair,<sup>102</sup> and Robert Pollock.<sup>103</sup>

Mr. Brown has served as the CEO and President of Retama Entertainment Group, Inc., since 1997.<sup>104</sup> He has more than twenty years of business and management experience in banking, finance, real estate, and horse racing, with nine years experience specifically in the racing industry.<sup>105</sup> Mr. Brown has managed and operated the Retama Race Park since 1997.<sup>106</sup>

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<sup>99</sup> Tr. Vol. 2, p. 114, B. Brown testimony; LRP Group Ex. 35; LRP Group Application; LRP Group Ex. 37; S. LaMantia direct pp. 3-4.

<sup>100</sup> Human Resources Director of Retama Entertainment Group, Inc.

<sup>101</sup> Director of Security of Retama Entertainment Group, Inc., since 1998. He has worked with security at Retama Park Racetrack in various positions since 1995.

<sup>102</sup> Director of Publicity and Marketing Director of Retama Entertainment Group, Inc., since 1995. Mr. Vair was raised in Laredo, Texas.

<sup>103</sup> General Manager of Retama Entertainment Group, Inc. He has forty-six years' experience in the racing industry and has served as a Racing Secretary, Assistant Racing Secretary, Placing Judge, Steward, and Director of Racing. LRP Group Ex. 35; LRP Group Ex. 7 (Brown Responsive) at BB-01.

<sup>104</sup> LRP Group Ex. 7 (Brown Responsive) p. 1; LRP Group Ex. 61 (Brown Direct) p. 1.

<sup>105</sup> LRP Group Ex. 7 (Brown Responsive) Ex. BB-01.

<sup>106</sup> LRP Group Ex. 61 (Brown Direct) pp. 4-5. In 1996, Mr. Brown was a representative of Call Now, Inc., the majority holder of bonds originally issued by the Retama Development Corporation to finance construction of Retama Park. When Retama Development Corporation declared Chapter 9 bankruptcy, he was involved in ensuring that the bankruptcy plan was acceptable. The Retama Development Corp. emerged from bankruptcy in 1997. At that time, the



Mr. Brown will oversee the construction of the Laredo Downs facility, including the planning and design phase. He will also be involved in planning the non-racing amenities, such as the restaurant and clubs at Laredo Downs.<sup>107</sup> Mr. Brown plans to draw upon his experience in real estate development and racetrack operations to “ensure that Laredo Downs will be designed and constructed to maximize efficiency and market enjoyment.”<sup>108</sup> Mr. Brown testified that there will be an onsite manager at Laredo Downs who will report to him.

Lisa Medrano has been the Chief Financial Officer of Retama Entertainment Group, Inc. since 1995. She is a former audit manager with KPMG Peat Marwick.<sup>109</sup> She is responsible for all accounting and financial areas for Retama Park.

Steven Ross has been the Director of Simulcasting of Retama Entertainment Group, Inc. since 1994. He is responsible for all aspects of simulcasting, including acting as the liaison between the sending and receiving tracks and the Retama departments that handle mutuels, tote, uplink, the racing office, and publicity. He has been involved in the horse racing industry since 1984.<sup>110</sup>

### **b. Experience of LRP Group Partners**

In addition to its managers, LRP Group’s partners have experience in the horse racing industry and operating a business in Laredo. Two of the partners, Larry Craft and Bob Pollock, each have over forty years’ experience in the racing industry.<sup>111</sup> Sam Phelps and Paul Bryant have

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Retama Park Management Company was responsible for the racing operations and Mr. Brown became president and CEO of Retama Park Management Company in July 1997. In December 1997, the Retama Entertainment Group, Inc. was formed. It was awarded the management contract for Retama Park by the Retama Development Corp. and Mr. Brown became president and CEO of the Retama Entertainment Group, a position he still holds. The Retama Entertainment Group also performs management duties with other businesses. *Id.* at 5.

<sup>107</sup> LRP Group Ex. 61 (Brown Direct) p. 8.

<sup>108</sup> LRP Group Ex. 61 (Brown Direct) p. 8.

<sup>109</sup> LRP Group Ex. 46 (Medrano Direct).

<sup>110</sup> LRP Group Ex. 53 (Ross Direct) pp. 1-2. He has previous experience as Director of Simulcasting at Garden State Park in Cherry Hill, New Jersey, and was the Customer Service Manager at the Daily Racing Form, Inc.

<sup>111</sup> LRP Group Ex. 7 (B. Brown Responsive).

operated Gulf Greyhound Park, Bluffs Run, and C'oeur d'Alene Race Park.<sup>112</sup> Larry Christopher is a former chairman of the Texas Racing Commission and has knowledge of the racing industry and the horse racetracks, including successes and failures, in Texas.<sup>113</sup>

Steve LaMantia, President of LRP Group, has resided in Laredo since 1990 when he purchased the local Budweiser distributorship that he currently owns and operates with his family. He serves as the manager of the distributorship and plans to continue to operate that business even if Laredo Downs receives a license from the Commission.<sup>114</sup> Mr. LaMantia is a member of a family partnership, Muy Buena Suerte, a partner in the LRP Group.<sup>115</sup>

Mr. LaMantia testified that he did not have experience in the beer distributorship business before taking it over. Nonetheless, the business has grown from a 20 percent market share to an 80 percent market share in less than twenty years under his management.<sup>116</sup>

Mr. LaMantia testified that the distributorship business has been very involved in the community and that Laredo Downs would be used for charitable fund-raising, civic events and as a venue for other entertainment events.<sup>117</sup>

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<sup>112</sup> LRP Group Ex. 7 (B. Brown Responsive) p. 2.

<sup>113</sup> *Id.*

<sup>114</sup> *Id.* at 188. According to Mr. LaMantia, he intends to provide Budweiser products to whatever racetrack is ultimately opened in Laredo. *Id.* at 189-90.

<sup>115</sup> Tr. Vol. 2 (S. LaMantia Cross) pp. 187-189; Muy Buena Suerte is the majority partner in LRP Group.

<sup>116</sup> Tr. Vol. 2 (S. LaMantia Cross) p. 229.

<sup>117</sup> LRP Group Ex. 37 (S. LaMantia Direct) p. 5; Tr. Vol. 7 pp. 44-45.

Mr. LaMantia admitted that he did not know much about horse racing or horse racetracks. He testified that he has been to Retama Race Park, but has not been to any of the other Class 1 or Class 2 racetracks in Texas.<sup>118</sup> He is not familiar with the specific Commission requirements for a racetrack facility. Despite his lack of experience in the racing industry, he said that he felt comfortable about getting involved in racing so long as he had the support of the Retama Park personnel who did have the needed racing experience.<sup>119</sup>

Most significantly, according to LRP Group, it has included within its partner group members who have a variety of experience in the racing industry, horse industry, and local Laredo community. According to Mr. Brown, the partnership was deliberately created so that it could benefit from the input of experienced people, thereby increasing the potential to operate a successful racetrack.<sup>120</sup>

**c. Marketing in a Border Area**

The LRP Group contends that a knowledge of, and familiarity with, the culture of Laredo is critical to the success of any racetrack located there. According to Mr. LaMantia, owning and operating a successful business in the Laredo area, particularly one that relies on entertainment for revenue, requires a flexible business model. This model does not contain too much overhead and must allow the business to survive unexpected events, including local security issues and the devaluation of the peso.<sup>121</sup> He testified that the success of the distributorship business is attributable to his family's involvement and participation in the community and the business relationships they have made.

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<sup>118</sup> Tr. Vol. 2 (S. LaMantia Cross), p. 188.

<sup>119</sup> Tr. Vol. 2 (S. LaMantia Cross) p. 232.

<sup>120</sup> LRP Group Ex. 7 (Brown Responsive) p. 2.

<sup>121</sup> LRP Group Ex. 37 (S. LaMantia Direct) pp. 2-3.

Sammy Jackson, the Commission's Deputy Director of Finance and Regulatory Control, confirmed the importance of attracting patrons from the Nuevo Laredo area.<sup>122</sup> He asserted that the applicants' attendance estimates are viable only if they include patrons from the Nuevo Laredo area.<sup>123</sup>

**d. Reputation of Managers/Partners**

Ann McGovern, a witness for Laredo Race Park, testified that Bryan Brown is a very competent manager of Retama Park.<sup>124</sup> Dr. Charles Graham, an investor in LRP Group, testified that he knows the Retama management team well and believes them to be competent, of high character, and possessing honesty and integrity.<sup>125</sup>

Orlando Navarro testified that the LaMantia family has been involved in a number of Laredo community events and that the family has a reputation of strong community service, honesty, and charity with both time and money.<sup>126</sup>

**2. Management Operating Strategy**

According to Mr. Brown, Retama Park was in bankruptcy when he began managing the track and it now operates at a profit.<sup>127</sup> He intends to operate Laredo Downs similarly to Retama Park, but

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<sup>122</sup> Tx.R.C. Ex. 7 (Jackson Responsive) pp. 4-5; Tr. Vol. 10 (Jackson Clarifying) pp. 282-286. "[T]hey better know what they're doing when it comes to marketing to them, catering to them and getting them into that facility." *Id.* at 284.

<sup>123</sup> Tx.R.C. Ex. 7 (Jackson Responsive) pp. 4-5; Tr. Vol. 10 (Jackson Clarifying) pp. 282-286.

<sup>124</sup> Tr. Vol. 1 (McGovern Cross ) p. 88.

<sup>125</sup> Dr. Graham, a veterinarian, is the owner/operator of Southwest Stallion Station in Elgin, Texas, an equine breeding center and brood mare farm. Dr. Graham has extensive experience in the racing industry and practiced veterinary medicine at numerous Texas racetracks: Columbus Racetrack, Brady Racetrack, Fredericksburg Racetrack, and Life Downs track near Laredo. LRP Ltd Ex. 52 (Dr. Graham Responsive) pp. 2, 5.

<sup>126</sup> LRP Group Ex. 10 (Navarro Direct) pp. 4-5.

<sup>127</sup> LRP Group Ex. 61 (Brown direct) p. 6.

he intends to use his Retama experience in the design and construction of the facility to maximize efficiency and market enjoyment. Mr. Brown will have oversight of the on-site general manager and will primarily concentrate on strategic issues. He will closely monitor the performance of the operation.<sup>128</sup>

Mr. Brown testified that he helped to institute many changes at Retama in order to improve its financial position. These included: (1) focusing on customer service; (2) allocating resources toward marketing, emphasizing a family-friendly atmosphere; (3) reconfiguring the facility, including adding a sports bar, players club, and new private club; (4) improving the facility to make it more comfortable for patrons; and (5) improving the quality and pricing of food and beverage service. Additionally, he said that the management team budgeted conservatively on the revenue side and aggressively in projecting expense reductions. As a result, Retama Park reported earnings before interest of more than \$1,300,000 in 1998.<sup>129</sup>

Additionally, Mr. Brown stated an intention to work closely with city government and the local community, just as the team does for Retama Park. Mr. Brown noted that it is important to work with horsemen as partners by maintaining credibility with them, supporting the legislative issues they face, and providing the kinds of races the horsemen want to participate in. Further, the team makes sure that the track surface and barn area are in excellent condition so as to be hospitable to horsemen.<sup>130</sup> As he stated, “Everything from our live race dates, simulcasting, management and purse structure to our safety plan will be operated to ensure the safety and comfort of all who attend Laredo Downs.”<sup>131</sup>

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<sup>128</sup> LRP Group Ex. 61 (Brown direct) p. 6.

<sup>129</sup> LRP Group Ex. 61 (Brown Direct) p. 6.

<sup>130</sup> *Id.* at 7.

<sup>131</sup> LRP Group Ex. 61 (Brown Direct) p. 24.

### C. Commission Staff

Staff notes that both applicants will rely upon a management staff with extensive racing experience. In Staff's opinion, neither applicant holds an advantage over the other one with respect to this factor.<sup>132</sup>

*Analysis.* The ALJs agree with Staff that the management team for each applicant has sufficient experience to operate a Class 2 racetrack in Laredo.

However, the ALJs conclude that the Laredo Race Park management team's broader base of experience from a number of racetracks in the United States gives them an advantage. First, Mr. Bork has been involved with the actual construction of the Philadelphia Park racetrack. His experience in working with racetrack architects and engineers gives him familiarity with construction issues unique to a racetrack. Ms. McGovern, is experienced as a veteran racetrack operations manager, who similarly adds to Laredo Race Park's advantage. Although LRP Group's Mr. Brown may be able to draw upon the collective experience of his partnership group, the ALJs were not convinced that all the partners will continue to remain in the group.<sup>133</sup> As a consequence, LRP Group's experience relies upon Mr. Brown and his experience has been gained at only one racetrack, albeit a successful one.

Second, Laredo Race Park's Mr. Bork has almost twice the number of years of experience in running a racetrack as Mr. Brown. Although Mr. Brown is a competent racetrack manager, Mr. Bork's thirty-seven years of experience at multiple racetracks gives Laredo Race Park an advantage.<sup>134</sup>

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<sup>132</sup> Staff's Closing Brief, p. 6.

<sup>133</sup> See Section IIIB (partners' ownership levels depend on the degree to which they respond to capital calls).

<sup>134</sup> Mr. Bork noted that neither Steve LaMantia nor Greg LaMantia, President and Vice-President of LRP Group respectively, has practical experience in racetrack management or operations or in the gaming industry. Mr. Bork claims that the lack of experience by the LaMantias will negatively affect the success of Laredo Downs. While the LaMantias' lack of experience in racetrack operations was conceded, the evidence demonstrated that the management of the racetrack

Third, the Laredo Race Park management team knows how to run a business in Webb County. The ALJs are mindful that Steve LaMantia was not a resident of Laredo until he moved there in 1990. He testified that he did not believe that being an out-of-towner was problematic in the business.<sup>135</sup> The Laredo Race Park team has successfully operated the Valley Race Park in Harlingen, Texas, since 2000,<sup>136</sup> particularly due to Mr. Bork's marketing efforts.<sup>137</sup> This evidence indicates that the management team has actual experience in marketing a racetrack in a border region, experience that LRP Group does not have. The ALJs do not conclude that a racetrack's success depends primarily on whether one is considered to be a "local" member of the community.

Fourth, the Laredo Race Park management team (and the managers of Sam Houston Race Park and Valley Race Park) has operated under the control of MAXXAM, Inc. and there was no evidence that the decisions relating to SHRP's and Valley Race Park's management were dictated by the corporate owner. This past history provides important evidence of what can be expected from the MAXXAM corporation in terms of continued support to a racetrack's operations. Consequently, considering the evidence as a whole with regard to this factor, the ALJs believe that Laredo Race Park has shown an advantage over the LRP Group with respect to the experience of its management team and ownership.<sup>138</sup>

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would come through the Retama Entertainment Group, Inc., which manages the Retama Race Park. Consequently, the LaMantias' lack of experience was not *per se* a conclusive factor.

<sup>135</sup> Tr. Vol 2 (S. LaMantia Cross) p. 192

<sup>136</sup> LRP Group contends this track has not been successful.

<sup>137</sup> Tr. Vol. 3 (Bork Re-Direct) pp. 192-193.

<sup>138</sup> However, the LaMantias are the President and Vice-President of the LRP Group and, as such, will exercise decision-making control over the racetrack. While it is likely they would defer to the Retama Entertainment Corp. manager for management decisions, they have the ability to make substantive decisions regarding all aspects of the track's operations. Because the LRP Group is a relatively new operation, there is no track record to look to for guidance as to whether the management company will be, in fact, allowed to manage the track as desired. As noted by Laredo Race Park, the ownership percentage of the LaMantia family in LRP Group has increased since LRP Group filed its application and may continue to do so as Muy Buena Suerte responds to cash calls on behalf of non-contributing partners. Laredo Race Park asserts that Mr. LaMantias increasing financial risk coupled with his inexperience in racing creates a dangerous combination. The ALJs do not know whether this truly creates a dangerous combination as suggested. However, they are mindful that the LRP Group is a new partnership and does not have prior business ventures that can be looked to for evidence of their working success or operational decision-making. Laredo Race Park's Initial Brief,

## V. FACILITIES FOR PATRONS AND OCCUPATIONAL LICENSEES

As addressed in the introduction, the competing applications are a study in contrast regarding the size and scope of the proposed facilities. Laredo Race Park plans a larger facility including a 120,000 square foot air-conditioned grandstand with more than 1,500 table and tiered seats and standing areas from which patrons could watch both live and simulcast racing. The indoor facilities would include two concession areas, five bars, a TV lounge with over 1,500 feet of floor space and a 50-foot long video/TV wall. The facility would include 3,600 parking spaces for patrons.

LRP Group proposes a much smaller and less costly facility. Patron facilities for live racing would include a covered, outdoor grandstand with a capacity of approximately 1,035, additional bleacher seating for 175 with a view of the paddock area,<sup>139</sup> and standing room on a 20,000 square foot apron.<sup>140</sup> The centerpiece of LRP Group's proposed facility is a 25,000 square foot air-conditioned simulcast building with a capacity to hold up to 300 simulcast patrons.

In terms of facilities for occupational licensees and state officials, both applicants would provide appropriate facilities for a Racing Commission office and Steward's office. Both would provide the required facilities for jockeys, and Laredo Race Park would add saunas and bunks. Laredo Race Park also plans to provide sleeping accommodations and access to a low-cost track kitchen for up to 300 grooms and other licensees.<sup>141</sup>

The discussion below first summarizes LRP Group's critique of the Laredo Race Park proposed facilities and a summary of Laredo Race Park's response. Following that, a summary

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pp. 28 - 29.

<sup>139</sup> LRP Group Ex. 40 (Cavazos Direct) at 4.

<sup>140</sup> Tr. Vol. 7, p. 101.

<sup>141</sup> Tr. Vol. 6, pp. 176-77.



is provided of Laredo Race Park's critique of LRP Group's proposed facilities along with a summary of LRP Group's response. The ALJs' analysis of both applicants' facilities is provided following these summaries. As a preview to that analysis, the ALJs find that, while there is room for concern that either track could operate profitably, the Laredo Race Park's proposal offers substantial benefits to live racing patrons and licensees not contained in the LRP Group proposal.

#### **A. LRP Group's Critique of Laredo Race Park**

LRP Group views Laredo Race Park's proposal as out of proportion to the market and the community. LRP Group hypothesizes that the facility is intentionally overbuilt to accommodate the installation of video lottery terminals (VLTs) that are currently not legal in Texas.

Along these lines, LRP Group points out that Laredo Race Park's proposed paved parking lot is designed to hold 3,600 vehicles, which it views as excessive to accommodate its projected average daily live attendance of 3,000 for the first year and for any peak crowd that it believes could reasonably be anticipated for live racing. It also points out that approximately one-quarter of the site, situated between the access road and the parking lot, is "not being used" according to the present design<sup>142</sup> and that the spacious and unfurnished second story of the simulcasting facility would be ideally positioned for the installation of VLTs or other gaming devices, were they to become legal at racetracks.

LRP Group asserts that this would not be the first time that a racetrack was overbuilt on the hope that an additional form of gaming would be legalized. Gil Short, a racetrack designer who testified for LRP Group, stated that Indiana Downs is currently suffering from financial difficulties precisely because it was constructed in anticipation of the legalization of VLTs, which has not occurred.<sup>143</sup> Likewise, with no indication in the record that VLTs will become legal at

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<sup>142</sup> Laredo Race Park Ex. 23, p. 8 of Exhibit O to Laredo Race Park Application

<sup>143</sup> Vol. 7, p. 169, 171. testimony of Gil Short

Texas racetracks in the foreseeable future, LRP Group asserts that Laredo Race Park's proposed facility is oversized toward no viable end and would likely never be built.

Aside from its VLT hypothesis, LRP Group also argues that the Laredo Race Park site is on an unfortunately shaped piece of land. As can be observed on Attachment 2, the site is nearly four times as long as it is wide (up to about 6,200 feet long approximately 1,600 feet wide.) LRP Group notes that Laredo Race Park's own architect, Gary Wilson, observed that the site was not ideally shaped and suggested that Laredo Race Park attempt to obtain additional road frontage to improve the configuration.<sup>144</sup> (The site frontage is at an angle along the narrow southern boundary.) Laredo Race Park, however, was unable to purchase the additional frontage.

LRP Group also asserts that the long and narrow site allows for only one roadway linking the back of the site with the front. Because the barns would be located in the back of the site, all horse truck traffic would have to be routed directly in front of the entrance to the grandstand along the eastern edge of the site. LRP Group suggest that this configuration will cause major traffic congestion problems.

Finally, LRP Group observes that it is approximately 1/3 mile from the access road to the Laredo Race Park parking lot and approximately 2/3 mile from the access road to the closest portion of the clubhouse. LRP Group contends this distance will make it hard or impossible to see the facility from the road and would reduce the racetrack's curb appeal.

With respect to facilities for licensees, LRP Group again asserts that Laredo Race Park plans to overbuild. However, with respect to living accommodations for licensees, LRP Group acknowledges that such facilities may be necessary for Laredo Race Park because that track would be located approximately fourteen miles from the hotel district, whereas the LRP Group's facility

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<sup>144</sup> Tr. vol. 1, p. 162, testimony of G. Wilson; Ex. LRP Group 1, e-mail).

would be closer in and have better access to accommodations.

Laredo Race Park responds that its proposed grandstand and simulcast building is modeled after Valley Race Park in Harlingen. It asserts that the facility is attractive, designed for comfort, and based on a plan that has succeeded in South Texas. Mr. Wilson, the Laredo Race Park track architect, testified that the public facilities at Valley Race Park (which is far smaller than Retama or Sam Houston) worked well and that the buildings there were sized appropriately for the crowds expected in Laredo. As a result, the facility in Harlingen was chosen to serve as a model for the Laredo facility.<sup>145</sup>

With respect to LRP Group's suspicion that the Laredo Race Park facility is really all about VLTs, Laredo Race Park acknowledges, "It is not a secret that passage of VLTs by the Legislature would be economically favorable to racetracks in Texas," and points out that the LaMantias are, in fact, part of a group working to get VLTs approved.<sup>146</sup> Laredo Race Park insists, however, that its facilities are, in fact, designed to accommodate other financially viable and currently legal purposes. It points out that both Valley Race Park and Sam Houston Race Park have meeting rooms designed for group business, and both were constructed long before the current interest in VLTs. Mr. Bork testified that the second level of Laredo Race Park was similarly designed to attract small trade shows, conventions, and business meetings.<sup>147</sup> Laredo Race Park asserts that such facilities have been integral to the success of Valley Race Park and Sam Houston Race Park.

Laredo Race Park also disagrees that its paved parking lot is oversized. It observes that LRP Group provided no evidentiary basis to correlate the number of vehicles with the expected number of customers, observing that many of the patrons would likely be driving large trucks.

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<sup>145</sup> Laredo Race Park Ex. 3 (Wilson Direct) pp. 4-5.

<sup>146</sup> See Laredo Race Park Ex. 33 (Letter from Greg LaMantia to LRP Group investors describing legislative efforts of the Coalition of Racetracks).

<sup>147</sup> Tr. Vol. 3 pp. 167-68.

Finally, Laredo Race Park asserts that the incremental cost of a few hundred more parking spaces is small in comparison with the detrimental effect of turning away patrons who seek to come to a major racing event.

Laredo Race Park asserts that traffic congestion in the parking lot would not be a problem. It observes that patrons can access the site at three different entrances and, because of ample parking, park near the grandstand.<sup>148</sup>

Laredo Race Park also dismisses criticism that it is overbuilding by providing sleeping accommodations to licensees. It points out that Mr. Bork testified that such accommodations are standard in the industry<sup>149</sup> and agrees that its decision to provide them evidences Laredo Race Park's commitment to live racing.

## **B. Laredo Race Park's Critique of LRP Group**

Laredo Race Park offers numerous criticisms of LRP Group's proposed facilities for patrons and licensees. They focus on the lack of air-conditioned facilities from which to watch live racing and on its contention that the proposed facility is inadequately and poorly designed.

Laredo Race Park asserts that LRP Group's failure to provide air-conditioned facilities from which to watch live racing dooms the facility to failure due to the hot weather in Laredo, which Javier Garza, a member of the Laredo Chamber of Commerce, described as "one of the hottest cities in the country, with summer temperatures frequently exceeding 100 degrees." According to Mr. Garza, sound business strategy in Laredo favors air-conditioning, which he described as a necessity rather than a luxury.<sup>150</sup> Accordingly, Laredo Race Park asserts that LRP

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<sup>148</sup> It also finds ironic LRP Group's assertion that traffic jams are inevitable because all horse trailer traffic is routed on a two lane road in front of the grandstand in that, pursuant to the LRP Group proposal, all traffic, including vehicles for patrons and licensees as well as trailers for horses, must enter and exit that facility from a single two-lane road that currently serves LRP Group's location.

<sup>149</sup> Tr. Vol. 6, p. 179.

<sup>150</sup> Laredo Race Park Ex. 17 (Garza Direct) p. 2.

Group's projected average daily attendance of 2,442 for the daytime July thoroughbred meet is unrealistic in light of the fact that live race patrons would be relegated to 1,035 seat outdoor grandstand and a 20,000 square foot uncovered apron.

Laredo Race Park also contends that LRP Group's proposed facilities are poorly designed. Based on the initial design submitted with its application, Laredo Race Park contends that views of the front side chute to the racetrack would be blocked by the paddock and jockeys' room, and that barns would obstruct the views from the backside chute.<sup>151</sup> Additionally, Laredo Race Park architect Gary Wilson testified that, in view of the limited apron seating and the size of the apron, the apron would be packed with patrons unable to sit in the grandstands if attendance ever did approach LRP Group's forecasts.

Laredo Race Park also observes that LRP Group's application provides for only seven mutuel windows for outside customers (compared with 47 mutuel counters in the simulcast building with a capacity of 300 patrons).<sup>152</sup> In summary, then, Laredo Race Park contends that LRP Group's layout is not properly sized and designed to handle relatively large groups of patrons on live race days.

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<sup>151</sup> *Id.* at 3-4.

<sup>152</sup> LRP Group Ex. 35 (Application) at Tab 14 p. 2 (LRP Group 000198).

LRP Group denies that a lack of air-conditioning for live racing presents a problem. It notes that Mr. LaMantia and Mr. Brown both testified that patrons in Laredo routinely enjoy attending day-time open-air sporting events and that both believed that patrons would attend race meets at Laredo Downs with an afternoon post time.<sup>153</sup> LRP Group also points out that Indiana Downs and Colonial Downs, two racetracks that Laredo Downs mentions in support of the proposition that modern racetracks are typically air-conditioned, were overbuilt and suffered financially as a result.<sup>154</sup> LRP Group instead points to Trinity Meadows, a now-closed Class 2 racetrack located west of Fort Worth, which Mr. Short described as the most successful racetrack in the state in its day. Mr. Short stated that the track drew excellent summertime crowds to its un-air-conditioned facilities and, that during its second successful season, enclosed and air-conditioned its grandstand.<sup>155</sup>

LRP Group asserted that Laredo Race Park's other criticisms of its facilities are also erroneous and based on "cavalier use of a conceptual site plan" that was refuted by LRP Group's rebuttal testimony. In particular, it asserts that Laredo Race Park is simply wrong in its interpretation that the front side chute would be blocked by the paddock and jockeys' room, and that the conceptual site plan that originally appeared to indicate that barns would obstruct the views from the backside chute has been refined to show that there would be a clear view of that chute as well.<sup>156</sup>

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<sup>153</sup> Ex. LRP Group Ex. 70, (Brown Rebuttal) pp. 11-12; Tr. Vol. 7, p. 64 (S. LaMantia testimony); Tr. Vol. 2, pp. 178-79 (Brown testimony). Thoroughbred post time is proposed to be 5:00 p.m. (Ex. LRP Group Ex. 35 (Application p. 26)).

<sup>154</sup> Tr. Vol. 7 (Short testimony) p. 169.

<sup>155</sup> Tr. Vol. 7, pp. 149, 151, and 174.

<sup>156</sup> LRP Group Ex. 65 (Cavazos Rebuttal) pp. 3-4, G

LRP Group also notes that Mr. Short testified that the apron is actually 21,000 square feet and could accommodate up to 4,000 patrons and that, with other common areas around the track, the facility will have ample room to handle peak crowds.<sup>157</sup>

LRP Group also observes that temporary and portable mutuel stands and concession stands will be used, depending on the size of a particular crowd. Mr. Brown defended this as a cost effective approach that has been used successfully at Retama and other racetracks.<sup>158</sup> Mr. Short also testified in favor of this approach. He stated that permanent cabling would be made part of the facility's slab and, when installed during the initial construction, its cost would be covered by the "utilities" line item in the proposed construction budget.<sup>159</sup>

***Analysis.*** The comparison of the proposed facilities for patrons emphasizes the clear choice before the Commission in terms of the future of racing in Texas. Laredo Race Park's proposal is bigger, more comfortable for live race patrons, and far more expensive. LRP Group's proposal is smaller, less expensive, and geared predominantly toward simulcasting. While there are numerous specific issues raised by the parties under this heading, the basic question is whether the Laredo Race Park facility is overbuilt and not economically viable for the expected customer base or whether LRP Group's facility is underbuilt to the point that it would not draw enough live race fans to succeed.

There is no clear answer to either of these questions. As addressed in Section VII, it is not clear that either facility would be economically viable based on current trends in the racing industry. Additionally, both racetracks forecast that more than 75% of their racing revenue would be derived from year-round simulcasting. Accordingly, there are clear and reasonable business incentives behind LRP Group's focus on its simulcasting facilities. Additionally, racetracks must set aside more than one-third of simulcasting revenue to supplement purses,

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<sup>157</sup> Tr. Vol. 10, p. 22.

<sup>158</sup> LRP Group Ex. 70 (Brown Rebuttal) pp. 12, 15; Tr. Vol. 10, pp. 7-11.

<sup>159</sup> Tr. Vol. 10, pp. 19-20 and 28-29.

which in turns substantially benefits live racing.

Nevertheless, in the context of this issue, two things are clear: (1) live racing fans would be more comfortable placing bets, dining, and watching live races at the air-conditioned Laredo Race Park site than they would be at the un-air-conditioned and less spacious LRP Group site; and (2) grooms and other licensees whose horses do stable at the track would have the convenience of living at the track during their stay at Laredo Race Park but not at Laredo Downs.

It is self-evident that air-conditioned facilities would significantly enhance Laredo Race Park's ability to draw live race patrons, particularly during the midsummer thoroughbred meet in which races would be run during the heat of the day. While die hard fans would attend irrespective of air-conditioning, the ALJs believe more casual fans would likely concur with Mr. Garza that air-conditioning on a July afternoon in Laredo is now considered more of a necessity than a luxury.

The ALJs are also unconvinced that Trinity Meadows serves as a role model for success. That track went out of business under troubled circumstances, and the track was apparently in such disrepair that the jockeys went on strike and refused to race there.<sup>160</sup> In any event, air-conditioning was installed at the track during the second season. The ALJs concur with Laredo Race Park that it would be a better business plan to air-condition the facilities from the beginning, rather than to hope to introduce live racing in a new area and build up a customer base without it.

With respect to the facilities for licensees, the ALJs also find significant Laredo Race Park's commitment to construct sleeping quarters and access to a track kitchen for up to 300 grooms and other licensees. These people rise at 4:00 a.m. to care for their horses, and they

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<sup>160</sup> Tr. Vol. 7, pp. 150-51, and 174.



“don’t make a whole lot of money,” according to Mr. Bork.<sup>161</sup> Additionally, while these facilities are not required under the regulations, they are somewhat expected and are addressed in the Commission’s rules.<sup>162</sup> The ALJs find the ability of these horsemen to live at the track during the meet represents a significant convenience and economic savings to them.

Finally, the ALJs concur to some extent with Laredo Race Park that LRP Group’s vague conceptual plans and evolving revisions to the layout of its physical facilities raise secondary concerns in terms of patron line-of sight view, access to mutuel windows, and space to move around. The ALJs find that LRP Group ultimately addressed these issues satisfactorily in its rebuttal testimony. Nevertheless, as further discussed below regarding the facilities for animals, Laredo Race Park’s more detailed and less fluid application more definitively establishes an appropriate layout of these facilities.

Based on the above, the ALJs find that both applications satisfy the regulations regarding facilities for patrons and licensees, that the simulcasting facilities of the two proposed racetracks are comparable, and that Laredo Race Park’s proposed facilities for live race patrons and licensees are superior to those proposed by LRP Group.

## VI. FACILITIES FOR RACEHORSES

As with the facilities for patrons and licensees, Laredo Race Park’s proposal would provide somewhat more extensive facilities for racehorses than would LRP Group’s. Laredo Race Park’s plans include sixteen barns, including one stakes barn, with a total of 656 stalls, and room for hot walkers for the horses to cool down after races.<sup>163</sup> The plans also identify an isolation and

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<sup>161</sup> Tr. Vol. 6, p. 177.

<sup>162</sup> 16 TAC § 308.282. (This rule sets out standards in the event these facilities are present.)

<sup>163</sup> Mechanical hot walkers are devices that walk a horse in a circle after a race to cool down. (Tr. Vol. 10, p. 116)

treatment barn, a postmortem area, a maintenance area, and all other Commission required facilities.<sup>164</sup> Laredo Race Park also plans to offer a training center that would serve as a site for horses to receive official works, which Mr. Bork testified would benefit the horse breeding industry in Texas.<sup>165</sup>

As addressed in Section III(A)(3), the ALJs recommend that LRP Group be granted a partial exemption to the stalls rule in that it should be required to construct only 600 stalls rather than the full 800 required under the rule for the short thoroughbred meet. Accordingly, the discussion below assumes the facility would have 600 stalls.

Mr. Cavazos's 600 stalls alternative identifies thirteen barns with a total of 600 stalls identified on the south side of the site.<sup>166</sup> Based on the scale of the drawing, it appears that the barns would be approximately 100 feet apart.

The testing and holding barn would be located near the backside chute, and, in his rebuttal testimony, Mr. Cavazos has indicated that the postmortem, isolation, and treatment facilities would be located just northeast of the track.

#### **A. LRP Group's Critique of Laredo Race Park**

LRP Group's primary complaint regarding Laredo Race Park's facilities for racehorses is that, because it did not propose a live racing schedule as required by Section 6.03(a)(9) of the Act, the evidence is insufficient to determine whether Laredo Race Park's proposed stalls comply with the Commission the rule because Laredo Race Park is not seeking an exemption in this proceeding.

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<sup>164</sup> Laredo Race Park Ex. 6A, exhibit J

<sup>165</sup> Tr. Vol. 6, pp. 151-52.

<sup>166</sup> LRP Group Ex. 65 (Cavazos Rebuttal) Attachment 3.

Laredo Race Park responds that Ms. McGovern's direct testimony establishes that Laredo Race Park's application complies with the stall rule. She testified that Laredo Race Park will have 10 races per day — 4 thoroughbred races and 6 quarter horse races. Assuming an average of 10 horses per race, 100 horses per day are required. Laredo Race Park proposes 3 days of racing per week in a 10-week meet. According to Commission Rule 309.243(a), Laredo Race Park would be required to have 600 stalls, which Laredo Race Park meets, with 56 stalls to spare.

### **B. Laredo Race Park's Critique of LRP Group**

Aside from opposing the stall exemption, Laredo Race Park argues that the facilities depicted for LRP Group's application are cramped and poorly designed. Laredo Race Park attributes the cause of the problem to the comparatively small 125-acre site that LRP Group has chosen. It observes that John Ferrara, the Racing Commission's Director of Racing, expressed concern that the site may be too small after the addition of more barns, a postmortem area, and a storage area for maintenance equipment not set out in the application.<sup>167</sup>

Laredo Race Park also asserts that LRP Group's plans depict a 3,000 square foot testing and holding barn,<sup>168</sup> which it believes is inadequate space to house all of the required stalls, offices, and other functions delineated in the rules.<sup>169</sup> Laredo Race Park also contends that the barn is inconveniently located at the back of the stabling area, which means that the horses may void before being tested after races.<sup>170</sup>

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<sup>167</sup> See Commission Ex. 5 (Ferrara Responsive) p. 6 (testifying that he is "concerned that the proposed site may not have sufficient acreage available").

<sup>168</sup> Laredo Race Park Ex. 64 (Wilson Responsive) p. 11.

<sup>169</sup> See e.g. Rule 309.250, which requires a test barn adjacent to the commission veterinarian's office that is equipped with a walk ring, four enclosed stalls with Dutch doors, an observation window, a wash rack that would accommodate at least two horses at one time, and a restroom for test barn employees in close proximity to the test barn.

<sup>170</sup> Tr. Vol. 1, 93.

Laredo Race Park further contends that the allotted area for the pre-race holding area does not appear to comply with Rule 309.248, which requires a pre-race holding area adjacent to the Commission veterinary office that is covered and has a walk ring, at least twelve stalls, and only one entrance that is locked or guarded during live racing.<sup>171</sup>

Finally, Laredo Race Park asserts that the barns appear too cramped to accommodate mechanical hot walkers, which have a diameter in the vicinity of 40 to 50 feet and require an additional 20 to 25 feet on each side.<sup>172</sup>

LRP Group responds that much of Laredo Race Park's critique is based on Mr. Wilson's inappropriate use of LRP Group's conceptual site plan. In particular, it points out that Mr. Brown testified in rebuttal that Laredo Downs' holding and testing barn will actually be 8,304 square feet, not the 3,000 square feet identified by Mr. Brown (based on the site plan submitted with LRP Group's application.)<sup>173</sup> Additionally, LRP Group witness Gilbert D. Short, who has designed numerous racetracks, testified that the location of these facilities at the back of the stables is by design. He testified that many horsemen prefer that testing be done in a quiet area away from the noise and commotion of the grandstand and racetrack.<sup>174</sup>

Finally, Mr. Brown testified that the proposed barns on Laredo Downs' backside will be approximately 330 feet by 48 feet, the same size as Retama's barns.<sup>175</sup>

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<sup>171</sup> Laredo Race Park Ex. 64 (Wilson Responsive) p. 11.

<sup>172</sup> Tr. Vol. 10, 129-130.

<sup>173</sup> LRP Group Ex. 70 (Brown rebuttal) p. 10.

<sup>174</sup> LRP Group Ex. 67 (Short Rebuttal) p. 4; *See also*, LRP Group Ex. 70 (Brown Rebuttal) p. 10.

<sup>175</sup> LRP Group Ex. 70 (Brown Rebuttal), pp. 8 and 5, respectively.

*Analysis.* As with the facilities for patrons and licensees, Laredo Race Park proposes more extensive facilities for racehorses and provides more detail to assess them than does LRP Group. LRP Group's bare bones and not-to-scale "conceptual" architectural plans filed with the application and the multiple alternatives it has proposed regarding the number and locations of its barns renders the adequacy of LRP Group's proposed facilities for racehorses somewhat more difficult to assess than Laredo Race Park's more straightforward and plainly adequate plan. Additionally, it is not entirely clear that LRP Group's facilities would have enough space to accommodate the use of mechanical hot walkers to cool down horses after they race. Ultimately, however, the ALJs find that both facilities meet the Commission's minimum regulatory requirements.

Starting with the Laredo Race Park application, the ALJs concur that there is no way to determine from the four corners of the application whether the 656 stalls proposed would comply with Section 309.243(a), the Commission's stall rule. This is because Laredo Race Park did not specify requested racing dates, but instead indicated it would coordinate a racing schedule with the other Class 1 and Class 2 racetracks in the state.<sup>176</sup> Nevertheless, Ms. McGovern testified that Laredo Race Park proposes a ten week season with three nights of racing per week, yielding a regulatory requirement of approximately 600 stalls.<sup>177</sup> Based on this testimony, Laredo Race Park satisfies the rule. If ultimately more stalls are required due to the number of racing days determined by the Commission, there is sufficient acreage to add them.

Turning to LRP Group's facilities for racehorses, the ALJs find that, based on the rebuttal testimony offered by Mr. Brown and Mr. Short, the 600 stall option alternatively proposed by LRP Group would meet the regulatory requirements and would likely have room to accommodate hot walkers between the barns. It appears that there would be approximately 100 feet between the barns based on this alternative proposal, which would likely leave enough room for the placement of hot

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<sup>176</sup> Laredo Race Park Ex. 23, p. 27.

<sup>177</sup> Laredo Race Park Ex. 1 (McGovern Direct) p. 8

walkers and to accommodate through traffic. (Commission witness John Ferrara testified quite generally regarding the space requirements for hot walkers. In response to questions on cross examination, he agreed that the required space for a hot walker is approximately 40-50 feet and that 20-25 feet of clearance would be required on each side to accommodate the movement of other horses.<sup>178</sup>)

In any event, the Commission’s rules do not specify a distance requirement between barns, nor do they mandate that mechanical hot walkers be available at the track, although all horse racetracks in Texas have them according to Mr. Ferraro.<sup>179</sup> Based on this state of the record, it appears that mechanical hot walkers could likely be placed between the barns, but, if not, there is no prohibition against a track relying on a human to hot walk the horses.

**VII. FINANCIAL STABILITY and APPLICANTS’ RESOURCES FOR SUPPLEMENTING THE PURSES**

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<sup>178</sup> Tr. V. 10, p. 130. Mr. Ferrara actually stated that the “radius” of the hot walker is in the vicinity of 40-50 feet. In that the exchange was intended to add up the entire required space to accommodate the hot walkers, it seems apparent that the questioner and Mr. Ferrara were actually referring to the diameter of the hot walker rather than its radius (which would require doubling). This is how Laredo Race Park interpreted the testimony in it Closing Argument (Initial Brief at 79) and appears to be in keeping with the scale of the hot walker’s designated in Laredo Race Park’s application. Laredo Race Park Ex. 23, I, unnumbered p. 2.

<sup>179</sup> Tr. Vol. 10, p. 116-17.

<sup>180</sup> Two tracks that have closed are Trinity Meadows near Fort Worth and Bandera Downs in the Texas Hill Country. LRP LLC Ex. 6 (Bork Direct) p. 11.



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ITS CONFIDENTIAL NATURE.**

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<sup>186</sup> Laredo Race Park Ex. 4 (Vitek Direct) pp. 1-3. Additionally, he serves as Vice President of Finance and Chief Financial Officer for Sam Houston Race Park, a Class 1 horse racing facility and Vice President and General Manager of Valley Race park, a greyhound racetrack in Harlingen, Texas. MAXXAM is the parent company of the entity that owns and operates Sam Houston Race Park; Sam Houston Race Park is the parent company of the entity that owns and operates Valley Race Park. Mr. Vitek is a certified public accountant. He has eleven years’ experience in the Texas racing industry and is director and treasurer of Houston Equine Research Organization (“HERO”) that provides scholarship funds for veterinary research.

<sup>187</sup> Tr. Vol. 1 (Vitek Cross) pp. 199-206; 239-241 [Note: Confidential portion of transcript, including LRP Ex. 3]; LRP Group Ex. 2 (MAXXAM, Inc. 2005 Form 10K);

<sup>188</sup> Tr. Vol. 4, pp. 157-58.

<sup>189</sup> Laredo Race Park Ex. 19 (Madison Rebuttal) p. 3.

<sup>190</sup> Tr. Vol. 1 (Vitek Re-Direct) p. 252.

<sup>191</sup> Mr. Brown acknowledged that SHRP, prior to bankruptcy, was set up as a partnership much like the LRP Group and that MAXXAM took over the obligations of the other partners. Tr. Vol. 2 (Brown Cross) p. 180.

<sup>192</sup> Tr. Vol.1 (Vitek) pp. 214-15; Tr. Vol 2 (Vitek) p. 180.



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193 Tr. Vol. 10 (Jackson Cross) p. 277.

194 Tr. Vol. 3 (Bork Cross) p. 93.

195 Tr. Vol. 4 (Vitek Re-direct) pp. 214-17; 227.

196 Laredo Race Park Ex. 4 (Vitek Direct) p. 6.

197 Tr. Vol. 7 (Short Cross) p. 141. Mr. Short has designed several racetracks in the United States. He testified that the total cost of Indiana Downs was closer to \$42 million which included off-track betting premises. Mr. Short testified that some of the cost differences between that facility and the one proposed by LRP Group was that Indiana Downs had both a turf track and a dirt track, whereas Laredo Downs will only have a dirt track. Additionally, the clubhouse is over

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twice the size of that proposed for Laredo Downs.

<sup>198</sup> Tr. Vol. 7 (Short Cross) p. 146.

<sup>199</sup> Laredo Race Park Ex. 10 (Bork Rebuttal) p. 6.

<sup>200</sup> Tr. Vol. 2 (Brown Re-Direct) p. 161.

<sup>201</sup> *Id.* at 162-163. According to Mr. Brown, SHRP went into bankruptcy sometime around 1994-1995 and its owner was the MAXXAM Group through the SHRP limited partnership.

<sup>202</sup> Laredo Race Park Ex. 6 (Bork Direcct) pp. 12-13.

<sup>203</sup> *Id.* See also p. 12, construction costs include architectural and engineering services, land acquisition, site development, facility construction, equipment acquisition, capitalized interest, loan placement and other guarantee fees, and administrative and legal services.

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<sup>204</sup> Laredo Race Park Ex. 4 (Vitek Direct) p. 13.  
<sup>205</sup> Laredo Race Park (Bork Direct) p. 12.  
<sup>206</sup> Laredo Race Park Ex. 4 (Vitek Direct) p. 9.  
<sup>207</sup> Tr. Vol. 4 (Vitek Re-Direct) pp. 211-12.  
<sup>208</sup> *Id.* at 9.

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<sup>209</sup> *Id.* at 9-10.

<sup>210</sup> Tr. Vol. 4 (Vitek Re-Direct) pp. 211-12.

<sup>211</sup> Laredo Race Park Ex. 4 (Vitek Direct) Ex. MV-08.

<sup>212</sup> *Id.* at 17.

<sup>213</sup> *Id.* at 19. Mr. Vitek noted that profitability is an especially important consideration for individual investors.

<sup>214</sup> Tr. Vol. 3 (Bork Cross) pp. 118-127.

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<sup>215</sup> *Id.* at 175-177.

<sup>216</sup> LRP Group Ex. 16 (Medrano Responsive) p. 3. However, she later admitted that Mr. Vitek factored in this cost in his projections. Tr. Vol. 3 (Medrano Cross) p. 266.

<sup>217</sup> LRP Ltd Ex. 16 (Medrano Responsive) pp. 3-4. Ms. Medrano testified that the actual average daily host handle for SHRP and Retama for the years 2002 through 2005 were \$1,267,107 and \$602,677 respectively.

<sup>218</sup> Tr. Vol. 1 (Vitek Cross-Examination) pp. 182-84. Mr. Vitek conceded on cross-examination that the over \$6 million difference in LRP Group’s estimated host handle would actually result in only \$110,447 as income to the LRP Group after commissions and purses were taken out. The \$110,447 would not impact LRP Group’s overall financial stability. *Id.* at 185. *See also* LRP Group Ex. 16 (Medrano Responsive) p. 2.

<sup>219</sup> LRP Ltd Ex. 16 (Medrano Responsive) pp. 4-5; Tr. Vol. 3 (Medrano Re-direct) pp. 270-71.



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<sup>225</sup> Tr. Vol. 3 (Bork Clarifying) pp. 182-83.  
<sup>226</sup> *Id.* at 184.  
<sup>227</sup> *Id.* at 184-85.  
<sup>228</sup> LRP LLC Ex. 4 (Vitek Direct) p. 14.  
<sup>229</sup> *Id.* at 15. A totalisator is the equipment that conducts the track’s pari-mutuel operations.

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<sup>230</sup> Those entities are also currently licensed by the Commission. *Id.*

<sup>231</sup> *Id.* at 19-20. Funds for purse accounts will be provided in accordance with Rule 309.297. Funds for purse supplements and allocation will be distributed in accordance with Section 6.08 of the Act.

<sup>232</sup> According to Mr. Vitek, Laredo Race Park also intends to enter into negotiations with the Texas Horsemen’s partnership to determine the source of all funds of purses. *Id.* at 20.

<sup>233</sup> Tx.R.C. Ex. 7 (Jackson Responsive) p. 2.

<sup>234</sup> Tx.R.C. Ex. 7 (Jackson Responsive) p. 3. In addition, Mr. Jackson calculated some key racetrack financial ratios to determine the soundness of the projections.

<sup>235</sup> Tx.R.C. Ex. 7 (Jackson Responsive) pp. 3-9.



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<sup>236</sup> Tx.R.C. Ex. 7 (Jackson Responsive) p. 3.

<sup>237</sup> 310,915.

<sup>238</sup> Tx.R.C. Ex. 7 (Jackson Responsive) pp. 4-5.

<sup>239</sup> The application projects \$4.95 million in live on-track handle, \$3.0 million in live export handle over 30 live race days and \$24.24 million in same species simulcast handle and cross species simulcast handle over 364 simulcast race days. The live projections result in an average live on-track handle of \$165,000 per race day and an average live export handle of \$100,000 per race day. The simulcast projections results in \$66,550 per race day. Add cite to Jackson’s testimony.

<sup>240</sup> Add cite.

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<sup>241</sup> Tx.R.C. Ex. 7, pp. 7-9.

<sup>242</sup> Muy Buena Suerta, Ltd. Is a family-owned partnership of the LaMantia family, local residents who own the Budweiser distributorship for the twenty-two counties south of the Nueces River. LRP Group Ex. 35 (Application), p. 3.

<sup>243</sup> Tr. Vol. 2 (S. LaMantia Cross) p. 203. Muy Buena Suerte picked up the cash calls for a number of the partners that did not respond. Muy Buena Suerte pays the capital calls for Robin and Gordon Johnson because their involvement in LRP is beneficial to the LRP Group. *Id.* at 205-06.

<sup>244</sup> Other cash calls have been made and not all partners have contributed in response. In August 24, 2005. Steven LaMantia notified the partners that William Allen, Larry Christopher, Larry Craft, James Helzer, Thomas Johnson, Lisa Medrano, Robert Pollock, Steven Ross and Gary Wolff had not participated in one or both of the last capital calls, although Mr. LaMantia testified that he believed Gary Wolff did agree to pay the last two calls. In September 21, 2005, Mr. LaMantia sent a letter to the LRP Group notifying them that Bryan Brown, Paul Bryant, Chris hall, Sam Phelps, Doug Vair and George Wolff did not participate in the August 24<sup>th</sup> capital call. In November 2005, Mr. LaMantia notified the LRP Group that William Allen, Larry Craft, Lisa Medrano, Robert Pollock, Steven Ross, and Gary Wolff did not participate in the last capital call. Tr. Vol. 2 (S. LaMantia Cross) pp. 200-01. [Confidential portion of transcript—also referred to Laredo Race Park Ex. 29, 30, 31).

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<sup>245</sup> LRP Group Ex. 35 (Application) p. 8. At the time of the hearing, the partner’s interests were as follows: *See also* Tr. Vol. 2 (S. LaMantia Cross) pp. 196-97.

<sup>246</sup> Tr. Vol. 3 (Medrano Cross) p. 257.

<sup>247</sup> Tr. Vol. 3 (Medrano Cross) pp. 258-59.

<sup>248</sup> Tr. Vol. 3 (Medrano Re-Direct) pp. 268-69.

<sup>249</sup> LRP LLC Ex. 66 (Vitek Responsive) at MV-04.

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<sup>250</sup> Tr. Vol. 2 (S. LaMantia Cross) p. 198.

<sup>251</sup> Tr. Vol. 2, pp. 186, 207-08. Mr. LaMantia stated that Muy Buena Suerta, Ltd. is “financially willing and able to ensure that any long term capitalization needs are met regardless of the participation or non-participation of the other investors.” LRP Group Ex. 8 (S. LaMantia Responsive) p. 3.

<sup>252</sup> Tr. Vol. 2, pp. 216, 228.

<sup>253</sup> *Id.* at 238-39.

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<sup>254</sup> LRP Group Ex. 17 (Cortez Responsive) p. 9.

<sup>255</sup> Mr. Brown has an M.B.A. from the University of Texas at Austin; Ms. Medrano is a CPA and is responsible for all accounting and finance functions for Retama Park racetrack. LRP Group Ex. 51 (Medrano Direct) p. 2.

<sup>256</sup> LRP Group Ex. 61 (Brown Direct) p. 11.

<sup>257</sup> LRP Group Ex. 61 (Brown Direct) p. 13.

<sup>258</sup> *Id.*

<sup>259</sup> *Id.*

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<sup>260</sup> *Id.*  
<sup>261</sup> LRP Group Ex. 61 (Brown Direct) p. 14.  
<sup>262</sup> LRP Group Ex. 61 (Brown Direct) pp. 14-15.  
<sup>263</sup> Tr. Vol. 3 (Medrano Cross) p. 228.  
<sup>264</sup> Tr. Vol. 3 (Medrano Cross) p. 233.  
<sup>265</sup> Tr. Vol. 4 (Toscano Cross) pp. 17-18.  
<sup>266</sup> Tr. Vol. 4 (Toscano Cross) p. 24.

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<sup>267</sup> Tr. Vol. 4 (Toscano Cross) p. 31.

<sup>268</sup> Tr. Vol. 4 (Toscano Cross) p. 40. “That’s where you’re going to make your money.” Mr. Toscano also testified that simulcast racing is available over the Internet, even though it is illegal. Because of the easy access to gaming opportunities, a racetrack has to face the economic reality that the track makes money due to simulcasting. *Id.* at 40, 45-47.

<sup>269</sup> Tr. Vol. 4 (Toscano Cross) p. 31.

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<sup>270</sup> LRP Group Ex. 7 (B. Brown Responsive) p. 3.  
<sup>271</sup> *Id.* at 5.  
<sup>272</sup> Tr. Vol. 10 (S. Jackson testimony) p. 275. Mr. Jackson testified that he believed both applicants’ financial forecasts were reasonable so long as they included attendance projections from the Nuevo Laredo area.  
<sup>273</sup> Tr. Vol. 2 (S. LaMantia Cross) p. 230.  
<sup>274</sup> LRP Ltd Ex. 16 (Medrano Responsive) p. 6.





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<sup>280</sup> Tr. Vol. 3 (Medrano Cross) pp. 243-46.

<sup>281</sup> Laredo Race Park Initial Brief pp. 55-56 citing Section 5.6(a) of the LRP Group Partnership Agreement, LRP Group Ex. at Tab p. 15.

<sup>282</sup> Tr. Vol. 3. p. 179; Tr. Vol , p. 37.



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<sup>286</sup> Tr. Vol. 4. p. 40, 45-46.

<sup>287</sup> Laredo Race Park Ex. 16 (Dr. Drummond Rebuttal) p. 12.

<sup>288</sup> Laredo Race Park Ex. 5 (Lerner Direct) p. 4.

<sup>289</sup> The training center is run by Keith and Cash Asmussen. The facility occupies 87 acres and hosts over 300 horses at any given time. Laredo Race Park Ex. 13 (Asmussen Rebuttal) p.1.

<sup>290</sup> The site layout for Laredo Race Park is included as Attachment 2.

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**VIII. Location of the Proposed Tracks**

The evidence indicated that convenient access to a racetrack is an important consideration for both the live race and simulcast patron. In reviewing each applicants’ location, the ALJs have focused on a number of issues: (1) site location with relation to the City of Laredo’s population and entertainment venues; (2) ease or difficulty in traveling to the site; (3) access to utilities; and (4) proximity to the tick eradication quarantine zone. For the reasons set forth below, the ALJs

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<sup>291</sup> *Id.* at 1-2. Mr. Lerner is experienced in real estate development.

conclude that, while each site has advantages and disadvantages, the LRP Group ultimately offers the better location with respect to its proximity to the City's population and entertainment venues and ease in traveling to the site. However, the four-lane highway leading to Laredo Race Park is preferred over the two-lane U.S. 59 because it will provide better ingress and egress to patrons. As noted, the status of U.S. 59's number of lanes may change in the future; presently, however, it offers a restricted and possibly dangerous option for entering and exiting the track.

The ALJs note that both locations have access to utilities, although it may prove more costly for the Laredo Race Park site. Further, the tick eradication quarantine zone proximity was found not to be a determinating factor for the preferred site selection.

#### **A. Laredo Race Park**

##### **1 Site Location and Selection**

The proposed Laredo Race Park site consists of two hundred acres that is part of a 1,316 acre tract known as the Old Laredo Feed Lot.<sup>292</sup> The site is in an undeveloped location on Mines Road (FM 1472), a four-lane highway. A portion of the tract is located within the Laredo city limits, with the remainder located outside the city limits. The proposed racetrack is approximately 5.5 miles south of F.M. 255 (Camino Columbia Toll Road) and approximately 11.5 miles from the center of Laredo.<sup>293</sup> The site is located near a nationally recognized training center, El Primero Horse Training Facility.<sup>294</sup> A copy of a map showing the location of the track is attached as Attachment 1 to this PFD.<sup>295</sup> Laredo Race Park believes that its site is better suited for the location of a racetrack because it is located on a major roadway that provides adequate access

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<sup>292</sup> *Id.* at 4.

<sup>293</sup> Laredo Race Park Ex. 5 (Lerner Direct) p. 4.

<sup>294</sup> The training center is run by Keith and Cash Asmussen. The facility occupies 87 acres and hosts over 300 horses at any given time. Laredo Race Park Ex. 13 (Asmussen Rebuttal) p.1.

<sup>295</sup> The site layout for Laredo Race Park is included as Attachment 2.

to patrons and horsemen, it is not located within a heavily commercial area containing other entertainment venues, and there is sufficient acreage to build a racetrack facility.

Mr. Jay Lerner, Vice President of MAXXAM Property Co. assisted in the site location for Laredo Race Park.<sup>296</sup> The site currently consists of unimproved property, with some scattered single-family residences within a half-mile of the proposed track. The site is not located within the 100 year flood plain and a Phase I environmental study did not reveal any known defects.<sup>297</sup> Mr. Lerner testified that no zoning or special use permits are presently required for the site since the proposed use is an allowable one.<sup>298</sup>

Mr. Bork testified that part of the decision to build a racetrack in Laredo resulted from the rapid growth of the Laredo area and the success of the newly built entertainment center, indicating that there was a need for additional forms of entertainment in the area.<sup>299</sup> Mr. Bork relied on Mr. Lerner to locate the site for the proposed racetrack. One of the criteria he gave to Mr. Lerner was that the site be located next to a major road in order to provide sufficient access to the patrons and horsemen. Mr. Bork agreed that the traffic issue is an important consideration in locating a facility. He testified about his involvement in the construction of Philadelphia Park, located in Bensalem, outside the city of Philadelphia, Pennsylvania. When the land was purchased, it was several cornfields on a four-lane highway. He said that the location has proven to be a good one, with plenty of access in and out without traffic gridlock.<sup>300</sup>

Mr. Bork testified that he spent a lot of time looking at locations on U.S. Highway 59, but he concluded that the highway was too congested with slow-moving traffic and many traffic

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<sup>296</sup> *Id.* at 1-2. Mr. Lerner is experienced in real estate development.

<sup>297</sup> *Id.* at 4.

<sup>298</sup> *Id.* at 7.

<sup>299</sup> *Id.* at pp. 148-49.

<sup>300</sup> Tr. Vol. 3 (Brown Re-Direct) pp. 195-97.

lights. Mr. Bork testified that he had discussions about the traffic with local community members and learned that traffic on U.S. Highway 59 becomes extremely congested whenever there is an event at LIFE Downs, which happens frequently during the year.<sup>301</sup> He does not believe that patrons at the proposed Laredo Downs site on U.S. Highway 59 will be able to easily turn left against the traffic to exit the facility.<sup>302</sup>

In response to LRP Group's criticism that the Laredo Race Park site is not near commercial development, Mr. Bork said that, in his opinion, it is good for racetracks not to be near commercial developments at the time they are constructed because "development will come to them."<sup>303</sup> He said that the newer racetracks have been built outside a commercial area or city due to the cost of the land and traffic congestion.<sup>304</sup> As an example, Mr. Bork cited to the Turf Paradise in Phoenix, Arizona, that was built forty miles out of town. He testified that it is a very successful track and the location was chosen deliberately so that people would come to the track, as opposed to building the track where people already were located.<sup>305</sup> Further, Mr. Bork testified that one would have to be careful in locating a racetrack where other entertainment venues are because of the potential for conflict between the venues' schedules, as well as increased traffic in the area.<sup>306</sup>

Mr. Bork testified that when he saw the Mines Road area with a divided highway, he indicated to Mr. Lerner that he would like to find 200 acres in that location.<sup>307</sup> He testified that the site allowed the opportunity for people to travel down Mines Road and come right into the

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<sup>301</sup> Tr. Vol. 3 (Brown Re-Direct) pp. 196-99.

<sup>302</sup> Tr. Vol. 3 (Bork Re-Direct) p. 194.

<sup>303</sup> Tr. Vol. 6 (Bork Cross), p. 91.

<sup>304</sup> Tr. Vol. 3 (Bork Re-Direct) p. 195.

<sup>305</sup> Tr. Vol. 3 (Bork Clarifying) pp. 177-78.

<sup>306</sup> *Id.* at 155.

<sup>307</sup> Tr. Vol. 3 (Bork Cross) pp. 143-44.



facility, without being caught in traffic.<sup>308</sup> Additionally, Mr. Bork said that the Laredo Race Park site is superior because there is more land that can accommodate the development needs of the racetrack.<sup>309</sup> Mr. Bork said that 200 acres was the minimum acreage required for a racetrack facility.

Gary Wilson, architect for Laredo Race Park, testified that a smaller site would have parking limitations and would require downsizing the grandstand, barns, and other essential structures.<sup>310</sup> However, he said that the 200 acre site could be reduced by up to 25 acres and there would still be enough room to comfortably incorporate the track and facilities.<sup>311</sup>

The land is currently covered by an option for its purchase. According to Mr. Lerner, he is unaware of any local opposition to the track (with the exception of the LRP Group) and the area has proven to be suitable for horses and horsemen. In his opinion, the location of a racetrack near the El Primero Horse Training Facility would benefit both facilities because trainers would have a conveniently located track on which to race their horses.<sup>312</sup>

The evidence showed that a number of residential developments are being built along Mines Road, demonstrating growth towards the Laredo Race Park site from the city.<sup>313</sup> Additionally, Steve LaMantia testified that he purchased 11,000 acres along the Mines Road and Camino Colombia intersection that he intended to develop for residential or business use.<sup>314</sup>

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<sup>308</sup> Tr. Vol. 3 (Bork Re-direct) pp. 193-94.

<sup>309</sup> Tr. Vol. 3 (Brown Re-Directd) pp. 199-200.

<sup>310</sup> Tr. Vol. 1 (Wilson Cross) p. 158.

<sup>311</sup> Tr. Vol. 1 (Wilson Cross) p. 158.

<sup>312</sup> Laredo Race Park Ex. 5 (Lerner Direct) p. 5.

<sup>313</sup> Laredo Race Park Ex. 20 (Puig Rebuttal) p. 8. These include the La Bota Development, Villas San Augustin, Embarcadero Development and the Green Ranch subdivisions.

<sup>314</sup> Tr. vol. 10, pp. 212, 214.

Mr. Brown of LRP Group criticized the Laredo Race Park location, saying that it is just too far away from bulk population of the city for patrons to visit as often as they would at the proposed Laredo Downs site. In his opinion, the lack of development and traffic passing through that site is inadequate to support the site.<sup>315</sup> The Retama location is in a site of much development, both commercial and residential.<sup>316</sup> Mr. Brown noted that there are large sponsor signs in front on the main side of Retama Park so that passers-by can see them. In addition, he believes that the commercial warehouse district and the resulting truck traffic on Mines Road will deter people from visiting the site.<sup>317</sup>

Steve LaMantia was critical of the Laredo Race Park site as being in a location of heavy commercial trailer traffic travel. He stated that the trailer traffic coming from Mexico uses Loop 20 as a main corridor between the United States and Mexico. Loop 20 intersects Mines Road and the area is one of commercial warehouses where traffic is congested. He believes that the heavy commercial traffic will stall northbound traffic using Mines Road to travel to Laredo Race Park.<sup>318</sup>

Mr. Navarro testified that the traffic dies going out toward the Laredo Race Park site because the major traffic is around the warehouse area. After the warehouse area, it starts becoming brush country. There are pockets of houses and the traffic begins to decline around the El Primero facility.<sup>319</sup> According to Mr. Navarro, there is a road off of IH-35 that was formerly intended to be a tollway and people traveling on IH-35 could take the proposed tollway to Mines Road,

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<sup>315</sup> Tr. Vol. 2 (B. Brown Cross) p. 157.

<sup>316</sup> Although Mr. Brown indicated some residential development and a golf course had been there for around thirty years, it was not clear if the commercial development existed before the Retama park was located at the site. Tr. Vol. 2 (B. Brown Cross) p. 159.

<sup>317</sup> Tr. Vol. 2 (Brown Re-Direct) p. 166.

<sup>318</sup> LRP Group Ex. 8 (S. LaMantia Responsive) p. 2.

<sup>319</sup> Tr. Vol. 3 (Navarro Clarifying) pp. 22-23.

intersecting Mines Road a few miles from the proposed racetrack site.<sup>320</sup> The road comes out at the Columbia Bridge.

According to Orlando Navarro, witness for LRP Group, the current roadway infrastructure does not provide easy access to the proposed site. He said that potential patrons may not be willing to contend with the traffic issues presented by the current roadways. Mr. Navarro stated that the warehouse district on Mines Road consists of more than 60 million square feet of warehousing. There is a large degree of commercial trailer traffic on Mines Road and Loop 20 and continued growth of warehousing space is planned in the area.<sup>321</sup> He believes that most people would find the traffic to be unnerving due to the large trailer traffic. Mr. Navarro contends that slow growth and lack of easy access to the area have stifled commercial growth in the area. The City's efforts to grow economically have been concentrated on IH-35, U.S. Highway 83, and U.S. Highway 59.<sup>322</sup> He also believes that the close proximity to the Rio Grande makes the area more risky because the waterways might be considered protected or wetlands.<sup>323</sup>

## 2. Access to Utilities

Laredo Race Park's application describes the sewer, water and utility improvements needed for the site. Howland Engineering prepared a report containing the utility easements recorded with the City of Laredo. These were provided in the application.<sup>324</sup>

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<sup>320</sup> Tr. Vol. 3 (Navarro Cross) pp. 33-36.

<sup>321</sup> LRP Group Ex. 11 (Navarro Supplemental Responsive) pp. 2-3.

<sup>322</sup> *Id.* at 3.

<sup>323</sup> *Id.* at 4. [Note—Mr. Navarro's testimony contains good maps of the locations.]

<sup>324</sup> Laredo Race Park Ex. 23 at 11.

Mr. Lerner testified that improvements would need to be made to the sewer and water systems.<sup>325</sup> Those improvements include installing a lift station and force main to connect to the sewer treatment plant at an estimated cost of \$250,000, and installing and connecting to an existing 12 inch waterline at an estimated cost of \$325,000.<sup>326</sup>

Benjamin Puig testified that Laredo Race Park could acquire water from the Pinto Valle development.<sup>327</sup> According to Mr. Puig, there is a wastewater treatment plant at the Camino Columbia Bridge which would have to be upgraded in order to provide sufficient service to the site.<sup>328</sup> Mr. Puig said that he discussed accessing water and wastewater for a racetrack site with the City of Laredo Utility Department and was not told of any restrictions that would limit access to the plant.<sup>329</sup> Mr. Puig testified that he was aware the LaMantias owned the land surrounding the Pinto Valle water treatment plant, but he thought that they would not be able to restrict access to the water and wastewater treatment plants because they are dedicated to the City of Laredo.<sup>330</sup> Mr. Puig said that the cost of linking the Laredo Race Park site was approximately \$400,000 more than for the LRP site.<sup>331</sup>

Steven LaMantia testified that his family purchased 11,000 acres on Mines Road, north of the proposed site, about eight months after the applications were filed in this case.<sup>332</sup> According to Mr. LaMantia, the general warranty deed used to purchase this land incorporated a Water Supply,

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<sup>325</sup> LRP LLC Ex. 5 (Lerner Direct) p. 7.

<sup>326</sup> *Id.*

<sup>327</sup> Tr. Vol. 6 (Puig Cross) pp. 17-18. Mr. Puig is a professional engineer with Howland Engineering and Surveying in Laredo, Texas.

<sup>328</sup> Tr. Vol. 6 (Puig Cross) pp. 22-24. As Mr. Puig noted, the determination of who would pay for the upgrade is still an undecided issue.

<sup>329</sup> Tr. Vol. 6 (Puig Cross) pp. 23, 27, 34, 36, (Puig Re-direct) pp. 43-44, 46-48.

<sup>330</sup> Tr. Vol. 6 (Puig Re-direct) pp. 44-45.

<sup>331</sup> Tr. Vol. 6 (Puig Cross) p. 21.

<sup>332</sup> Tr. Vol. 2 (S. LaMantia Cross) p. 236; Tr. Vol. 10 (S. LaMantia Cross) p. 202.

Sanitary Sewer Service and Controlled Development Agreement (Water Agreement) that restricted access to the water at the Pinto Valle treatment plant to third parties.<sup>333</sup> He conceded that part of the reason for the purchase was to obtain the water rights in the area and prevent Laredo Race Park from having access to the water. He also admitted that if Laredo Race Park received the license for the track, the LaMantia family would not convey any water rights to Laredo Race Park.<sup>334</sup> Mr. Puig testified that even if the Water Agreement prevented Laredo Race Park from having access to water, the Laredo Race Park could still tie into the City's line at the intersection of Mines Road and the toll road or just run a line straight to the water plant, although the costs would increase substantially.<sup>335</sup>

Laredo Race Park contends that Mr. LaMantia's claim relating to the Water Agreement is without merit. According to Laredo Race Park, the Water Agreement was between Dolores-Pinto Valle and the City of Laredo.<sup>336</sup> Dolores-Pinto Valle is not the grantor on the warranty deed to the LaMantias. Laredo Race Park also claims that there was no evidence that notice had been provided to the Laredo City Manager, as required by the agreement, in order to transfer the Water Agreement from the grantor to the LaMantias. Consequently, Laredo Race Park contends that there are no restrictions to using the water from the Pinto Valle treatment plant.

### 3. Cattle Fever Tick issue

\_\_\_\_\_ LRP Group contends that Laredo Race Park's site should be excluded from consideration for a license due to its proximity to the cattle fever tick eradication zone. Several expert witnesses

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<sup>333</sup> Tr. Vol. 10 (S. LaMantia Cross) pp. 204; 212. According to Mr. LaMantia, the water rights belonging to the LaMantia family on that property could not be sold to anyone according to the terms of the deed that was conveyed.

<sup>334</sup> Tr. Vol. 10 (S. LaMantia Cross) pp. 202-203.

<sup>335</sup> Tr. Vol. 10 (Puig Re-direct) pp. 226-229. In that case, the cost estimates by Mr. Puig are \$826,000 for the sewer improvement and \$655,000 for the water improvement. *Id.* at 230.

<sup>336</sup> Laredo Race Park Initial Brief, p. 74. "Dolores-Pinto Valle" referred to Dolores Development Company, Ltd. And Pinto-Valle II, Ltd.

testified regarding fever ticks.<sup>337</sup> Fever ticks pose a danger to livestock and were particularly devastating to the Texas cattle industry in the late 1800's. The land bordering Mexico in South Texas has experienced a fever tick problem since the cattle drives of the 1800's. In 1893, the Texas Legislature created the Livestock Sanitary Commission (now known as the Texas Animal Health Commission ("TAHC")) to address this problem.<sup>338</sup> Additionally, the Cattle Fever Tick Eradication Program ("CFTEP") was created by Congress due to the large number of cattle losses from the disease when the cattle were driven to market from the southern states to the northern pastures.<sup>339</sup> The U.S. Department of Agriculture ("USDA") and the TAHC worked together in an effort to eradicate and/or control fever tick infestations. As a result of the program, cattle ticks were essentially eradicated in the United States by 1943. However, the USDA and the TAHC continue to work together to prevent cattle fever ticks from becoming a renewed threat to the nation's cattle.

**a. Precautions**

Certain areas near the Mexican border have been designated as permanent tick eradication quarantine areas (TEQA) to prevent the spread of cattle ticks on Mexican livestock that cross the Rio Grande River into Texas.<sup>340</sup> A 500-mile TEQA extending from Brownsville to Del Rio has

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<sup>337</sup> Dr. Bill Clymer, livestock parasitologist with Fort Dodge Animal Health, testified for LRP Group. Dr. Clymer is a board-certified entomologist with a Ph.D. in entomology. His Ph.D. thesis addressed habitat modification as a means of tick control. LRP Group Ex. 57 (Dr. Clymer Responsive) p. 2. Dr. Roger O. Drummond, retired consultant on the topic of livestock entomology, testified for Laredo Race Park. Dr. Drummond's doctorate is in acarology, the study of ticks and mites. He was a research scientist and, ultimately, laboratory director of the Livestock Insects Investigations Laboratory in Kerrville, Texas. This laboratory is run by the U.S. Department of Agriculture (USDA) Agricultural Research Service (ARS). Dr. Drummond retired as director in 1986 and began consulting for numerous organizations and companies. Laredo Race Park Ex. 16 (Dr. Drummond Responsive), pp. 1-2. He has written numerous articles related to the biology and control of ticks and other arthropods affecting livestock and has developed testing methods and materials of active chemicals in sprays applied to cattle in the field. William "Dub" Davis, is a former employee of the USDA's tick eradication program. He served for seven years as a "tick rider" and 27 years in the tick eradication program as a supervisor. Laredo Race Park Ex. 15 (Davis Rebuttal) p. 1.

<sup>338</sup> Laredo Race Park Ex. 16 (Dr. Drummond Rebuttal), p. 9.

<sup>339</sup> The program is part of the Animal Plant Health Inspection Service (APHIS) of the USDA. Tr. Vol. 8 (Dr. Drummond Cross) p. 148.

<sup>340</sup> Although there is a research lab in Mexico to research insecticides to eradicate fever ticks, there has been no actual program addressing this issue since 1980. Tr. pp. 145-46.

been established by the TAHC and APHIS-USDA.<sup>341</sup> Cattle pastured in the permanent quarantine zone can be moved from those pastures if they are found to be free of ticks.<sup>342</sup> In order to move cattle from the permanent quarantine zone, the cattle must be inspected and found tick-free. They are dipped in coumphos<sup>343</sup> and loaded onto trucks while still wet before they can be transported.<sup>344</sup> If a tick is found during the inspection, the cattle must be treated and inspected again. Horses can be sprayed for the ticks, but cattle have to be placed in a submersive dip or in a spray dip machine, *i.e.*, a big box with spray nozzles from every direction that recirculates the spray. In general, horses do not like to be sprayed. Although ticks will attach to other animals, such as whitetail deer, cattle are their preferred host and they are more reproductive on cattle than on other animals. However, ticks can feed on horses and can be transported by horses.

Another precaution taken in the quarantine zone is the presence of APHIS - USDA personnel who ride horses throughout the zone, looking for smuggled and stray livestock, and other animals that are known as hosts for cattle fever ticks.<sup>345</sup> They employ a method called “scratching” in which an animal is placed into a chute or other immobilization device. The examiner rubs his hands over the animal, examining it both visually and by touch, for ticks on its body.<sup>346</sup> If ticks are found, a quarantine is imposed and nothing can be moved from the area, including livestock, until it is treated, inspected, and found to be tick-free.

       **b. Types of premises**

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<sup>341</sup> Laredo Race Park Ex. 16 (Dr. Drummond Rebuttal) p. 10. See also Laredo Race Park Ex. 15 (Davis Rebuttal) p. 2.

<sup>342</sup> Cattle are scratched in order to determine whether they have fever ticks. If ticks are found, the cattle are then dipped in coumaphos. Cows that are moved from the quarantine zone must be scratched and dipped before they can be moved. Horses in the pastures are scratched and sprayed with 0.25% coumaphos. *Id.* at 11.

<sup>343</sup> Coumphos is an insecticide that kills fever ticks. *Id.*

<sup>344</sup> Tr. Vol. 8 (Dr. Drummond Clarifying) pp. 175-76.

<sup>345</sup> Laredo Race Park Ex. 16 (Dr. Drummond Rebuttal) p. 11.

<sup>346</sup> Tr. Vol. 8 (Dr. Drummond Cross) pp. 156-57.

In addition to the tick eradication quarantine area, there are other designations for other premises, not in the TEQA, but that may be affected by fever ticks. One of these types of premises is an adjacent premise, which is a “premise that borders an exposed or infested premise, including premises separated by roads, double fences, or fordable streams.”<sup>347</sup> An area that would otherwise be considered an adjacent premise may be exempted from the adjacent premise requirements by a state or federal epidemiologist if the premise is separated from the exposed or infected premise by double fencing, if one of the fences is game-proof, sufficient to prevent the spread of ticks.<sup>348</sup>

A check premise is a “premise located in a tick eradication quarantine area, temporary preventative quarantine area or control purpose quarantine area that is not classified as an infested, exposed or adjacent premise.”<sup>349</sup> If ticks are found in a check premise, the premise would be reclassified as a temporary quarantine area and the animals must be treated and re-inspected.<sup>350</sup>

According to Dr. Drummond, the presence of Mines Road between the permanent quarantine area and the pastures on the north side of Mines Road (the intended site of Laredo Race Park) acts as a barrier for cattle fever ticks, to the extent that those pastures are not considered as adjacent premises to TEQA.<sup>351</sup>

### **c. Quarantine history**

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<sup>347</sup> Laredo Race Park Ex. 16 (Dr. Drummond Rebuttal) p. 10, citing 4 TEX. ADMIN. CODE § 41.1(1).

<sup>348</sup> *Id.* at 10-11.

<sup>349</sup> Laredo Race Park Ex. 16 (Dr. Drummond Rebuttal) p. 12, citing 4 TEX. ADMIN. CODE § 41.1(3).

<sup>350</sup> Tr. Vol. 8 (Dr. Drummond Clarifying) p. 177.

<sup>351</sup> Laredo Race Park Ex. 16 (Dr. Drummond Rebuttal) p. 11. Dr. Drummond is an expert on cattle fever ticks. He worked for the USDA-ARS at the Livestock Insects Investigations Laboratory in Kerrville, Texas for thirty years. He served as the Laboratory Director for nine years.



In the past, the Old Laredo Feed Lot has been quarantined, and, after appropriate tick eradication measures were taken, the quarantine was lifted.<sup>352</sup> Joe Finley, Jr., a former member of the TAHC,<sup>353</sup> testified that because the proposed Laredo Race Park site is directly across from the TEQA, it is in constant danger of being subject to the quarantine restrictions under the rules of the TAHC.<sup>354</sup> Further, the site is next to a creek that has been the most frequently quarantined site in the state.

Dr. Clymer is of the opinion that the Laredo Race Park site is not suitable for a racetrack due to its potential to be quarantined by the Texas Animal Health Commission.<sup>355</sup> Dr. Clymer, an LRP Group witness, testified that the Laredo Race Park site was currently under a fever tick quarantine.<sup>356</sup> Dr. Clymer does not believe that safety precautions proposed by Laredo Race Park, such as double-fencing and a non-vegetative boundary, will prevent the risk of fever tick exposure because stray, tick-infested animals, such as deer, could cross the Mexican border.

Dr. Drummond noted that the proposed site is actually listed as a “check premise” and noted that it was included in the TAHC recent quarantine notice because the 200-acre proposed site currently has no boundary lines separating it from the remainder of the Old Laredo Feed Lot tract. Dr. Drummond noted that the TAHC designates quarantine areas based upon known boundary lines.<sup>357</sup> He cited to TAHC Rule 41.2(a) that provides for a re-designation of an area when any change in circumstances warrants reclassification to support his contention that the

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<sup>352</sup> Laredo Race Park Ex. 16 (Dr. Drummond Rebuttal) pp. 12-13; LRP Group Ex. 48 (Finley Responsive) p. 5.

<sup>353</sup> LRP Group Ex. 48 (Finley Responsive) p. 2. He was appointed to the Commission by Governor Connally in the 1960s. He is also a life member and past president of the United States Animal Health Association. He has extensive experience in raising horses, cattle, and other livestock on ranches in Webb County and Mexico.

<sup>354</sup> LRP Group Ex. 48 (Finley Responsive) p. 5.

<sup>355</sup> LRP Group Ex. 57 (Dr. Clymer Responsive) p. 3.

<sup>356</sup> LRP Group Ex. 58 (Dr. Clymer Supplemental Responsive) p. 2. He relied upon a Fever Tick Quarantine notice issued by the TAHC on December 8, 2005. *Id.* at Ex. 1. However, Dr. Clymer later admitted that the premises were considered to be a Check premise.

<sup>357</sup> Laredo Race Park Ex. 16 (Dr. Drummond Rebuttal) p. 18.

past quarantine history was not determinative with respect to the Laredo Race Park site.<sup>358</sup> Dr. Drummond stated that once the site is developed, it would constitute a change in circumstances that warranted reclassification and it would have no higher risk of infestation than the LRP Group's site. Dr. Drummond contended that the history of the Laredo Feed Lot does not affect any future TAHC designation, as the determination of whether parts of it should be designated as an adjacent premises would be premised upon finding cattle ticks on nearby premises.<sup>359</sup>

Dr. Drummond notes that Laredo Race Park's plans involving the double-fencing<sup>360</sup> around the facility and the security for both the race horses and the facility should exempt it from being classified as an adjacent premise, in accordance with Rule 41.1(1) of the TAHC.<sup>361</sup> Further, Dr. Drummond noted that the addition of cattle guards in areas in which horses are brought in and out of the facility, as well as gates at the entrance will prevent stray livestock and wild game animals from entering the facility.<sup>362</sup> Dr. Drummond acknowledged that he was unaware of any plan to develop the land surrounding the proposed Laredo Race Park site.<sup>363</sup>

Dr. Clymer said that the risk for tick infestation or quarantine is higher at the Laredo Race Park site than for Laredo Downs due to its proximity to the border, as well as the lack of development around the site. Dr. Drummond agreed that the Old Laredo Feedlot, if it remained

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<sup>358</sup> Laredo Race Park Ex. 16 (Dr. Drummond Rebuttal) p. 18; Tr. Vol. 8 (Dr. Drummond Cross) p. 170.

<sup>359</sup> Laredo Race Park Ex. 16 (Dr. Drummond Rebuttal) pp. 12-13.

<sup>360</sup> Laredo Race Park proposes to use a game-proof double fence that is eight feet high, composed of six by seven inch wire mesh with two strings of barbed wire, twenty feet of crushed granite in between, followed by a second fence that is eight feet high. Tr. Vol. 8 (Dr. Clymer Cross) p. 28.

<sup>361</sup> *Id.* at 13-14. Dr. Drummond acknowledged that there is no guarantee of an exemption. Tr. Vol. 8 (Dr. Drummond Cross) p. 140. Dr. Clymer testified that conversations with people from TAHC led him to believe that there was a possibility that TAHC's rules may be changed to eliminate an exemption for an adjacent premise with a game-proof double fence that is approved by state or federal epidemiologist. He conceded that such a change had not yet occurred or had even been proposed.

<sup>362</sup> Tr. Vol. 8 (Dr. Clymer Cross) p. 14.

<sup>363</sup> Tr. Vol. 8 (Dr. Drummond Cross) p. 143.

brush land or pastureland, would be more susceptible to an infestation of fever ticks. He also acknowledged that multiple owners of cattle who are allowed to graze cattle in that area would increase the possibility of infestation.<sup>364</sup> However, he contended that the development of the site into a racetrack, along with the planned protective measures to be taken by Laredo Race Park, would minimize any risk of tick infestation at the site.

Dr. Clymer agreed that, when all the land became developed, it could change his analysis.<sup>365</sup> He agreed that the history of an area comprised primarily of open pastureland reveals little about the possibility of a quarantine once the land is developed.<sup>366</sup>

Dr. Clymer testified that a quarantine disrupts a racetrack because the animals have to be treated and then remain at the track for a minimum of fourteen days until a tick inspector could inspect the animals and find them to be tick-free prior to leaving.

**d. Types of cattle ticks.**

There are two species of cattle ticks: (1) *boophilus annulatus*, and (2) *boophilus microplus*.<sup>367</sup> Both species are found in Mexico. The *boophilus microplus* is also known as the southern cattle tick. Dr. Drummond noted that “most of the ticks found south of Webb County are the southern cattle tick. There is a transition area between Webb and Val Verde County in which both the southern cattle tick and the cattle tick are found.”<sup>368</sup> Cattle fever ticks carry the potential to pass

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<sup>364</sup> *Id.* at 150-51.

<sup>365</sup> Tr. Vol. 8 (Dr. Clymer Cross) pp. 36.

<sup>366</sup> *Id.* at 37.

<sup>367</sup> Laredo Race Park Ex. 16 (Dr. Drummond Rebuttal) p. 8. Dr. Clymer’s doctoral dissertation addressed the Lone Star tick. Tr. Vol. 8 (Dr. Clymer Cross) pp. 11-12.

<sup>368</sup> Laredo Race Park Ex. 16, pp. 8-9.

along certain diseases in bovine, such as bovine babesiosis.<sup>369</sup> Dr. Drummond testified that approximately 80 to 90% of cattle ticks carry disease.<sup>370</sup>

A fever tick can carry a protozoa,<sup>371</sup> or minute animal parasite, that is injected into the animal's bloodstream when the tick feeds upon it, resulting in acute anemia and a fast and brutal death for as many as 90 percent of affected cattle.<sup>372</sup> Very few cattle in the United States have any immunity to cattle fever; however, resident cattle found in areas in which cattle ticks and the disease have been present for a long time are immune to the disease.<sup>373</sup> In a nine-month period in 2005, APHIS reported that approximately 4,000 cattle and 50 horses were seized in the quarantine zone as having cattle fever ticks.<sup>374</sup>

\_\_\_\_\_ e. **Tick characteristics**

According to Dr. Clymer, the cattle tick can survive in temperature between 40 and 110 degrees, in 60% relative humidity.<sup>366</sup> The area in which a cattle tick lives is a small one.<sup>367</sup> The cattle fever tick is a one-host animal, meaning that it lives all of the stages of its life (larvae, nymphal, and adult) on one animal. Dr. Drummond noted that this characteristic means that "it is

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<sup>369</sup> Equine babesiosis is the same disease as bovine babesiosis except that it is specific to horses. Equine babesiosis is not currently present in the United States. Dr. Clymer's testimony was limited to consideration of bovine babesiosis. Tr. p. 20. However, he did testify that the tick eradication program reported that a stray horse was euthanized because it carried the babesia equine organism, piroplasmosis. Tr. Vol. 8 (Dr. Clymer Re-Direct) p. 84. Dr. Clymer's testimony addressed the risk of a future quarantine.

<sup>370</sup> Tr. Vol. 8 (Dr. Drummond Cross) p. 167.

<sup>371</sup> *Babesia bigemina* or *Babesia bovis*. Laredo Race Park Ex. 16 (Dr. Drummond Responsive) p. 9.

<sup>372</sup> LRP Group Ex. 57 (Dr. Clymer Responsive) p. 5. According to Mr. Finley, most infected cattle will die, but horses typically do not. LRP Group Ex. 48 (Finley Responsive) p. 4.

<sup>373</sup> Laredo Race Park Ex. 16 (Dr. Drummond Rebuttal) p. 9.

<sup>374</sup> Tr. pp. 148-49.

<sup>366</sup> Tr. Vol. 8 (Dr. Clymer Cross) p. 37.

<sup>367</sup> "So I would say it is a very small area." Tr. Vol. 8 (Dr. Clymer Cross) p. 38.

critical that the larvae attach to a host that is large enough to support the feeding of the larval, nymphal and adult stages of cattle ticks.”<sup>368</sup> Because of this, cattle ticks are rarely found on hosts that are smaller than cattle, horses or larger game animals.<sup>369</sup>

The total life cycle of the fever tick is approximately 56 days.<sup>370</sup> A one-host tick normally gets on one host and does not drop off. The female lays the eggs on the ground. The larval are very small six-legged seed ticks. After they hatch, they crawl away and wait for an animal to get close so that they can attach, after which they crawl to a preferential feeding site and take a blood meal.<sup>371</sup>

#### **f. Infestations and Preventive Measures**

There are three types of scenarios in which an infestation can occur through a transported animal: (1) the animal is transported into a facility and already has one or more ticks; (2) a stray animal with ticks comes into the facility; and (3) an animal with ticks is smuggled into the facility. With regard to the first scenario, Dr. Clymer agreed that this risk exists no matter where the facility is located in Webb County.<sup>372</sup> With regard to the second scenario, Dr. Clymer testified that the risk would be small if a game-proof double fence, with 20 feet of crushed granite in between, surrounded

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<sup>368</sup> Laredo Race Park Ex. 16 (Dr. Drummond Rebuttal) p. 15.

<sup>369</sup> *Id.* The grooming habits of smaller animal hosts make it more likely that the tick will be dislodged or killed during the grooming process. Dr. Clymer testified that there has been an increase in the number of whitetail deer in the state, which increases the possibility of tick infestations. Additionally, a type of corn that had been treated with Ivermectin, which reduces the tick population, is no longer in use, which Dr. Clymer attributes to an increase in the number of tick infestations outside of the quarantine area.

<sup>370</sup> Tr. Vol. 8 (Dr. Clymer Cross) p. 58. A female larvae tick will feed on the host, filling up with blood until it molts to the nymphal stage on the same host. It will then feed, fill up with blood and molt to the adult stage. As the female engorges on the host’s blood, she is inseminated by the male and then she fully fills up with blood and drops to the ground, where she lays eggs. The disease organism migrates from her to the eggs. She will lay approximately 3-4,000 eggs before she dies. As the tiny seed ticks hatch, they have received the disease organism and have the capability of transferring the disease to its host animal. Tr. 8 (Dr. Drummond Cross) pp. 167-68.

<sup>371</sup> Tr. Vol. 8 (Dr. Clymer Cross) pp. 59-60; Tr. Vol. 8 (Dr. Drummond Clarifying) pp. 172-74. Dr. Drummond noted that a fully engorged female tick that is pregnant and about to lay eggs is unlikely to move very far. A male tick does not engorge with blood. *Id.* at 184.

<sup>372</sup> Tr. Vol. 8 (Dr. Clymer Cross) p. 22.

the facility.<sup>373</sup> Dr. Clymer agreed that the crushed granite would prevent vegetation between the two fences. Dr. Drummond noted that the bare, vegetation-free area inside the double fencing would be too harsh an environment for cattle tick females or larvae.<sup>374</sup> Dr. Clymer admitted that a game-proof fence greatly decreases the opportunity for ticks to come into the facility and that the risk for the third scenario would be similar to that of the second scenario.<sup>375</sup>

Dr. Drummond noted that the ARS Research Laboratory at Moore Air Force Base in Mission, Texas, was founded in 1983 to study cattle ticks on infested cattle and pastures inside the 140-acre facility. The premise is classified as infested, although it is located in the tick-free area. The game-proof double fence in place at that facility has prevented adjacent premises from receiving an official classification as an “adjacent premise.”<sup>376</sup> Further, the facility uses cattle guards and gates at the entrances. This facility, according to Dr. Drummond, is a good example of how a premise can be tick-infested, yet preventive measures can keep surrounding premises from being designated as an adjacent premise.<sup>377</sup> Dr. Drummond also cited to the El Primero Training Facility, with double-fencing and reasonable maintenance of the facility, as another example of how a premise can avoid a problem with cattle ticks.

Dr. Drummond stated that cattle ticks can crawl only a very short distance and game-proof double fencing would prevent ticks that are dislodged on the outside of the fence from being picked up by horses on the inside of the inner fence.<sup>378</sup> Dr. Clymer agreed that a fever tick could not crawl

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<sup>373</sup> Tr. Vol. 8 (Dr. Clymer Cross) p. 29.

<sup>374</sup> Laredo Race Park Ex. 16 (Dr. Drummond Rebuttal) p. 15.

<sup>375</sup> Tr. Vol. 8 (Dr. Clymer Cross) p. 44.

<sup>376</sup> Laredo Race Park Ex. 16 (Dr. Drummond Rebuttal) p. 16.

<sup>377</sup> *Id.* at 17. The area surrounding the Air Force Base laboratory is agricultural land that is used for farming. Tr. Vol. 8 (Dr. Drummond Cross) p. 166.

<sup>378</sup> Laredo Race Park Ex. 16 (Dr. Drummond Rebuttal) p. 15.

a great distance.<sup>379</sup> Dr. Clymer is familiar with the Moore Air Force Base facility and its use of protective double fencing. He noted that the facility did not use crushed granite between the game fence and the second fence, which he did not believe to be a game fence. Dr. Clymer agreed that the Laredo Race Park site was even more conservative from a control perspective than the Moore Air Force Base facility.<sup>380</sup> However, Dr. Clymer observed that he was aware that a double game fence had been ineffective on a few other occasions.<sup>381</sup> When questioned about those occasions, he acknowledged that one of them involved a ranch consisting of approximately a half million acres. Dr. Clymer agreed that controlling a double fence on that amount of acreage is much different than controlling it on a 200-acre racetrack.<sup>382</sup> He also admitted that he did not have personal knowledge about the other two incidents and had no knowledge of the fences on those properties.

Mr. Finley disputed the use of double-fencing as a guarantee against ticks because the proposed site will be surrounded by a very undeveloped area that is grassy and weed-infested. He stated that patrons and rodents could pick up a nymph fever tick on their way into the facility. He also believes that a horse owner, trainer or breeder would have concern about bringing their horses into an area that could be subject to a quarantine. He also believes that locating a racetrack at this site would not protect the health, safety and welfare of race animals and participants in racing due to the consequences that could occur from an actual infestation or a quarantine.<sup>383</sup>

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<sup>379</sup> Dr. Clymer noted that 15-20 feet is the outside normal range of the distance that a fever tick could crawl. Mr. Finley also provided testimony that a fever tick can move on the ground, but could not crawl more than twenty feet. LRP Group Ex. 48 (Finley Responsive) p. 4.

<sup>380</sup> Tr. Vol. 8 (Dr. Clymer Cross) p. 43.

<sup>381</sup> Tr. Vol. 8 (Dr. Clymer Cross) pp. 80-81.

<sup>382</sup> Tr. Vol. 8 (Dr. Clymer Cross) p. 103.

<sup>383</sup> *Id.* at 7.

Dr. Drummond said that the issue of cattle fever ticks had, in his opinion, been blown out of proportion.<sup>384</sup> He also noted that the horses will be housed in pens and stalls, not in open, grassy pastures, and will be carefully handled in terms of their movement, housing and protection from the elements. The man-made environment inside the facility is also not conducive to the survival of cattle ticks because it will not consist of grass and will be subject to high temperatures and low relative humidity.<sup>385</sup> Dr. Drummond also dismissed the notion that a stray animal or livestock could enter the facility due to its security, fencing and hostile environment for ticks.

Laredo Race Park challenged the credibility of LRP Group in raising the cattle fever tick issue, noting that it had applied for a license for another racetrack, Valle de los Tesoros, in Hidalgo County, Texas, which is located within 500 yards of the tick eradication quarantine zone. Laredo Race Park argues that if the cattle fever tick issue is truly a threat for potential racetrack locations, then LRP Group would have considered this in selecting their proposed site in Hidalgo County. Mr. Brown from LRP Group conceded that the issue had not been considered at all. Dr. Clymer said that he had not been asked to advise LRP Group about the risk of cattle fever ticks at the Hidalgo site.<sup>386</sup> Further, Laredo Race Park contends that the prior history of a quarantine at LIFE Downs, a former racetrack not far from the proposed Laredo Downs site, should also be considered in determining whether its site is suitable for a racetrack.

## **B. LRP Group**

### **1. Site selection and location**

The site proposed by LRP Group is located on U.S. Highway 59 in Laredo and consists of approximately 125 acres from the Hurd Ranch. LRP Group holds an option contract to purchase the

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<sup>384</sup> *Id.* at 19.

<sup>385</sup> *Id.* at 20. Dr. Drummond noted that ticks need a moderate temperature and higher humidity in order to survive.

<sup>386</sup> Tr. Vol. 8 (Dr. Clymer Cross) p. 56.



land. The site is located east of downtown Laredo, in the area of commercial and residential development. It is close to the Laredo Entertainment Center, Texas A&M International University, and LIFE Downs. The area is generally referred to as the Eastern Corridor. The bulk of the new development, both commercial and residential, is east of IH-35, towards the LRP site.<sup>387</sup> A map of the proposed site is attached as Attachment 1.<sup>388</sup>

Laredo Downs' location on U.S. Highway 59 will be visible to vehicle traffic in the area. Mr. Brown testified that Retama Park is located on IH-35 in Selma, Texas, approximately twenty miles from San Antonio. He said that the location is very good and that it is important to be visible to passing traffic because travelers can see the park, including the fact that there is activity going on there, and reminds them of Retama Park.<sup>389</sup>

At the site, U.S. Highway 59 is a two-lane road with a shoulder on either side. There is no center turning lane. The majority of traffic exiting Laredo Downs will turn left onto U.S. Highway 59 in order to return to Laredo. Patrons and horsemen, including those transporting horse trailers, will travel on two lanes from the horse track for about 6/10 of a mile before the highway expands to four lanes traveling in either direction. Because U.S. Highway 59 is in an area of commercial development, traffic is heavy and there are a number of street lights on the roadway.

Orlando Navarro testified on behalf of LRP Group. He is a real estate administrator for B.P. Newman Investment Company and is a member of the City of Laredo Planning and Zoning Commission.<sup>390</sup> The Commission's role is to review and make recommendations on zone changes to the City Council, review plat designs for final approval, and review proposed ordinances. He testified that the Laredo Downs site is currently zoned agricultural and should have no difficulty

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<sup>387</sup> Tr. Vol. 2 (B. Brown Cross) p. 157.

<sup>388</sup> A site plan (containing 600 stalls) for Laredo Downs is included as Attachment 3.

<sup>389</sup> *Id.* pp. 123-26.

<sup>390</sup> He assumed the position of chairman of the Commission in October 2004 for a one-year term. LRP Group Ex. 10 (Navarro Direct) p. 1. He is also a board member of LIFE Downs.

with zoning for a racetrack at that location.<sup>391</sup>

Mr. Navarro believes the proposed site for Laredo Downs is a good one due to the current development that already exists in the area from the Eastern Corridor.<sup>392</sup> The existing facilities in the Eastern Corridor attract a large number of people who can also patronize Laredo Downs. Additionally, there are future plans to build hotels, movie theaters and shopping centers in the Eastern Corridor. Mr. Navarro asserted that there are plans to construct a fifth international bridge in South Laredo that would link to Loop 20 and provide easy access for Mexican tourists to travel to businesses in the Eastern Corridor.<sup>393</sup> He agreed that traffic traveling to the existing businesses in the Eastern Corridor would not actually pass by Laredo Downs; however, someone traveling to Laredo Downs would pass by those businesses unless the person was traveling from the east.<sup>394</sup>

## 2. Access to site

Jim Toscano testified on behalf of LRP Group. Mr. Toscano is a consultant who works in the gaming industry, representing horse track owners, developers, casino owners and developers, and shopping mall developers, and ship terminal contractors. According to Mr. Toscano, the site proposed by the LRP Group is clearly the best site for a racetrack in Laredo, Texas. In describing the site as unique, Mr. Toscano relied on factors such as enough acreage at an affordable price, zoning, visibility, and access to a major interchange close within the commercial hub or downtown

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<sup>391</sup> Tr. Vol. 3 (Navarro Cross) p. 14.

<sup>392</sup> *Id.* at 3. The Eastern Corridor encompasses LIFE Downs (a site used for festivals, carnivals, rodeos, concerts, 4-H competitions and auctions), Boy Scout grounds, Lake Casa Blanca (a state park), public golf course, Laredo International Airport, Laredo Entertainment Center (home to concerts, large business functions, and hockey games), and Texas A&M International University.

<sup>393</sup> LRP Group Ex. 10 (Navarro Direct) p. 3.

<sup>394</sup> Tr. Vol. 3 (Navarro Cross) p. 54. The area east of the Eastern Corridor is not very densely populated.

of the city. Mr. Toscano described the two most important considerations for a track as being location and size of facility.<sup>395</sup>

To see which site was easier to access, Mr. Toscano drove from the Mall de Norte area in the commercial center of Laredo to each site. He testified that it took 15 minutes of driving time to get to the LRP Group site on U.S. Highway 59, whereas it took 30 minutes to get to Laredo Race Park.<sup>396</sup> According to Mr. Toscano, this is a significant difference because the simulcast bettors, who constitute the majority of patrons for either track, value convenience and ease of being able to “drop in” and place their bets. Mr. Toscano said that he did not believe the bulk of customers for either racetrack would come from Mexico.<sup>397</sup>

Mr. Toscano testified that the site’s design should reflect the needs of the majority of the patrons. Mr. Toscano cited the example of Rockingham Park, near Boston. He said that the track is trying to reduce its race days because it loses money every day that it holds races.<sup>398</sup> As he stated, “That’s one of the reasons why you want to keep the investment in the live racing portion as minimal as possible.”<sup>399</sup> Mr. Toscano conceded that simulcasting does not provide jobs for jockeys, horsemen or trainers without live racing, and observed that the Commission would probably not allow a simulcast facility without live racing.<sup>400</sup>

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<sup>395</sup> Tr. Vol. 4 (Toscano Cross) p. 48.

<sup>396</sup> Tr. Vol. 4 (Toscano Direct) pp. 35-37; (Toscano Cross) pp. 41-44.

<sup>397</sup> Tr. Vol. 4 (Toscano Cross) pp. 45-46.

<sup>398</sup> Tr. Vol. 4 (Toscano Cross ) pp. 48-49; 50.

<sup>399</sup> Tr. Vol. 4 (Toscano Cross) p. 51.

<sup>400</sup> *Id.*

According to Mr. Toscano, the race industry is in such a decline that it must try to avail itself of every potential market. Mr. Toscano said that cross-generation activities, such as going to the movies or shopping, located close to the gaming facility facilitates drop-in racing attendance.<sup>401</sup> For example, some tracks will offer concerts or show basketball games on a big screen in hope of trying to expose a potential patron to the concept of attending a race.

### 3. Cattle Fever Tick issue

The Laredo Downs site is less than one mile from the LIFE Downs property that is currently the home of the Laredo International Fair and Exposition. The LIFE Downs site has been quarantined in the past, although Dr. Clymer said that he understood that the Laredo Downs area had not been under quarantine in the last twenty-three years.<sup>402</sup> Dr. Clymer is unaware of the type of fence planned for Laredo Downs and acknowledged that there was no development south and east of the site.<sup>403</sup> Because the proposed site for Laredo Downs is not an adjacent premise and is in an area of developed land with a history of human traffic, Mr. Finley does not believe that it poses a fever tick concern.<sup>404</sup>

Mr. Brown testified that Retama Entertainment Group has also applied to operate another racetrack in Texas, the Tesoros Racetrack in Hidalgo County, Texas.<sup>405</sup> That location consists of 200 acres. The application for the Tesoros proposal shows that Retama Entertainment Group would be the management company and the primary investors are the LaMantia family. Mr. Brown conceded that the application for the Tesoros site was filed after the fever tick issue had been raised

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<sup>401</sup> Tr. Vol. 4 (Toscano Direct) pp. 31-32.

<sup>402</sup> Tr. Vol. 8 (Dr. Clymer Cross) p. 85. Dr. Clymer stated that the Laredo Race Park site had been under quarantine 40 percent of the time in the last twenty-three years.

<sup>403</sup> Tr. Vol. 8 (Dr. Clymer Cross) p. 31.

<sup>404</sup> *Id.* at. 8.

<sup>405</sup> Tr. Vol. 2 (B. Brown Cross) p. 114.

in the present case and admitted that he did not raise the issue with respect to selecting the Tesoros location.<sup>406</sup> Mr. Brown testified that he was unaware of how close the site was to the Texas-Mexico border and was not aware of any quarantined areas near the site, but agreed that this would be something to care about.<sup>407</sup> Mr. Brown said that if the site was outside the quarantined area, it should not disqualify the Tesoros application from going forward.<sup>408</sup>

Steve LaMantia responded to the criticism of Laredo Race Park that no investigation was done by the Valle de los Tesoros partnership to determine whether their proposed racetrack in Hidalgo County was in the proximity of the tick eradication quarantine zone. Mr. LaMantia testified that he is the vice-president for the Valle de los Tesoros Limited partnership. He said that he was not involved in the selection for that proposed site. He said that it was at least two miles from Mexico and does not know whether it has ever been a temporary quarantine area.<sup>409</sup> Mr. LaMantia admitted that he and his brother had not talked about how close the site was to the permanent quarantine area, but said that it was appropriate to build a racetrack within a half mile of a permanent quarantine area “[d]epending on the external conditions.”<sup>410</sup>

The Laredo Downs site does not appear to have any significant issues related to the accessibility of water or other utilities.

***Analysis.*** After considering all of the evidence related to the proposed site locations, the ALJs note that determination of the best site is dependent upon several factors: (1) proximity to existing development; (2) traffic; (3) adequacy of the site’s acreage; (4) availability of utilities; and (5) impact, if any, of the TEQA. Also, the consideration of site involves the inherent differences

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<sup>406</sup> *Id.* at 146-47.

<sup>407</sup> *Id.* at 140-41.

<sup>408</sup> *Id.* at 143.

<sup>409</sup> Tr. Vol. 2 (S. LaMantia Cross) pp. 225-26.

<sup>410</sup> *Id.* at 226.

in the proposals: Laredo Race Park envisions an expansive site with a larger grandstand, greater number of stalls, and ability to serve as a first-class facility (both for racing and training horses), in a location that is accessed by a four-lane highway without much immediate development; Laredo Downs envisions a more simplified facility, with a site that offers other entertainment options besides horse-racing, in a location that is accessed off a two-lane highway (in front of the site) in a more commercially developed part of the city.

The ALJs believe that either site is suitable for a racetrack, given the other remarks in this PFD relating to facilities and acreage size. Although the ALJs find the facility envisioned by Laredo Race park superior to that proposed by LRP Group, the ALJs believe that the site proposed by LRP Group is ultimately preferable.

The ALJs first note that they do not believe the cattle tick fever issue raised by LRP Group as a reason to disqualify Laredo Race Park from consideration is a *per se* disqualifier. The evidence shows that the City of Laredo borders the TEQA. The possibility of a cattle fever tick ending up on a racehorse is a possibility, however remote, at either location. Although the Laredo Race Park site is surrounded by undeveloped pasture-land (suitable habitat for the fever tick) sufficient precautions through double-fencing and preventing vegetation between the double fences should deter an infestation. Additionally, more development is planned in the area by the LaMantias. As the development moves in the direction of Laredo Race Park, the likelihood of a cattle fever tick problem becomes more remote.

The Laredo Downs site is also surrounded by undeveloped pasture-land in the immediate vicinity, although there is greater human activity in the area. Although all of the fever tick experts were credible, the ALJs rely primarily on the testimony of Dr. Drummond for their conclusion that the fever tick specter raised by LRP Group is not a matter that should preclude the Laredo Race Park site from consideration by the Commission. The ALJs found Dr. Drummond to be most credible due to his many years of experience of researching the cattle tick, as compared to the other

experts.<sup>411</sup> Notably, LRP Group has submitted an application for another racetrack in Hidalgo County and did not even inquire about the proximity, if any, to the TEQA. This action seems to confirm Dr. Drummond's view that the level of risk for fever ticks in a modern and highly developed racetrack that institutes appropriate safety precautions is not as high as claimed by the LRP Group experts.

Additionally, the testimony by Steve LaMantia that suggested Laredo Race Park would not be able to acquire water and sewage access for their site appeared to be contradicted by the terms of the Water Agreement, which provides restricted access between the parties referred to as "Dolores-Pinto Valle that could be transferred after the City Manager had been provided with notice."<sup>412</sup> Further, Mr. Puig's testimony that there would be sufficient ability to tie into the water and sewer lines negated the implication that Laredo Race Park would not be able to access water. Further, it seems probable that the City of Laredo, which would benefit economically from having a racetrack built in the City, would want to cooperate with the track in making utilities available.

With respect to accessibility of the proposed sites, the ALJs find that the Laredo Race Park, located on Mines Road, currently provides better access through existing roadways. Mines Road is a four-lane divided highway. Once a traveler has passed the commercial warehouse district, the road does not have much vehicle traffic. The availability of two lanes of travel in each direction helps traffic flow more smoothly. Although there was some testimony about the large number of trucks and trailer traffic on Mines Road, the "bad traffic" seems concentrated around the warehouse district. The construction of an overpass at the railroad crossing will also help with regard to potential traffic back-up, although the evidence did not seem to indicate that would be the access point of choice for most people.

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<sup>411</sup> The ALJs also found the other experts to be credible; however, Dr. Drummond had specific expertise and qualifications regarding the habitat of the fever tick and preventive measures that the ALJs found persuasive.

<sup>412</sup> Water Agreement, LRP Group Ex. 38 at 1.

However, the ALJs prefer the location of LRP Group on U.S. Highway 59. This area is in a more developed area of town, one in which commercial entertainment venues are present. The evidence indicates that the expansion of U.S. Highway 59 will continue and it will ultimately be a four-lane highway. Of course, the highway construction may occur after a racetrack was built on the site, thereby adding to traffic delays and confusion. However, at some point the roadway will be four-lane highway and its location in a commercially developing area seems most likely to attract patrons to the site due to its visibility and accessibility.

The ALJs cannot ignore the evidence that the majority of patrons to either site will be simulcast patrons. As testified by Mr. Bork and Mr. Toscano, these patrons drop in during the day to place their bets, perhaps socialize with a friend or two, have something to eat and drink, and then leave. With that scenario in mind, convenience of travel becomes a primary focus. The LRP Group site offers a more direct location for the patron envisioned as the simulcast customer. Although there are more street lights and there can be heavy traffic on U.S. Highway 59, the travel time to and from the site is less than that of Laredo Race Park. The remoteness of the Laredo Race Park location, at the present stage of growth in the Laredo area, makes it less appealing to the simulcast patron who is unlikely to be traveling in that area for any other purpose. In contrast, the simulcast patrons will most likely travel and live in closer proximity to the Laredo Downs site because it is located near an entertainment center.

The accessibility of utilities, and the corresponding cost to access them, also favors the Laredo Downs site. While it appears likely that Laredo Race Park can ultimately obtain sufficient utilities, there may be some delay and additional costs to do so. Laredo Downs, on the other hand, does not have the same concerns.



Consequently, the ALJs believe that the Laredo Downs site is ultimately the preferable site, considering its location in a more commercially developed area, the apparent lack of complications in securing utility access, and, to a lesser extent the remote possibility of a fever tick problem.

## IX. EFFECT OF THE PROPOSED TRACKS ON TRAFFIC FLOW

### A. Laredo Race Park

The proposed site for Laredo Race Park is on FM 1472, also known as Old Mines Road. The site is approximately 11.5 miles from the intersection of Loop 20 and FM 1472, and over 14 miles from IH-35 in the City of Laredo. The site is accessible by a four-lane divided highway in an area that handles a substantial amount of commercial traffic near the area containing numerous warehouses south of the site. To exit the racetrack, patrons would turn right, to the north, on Mines Road/FM 1472 and proceed to the nearest pass-through or connector road. Patrons wishing to return to the city of Laredo would have to exit to the north and make a U-turn (a “Texas turnaround”) in order to travel south on Mines Road/FM 1472. The peak time for 18-wheeler traffic on Mines Road is from 11:00 a.m. to 1:00 p.m. which would coincide with the 1:00 p.m. post time proposed by LRP Group.<sup>413</sup> An overpass construction project will divert traffic over a train track that runs across Mines Road and parallel to IH 35, south to the border of Mexico.<sup>414</sup> Currently, however, traffic heading to the site from that location must periodically stop for the train traffic at this intersection.

Mr. Lerner testified that improvements to the entry and exit into the race park may be necessary.<sup>415</sup> According to Mr. Lerner, a traffic study was prepared and included with the

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<sup>413</sup> Tr. Vol. 5, pp. 73-74.

<sup>414</sup> Tr. Vol. 2, p. 77; Vol 4 (Lerner Re-Direct) p. 78; Tr. Vol 3 (Navarro Cross) pp. 43-44.

<sup>415</sup> Laredo Race Park Ex. 5 (Lerner Direct) p. 8 (referring to the testimony of James Michael Heath that a median crossing would better accommodate traffic leaving the track and turning onto Mines Road).

application.<sup>416</sup> Mr. Lerner agreed that there were two ways in which patrons coming from Laredo could get to the race park site. One was to take Mines Road (F.M. 1472). The other was to take IH-35 to Loop 20, and then take Loop 20 to Mines Road.<sup>417</sup> These alternatives may be seen on Attachment 1 to this PFD. Mr. Lerner stated that the existence of warehouses in the area would indicate that access is very good because it would mean that there would be multiple ways to get in and out of the area.<sup>418</sup> He said that the traffic study indicated that the building of the track would not impact traffic in a negative way and that Mines Road was adequate to support the racetrack.<sup>419</sup> Mr. Lerner relied on the traffic studies and visual observations to support his conclusion regarding the impact of traffic.<sup>420</sup> Mr. Lerner said that the vast majority of patrons to the racetrack would come from Laredo.<sup>421</sup>

Mr. Bork agreed that traffic would be heavier on the thirty days when live racing is available. During the remaining days, the park would open at 11:00 a.m. for the simulcast patrons who would travel on Mines Road to get to the park around that time of day. Mr. Bork did not remember whether he had asked Mr. Heath to consider the time of day with regards to traffic at the site, although he stated that he intentionally drove Mines Road at different times of the day so he could personally observe the traffic conditions.<sup>422</sup>

James Michael Heath, a traffic engineer, reviewed the traffic study prepared by Laredo Race Park by Civil Engineering Consultants (“CEC”).<sup>423</sup> In addition, Mr. Heath relied

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<sup>416</sup> *Id.* at 8.

<sup>417</sup> Tr. Vol. 2 (Lerner Cross) pp. 14-15.

<sup>418</sup> *Id.* at pp. 18-19.

<sup>419</sup> *Id.*

<sup>420</sup> *Id.* at 24. A traffic study was performed by CEC and was submitted with the Laredo Race Park application.

<sup>421</sup> *Id.* at 28.

<sup>422</sup> Tr. Vol. 3 (Bork Cross) pp. 156-157.

<sup>423</sup> Mr. Heath is President and a Principal Transportation Engineer at Alliance Transportation Group, Inc. Laredo Race Park Ex. 7 (Heath Direct) p. 1.

upon other traffic data and analysis, Mr. Heath concluded that the impact on traffic flow on Mines Road, even using the higher number including traffic counts, in order to corroborate the conclusions of CEC.<sup>424</sup> The average daily traffic (“ADT”) in the spring of 2005 for the section of Mines Road at the site was 7,600 vehicles per day.<sup>425</sup> Mr. Heath stated that the proposed land use will increase this amount to, at most, approximately 8,600 vehicles per day based on the estimates from the Trip Generation Handbook.<sup>426</sup> He testified that, even 8,600 trips per day actually occurred, which he doubted, would traffic on Mines Road would be minimally impacted because Mines Road is a divided highway.<sup>427</sup>

Additionally, Mr. Heath reported that the highest truck volume on Mines Road occurs from noon to 1 p.m., which is outside the peak hour for racetrack activity. Consequently, the impact of truck traffic on the racetrack’s operations is minimized.<sup>428</sup>

Mr. Heath disputed the notion that patrons will be required to cross over the railroad grade crossing at the intersection of Mines Road and IH-35 to reach the track. Instead, most patrons traveling from the race park site to their homes would not be required to use the grade crossing, nor would anyone traveling north on IH-35. Instead, it is expected that patrons would use Loop 20 from Mines Road to IH-35 as the primary route to and from Laredo Race Park.<sup>429</sup> An overpass is currently

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<sup>424</sup> Laredo Race Park Ex. 7 (Heath Direct) p. 4.

<sup>425</sup> *Id.* at 6. Mr. Heath noted in his rebuttal testimony that the base traffic count had not been adjusted for semi-trucks which would result in an even lower number. Laredo Race Park Ex. 18 (Heath Rebuttal) p. 7.

<sup>426</sup> Laredo Race Park Ex. 7 (Heath Direct) JMH-Ex. 7 at 3. (Institution of Transportation Engineers, Trip Generation Handbook (2003). Mr. Heath also considered admissions data from SHRP that showed about 1,500 to 2,500 trips per day were recorded at that track, a Class 1 facility in a more populated city.

<sup>427</sup> According to Mr. Heath, the average daily traffic farther south on Mines Road exceeds 55,000 vehicles per day. *Id.*

<sup>428</sup> Laredo Race Park Ex. 18 (Heath Rebuttal) p. 7.

<sup>429</sup> Laredo Race Park Ex. 18 (Heath Rebuttal) p. 8. *See also* Laredo Race Park Ex. 20 (Puig Rebuttal) p. 17.

under construction and will connect northbound IH-35 directly to westbound Loop 20, providing easier access to Mines Road.<sup>430</sup>

The majority of traffic is estimated to be going to and from the City of Laredo, leading to a demand for left turns out of the site. Mr. Heath noted that a median break would be useful, although he asserted that the three driveway intersections with Mines Road appear able to operate at an acceptable level of service.<sup>431</sup> He concluded that Laredo Race Park's application is reasonable from a traffic perspective.<sup>432</sup>

Laredo Race Park also disputed the notion that the intense truck traffic in the area would frighten drivers due to the subjective nature of fear and the heavy truck traffic throughout Laredo. However, it presented evidence that there is a great deal of truck traffic throughout the city of Laredo and the truck traffic thinned as Mines Road neared the Laredo Race Park site.<sup>433</sup> Further, evidence was presented that horsemen would have the ability to bypass the city by taking the Camino Colombia Toll Road exit off IH-35, which connects to Mines Road north of the site. They can access the racetrack by making a left turn onto Mines Road and traveling southbound to the site, thereby avoiding the traffic in the warehouse district.

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<sup>430</sup> Laredo Race Park Ex. 18 (Heath Rebuttal) at JMH-05 TxDot Press Release (Jan. 23, 2006).

<sup>431</sup> Laredo Race Park Ex. 7 (Heath Direct) p. 6. A median crossing would require the approval of the Texas Department of Transportation and would be negotiated after the Commission's approval of a license for the Laredo Race Park.

<sup>432</sup> Laredo Race Park Ex. 7 (Heath Direct) p. 3.

<sup>433</sup> See Tr. Vol. 3 (Navarro Cross) p. 22; Tr. Vol. 2 (Cross of Finley) pp. 82-84; Laredo Race Park Ex. 20 (Puig Rebuttal) p. 6.

**B. LRP Group**

The proposed site for the LRP Group is located on U.S. 59, approximately 5.5 miles from the intersection of U.S. 59 and IH-35.<sup>434</sup> It is expected that the majority of patrons will come from Laredo proper and will travel east on U.S. 59 from IH-35 to the site.<sup>435</sup> Patrons could also access the site by traveling on Loop 20 to U.S. 59 and then continue eastbound to the site.<sup>436</sup> U.S. Highway 59 is a two-lane undivided road with a shoulder on each side at the site's location.<sup>437</sup> A center stripe divides the two lanes of traffic.<sup>438</sup> Traffic exiting the racetrack would have to make a left-hand turn onto U.S. Highway 59 (crossing oncoming traffic) in order to return to Laredo. It is estimated that ninety percent of the patrons will make a left hand turn in order to return to Laredo.<sup>439</sup> Vehicles may have to use the shoulder in order to merge with the westbound traffic traveling to Laredo if they are unable to directly merge onto the highway.<sup>440</sup> U.S. Highway 59 is currently being expanded to increase the road from two lanes to four, but the expansion will end 6/10 of a mile southwest from the entrance of the LRP site.<sup>441</sup> Mr. McInturff testified that a construction project had been proposed to widen U.S. Highway 59 from two lanes to four lanes, beginning in 2009. However, he does not know whether that project has been approved or funded.<sup>442</sup> He agreed that construction is

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<sup>434</sup> LRP Group Ex. 30 (McInturff Direct, Exhibit MM-3).

<sup>435</sup> Tr. Vol. 5 (Cross of McInturff) p. 171; LRP Group Ex. 30 (McInturff Direct) Ex. MM-3.

<sup>436</sup> LRP Group Ex. 30 (McInturff Direct) Ex. MM-3; LRP Group Ex. 11 (Navarro Responsive).

<sup>437</sup> Tr. Vol. 2 (Brown Cross) p. 171.

<sup>438</sup> Tr. Vol. 5 (McInturff Cross) p. 173.

<sup>439</sup> Tr. Vol. 5 (McInturff Cross) p. 171.

<sup>440</sup> Mr. McInturff testified that the shoulder were ten feet wide on either side. Tr. Vol. 5 (McInturff Cross) p. 173.

<sup>441</sup> Tr. Vol. 5 (McInturff Cross) pp. 177-78; 186.

<sup>442</sup> Tr. Vol. 5 (McInturff Cross) pp. 178-79.

possible in front of the racetrack and said he did not know what sort of financial impact that could have on the track.<sup>443</sup>

It will be necessary for LRP Group to negotiate with TxDOT and local governmental entities in order to make improvements to U.S. Highway 59 at the site's location. There is less 18-wheeler traffic in this area than at the Laredo Race Park site.<sup>444</sup> The majority of patrons traveling to Laredo Downs are expected to come from Laredo proper, who are most likely to travel to the site by traveling east on U.S. Highway 59 from IH-35.<sup>445</sup> Patrons traveling from the north could access U.S. Highway 59 from Loop 29 and travel east on U.S. Highway 59 for approximately two miles.

LRP Group plans to have two driveways off of U.S. Highway 59, Driveway A and Driveway B.<sup>446</sup> Patrons coming from Laredo proper, driving east on U.S. Highway 59, would have the option of turning into the site's location at either Driveway A or B. Patrons traveling from the east would turn left into Driveway B. In exiting the site, patrons would use Driveway A to turn into a lane proposed in the center of the roadway where they can pause to wait for traffic to clear or accelerate as they enter into U.S. Highway 59. Patrons wishing to head east from the site can use Driveway B. Driveway B can also be used by patrons returning to Laredo proper but they will have to make a left turn across oncoming traffic.

Laredo Race Park contends that locating Laredo Downs on U.S. Highway 59 creates traffic congestion issues because both patrons and horsemen will access the site on U.S. Highway 59 coming from Laredo. As noted by Keith Asmussen, there are major traffic delays when there are events at LIFE Downs, located near the proposed Laredo Downs site.<sup>447</sup> Further, Laredo Race

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<sup>443</sup> *Id.* at 179-81. He also testified that he was not asked by any of the LRP Group economists to discuss the impact of construction on the track's financial forecasts.

<sup>444</sup> *Id.*

<sup>445</sup> *Id.*

<sup>446</sup> LRP Group Ex. 33.

<sup>447</sup> Tr. Vol. 4 (Asmussen Re-Direct) p. 150.

Park asserts that the construction project to widen U.S. Highway 59 appears to be limited to the area from west of Loop 20 to LIFE Downs and the expansion will not continue to Laredo Downs.<sup>448</sup> Consequently, patrons traveling to Laredo Downs will have to travel on U.S. Highway 59, going from three lanes into one lane, which could cause congestion.<sup>449</sup> Laredo Race Park also contends that the entering and exiting turns at the location are poor, especially considering that the road is only a two-lane roadway at the location. Mr. McInturff conceded that the left turn from Driveway B does not meet an acceptable level of service according to the TxDOT standards.<sup>450</sup>

***Analysis.*** The traffic in Laredo is heavy due to its location on the Texas-Mexico border. The area generates heavy truck and 18-wheeler traffic. Both sites will have to contend with significant vehicle traffic, including truck traffic. The Laredo Downs site has a heavier concentration of traffic on U.S. Highway 59. The Laredo Race Park site is accessed by going through very heavy traffic, including commercial traffic to the warehouse district, with a thinning of traffic closer to its site. The four-lane divided highway to Laredo Race Park is superior to the two-lanes of U.S. Highway 59. It provides easier ingress and egress and can currently provide adequate access to the site. The modifications proposed by Laredo Race Park, *i.e.*, dedicated median crossing, are reasonable and will not take a long time to achieve if approved.

On the other hand, substantial construction will need to occur on U.S. Highway 59 in front of the Laredo Race Park site to provide adequate access for the patrons. Significant traffic bottlenecks and congestion occur when events take place at neighboring LIFE Downs, just up the road from Laredo Downs. As noted by Mr. McInturff, a construction project to widen the highway at the site's location has been proposed, but there is no evidence that it has been approved. Even if approved, the construction would begin in 2009, presumably after Laredo Downs would have

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<sup>448</sup> Laredo Race Park Ex. 68 (Heath Responsive) p. 8; Tr. Vol. 5 (McInturff Cross) pp. 172-74.

<sup>449</sup> *Id.* at 9.

<sup>450</sup> Tr. Vol. 5 (McInturff Cross) p. 166.

opened for business. There is no evidence about the financial impact that could result to the track because of the construction. Traffic construction projects result in delays and frustrations to travelers; undoubtedly, there would be some impact to the track. However, once a widening project was completed, it would provide sufficient access to the site. After considering the evidence related to traffic impact regarding both sites, the ALJs conclude that the Laredo Race Park has the superior roadway at the present time.

#### **X. AVAILABILITY TO THE TRACK OF SUPPORT SERVICES and EMERGENCY SERVICES**

Both applicants submitted plans involving access to fire stations, EMS assistance, hospitals and veterinary services. Laredo Race Park's security plan was modeled after the one for SHRP, which has already received Commission approval. Although Laredo Race Park is farther from both fire and hospital services than Laredo Downs, those services can be accessed within fifteen minutes from either site. Because the ALJs' recommendation regarding licensure does not turn on the issue of availability to the track of support and emergency services, the ALJs do not further elaborate but note that sufficient evidence was presented to address the Commission's concerns about the applicants' plans. Each applicant's plans relating to security and procedures for obtaining services from local law enforcement authorities was reasonable.



## XI. ANTICIPATED EFFECT OF THE RACE MEETING ON THE STATE AND LOCAL ECONOMY

Laredo Race Park's construction and development costs, excluding land, are projected to be \$24.7 million<sup>451</sup> in comparison with LRP Group's projected costs of \$12.6 million or so.<sup>452</sup> Laredo Race Park's annual operational expenses would also be slightly higher, at \$4,434,113 (including salary-related expenses and excluding depreciation), compared with LRP Group's first year operating expenses of \$4,278,000.<sup>453</sup> Economic modeling indicates the LRP Group proposal would generate \$14.04 million in economic output and 199 jobs during construction compared with \$34.01 million in output and 481 jobs for the Laredo Race Park facility. During the first five years of operations, LRP Group would generate \$26.69 million annually in economic output and 472 jobs compared with \$28.28 million in output and 500 jobs for Laredo Race Park.<sup>454</sup> Additionally, Laredo Race Park plans to operate a year-round training facility at the track that Mr. Bork testified would create more than 100 new jobs.

Aside from noting the relatively small percentage difference in economic impact during the operating phases of the facilities, LRP Group's major complaint with these comparisons is its belief that Laredo Race Park's plan is not economically viable, meaning the facility would never be built or would not operate as projected. It complains in particular that Laredo Race Park's expert witness on this topic, Angelos Angelou, did not assess the economic impact if the Laredo Race Park proposal were to fold.

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<sup>451</sup> Laredo Race Park Ex. 23 (Application) at Ex. L.

<sup>452</sup> LRP Group projected costs of \$10 million were based on construction of 240 horse stalls rather than the 600 recommended in this PFD. LRP Group believed the cost of providing 540 additional stalls to its application would be about \$4 million. Laredo Race Park Ex. 37. The cost of adding 340 additional stalls, as recommended here, would presumably be somewhat less than \$4 million. Using the same cost per stall (\$7,143) incorporated in the 560 stall projection, the cost of constructing the additional 360 stalls recommended in this PFD would be about \$2.6 million.

<sup>453</sup> See Laredo Race Park Ex. 6a (application) tab O; LRP Group Ex. 35 (application) tab 17.

<sup>454</sup> Laredo Race Park Ex. 12 (Angelou Rebuttal) tab 1, numbered page 1

Laredo Race Park, in turn, focuses on the disparity in economic impact during the respective construction phases and urges that LRP Group's open air live racing facilities are ill-equipped to draw tourists and that its simulcasting facility has no room to host business events or civic groups.

*Analysis.* Both facilities would enhance the local and state economies if they were constructed and operated as projected. Laredo Race Park's facilities would have a somewhat greater impact, particularly during construction and appear better designed than LRP Group's un-air-conditioned and smaller facilities to attract tourists for live racing and business and civic groups for any occasion. Although LRP Group is correct that none of these benefits would accrue if the facilities were not, in fact, constructed – *i.e.*, if the project were dependent on non-existent legislation permitting additional forms of gaming such as video lottery terminals – the same is true for the LRP proposal. The ALJs have been shown no binding obligation for either applicant to move forward in accordance with any particular time frame. Based on this Proposal for Decision, however, Laredo Race Park would, at least, be required to demonstrate its commitment to this project to the extent of selling its interest in Valley Race Park.

In summary, Laredo Race Park has a qualified edge in terms of the economic benefit expected from the proposed facilities. As addressed in Section, VII, however, the economic viability of neither facility is clear. But the disparate economic impacts of construction costs could not be undone once that money has been spent, and the ongoing operational costs are relatively close.

In the ALJs' view, the additional costs associated with the Laredo Race Park proposal – in particular, air-conditioned facilities to view live racing and living quarters for groomsmen – are worth it and will significantly increase that track's appeal to patrons and horsemen as a destination for live racing.

## XII. ANTICIPATED EFFECT OF THE RACE MEETING ON THE HORSE BREEDING INDUSTRY OF THE STATE

Both facilities would have a positive impact on the horse breeding industry in Texas. Although quantification of this impact received relatively little attention during the hearing, the modeling analysis of Laredo Race Park witness Angelos Angelou indicated that the Laredo Race Park application would generate \$58.31 million in breeding related expenditures and 464 breeding-related jobs during the track's first five years of operation compared with \$55.04 million and 434 jobs for LRP Group's facility.<sup>455</sup>

In addition to the modeling described above, LRP Group also addressed this issue through the testimony of Larry Christopher, a former chairman of the Commission, and an investor in LRP Group. According to Mr. Christopher, licensing of a Class 2 racetrack would be beneficial in that it would "give that class of horse the opportunity to race at live meets in Texas."<sup>456</sup> Mr. Christopher believed LRP Group's application was particularly designed to enhance racing opportunities for Texas-bred horses because it has proposed that each race be designated as "Texas-bred" or "Texas-preferred," other opportunities would be provided for Texas bred Arabians and paints, and LRP Group has committed to avoid conflicts with the live racing seasons of other tracks.<sup>457</sup>

**Analysis.** No party questioned the methodology of the modeling calculations summarized above, and it is consistent with that of LRP Group economic impact expert David A. Schauer, Ph.D.<sup>458</sup> Accordingly, these numbers are the best indication available in the record of the impact the proposed facilities would have on the Texas breeding industry if they are constructed and operated as projected.

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<sup>455</sup> Laredo Race Park Ex. 12 (Angelou Rebuttal) tab 1, p. 5/

<sup>456</sup> LRP Group Ex. 46 (Christopher Direct) p. 7.

<sup>457</sup> LRP Group Ex. 46 (Christopher Direct) p. 7; LRP Group Ex. 35 (application) p 27.

<sup>458</sup> LRP Group Ex. 41 (Schauer Direct).

The ALJs do note, however, that these numbers seem quite high. Additionally, Dr. Angelou expressed concern that the horse production multiplier was based on a Maryland study, and stated that use of the Maryland multiplier to calculate the economic impact in Webb County “is not ideal.”<sup>459</sup> In any event, however, similar to the overall economic impact, the “horse production” calculations indicate that the effect of both facilities on the horse breeding industry would be similar and positive, with Laredo Race Park’s larger scale racetrack having a slightly larger impact than LRP Group’s proposed facility.

While Laredo Race Park has apparently not committed to “Texas-bred” or “Texas Preferred” racing, there are other indicators, in addition to the model, that Laredo Race Park’s facility would have the greater positive impact on the horse breeding industry. In particular, Laredo Race Park would maintain a training center that would give horsemen a place to house horses and obtain official works on a year round basis. Additionally, its focus on live racing, as evidenced by air-conditioned seating and sleeping accommodations for horsemen, seem likely to provide at least a tangential benefit to the breeding industry not offered by LRP Group’s proposal.

Based on the above, it is apparent that both of the proposed facilities would substantially benefit the breeding industry in Texas. The advantage here goes to Laredo Race Park because its more extensive facilities (air-conditioned viewing areas, living quarters for horsemen, and a year-round training center) indicate a greater commitment to live racing than is evidenced by LRP Group’s application, and because accepted financial modeling indicates it would have the greater positive impact on the industry.<sup>460</sup>

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<sup>459</sup> Laredo Race Park Ex. 12 (Angelou Rebuttal) tab 1, p. 10.

<sup>460</sup> These advantages outweigh the fact that LRP Group has formally committed to “Texas bred” or “Texas bred preferred” racing. With a year-round training center, Laredo Race Park will have a built-in incentive to promote the Texas breeding industry. Additionally, the need or significance of Texas bred designations for a relatively small Class 2 track was not explained in the record. Finally, LRP Group’s own plans are not entirely clear in that, in addition to designating “each race” as Texas bred or Texas bred preferred, its application also states that there would be a card of challenge races between Texas bred and Mexican bred horses. LRP Group Ex. 35, p. 27.

### **XIII. POTENTIAL FOR CONFLICT WITH OTHER LICENSED RACE MEETINGS**

In determining whether to grant an application for horse racetrack license, Section 6.04(a)(9) of the Act allows the Commission to consider the potential for conflict with other licensed race meetings in Texas. Presumably in order to inform the Commission in its consideration of this factor, Section 6.03(a)(9) of the Act requires an application for a horse racetrack to include information on “the kind of racing to be conducted and the dates requested.”

LRP Group indicated in its application and testimony that it planned to conduct its huarter horse meet between January 14, 2005 and February 21, 2005, and to conduct its separate thoroughbred meet between July 7, 2005 and July 24, 2005. Obviously, these specific dates are in the past and are no longer operative. LRP Group witness Larry Christopher testified, however, that the proposed schedule should essentially carry over to succeeding years because the existing racetracks in Texas typically schedule their live race meets during the same approximate time period from year to year.<sup>461</sup>

Ultimately, actual race dates for the existing and any newly licensed racetracks are determined in the spring for the following racing year. Texas race dates are typically determined by the tracks working together to create a joint proposal that is submitted to the Commission staff. The staff then makes a recommendation to the Commissioners, who make the final determination.<sup>462</sup>

Mr. Christopher testified that it is important to have as little overlap in schedules as possible, particularly between each breed of horse, both to allow horsemen the opportunity to run their horses throughout the year and to allow the track to draw a full field of horses.<sup>463</sup> Mr. Christopher testified that the proposed schedule was crafted to run the quarter horses in early winter between the time Lone Star Park’s live racing of quarter horses ends and the meet at Manor

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<sup>461</sup> LRP Group Ex. 46 (Christopher Direct) p. 5

<sup>462</sup> LRP Group Ex. 46 (Christopher Direct) p. 3

<sup>463</sup> LRP Ex. 46 (Christopher Direct) p. 4

Downs begins. Similarly, the thoroughbreds meet in July would be scheduled between Lone Star Park and Retama Park's meets. Mr. Christopher did note, however, that some adjustment in the dates proposed in the application would have had to have been made to accommodate the racing dates established in 2006.

Laredo Race Park did not propose specific dates for its proposed mixed quarter horse and thoroughbred meets. Instead, it more generally proposed to coordinate with existing tracks and indicated that it currently considered a meet in late spring or early fall as an appropriate time to run its 20-30 race day meet.<sup>464</sup>

LRP Group asserts that Laredo Race Parks general statements of intent are of no use to the Commission in assessing this factor and fall short of the regulatory requirements referenced above. Laredo Race Park counters that the specific dates offered by LRP Group in 2005 are historical and of no use now. It also points out that Mr. Bork testified that Laredo Race Park would see what the racing industry in Texas wanted and would then work with the Commission to place the meet at a time when it would not interfere or conflict with other tracks in the state.<sup>465</sup>

***Analysis.*** Both applicants have evinced a willingness to coordinate with other tracks and the Commission to minimize conflict with other meets. Based upon the testimony of Mr. Christopher and Mr. Bork, it appears that there are blank spaces on the Texas racing calendar that could be filled by either proposal. No other tracks have objected to these applications and, in fact, management from the nearest tracks – Sam Houston and Retama – are actively vying for the licenses.

The ALJs also conclude that Laredo Race Park's plan to run in the late spring or early Fall effectively provides as much information as LRP Group's provision of proposed dates that

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<sup>464</sup> Laredo Race Park Ex. 23 (application) p. 27

<sup>465</sup> Tr. Vol. 3, p. 125-26.

are now in the past, and which would have to be modified to accommodate changes in the schedules of other tracks. It does appear, however, that LRP Group's proposal has one advantage in terms of avoiding conflict in that it will run its Quarter horse and Thoroughbred meets separately. Presumably it will be easier for LRP Group to avoid in-breed conflicts with the breeds running separately – so that the quarter horses would run between other Quarter horse meets and the thoroughbreds would avoid other thoroughbred meets – than it will be for Laredo Race Park to run a longer single mixed meet that would need to avoid conflicts with both quarter horse and thoroughbred meets.

#### **XIV. PUBLIC INTEREST**

Section 6.04(a) of the Act provides that, for the Commission to issue a license, it must find that “the conduct of race meetings at the proposed track and location will be in the public interest....” The parties' arguments on this broad issue recapitulate their views on the applications as a whole. LRP Group argues that the key to this issue is financial success. It asserts that the Laredo Race Park facility would be doomed to failure because it is overbuilt and in a bad location. Laredo Race Park asserts that the public interest requires consideration of the promotion of live racing, and in particular the interests of breeders, race animals, patrons, trainers, jockeys, and other licensees. Laredo Race Park asserts that, in view of the bare bones facilities LRP Group plans for live racing, only Laredo Race Park's application is in the public interest.

Both applicants have a point. As discussed in Section VII, LRP Group has, overall, obtained a preferable location for its proposed facility. Overall, however, the ALJs disagree with LRP Group that its proposed track is more economically viable than the Laredo Race Park Facility. As addressed in Section VI, the ALJs find Laredo Race Park to be more financially stable, and the ALJs agree with Laredo Race Park that its emphasis on facilities for live race patrons, animals, and licensees separates it from the LRP Group application and is very much in the public interest in the

context of this racetrack licensing proceeding. Accordingly, while both tracks, standing alone, are in the public interest, the Laredo Race Park application has the edge in this category.<sup>466</sup>

## XV. COMPLIANCE WITH ZONING REQUIREMENTS

Both applications comply with applicable zoning requirements.

Jay Lerner, a vice president and real estate developer with the parent company of Laredo Race Park, testified that the Laredo Race Park site is presently zoned for agricultural use for the 500 feet from the center line of Mines Road. The remainder of the tract is not zoned and is outside the city limits. No zoning variances are required.<sup>467</sup> Benjamin Puig, a professional engineer and expert in Laredo development matters, confirmed these facts and testified that he believed the site is feasible from a zoning perspective.<sup>468</sup> Mr. Puig testified that, if the Commission grants Laredo Race Park the license, the tract would be annexed and re-zoned.<sup>469</sup> No opposition to the site by local residents has been registered, and the ALJs concur that Laredo Race Park's site is consistent with existing development uses along Mines Road, including warehousing, residential, commercial, and industrial land uses.<sup>470</sup>

The LRP Group site is outside the city limits and not zoned.<sup>471</sup> Mr. Orlando D. Navarro, Chairman of the City of Laredo Planning and Zoning Commission, testified that he could not

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<sup>466</sup> As addressed in Section II, however, the ALJs condition their finding that the Laredo Race Park application is in the public interest on its parent company's sale of Valley Race Park prior to the Commission's issuance of its license.

<sup>467</sup> Laredo Race Park Ex. 5 (Lerner Direct) p. 7.

<sup>468</sup> Tr. Vol. 10, p. 230.

<sup>469</sup> Tr. Vol. 10, p. 236.

<sup>470</sup> Laredo Race Park Ex. 20 (Puig Rebuttal) p. 8.

<sup>471</sup> LRP Group Ex. 35 (Application, Section 2, p. 12.



foresee any problems with the site LRP Group proposes for its facility from a zoning perspective, given that the proposed site is on U.S. Highway 59, which should be used for commercial development.<sup>472</sup>

## **XVI. COMPLIANCE WITH CRIMINAL LAWS**

Section 6.04(a) of the Texas Racing Act provides that the Commission may issue a racetrack license only upon a showing by clear and convincing evidence that it will comply with all criminal laws of the state. The applications of LRP Group and Laredo Race Park both indicate intention to comply with all criminal laws of the state. In addition, the owners of both applicants were subjected to the required DPS background check, which showed that both applicants are eligible in this respect to hold the license sought.<sup>473</sup>

Nevertheless Laredo Race Park asserts that LRP Group runs afoul of this requirement due to a combination of LRP Group's intent to sell alcoholic beverages at its facility and Laredo Race Park's belief that LRP Group will be ineligible to receive an alcoholic beverages permit for the reasons discussed in Section III(A)(2) of this PFD. Accordingly, Laredo Race Park believes LRP Group has not shown by clear and convincing evidence that it would not violate sections 1.05(a) and 101.61 of the Alcoholic Beverage Code, which combine to provide that a person who violates the provisions of the Texas Alcohol Beverage Code commits a Class B misdemeanor.

For the reasons discussed in Section III(A)(2), the ALJs believe it is likely that LRP Group will be able to work with the TABC in order to obtain a license to sell alcoholic beverages at the track. Irrespective of this, however, the ALJs find no basis to infer that the LaMantias would

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<sup>472</sup> Tr. Vol. 3, pp. 14-15.

<sup>473</sup> Texas Racing Commission Ex. 1, 2, 3, and 4 (Responsive testimony of Capt. Durochez and Capt. Fulton).

risk their highly profitable beer distributorship by allowing beer to be sold at Laredo Downs in violation of the Alcoholic Beverage Code. Accordingly, the ALJs find that both applicants satisfy this consideration.

### **XVII. APPLICATION OF TEXAS RACING ACT SECTION 6.06**

Section 6.06(a) of the Act sets out other express grounds upon which the Commission may refuse to issue a racetrack license. Laredo Race Park asserts that LRP Group's application should be denied based on Subsections 6.06(a)(4), (5), and (17) which, respectively, authorize denial where the applicant: is unqualified by experience or otherwise to perform its duties; fails to answer or falsely or incorrectly answers a question in an application; or fails to fully disclose the true owners of all interests in a proposed racetrack facility. LRP Group counters that Laredo Race Park's application should be denied based on Section 6.06(h), which prohibits ownership of more than a five percent interest in more than two racetracks licensed under the Act. These contentions are addressed in Sections II and III of this PFD. For the reasons set out in those sections, the ALJs do not believe either application should be denied based on the provisions of Section 6.06 of the Act.

### **XIII. OTHER ISSUES - ISSUANCE OF TWO CLASS 2 HORSE TRACK LICENSES IN WEBB COUNTY**

While both applicants deny that the other is qualified for the many reasons set out above, both also agree that, should it be determined that both applicants meet the standards for licensure, the decision regarding whether it would be in the public interest to issue two Class 2 horseracing licenses for Webb County is a policy matter for the Commission to determine. The ALJs agree. However, that policy determination should, of course, be informed by the facts regarding the potential financial viability of multiple Class 2 tracks in Webb County. The evidence in this respect appears clear. Operating one Class 2 facility in Webb County will be a challenging and uncertain proposition. Operating two profitably, with the resultant splitting of the simulcast revenues,

appears to be out of the question. Mr. Bork essentially acknowledged this,<sup>474</sup> and LRP Group witness Jim N. Toscano painted a particularly bleak portrait of the general financial health of the racing industry.<sup>475</sup> Finally, Commission witness Sammy Jackson could justify the financial forecasts of both applicants only by including the much larger population base of Nuevo Laredo in the pool of racing patrons to draw from in the same proportion as the residents on the American side of the border. The ALJs conclude that this assumption has questionable validity.

Based on the current state of the racing industry and the financial projections contained in the record, it would be economically infeasible to license two competing Class 2 horseracing tracks in Webb County at this time.

### **XIX. RECOMMENDATION**

In conclusion, the ALJs acknowledge that both applicants demonstrated their qualification for a racetrack license. Although the Commission could grant a license to each, it does not seem prudent to do so, given the lack of evidence that the area could support two racetracks. Instead, the Commission must determine which racetrack plan provides the necessary support and opportunity for live racing for Texas horsemen, while also remaining economically successful. The public interest will not be served by an unsuccessful racetrack. The importance of simulcasting to a racetrack's operations cannot be over-stated. A successful applicant must be able to design and locate a facility so that it meets the needs of both live racing and simulcasting. While the majority of revenue to a track is derived through simulcasting, this should not be determinative in light of the Commission's obligations with respect to supporting and encouraging racing in Texas.

In this case, both applicants attempted to demonstrate that it was the most suitable candidate for a Class 2 racetrack license in Webb County, Texas. Much evidence and legal

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<sup>474</sup> Tr. Vol. 3, p. 179.

<sup>475</sup> Tr. Vol. 4, pp. 48-52.

argument was presented in support of their contentions. As noted earlier, the attempts to disqualify one another by raising such issues as the two racetrack ownership limitation, the sale of alcoholic beverages at a track owned by a partnership that includes the owner of a local beer distributorship, and the specter of a cattle tick infestation were not found to be persuasive. The ALJs believe that a variety of options exist to address these problems as discussed previously and that the Commission has the ability to work with the applicants to do so.

Each applicant has strengths and weaknesses associated with their respective applications. The ALJs attempted to identify the most significant factors that they believed would affect the viability of a racetrack. In so doing, the evidence supported the LRP Group's site selection for its racetrack as the best location in terms of its proximity to residential and commercial development and the main highway that leads to the site. However, the highway, with only two lanes, is problematic and there will need to be modifications in order to smoothly enter and leave the facility, particularly on live race days. With respect to the remaining location issues, the Laredo Race Park site was found to be the better prospect. It has a better existing road that provided sufficient ingress and egress and the site was sufficiently large enough for the planned facilities. However, the site was fairly remote from other commercial ventures with the exception of businesses around the warehouse district and the neighboring El Primero training facility.

Because of LRP Group's partnership structure and the possibility of rapidly changing ownership interests, the evidence supported Laredo Race Park on the issue of financial stability. Both applicants have sufficient financial resources available to them to construct a racetrack, begin operations and supplement purses. Lastly, Laredo Downs' proposal to build a facility that takes into account the local venue and the realities of the importance of simulcast wagering is notable. Nevertheless, Laredo Race Park demonstrated that its facilities for live race patrons and licensees were superior to those of Laredo Downs, and that is an important consideration in terms of assessing which application is most in the public interest.

After considering the evidence and testimony in its entirety, the ALJs recommend that a Class 2 racetrack license be issued to Laredo Race Park, contingent upon the sale of the Valley Race Park.

## **XX. PROPOSED FINDINGS OF FACT<sup>476</sup>**

### **JURISDICTIONAL: PROCEDURAL**

1. From December 1, 2003, through January 29, 2004, the Texas Racing Commission (“Commission”) accepted applications for a Class 2 horse racetrack license in Webb County, Texas.
2. On January 29, 2004, Applicants Laredo Race Park, LLC (“Laredo Race Park”) and LRP Group, Ltd. (“LRP Group”) submitted applications for a Class 2 horse racetrack license to the Commission.
3. The Commission’s Executive Secretary certified Laredo Race Park’s application as complete on February 11, 2004.
4. On February 11, 2004, the Executive Secretary notified LRP Group that its application was incomplete, and LRP Group was requested to provide additional information related to the application within thirty days.
5. On March 2, 2004, LRP Group timely provided the additional information to the Commission as requested.
6. LRP Group’s application was certified as complete on March 15, 2004, by the Commission’s Executive Secretary.
7. On May 3, 2004, Staff of the Commission filed a request to docket this case for hearing at the State Office of Administrative Hearings.
8. On May 21, 2004, the Commission, LRP Group and LRP, Ltd. were named as parties at a prehearing conference.
9. On March 13, 2006, Staff issued notices of hearing to all parties, advising them of a hearing

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<sup>476</sup> In addition to the facts addressed in the preceding discussion of the major issues, these Findings of Fact include other facts, as established during the hearing, that are necessary to show compliance with regulatory requirements applicable to this proceeding. These additional facts were not seriously contested and are incorporated by reference into the PFD.

on each application for a Class 2 horse racetrack license.

10. The hearing on the merits convened on March 27, 2006, and concluded on April 7, 2006. All parties appeared and participated in the hearing.
11. The record finally closed on August 25, 2006.

### **OWNERSHIP AND BACKGROUND INFORMATION**

12. Laredo Race Park is a Texas limited liability company.
13. Laredo Race Park is a for-profit corporation incorporated under the laws of Texas.
14. Laredo Race Park is 100% owned by Laredo GP LLC (GP), a Delaware limited liability company.
15. GP is a wholly-owned subsidiary of MAXXAM, Inc. (MAXXAM), a publicly-traded company.
16. MAXXAM is the parent company of SHRP Valley LLC (SHRP Valley), the entity that owns and operates Sam Houston Race Park in Houston, Texas and Valley Race Park in Harlingen, Texas.

### **EXPERIENCE OF EMPLOYEES**

17. Laredo Race Park's management team has extensive experience in the racing industry.
18. Laredo Race Park will be managed by Sam Houston Race Park, Ltd. (SHRP).
19. SHRP's management team is comprised of individuals with experience in the management and promotion of racing facilities.
20. Robert L. Bork is the President and General Manager of SHRP.
21. Mr. Bork will be the President and General Manager of Laredo Race Park.
22. Mr. Bork has thirty-seven years' experience in the racing business.
23. Mr. Bork has served as Vice-President/General Manager and Chief Operating Officer of Arlington Race Course in Arlington Heights, Illinois.
24. Mr. Bork was the Vice-President and General Manager of Philadelphia Park in Bensalem, Pennsylvania and Garden State Park in Cherry Hill, New Jersey.

25. Mr. Bork is currently the President and General Manager of SHRP.
26. Mr. Bork is the President of Valley Race Park.
27. Mr. Bork serves as Director and Secretary of the Thoroughbred Racing Association of America.
28. Mr. Bork is a Director of the Thoroughbred Racing Protective Bureau, Chairman of the Thoroughbred Racing Association (TRA) Technology Committee, and a Director of the Cy-Fair Chamber of Commerce.
29. Mr. Bork served as President of the TRA's 1995 Committee, which created the framework for simulcasting.
30. In his duties as President and General Manager of Philadelphia Park, Mr. Bork was responsible for construction of the racetrack.
31. Ann McGovern is the Vice-President of Operations of Laredo Race Park.
32. Ms. McGovern is the Vice-President of Operations of Sam Houston Race Park and Valley Race Park.
33. Ms. McGovern has over 20 years' experience in the racing industry.
34. Ms. McGovern worked in public relations and marketing for Louisiana Downs.
35. Ms. McGovern served as Director of Operations of Remington Park prior to joining Sam Houston Race Park in 1994.
36. Ms. McGovern serves on the boards of several animal welfare organizations, including the Adopt-A-Horse program which places retired racehorses with new owners for recreation, show jumping and pleasure riding
37. Ms. McGovern is the Vice-President of the Houston Equine Research Organization.
38. Ms. McGovern completed the Racetrack Industry Program at the University of Arizona.
39. Michael Vitek is the Vice-President of Finance for Laredo Race Park.
40. Mr. Vitek is the Vice-President of Finance for SHRP and Valley Race Park.
41. Mr. Vitek is the General Manager of Valley Race Park.
42. Mr. Vitek joined SHRP in November of 1994.

43. Mr. Vitek has a B.A. in business administration from Ohio State University and is a certified public accountant.
44. Mr. Vitek previously worked as a financial officer for Fare Farms, Inc., which has thoroughbred breeding and racing operations in Lexington, Kentucky; England; and France.
45. Mr. Vitek was responsible for the acquisition of Valley Race Park in January 2000, a greyhound track that had been closed for five years.
46. Kim Pomposelli will be the Director of Mutuels for Laredo Race Park.
47. Ms. Pomposelli has worked in the racing industry for over 20 years.
48. Ms. Pomposelli worked with Birmingham Race Course, Trinity Meadows, Remington Park, and Bandera Downs prior to assisting with the opening of Sam Houston Race Park in March, 1994.
49. Ms. Pomposelli has experience overseeing simulcast and live wagering.
50. Ms. Pomposelli has experience overseeing money rooms and simulcasting departments.
51. Ms. Pomposelli oversees the Mutuels Department at Valley Race Park.
52. Eric Johnston will be Laredo Race Park's Racing Secretary.
53. Mr. Johnston has served as Racing Secretary of SHRP since 1994.
54. Mr. Johnston has experience overseeing racing offices, the starting gate, and jockey room operations.
55. Mr. Johnston has experience designing competitive stakes schedules, writing condition books, forecasting and balancing purse funds, as well as experience communicating with horsemen.
56. Mr. Johnston has also worked at Maryland Jockey Club and Timonium Race Course.
57. Dwight Berube will serve as Laredo Race Park's Director of Food Service.
58. Mr. Berube has experience managing the food and beverage operations at Sam Houston Race Park.
59. Mr. Berube has more than 30 years' experience in the food service industry.



60. David Hawes will be Laredo Race Park's Director of Marketing.
61. Mr. Hawes has experience in strategic planning, marketing, financial management, and business development.
62. Mr. Hawes has served as Director of Marketing for SHRP since June 2005.
63. Laredo Race Park's management team has experience marketing racing products along the U.S.- Mexico border region and into Mexico.
64. Laredo Race Park submitted a management agreement attached to the application.
65. The individuals that will manage Laredo Race Park have all been licensed by the Texas Racing Commission.

## **FACILITIES FOR PATRONS AND OCCUPATIONAL LICENSEES**

### **FACILITIES FOR PATRONS**

66. Laredo Race Park's architectural drawings submitted with its application fully and accurately describe the proposed facilities for patrons, race animals, and occupational licensees.
67. Laredo Race Park's grandstand building is approximately 120,000 square feet.
68. Laredo Race Park's grandstand provides air-conditioned viewing of live and simulcast races.
69. The grandstand's track level serves as the public entry point.
70. Two concession areas and five bars are situated along the length of the public area on the track level.
71. A VIP lounge of about 600 square feet is situated in a private area off the main lobby.
72. Large restrooms are located at either end of the track level for easy access by patrons.
73. The track level will feature a large TV lounge with over 1,500 square feet of floor space and a 50 foot long video/TV wall.
74. The grandstand's second level has a clubhouse level, which will accommodate group events such as trade shows and civic events.

75. The clubhouse level will be equipped with mutuel facilities and television displays.
76. Laredo Race Park will provide 30 water closets for women, 13 water closets for men, 17 urinals for men, 24 lavatories for women, and 16 lavatories for men.
77. Service areas, the money room, and commissary functions will be located at the northern end of the building.
78. Administration offices, a first-aid station, mutuel admission accounting racing, and Texas Racing Commission offices will be located on the track level.
79. Operational areas such as mechanical and electrical rooms, a loading dock, service bay, and commissary functions will be accessible from the track level.
80. The track level will allow access to the racetrack paddock and other outdoor areas.
81. Designated areas above the track and clubhouse levels will be monitored by the security department via a closed circuit video system.
82. The third level will house a press box, announcer's booth, placing judges, and steward offices.
83. The placing judges offices will house the photo finish and timing equipment.
84. All areas of the facility will be designed to meet or exceed federal, state, and local building code requirements including federal ADA requirements.
85. Laredo Race Park's grandstand includes a simulcast area.
86. Laredo Race Park's grandstand is attractive and designed for comfort.
87. Laredo Race Park's grandstand is modeled after Valley Race Park.
88. Laredo Race Park's grandstand and simulcast building is sized appropriately for the market and the crowds expected.

89. Laredo Race Park's multi-purpose facility is designed to serve as an entertainment destination for local residents and tourists.
90. Access to the public parking lot will be from two primary entrance points on Mines Road.
91. Each driveway entrance will include two inbound lanes and two outbound lanes during arrival and departure times.
92. A third separate entrance to the racetrack is available for the entry and exit of horsemen.
93. A gate will secure all three entrances after operational hours.
94. Entry and exit from the racetrack is reasonable from a traffic safety perspective.
95. A paved parking lot located on the southwest portion of the property will accommodate 3,500 vehicles.
96. An additional 240 employee vehicles will be accommodated in a separate paved lot near the grandstand building.
97. Three entry and exit driveways allow for loading and unloading of the parking area.
98. Valet and drop-off traffic are designed to be at the main entry point of the grandstand building.
99. The parking area can be expanded by about another 1,500 spaces should demand dictate it.
100. A manned entrance to the stable area will be located within the property at the west side of the general parking area.

#### **FACILITIES FOR OCCUPATIONAL LICENSEES**

101. Laredo Race Park will provide sleeping accommodations for up to 300 grooms and other licensees.
102. Laredo Race Park will provide dormitories for grooms or other licensees who tend to horses racing at the racetrack.
103. Providing dormitories for grooms or other licensees who tend to horses racing at a racetrack is a standard industry practice.
104. Laredo Race Park's living quarters for licensees will be equipped with windows that

- open, have heating, hot and cold water, showers, toilets, and sinks.
105. Laredo Race Park's saddling barn is adjacent to the paddock.
  106. The west half of the saddling barn will house jockeys, colors, laundry, scales, a jockey's lounge, a shower, toilets, and a dressing area.
  107. Jockey facilities will be segregated by gender with a common lounge and access to the color storage and laundry in accordance with Commission rules.
  108. The scales are immediately adjacent to the exits in the jockey area into the paddock.
  109. The east section of the saddling barn incorporates a kitchen for horsemen, a dining and recreation area, a horsemen's lounge, entries and judges offices, a first-aid area, a horseman's foot keeper, an Horsemen's Benevolence & Protective Association office, a horse identifier office, and a licensing office.
  110. The saddling barn is approximately 17,000 square feet.

#### **FACILITIES FOR RACEHORSES**

111. Laredo Race Park's proposed facility will sufficiently provide for the comfort, needs and care of the horses and licensees.
112. The track's racing surface will be 28-inches deep.
113. The track's base will consist of 12 inches of compacted fill material.
114. An intermediate layer will consist of 6 inches of compacted limestone screening.
115. A 10-inch track cushion consisting of select sand, silt and clay will top the track.
116. The track's depth and composition is safe.
117. The track's inside rail will be Fontana Safety Panel Rail.
118. The outside rail will be Fontana Tilt Rail.
119. The track will have three video towers, one at each end of the homestretch and one at each end of the back stretch.
120. The track oval will be 7/8th of a mile.

121. The track is 100-feet wide with a radius at each turn of 420 feet.
122. The length of each stretch is 990 feet.
123. The distance from the last turn to the finish line is 790 feet.
124. The backside shoot length is six furlongs.
125. The front side shoot is 550 yards.
126. Banking for the track stretches will be 3%.
127. The maximum banking in the turns will be 5.5%. The banking will gradually increase from 3% to 5.5%, beginning at a point 200 feet before the start of the turn.
128. Laredo Race Park's racing surface will be maintained daily both for training in the morning hours and during the racing program.
129. Laredo Race Park will have 20 main barns with 40 stalls in each barn..
130. Laredo Race Park will have additional stabling, including a holding and testing barn with 19 stalls, a stakes barn with 16 stalls, two receiving barns with 40 stalls each, a treatment barn with a treatment area, two treatment stalls, two recovery stalls, a four-stall isolation building with a treatment area, and a postmortem barn.
131. A covered area for the horse ambulance is located within 150 feet of the racing surface at the eastern end of the grandstand chute.
132. The barns will be constructed of steel and open on all sides.
133. Stalls in each barn will be constructed of fire-retardant treated lumber for the sides.
134. The lumber will be secured in steel pipe frames.
135. The stalls will be 10 feet deep by 12 feet deep.
136. Laredo Race Park's plan for each barn allows for covered aisles that are 12-feet wide at the perimeter and a covered aisle in the center that is 16-foot wide.
137. A central cross aisle will be 10 feet wide.
138. Aisle widths are ten feet or more.
139. Laredo Race Park will have a stakes barn that has 16 stalls at 152-square feet each.



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**CONSTRUCTION, RENOVATION, AND OPERATION OF RACETRACK FACILITIES**

180. Construction costs, including land, are estimated at \$29.7 million.



181. Laredo Race Park's estimates are derived from the expertise of racetrack operators, architects and engineers who have experience in the development, design and financing of racetracks.
182. Laredo Race Park's construction costs are realistic in comparison to costs at recently built racetracks around the country.

## **LOCATION**

### **SITE**

183. Laredo Race Park is located on Mines Road, a four-lane divided highway in Laredo, Webb County, Texas.
184. Laredo Race Park is approximately 11 miles from Loop 20 near the World Trade Center Bridge in Laredo and five miles from the Camino Colombia Toll Road.
185. Laredo Race Park is located on a 200-acre tract of unimproved property.
186. The 200-acre parcel is part of a 1,316-acre tract known as the Old Laredo Feed Lot.
187. Laredo Race Park has an option to purchase the 200-acre tract.
188. Laredo Race Park's acreage provides sufficient size to accommodate the proposed facility.
189. A Phase I environmental study for the site was prepared, no known defects were found.
190. The racetrack site is not located within the 100-year flood plain.
191. A title commitment prepared by Border Title Company has been procured for the site.
192. Laredo Race Park submitted an aerial photograph of the racetrack site with its application in accordance with Commission requirements.

### **SURROUNDING DEVELOPMENT**

193. Laredo Race Park is located on Mines Road near the El Primero Training Center (El Primero), a nationally-recognized training center.
194. El Primero has been in business for 27 years.
195. El Primero has trained world champion horses.

196. Because of its proximity to El Primero, horses that train at El Primero are likely to race at Laredo Race Park.
197. Laredo Race Park, a racetrack, and El Primero, a training facility, complement one another.
198. There is no organized opposition to locating the track on Mines Road.
199. Laredo Race Park is compatible with present and future development along Mines Road.

### CATTLE TICKS

200. Preventing the spread of fever ticks (also referred to as “cattle ticks”) in the United States is important because of their potential deadliness to livestock and ruinous effects on the cattle industry.
201. Fever ticks are capable of producing a protozoa, a minute animal parasite, that is injected into the bloodstream of cattle when a fever tick preys upon it.
202. Fever ticks carry diseases that can infect and kill livestock.
203. Fever ticks can spread diseases to livestock that may result in acute anemia, an enlarged spleen and liver, and a fast brutal death for as many as 90% of the affected livestock.
204. Presently, all cattle in the United States are vulnerable to the disease carried by the fever tick.
205. In the case of horses, fever ticks are carriers of a debilitating illness called piroplasmosis.
206. If a fever tick is found on a premise, the Texas Animal Health Commission (TAHC) quarantines the premise, as well as the areas adjacent to the infested premise.
207. Fever ticks can infest a premise through various means, including being brought onto a premise by a carrier animal, such as a stray or smuggled deer, cow or horse.
208. Fever ticks can be transported from one area to another by smaller, rodent-like animals in a process called “hitchhiking.”
209. Fever ticks can be brought onto a premise by people when the tick attached to a person’s clothing while he or she is walking in or through an infested area.
210. If a premise is quarantined, any livestock, including horses, entering and exiting the premise must undergo an inspection by government inspectors.

211. If a premise is quarantined, then feed, hay, trailers, barns and equipment must be inspected.
212. The inspections and restrictions of a fever-tick quarantine can disrupt schedules and other operations at a horse racetrack.
213. A horse infected with a cattle tick that travels to a horse racetrack elsewhere can cause the other racetrack to be quarantined.
214. El Primero Training Center is located on Mines Road and across the highway from the permanent Tick Eradication Quarantine Area (TEQA).
215. El Primero has always been in a tick-free zone.
216. No quarantine measures have ever been required at El Primero.
217. El Primero maintains double fencing on one portion of his training area as a precaution against cattle ticks and to avoid being designated as an adjacent premise.
218. Laredo Race Park will be surrounded entirely by a game-proof double fence with 20 feet of crushed granite in between the double fences.
219. Laredo Race Park will install cattle guards to prevent animals from entering the front gate.
220. A game-proof double fence will keep stray livestock and wild game animals from entering the Laredo Race Park site.
221. A developed site is not a suitable environment for the survival and reproduction of cattle ticks.
222. Because of high temperatures and low relative humidity, the man-made environment of a racetrack is not conducive to the survival of cattle ticks or their larvae.
223. The past or present quarantine status of the proposed undeveloped Laredo Race Park site will not determine whether the developed site is at risk of a future designation by the TAHC that would mandate quarantine measures.
224. The TAHC designates quarantine areas based on known boundary lines.
225. From time to time, the Old Laredo Feed Lot has been subject to quarantine measures and then released from quarantine when it was determined to be appropriate to do so.
226. The 200-acre tract of Laredo Race Park presently has no distinct boundary lines delineating its location on the Old Laredo Feed Lot.

227. If Laredo Race Park is built, the site will be developed and known boundary lines will be established.
228. Laredo Race Park will be able to seek a re-designation of its property when the facility is constructed.
229. The Laredo Race Park site is currently designated as a cattle fever tick “check” premise.

### **UTILITIES**

230. Electrical and telephone service utilities are available to Laredo Race Park.
231. The City of Laredo is capable of providing adequate and sufficient electrical services to Laredo Race Park in amounts necessary to handle the development of Laredo Race Park.
232. Improvements are necessary in order to adequately serve Laredo Race Park with water and wastewater service.
233. Laredo Race Park would receive water and wastewater services from the Pinto Valle wastewater and water treatment facilities.
234. Physical access to the Pinto Valle water and wastewater treatment facilities exists via existing easements and rights-of-way.
235. Wastewater service will be provided by installing a lift station and a force main to connect to the Pinto Valle wastewater treatment facility.
236. Access to potable water will be provided by installing and connecting to an existing 12-inch water line, which connects to the Pinto Valle water treatment facility.
237. LRP Group claims that the Needmore Ranch, owned by Steve LaMantia, is the successor-in-interest of a Water Supply, Sanitary Sewer Service and Controlled Development Contract (Water Agreement) which would preclude Laredo Race Park from accessing water and wastewater from the Pinto Valle water and wastewater treatment facilities.
238. The Pinto Valle water and wastewater treatment facilities are owned by the City of Laredo.
239. The City of Laredo has access to the Pinto Valle water and wastewater treatment facilities via existing easements and rights-of-way.
240. The Pinto Valle water and wastewater treatment facilities are adjacent to the Needmore Ranch.

- 241. LRP Group submitted a general warranty deed for the Needmore Ranch and the Water Agreement as evidence of its right to preclude Laredo Race Park from accessing water and wastewater services from Pinto Valle’s facilities.
- 242. There was no reliable evidence that the Water Agreement had been transferred to the Needmore Ranch.
- 243. There was no evidence that the signatory of the Water Agreement transferred its rights to subsequent owners of the property.
- 244. There was no evidence that the City of Laredo received notice of a transfer of the Water Agreement, as required by the Agreement’s terms.
- 245. If Laredo Race Park is unable to access water and wastewater service from the Pinto Valle facilities due to restrictions resulting from the Water Agreement, there are economically feasible engineering alternatives that would permit access to the Pinto Valle facilities and still preserve capacity for the referenced tract in the Water Agreement.
- 246. The engineering alternatives referenced in Finding of Fact No. 245 may result in increased costs to Laredo Race Park.
- 247. Access to water and wastewater services is available to Laredo Race Park as described in its application, as well as other economically and technologically feasible means.

**EMERGENCY RESPONSE SERVICES AND SECURITY PLAN**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]





280. Laredo Race Park's application included a traffic flow study performed by Civil Engineering Consultants (CEC).
281. Laredo Race Park's traffic flow study was timely submitted with its application.
282. The traffic flow study analyzed existing access to Laredo Race Park's proposed site.
283. The traffic flow study found that access to the site for both horsemen and patrons is reasonable.
284. The CEC traffic study was independently analyzed by a traffic expert with Alliance Transportation.
285. Laredo Race Park's application is reasonable from a traffic safety perspective.
286. Laredo Race Park's site provides adequate and reasonable parking.
287. Laredo Race Park's site is safe and accessible to horsemen and patrons.
288. Existing roadways provide adequate access to the site for the anticipated traffic.

**EFFECT OF RACE MEET ON THE STATE AND LOCAL ECONOMY FROM TOURISM, INCREASED EMPLOYMENT, AND OTHER SOURCES**

289. Laredo Race Park's track and training center will have a positive economic impact on Webb County and the State of Texas.
290. Laredo Race Park will have a greater financial effect on the state and local economy than would LRP Group based on its larger budget for construction and operations.
291. Laredo Race Park's actual investment in construction and development, excluding land, is projected to be \$24.7 million versus approximately \$10 million for Laredo Downs.
292. Laredo Race Park's annual operating expenses are higher than those of LRP Group.
293. Laredo Race Park's training facility will create over 100 new jobs.
294. During the live racing season, Laredo Race Park will generate approximately 400 new jobs.
295. Laredo Race Park's economic impact from construction is projected to be \$34 million.



296. Laredo Race Park's economic impact from operations is projected to be \$28.28 million.
297. Laredo Race Park is designed to attract tourists.

#### **EFFECT OF RACE MEETINGS ON HORSE BREEDING INDUSTRY**

298. Laredo Race Park's contributions to purses and operations of a parimutuel racetrack will have a positive effect on the horse breeding industry in Texas.
299. Laredo Race Park's year-round training facility will have a positive effect on the horse breeding industry.

#### **POTENTIAL FOR CONFLICT WITH OTHER LICENSED RACE MEETINGS**

300. Laredo Race Park proposes a mixed thoroughbred and quarter horse meet of four thoroughbred races per day and six quarter horse races per day.
301. Laredo Race Park proposes three days of racing per week in a 10-week meet.
302. Laredo Race Park proposes to conduct live racing during late spring or early fall.
303. Laredo Race Park will accommodate its live racing schedule based on live race dates at other Class 1 and Class 2 racetracks in the state.
304. Laredo Race Park will coordinate a racing schedule with the Class 1 and Class 2 racetracks in the state that will fully utilize the horse population in Texas and consider the racing schedule of other racetracks.

**PUBLIC INTEREST**

305. Laredo Race Park's proposed facility is in the public interest.
306. Laredo Race Park is financially stable, the facility will have a positive effect on the economy and the horse breeding industry, and would promote live racing.

**COMPLIANCE WITH ZONING REQUIREMENTS**

307. The first 500 feet from the center line of old FM 1472 right-of-way is zoned AG (agricultural district).
308. The remainder of the tract is not zoned and is outside the city limits. No zoning variance is required.
309. No zoning or special use permits are required.
310. Local and county governments have encouraged Laredo Race Park.
311. There is no organized opposition to the racetrack in the community.

**COMPLIANCE WITH CRIMINAL LAWS**

312. The Department of Public Safety (DPS) conducted a background investigation of Laredo Race Park's management team.
313. No information was received by the DPS that would preclude Laredo Race Park from being considered for approval for a racetrack owner's license.

**APPLICATION OF TEXAS RACING ACT SECTION 6.06 (RACETRACK LICENSE; GROUNDS FOR DENIAL, REVOCATION, AND SUSPENSION)**

314. SHRP Valley has entered into a letter agreement with a proposed buyer in order to sell its interest in Valley Race Park, a greyhound park, which would permit Laredo Race Park to proceed to build a horse racetrack in Laredo.
315. Prior to the issuance of a final order in this proceeding granting a license to Laredo Race Park for a Class 2 horse track in Webb County, MAXXAM's subsidiary will divest itself of Valley Race Park.

**COMPARISON OF LAREDO RACE PARK APPLICATION WITH LRP GROUP APPLICATION****EXPERIENCE OF EMPLOYEES**

316. The Laredo Race Park management team has a broader base of experience from a number of racetracks that gives it an advantage in terms of experience. In particular, Robert L. Bork, its president and general manager, has been involved with the construction of Philadelphia Park racetrack.

**FACILITIES FOR PATRONS AND LICENSEES**

317. Laredo Race Park's proposed facilities for live race patrons and licensees are superior to those proposed by LRP Group.
318. Laredo Race Park will have air conditioned viewing areas for live race patrons.
319. Laredo Race Park will have sleeping accommodations and access to a track kitchen for up to 300 horsemen.
320. LRP Group would have no air-conditioned facilities for live race patrons.
321. LRP Group's lack of air-conditioned facilities from which to view live racing would likely inhibit attendance, particularly during the thoroughbred meet planned for July.
322. Laredo Race Park will have sleeping accommodations for horsemen.
323. Horsemen rise early to care for their animals.
324. Many horsemen earn relatively low wages.
325. On-track sleeping accommodations for horsemen are somewhat expected.
326. The ability of horsemen to live at the track during the meet represents a significant convenience and economic savings to them.

**FINANCIAL STABILITY AND RESOURCES TO SUPPLEMENT PURSES**

327. The partnership arrangement of LRP Group is less stable than that of Laredo Race Park.
328. Because not all partners in LRP Group are required to contribute to cash calls and can exit the partnership at any time, ownership stability and financial stability could become an issue.

**ECONOMIC EFFECT OF RACE MEETINGS**

329. Both facilities would have a positive economic effect on the state and local economies and the breeding industries if constructed and operated as projected. Laredo Race Park's facilities would have a greater positive economic effect on the state and local economies than would the LRP facilities, particularly during construction.
330. Compared to LRP Group, Laredo Race Park would provide \$20 million more in economic output during construction, 282 more jobs during construction, nearly \$5million more of additional output during the first five years of operations, and an average of 50 additional jobs during the first five years of operations.
331. Laredo Race Park's facilities are better equipped than LRP Group's un-airconditioned and smaller facilities to attract tourists for live racing.
332. Laredo Race Park's application would have a greater positive impact on the horse breeding industry in Texas.
333. Based on the size of the market, two licensed facilities could not operate in an economically viable manner in Webb County.

**CERTIFICATION OF ELECTION**

334. On November 7, 2000, Webb County conducted a local election, which included two propositions for pari-mutual wagering.
335. True and correct copies of the official ballot, including Proposition No. 1 and No. 2 related to pari-mutual wagering and the canvass of the General Election were signed by Mercurio Martinez, the County Judge of Webb County, dated November 14, 2000.
336. The Webb county election precinct returns were forwarded to the Secretary of State.
337. The Texas Secretary of State sent correspondence dated May 27, 2004, addressed to the Texas Racing Commission, stating that Webb County submitted precinct by precinct results for its November 7, 2000 election.
338. The precinct by precinct results reflect that the voters of Webb County passed both pari-mutual propositions at the November 7, 2000 election.
339. The precinct returns were forwarded to the Secretary of State within the 10 day statutory deadline found at § 16.12(a) of the Act.

340. On January 29, 2004, the Applicants submitted to the Commission their respective documents seeking a license to construct and operate a Class II horse racetrack in Webb County, Texas.
341. The Commission accepted the Applicants' submittals, and referred them to the State Office of Administrative Hearings for consideration of the merits via a contested case hearing.
342. On August 17, 2004, the Commission requested an opinion from the Texas Attorney General related to the certification of the Webb County, Texas election.
343. On December 20, 2004, the Texas Attorney General issued his opinion responding to the Commission's request.

## **XXI. PROPOSED CONCLUSIONS OF LAW**

### **JURISDICTION AND NOTICE**

1. The Texas Racing Commission has jurisdiction over the applications filed by LRP Group and Laredo Race Park. TEX. REV. CIV. STAT. ANN. 179e (Racing Act) § 6.03 (Vernon Supp. 2005).
2. The State Office of Administrative Hearings has jurisdiction to conduct a hearing and issue a proposal for decision. TEX. GOV'T CODE ANN. Ch. 2003 (Vernon Supp. 2005).
3. Applicants received proper notice of the hearing, pursuant to TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052 (Vernon Supp. 2005) and 16 TEX. ADMIN. CODE (TAC) § 307.
4. This proceeding is governed by the Racing Act, the Texas Racing Commission Rules, the Texas Administrative Procedure Act, and the State Office of Administrative Hearings rules.
5. The Texas Racing Commission may issue a racetrack license only to a qualified applicant. Racing Act § 6.04.
6. The applicants bear the burden of proving that they comply with the Racing Act and the rules of the Commission. Racing Act § 6.03(g).
7. The Commission may deny a racetrack license pursuant to the criteria in Section 6.06 of the Act.

### **OWNERSHIP AND BACKGROUND INFORMATION**

8. Laredo Race Park and LRP Group are applicants for a Class 2 Horse Track License in Webb County under the terms of Texas Revised Civil Statutes Annotated Article 179(e) (the Racing Act).

#### **COMPLIANCE WITH THE RACING ACT, COMMISSION RULES, AND OTHER LAWS**

9. Laredo Race Park's application is in compliance with the rules of the Commission, the Racing Act, and the laws of the State.
10. The Texas Racing Act limits a person's right to own more than a five percent interest in more than two racetrack facilities licensed under the Act.

#### **EXPERIENCE OF EMPLOYEES**

11. Laredo Race Park's officers and employees are qualified to serve in the positions they hold.

#### **FACILITIES FOR PATRONS AND OCCUPATIONAL LICENSEES**

12. Laredo Race Park's application included architectural drawings of facilities for patrons, race animals, and occupational licensees in accordance with the application's requirements.
13. Laredo Race Park's facilities for patrons comply with Commission rules.
14. Laredo Race Park's proposed multi-purpose, air-conditioned grandstand is in the best interest of horse racing, the citizens of Texas, and the public interest.
15. Laredo Race Park's parking lot complies with Commission Rule 305.149.
16. Laredo Race Park's living quarters for licensees comply with Rule 309.282.
17. Laredo Race Park's quarters for jockeys comply with Rule 309.281.

#### **FACILITIES FOR HORSES**

18. Laredo Race Park has proposed facilities for race animals that will meet the requirements of the Act and the Commission Rules
19. Laredo Race Park's rail specifications comply with Commission Rule 309.206.

20. Laredo Race Park's track dimensions comply with Commission Rules 309.203(3), 309.202(e), 309.202(d), and 309.202(c)(1).
21. Laredo Race Park's track maintenance program complies with Rule 309.207.
22. Laredo Race Park backside facilities comply with the Commission Rules 309.241 - 309.254 regarding facilities for horses.
23. Laredo Race Park's training center is in the best interest of horsemen, the citizens of Texas, and the public interest.

### **FINANCIAL STABILITY**

24. Laredo Race Park is financially stable.
25. Laredo Race Park's financial forecasts are reasonable.
26. Laredo Race Park's projected revenues and expenses are reasonable.
27. Laredo Race Park's simulcast plan is reasonable.
28. Laredo Race Park's totalisator contract and totalisator operations are reasonable.
29. Laredo Race Park's construction costs are reasonable.

### **LOCATION**

30. Laredo Race Park's location on a 200-acre tract of land along Mines Road in Webb County is in the public interest.
31. There is no reasonable scientific or historical basis to assume that the proposed Laredo Race Park site is at risk of future cattle tick infestation or quarantine.
32. TAHC Rule 41.2(a) provides that TAHC will re-designate an area when a change in circumstances warrants reclassification.
33. LRP Group's claims with respect to utility rights are not based on legally sufficient evidence.
34. Laredo Race Park has legal access to electrical, water, and wastewater services.

**EMERGENCY RESPONSE SERVICES**

35. Laredo Race Park's site is reasonable from a safety perspective.
36. Laredo Race Park's confidential security plan attached as Exhibit T to its application is in compliance with the application sections of Chapter 309 relating to the operation of racetracks.
37. Laredo Race Park's confidential security plan includes adequate information regarding the description of local law enforcement services that are available to the racetrack.

**EFFECT OF TRACK ON TRAFFIC FLOW**

38. Laredo Race Park timely submitted a traffic study with its application.
39. Laredo Race Park's effect on existing traffic flow along Mines Road is minimal.
40. Laredo Race Park's traffic study meets Commission requirements.

**POTENTIAL FOR CONFLICT WITH OTHER LICENSED RACE MEETINGS**

41. Laredo Race Park's application complies with the Commission's statutory directive to consider the potential for conflict with other licensed race meetings.

**RESOURCES FOR SUPPLEMENTING PURSES**

42. Funds for Laredo Race Park's purse accounts will be provided in accordance with Rule 309.297 and the requirements of the Racing Act.



**PUBLIC INTEREST**

43. Laredo Race Park's application, which promotes both live and simulcast racing, is in the public interest.

**COMPLIANCE WITH ZONING REQUIREMENTS**

44. Laredo Race Park has complied with all relevant zoning laws.

**COMPLIANCE WITH CRIMINAL LAWS**

45. Clear and convincing evidence exists to conclude that Laredo Race Park will comply with all criminal laws of the State of Texas, the Texas Racing Act, and the Commission's rules.

**APPLICATION OF TEXAS RACING ACT SECTION 6.06 (RACETRACK LICENSE; GROUNDS FOR DENIAL, REVOCATION, AND SUSPENSION)**

46. The Texas Racing Act limits a person's right to own more than a five percent interest in more than two racetrack facilities licensed under the Act.
47. Section 6.06(h) of the Racing Act does not preclude an applicant from submitting an application for one license while divesting itself of ownership of another license.
48. The Commission has the authority to condition issuance of Laredo Race Park's license upon completion of the transfer of ownership of Valley Race Park.

**CERTIFICATION OF ELECTION**

49. With respect to the election held in Webb County, Texas on November 7, 2000 on Proposition Nos. 1 and 2, Webb County officials have complied with the timing and certification requirements of § 16.12(a) of the Texas Racing Act.
50. The results of the election held in Webb County on November 7, 2000 on Proposition Nos. 1 and 2 were certified to the Secretary of State in accordance with § 16.01(a) of the Texas Racing Act prior to the filing of Applicants' applications with the Commission on January 29, 2004.

**CONCLUSION**

- 51. Standing alone, the applications of Laredo Race Park and LRP Group each satisfy the minimum statutory and regulatory requirements for licensure.
- 52. Because only one licensed facility in Webb County is economically viable, it is not in the public interest for the Commission to issue licenses to both Laredo Race Park and LRP Group.
- 53. The application of Laredo Race Park is superior to and more in the public interest than the application of LRP Group for the reasons set out in the Findings of Fact and Conclusions of Law.
- 54. Laredo Race Park is qualified to perform the duties required by a licensee and its license should be GRANTED.
- 55. The application of LRP Group should be DENIED.
- 56. All other motions, requests for entry of specific findings of fact and conclusions of law, and other request for general or specific relief, if not expressly granted herein, are hereby denied.

**SIGNED SEPTEMBER 19, 2006.**

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**SUZANNE FORMBY MARSHALL**  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

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**KERRY D. SULLIVAN**  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS