

**STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL**

IN THE MATTER OF THE XANADU)	
PROJECT AT THE MEADOWLANDS)	
COMPLEX; APPLICATION OF)	FINAL ORDER GRANTING
BENIHANA MEADOWLANDS CORP.)	SPECIAL CONCESSIONAIRE PERMIT
FOR A SPECIAL CONCESSIONAIRE)	
PERMIT)	

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BY THE DIRECTOR:

This Final Order addresses the remaining issues regarding the application by Benihana Meadowlands Corp. (Benihana) for a Special Concessionaire Permit to be located in the Xanadu Redevelopment Project at the Meadowlands (Meadowlands Xanadu). The procedural history of this matter has been set out previously in numerous orders and so is not reiterated here. As scheduled in the Pre-Hearing Order dated October 21, 2008, a hearing regarding this application was held on November 20, 2008. Present at the hearing were counsel for Hartz Restaurant Associates (Hartz),¹ the New Jersey Sports and Exposition Authority (NJSEA) and counsel for

¹Hartz is one of the objectors to the Benihana application. The other objectors are the New Jersey Restaurant Association and certain municipal license holders in East Rutherford (collectively referenced here as "NJRA").

Benihana and the developer.² Benihana also offered the testimony of two witnesses, Daniel J. DeLorenzi (security consultant for Meadowlands Xanadu) and Gittipong Dararouksa (regional manager of Benihana). Although clearly aware of the hearing, NJRA chose not to participate in the proceeding. As discussed below, upon consideration of all the submissions, arguments and testimony, I have determined to issue a Special Concessionaire Permit to Benihana for use at Meadowlands Xanadu, with certain conditions.

In my Pre-hearing Order, I found that the application made by Benihana meets the basic jurisdictional requirements of N.J.A.C. 13:2-5.2 for the issuance of a Special Concessionaire Permit. I preliminarily determined that the applicant's qualifications, source of funding and method of operation were satisfactory based on the documents submitted to me. No contrary objections were raised as to these issues.

Additionally, as I discussed in detail in my Pre-hearing Order, I found that objectors Hartz and NJRA have not proven a sufficient property right to require a contested case hearing pursuant to the Administrative Procedures Act. Accordingly, pursuant to N.J.A.C. 13:2-5.2, the remaining issue at the hearing on the Benihana application was whether the applicant can satisfy me that it is qualified and appropriate to receive and operate an alcoholic beverage permit and under what conditions or limitations, if any, this permit is to be operated. The role of the objector was to provide such other information or comment as it has available so as to complete the record in order to assist me in making my decision. In Re: Application of Bayshore

²The developer is referred to in the various submissions before me as "Mills Corporation," and "Mack-Cali Realty Corporation" (the original developer), as well as "Colony Capital" and "ERC 16W Limited Partnership," of which Colony Capital is a part (the current developer). I use the term "developer" and/or all names interchangeably here to refer to the developer of Meadowlands Xanadu.

Restaurant Group, LLC, 2004 N.J. Agen. LEXIS 180 (March 12, 2004). Thus, this was the substance of the hearing on November 20, 2008, which included exploration of the applicant's alcohol handling procedures, as well as consideration of the concerns expressed by Hartz, the sole objector to appear at the hearing.

In its argument at the hearing and in its post-hearing submissions,³ Hartz reiterated a long list of issues, beginning with its basic objection to the hearing process itself. Other concerns highlighted by Hartz included the objector's contention that insufficient ownership and control resides with NJSEA and that the smart growth legislation (N.J.S.A. 33:1-24.1, et seq.) should apply to Meadowlands Xanadu. Hartz also maintained its objection to my finding that the East Rutherford ordinance requiring 500 feet between licensed premises does not apply in this instance.

Many of the concerns raised by Hartz, at both the hearing and throughout the post-hearing submissions, have been discussed repeatedly in detail by the parties from the very outset of this matter and have been decided in previously issued orders. Hartz's arguments on these subjects did not contain anything new, and to the extent that certain of these arguments continue to raise concerns regarding the appropriateness of the entire Meadowlands Xanadu project, I have already found that issues such as whether Meadowlands Xanadu falls within the scope of NJSEA's statute; whether NJSEA has ceded control over Xanadu to the developer; as well as other issues addressing the nature of the agreement between the developer and the NJSEA or challenging

³Based on testimony at the hearing, I asked the parties to address what supplemental measures, if any, Benihana intends to put in place to account for its proximity to other proposed alcohol serving establishments in the facility and the purported potential for an influx of intoxicated patrons after an event at one of the NJSEA sports complexes. Both parties provided supplemental information and argument.

their agreement, are not properly before me.⁴

In addition to the issues discussed above, Hartz has opined that large crowds of intoxicated patrons from nearby NJSEA venues may present security and alcohol control issues at Meadowlands Xanadu on sporting event days. Hartz also questioned the current alcohol management plan submitted for Meadowlands Xanadu, describing it as “watered down” and inadequate. Furthermore, Hartz contended that the proximity of other permittees in Meadowlands Xanadu to Benihana will cause issues and concerns for control of alcohol consumption.

At the hearing, Benihana emphasized that it is applying for a permit to serve alcoholic beverages in its family-oriented restaurant to be placed in Meadowlands Xanadu, which it described as NJSEA’s family entertainment facility. Benihana presented Daniel J. DeLorenzi as its first witness. Mr. DeLorenzi is the security consultant for Meadowlands Xanadu and he testified regarding the security protocol for the facility. Specifically, Mr. DeLorenzi stated that there are limited places of ingress and egress from Meadowlands Xanadu and that specially trained security personnel will be stationed at each entrance/exit, with a sophisticated camera surveillance system in place throughout the facility. Additionally, Mr. DeLorenzi described the draft Meadowlands Xanadu Public Safety Standard Operations Plan (Public Safety Plan), which

⁴As I discussed fully in my April 22, 2008 Scheduling Order and reiterated in my Pre-hearing Order, the Appellate Division has already completed such a review and found that the NJSEA had the authority to select the Xanadu project as it has been planned. Hartz Mountain Industries, Inc. v. NJSEA, 369 N.J. Super. 175, 192 (App. Div. 2004), certif. den. 182 N.J. 147 (2004). Furthermore, in In re Protest of Hartz Mountain Industries, 2006 WL 2371348 (App. Div. 2006), the Appellate Division reiterated this pronouncement, stating that the project is consistent with the NJSEA’s enabling legislation.

he claimed contained safety measures tailored to respond to any effects stemming from sports events at NJSEA sites in the area, including Giants Stadium, the Izod Center or the racetrack. Mr. DeLorenzi opined, however, that he did not anticipate a large influx of intoxicated football fans at Meadowlands Xanadu on game days, since his study of the situation revealed that football fans have a predisposition to remain near the stadium, especially if they are tailgating.

Nevertheless, Mr. DeLorenzi emphasized that the Public Safety Plan has procedures in place to address a potential influx of patrons on game days. These procedures also include participation by the East Rutherford Police Department and the New Jersey State Police, who patrol the NJSEA areas. Furthermore, Mr. DeLorenzi described the Alcohol Incident Management Program to be put in place at Meadowlands Xanadu. This plan contains procedures for adverse crowd conditions and other emergencies, should they arise. The plan also sets up a group to be known as the Alcohol Awareness Alliance, of which Benihana is to be a member, which will meet monthly to discuss topics such as alcohol awareness training, safety and compliance audits, security patrols, and alcohol-related incidents.

As noted, Hartz characterized the plan as “watered down” and inadequate. However, Benihana emphasized that both internal and external protective measures will be employed for alcohol management at its premises at Xanadu. The external security measures encompass the procedures discussed by security consultant Daniel DeLorenzi and include a protective security cordon in place in and around Meadowlands Xanadu on event and non-event days that is designed to screen out incoming intoxicated patrons before they ever reach restaurants such as Benihana. The draft Public Safety Plan (an updated version of which was attached to Benihana’s post hearing submission) contains an advance planning process wherein the East Rutherford

Police Department, as well as the in-house security force, will allocate resources to account for any events which could affect Meadowlands Xanadu, including a centralized emergency operations center. Moreover, Benihana pointed out that in Meadowlands Xanadu, unlike a traditional mall setting, the sole means of access to the restaurant will be through a common area, with a strong security presence, not only at the ingress/egress points, but throughout the facility.

Benihana presented Gittipong Dararouksa as its second witness. Mr. Dararouksa is the regional manager of Benihana and the primary focus of his testimony and written submissions relates to the internal security procedures employed by Benihana. Although Mr. Dararouksa had some issues with expressing himself verbally in English, he was able to confirm that all of Benihana's management staff is trained in alcohol service training, such as the TIPs and TAMs programs. He also agreed that if the Division requires TIPs or TAMs training for all staff, Benihana will comply with this condition. Moreover, through written testimony submitted at the hearing by Benihana, Mr. Dararouksa explained that he worked for Benihana for the past 12 years and, as a regional manager, he is responsible for the operations of several Benihana restaurants on the east coast of the United States. Thus, he is intimately familiar with the operations and details of running a Benihana restaurant.

According to Mr. Dararouksa a typical Benihana restaurant is approximately 8,000 square feet in size and has about 18-20 tables, a bar or lounge area and a sushi bar. Mr. Dararouksa testified that Benihana is a family-oriented Japanese-themed restaurant, where chefs prepare food at a teppanyaki grill, which forms part of a customer's table. He noted that alcohol service, such as traditional Japanese saki, is an accent to the meal and bar service is not emphasized. He stated that the bar at Benihana is small, usually containing about 8-9 stools with some tables, and is

used as a place for customers to wait for their tables. Furthermore, Mr. Dararouksa asserted that Benihana has many written policies and procedures governing its operations. These policies include a “commitment to responsible service,” which has guidelines for asking for proof of age before service of alcohol and for recognizing intoxicated patrons. Finally, Mr. Dararouksa emphasized that it is a violation of Benihana’s employee rules and regulations to serve alcoholic beverages to any minor or to any person who is intoxicated.

With regard to Benihana’s location in Meadowlands Xanadu, Mr. Dararouksa indicated that he was aware that the location is adjacent to Giants Stadium, the Izod Center and the Meadowlands Racetrack. He discounted any claims made by the objectors that the area will pose problems for Benihana, asserting that Benihana is a fine dining establishment where people come with their families for food and entertainment, not to become intoxicated. However, if an intoxicated patron appears at the restaurant, Mr. Dararouksa insists that the Benihana staff is well trained and certified, and has procedures in place to address the situation. He added that Benihana locations typically have 10-15 surveillance cameras on premises, which are monitored and recorded in the manager’s office. With regard to public safety at Meadowlands Xanadu, Mr. Dararouksa affirmed that the restaurant will be a member of the monthly Alcohol Awareness Alliance meetings and will actively assist the Xanadu security staff when needed.

In response to Hartz’s objection that other tenants who may apply for a permit to serve alcohol are to be located close to Benihana, the restaurant argued that it did not perceive any issues presented by its location at Meadowlands Xanadu. Benihana contends that where it will be located on Level One of the complex, the restaurant will be in the vicinity of other fine dining establishments which have not been known to contribute to excessive alcohol consumption.

At the outset of this Order I emphasized that, pursuant to N.J.A.C. 13:2-5.2, the basic issue at the hearing on the Benihana application was whether the applicant can satisfy me that it is qualified and appropriate to receive and operate an alcoholic beverage permit and under what conditions or limitations, if any, this permit is to be operated. The role of the objector was to provide such other information or comment, so as to complete the record in order to assist me in making my decision.

Additionally, as I explained in detail in my Pre-Hearing Order, based on the material submitted to me, I found that the application made by Benihana meets the basic jurisdictional requirements of N.J.A.C. 13:2-5.2 for the issuance of a Special Concessionaire Permit. The arguments made by Hartz at the hearing and in its post-hearing submissions repeat those made earlier and have not affected my analysis on these issues.

Benihana and NJSEA asserted that they are partners in constructing an entertainment development which fulfills a public project and is going to yield substantial benefits to the community of East Rutherford and the State of New Jersey. This project will generate jobs, revenues, and taxes, and is clearly in the public interest. The only objector at the hearing was Hartz, a defeated bidder for the Meadowlands project and holder of two inactive alcoholic beverage licenses in another town. Notably absent were any objectors from the community of East Rutherford, including the mayor, city council or any citizen of the community.

The evidence presented to me at the hearing on November 20, 2008 demonstrated that applicant Benihana is a family-oriented restaurant which will not draw a significant bar crowd. The applicant adduced sufficient evidence that it has in place responsible alcohol service guidelines that govern its operations, including evidence that all new employees are trained in

these procedures and all managers must be certified in ServSafe, TIPs or TAMs. The applicant also outlined numerous safety and security protocols. This included a video security system in the restaurant which can be monitored both in the manager's office and remotely by the regional manager, and facility-wide public safety plans and specially trained security personnel, as well as the applicant's avowed membership in Meadowland Xanadu's Alcohol Awareness Alliance. Despite this, Hartz has raised speculations that large crowds of intoxicated patrons may visit Meadowlands Xanadu after sporting events in the area. I am not convinced by Hartz's arguments.⁵

First, Hartz's position that there is a culture of intoxication seems predicated on the unproven assumption that everyone leaving a Jets or Giants football game is intoxicated and out of control in search of more alcohol. Nothing in the record supports this hypothesis. Secondly, even if sporting events at the Meadowlands present a need for special awareness, there is no evidence to suggest that effective conditions of operation and diligent management of responsibilities by the permittee would not be sufficient. In fact, even if the applicant was to be located on a country road far from any crowds, I would still need to conduct the same analysis regarding its qualifications and ability to properly operate an alcoholic beverage permit. Wherever it is located, a permittee must be vigilant regarding its service of alcohol.

It appears that Hartz's objections are really directed at this particular use of the

⁵I also note that the location of Meadowlands Xanadu adjacent to several sporting arenas was an integral part of the original plan of the redevelopment project, with full knowledge of event-related crowds. NJSEA's authority to approve such a plan has already been affirmed several times by New Jersey courts. Hartz Mountain Industries, Inc. v. NJSEA, 369 N.J. Super. 175, 192 (App. Div. 2004), certif. den. 182 N.J. 147 (2004); In re Protest of Hartz Mountain Industries, 2006 WL 2371348 (App. Div. 2006).

Meadowlands area as a concentrated entertainment shopping venue in the presence of the adjoining NJSEA sporting facilities. A facial challenge of that decision is the responsibility of a jurisdiction other than this one. As to alcohol management, I find that there is no basis for concluding that a safe and responsible program for the service of alcohol cannot exist at Meadowlands Xanadu. Rather, each application must be looked at individually to determine the safety and appropriateness of its operation in the context in which it is presented.

I find that Benihana has presented to me appropriate qualifications, including its source of funding and method of operation. I note that Benihana is currently operating three locations in New Jersey with alcoholic beverage licenses and has been for over 30 years without a disciplinary violation. Upon review of the testimony at the hearing in this matter, I am satisfied that Benihana plans to put into place appropriate safeguards to safely sell alcohol at its location in Meadowlands Xanadu and I have no reason to believe that Benihana will not comply with alcoholic beverage law. Consequently, I hereby grant Benihana's application for a Special Concessionaire Permit. However, because Benihana is not yet ready to open for business at Meadowlands Xanadu, I place the following conditions which must be met prior to authorization for activation of this permit: (1) Benihana shall provide the Division with final "as constructed" drawings of the restaurant and a Certificate of Occupancy; (2) Benihana's on-premises manager shall submit to a criminal background check, including fingerprinting; and (3) The completed restaurant shall be subject to a final inspection by Division personnel.

Upon authorization to activate the permit, Benihana may sell and serve alcoholic beverages for on-premise consumption only within the permitted premises. However, given the circumstances presented by the application for this permit, I shall impose certain conditions on its

continued operation. I place these conditions, especially that of training for all employees, in order to ensure that Benihana can fully monitor all patrons arriving at their premises at Meadowlands Xanadu to prevent service to underage and/or intoxicated patrons. These operating conditions are: (1) All employees who serve or deliver alcoholic beverages must be TAMs, TIPs or ServSafe trained; (2) Sale of alcoholic beverages as package goods is prohibited; (3) All deliveries of alcohol to patrons must be for immediate consumption and patrons may not remove alcoholic beverages from the permitted premises, and employees of the permittee must monitor activities of the patrons to ensure compliance; (4) Benihana shall maintain a membership in Meadowland Xanadu's Alcohol Awareness Alliance; (5) B.Y.O.B. service is prohibited; and (6) Benihana shall not sell or serve alcoholic beverages during hours when retail consumption licensees are prohibited from making sales in the municipality in which the premises is located.

In addition to these specific conditions, the permittee shall not sell or serve alcoholic beverages during hours when retail consumption licensees are prohibited from making sales in the municipality in which the aforesaid premises is located. Any sale of alcoholic beverages beyond the scope of limitations conditioning this permit or in violation of statutes or regulations shall be cause for suspension or revocation. Furthermore, this permit will include such conditions as are typically included in the issuance of a Special Concessionaire Permit.

Finally, I address Hartz's continued complaint that Meadowlands Xanadu will be the recipient of an excess of 20 Special Concessionaire Permits. I have made no decision as to how many other applicants, if any, are appropriate for permitting at Meadowlands Xanadu, and if so, what conditions would be placed on such permits. Each applicant for a Special Concessionaire Permit will be analyzed individually and in the context in which they are presented.

Accordingly, it is on this 18th day of December, 2008,

ORDERED that the application of Benihana for a Special Concessionaire Permit to be used at Meadowlands Xanadu is hereby GRANTED; and

IT IS FURTHER ORDERED that the following special conditions are placed for activation of this permit:

(1) Benihana shall provide the Division with final “as constructed” drawings of the site and a Certificate of Occupancy;

(2) Benihana’s on-premises manager shall submit to a criminal background check, including fingerprinting; and

(3) The completed restaurant shall be subject to a final inspection by Division personnel.

IT IS FURTHER ORDERED THAT upon authorization to activate the permit, Benihana, is authorized to sell and serve alcoholic beverages for on-premise consumption only within the permitted premises, subject to the following operating terms and conditions:

(1) All employees who serve or deliver alcoholic beverages must be TAMs, TIPs or ServSafe trained;

(2) Sale of alcoholic beverages as package goods is prohibited;

(3) All deliveries of alcohol to patrons must be for immediate consumption and patrons may not remove alcoholic beverages from the permitted premises, and employees of the permittee must monitor activities of the patrons to ensure compliance;

(4) Benihana shall maintain a membership in Meadowland Xanadu’s Alcohol Awareness Alliance;

(5) B.Y.O.B. service is prohibited; and

(6) Benihana shall not sell or serve alcoholic beverages during hours when retail consumption licensees are prohibited from making sales in the municipality in which the premises is located.



JERRY FISCHER
DIRECTOR