

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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IN THE MATTER OF NEIGHBORS UNITED
BELOW CANAL, JAN LEE, DCTV, EDWARD J.
CUCCIA BETTY LEE, and AMERICAN INDIAN
COMMUNITY HOUSE,

Index No.

Petitioners,

**AFFIDAVIT OF
IAKOWI:HE'NE'
IN SUPPORT OF THE
VERIFIED PETITION**

For a Judgment pursuant to Article 78 of the CPLR

-against-

MAYOR BILL DE BLASIO, et al.,

Respondents.
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Iakowi:He'Ne' being duly sworn deposes and says:

1. I am a member of the Akwesasne Mohawk Tribe, The Keepers of The Eastern Door of the North within Haudenosaunee Confederacy and the Executive Director of the American Indian Community House ("AICH"), a not-for-profit organization serving the needs of Native Americans residing in New York City. The mission of AICH is to improve and promote the well-being of the American Indian Community and to increase the visibility of American Indian cultures in an urban setting in order to cultivate awareness, understanding and respect.

2. My western name is Melissa Oakes. I have been the Executive Director of AICH for seven months and prior to that served as AICH's Deputy Director. I submit this affidavit in support of this Article 78 proceeding to bring to light how the City's the exclusionary decision-making process to locate yet another new jail at 124-125 White Street and its plan for post-approval archeological investigations inflicts injury on Native Americans that is unique and is a

violation of long standing Treaty obligations and the UN Declaration on the Rights of Indigenous Peoples.

Native American Roots in What is Now NYC

3. New York City is home to more than 115,000 inter-tribal Native American, First Nations, and Indigenous peoples, more than any urban area in the United States.

4. The lands of the five boroughs of New York City are the traditional homelands of the Lenape, Merrick, Canarsie, Rockaway and Matinecock Nations. They are the lands also known as the Eastern Door of the North under the protection and peaceful governance of The Great Law of Peace of the Haudenosaunee Confederacy, also known as the League of the Iroquois. These lands have also been and remain home to Indigenous peoples of many more Tribal Nations, all in agreement to honor the “Dish with one Spoon Wampum,” a treaty agreement to share lands peacefully and equitably amongst other tribal nations who migrated their villages in and around the Northeastern region. Over many centuries to this very day, diverse Indigenous people have lived, relied upon, contributed to and helped steward the cultural and spiritual integrity of this place in every way, according to our Creation Stories, knowledge and lifeways that we share across the North Eastern Region and InterTribal origins.

Recognized Legal Rights of Indigenous Peoples

5. Under Article 11 of the United Nation’s Declaration on the Rights of Indigenous Peoples, which was endorsed by the United States on December 15, 2010, Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect, and develop the past, present and future manifestations of their cultures, such as archeological and historical sites.

6. Article 12 of the United Nation's Declaration on the Rights of Indigenous Peoples states that Indigenous peoples have the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to use and control of their ceremonial objects; and the right to repatriation of their human remains. In addition, Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas.

7. Similarly, the American Indian Religious Freedom Act (AIRFA) declares that it shall be the policy of the United States to protect and preserve for American Indians their inherent right exercise their traditional religions, which includes access to sacred places and possession of sacred objects.

8. Native American rights to the Land are also governed by a treaty entered into with the Dutch upon their arrival in 1613, known as the Two Row Wampum living treaty that each party agreed would last forever. This treaty was recorded by the Dutch on paper with three silver chains, which would never rust, and by the Mohawks in a belt made of white and purple wampum shells signifying how each nation would travel down the river of life side by side, not attempting to steer the other's vessel. The principles of the treaty are lasting friendship and peace.

Meaning and Significance of Sacred Places

9. The concept of sacred place has a different meaning to Native Americans than it does in western culture. In Native American societies, there is an intimate connection between humans and the landscape and religion. Land is not an inanimate commodity to be transferred and manipulated at will. Rather, all land in and of herself, as our Mother, lives through communal, reciprocal social and deeply spiritual relationships. Burial sites are sacred, as is true

of most cultures, but for Native people all places in which our relations thrived must be honored as sacred. This certainly applies to lower Manhattan, where Native people and all relations flourished near pristine water sources and verdant grounds.

10. Thus, the Native American idea of a sacred place goes beyond how CEQR defines “archeological resources.” For Native Americans, archaeological resources are not limited to “physical remains, usually subsurface, of the prehistoric, Native American, and historic periods—such as burials, foundations, artifacts, wells, and privies.”

11. When Native people say “Land”, we mean all that lives and are our relatives on Mother Earth: those relations that fly, that crawl, that swim, the air we breathe, the clouds that bring rain, the bountiful plants/trees and all beings that share this Land with us as humans. Furthermore, for Native people, all of our Ancestors, who will always be part of the Land, still live and guide us. Therefore, protecting sacred places, which hold all of these relations, is necessary for the survival of traditional religions, cultures and lifeways, as well as the protection of the identity of Indigenous peoples and their status as sovereign nations. Native Americans are required by the tenets of our traditional religions to protect the physical integrity of sacred places.

12. Sacred places, sacred objects, and Ancestors, which are both human relations and the relations of Land itself, which we regard as Mother and Grandmother, never lose their sacredness or cultural integrity, even after others may perceive that they are “destroyed.”

13. The loss of any sacred place is like a tiny crack in a strong building. Every ritual, ceremony, and action performed by Native Americans is about respect for the natural order and to ensure the continuation of the world. Over time, as more and more sacred places are lost, the

cracks build and the existence of all is threatened as each loss brings closer the eventual demise of Mother Earth. The cumulative loss of sacred places begets the loss of the earth.

14. The site of the proposed jail on 124-125 White Street in Manhattan is a sacred place among many Native Americans in lower Manhattan because it was a nexus for life, bountiful in food, traditional medicines and villages, with pristine water sources in the form of ponds and springs. It was and remains, according to Native worldview, an extension of and a beleaguered yet lasting example of all things sacred about the Land.

15. Prior to European colonization, all lower Manhattan was a highly resided area for Indigenous peoples, primarily members of the Lenape tribe, as well as many other tribes such as the Haudenosaunee (Iroquois) who came to the area for the abundant gifts of the Land and the sharing of inter-tribal knowledge. Colonization resulted in the systematic and violent taking of the land and the lives of Native Americans who called Manhattan, New York City and beyond our home, obviously without the consent of or consultation with Indigenous peoples.

16. Lower Manhattan has already been desecrated by development on the land formerly occupied by Native Americans, starting at the time of colonization. Colonization resulted in not only the development of buildings on lands occupied by Native Americans, but also in the filling of Collect Pond (once located at Leonard street between Centre and Lafayette Streets). Collect Pond was not just a water body or “resource,” but rather, like other life sustaining elements of nature, was considered by Native Americans to be a relation, a vital family member which we surround a large part of our ceremonies.

17. The pond was a large, sixty-foot deep pool fed by an underground spring and was used by Native Americans for drinking water. After colonization, by the early 19th century, it became a communal open sewer. By 1811, the City had completed the filling of Collect Pond,

without regard to its significance to Native American culture, or consultation with or consent of Native Americans.

18. With the greater society now more enlightened about the necessity of maintaining respect for traditional Native lands and the need for everyone to protect these cherished places, it seems unimaginably insensitive for the City of New York, in the name of criminal justice reform, to build a jail that incarcerates those who are typically our least fortunate relations, in one of the last sacred places Native people of Manhattan can still protect.

The City’s Exclusion of Native Americans

19. Even though the proposed Manhattan jail site is a sacred place, the entire process of community engagement with respect to the jail, to the extent that it actually occurred, did not involve any Native Americans. No Native Americans were invited to serve on the Neighborhood Advisory Committee (NAC) that was purportedly convened to involve the community in the Proposed Project. Nor was the Native American community even made aware of NAC meetings.

20. Sadly, this is consistent with the history of subrogation of the lands, interests and values of Native Americans in New York City and beyond, which has resulted in the systematic erasure of the long history and location-specific culture of Native Americans prior to colonization.

The City’s Failure to Consider Archeological Resources During its Environmental Review

21. I understand that the Final Environmental Impact Statement (“FEIS”) for the Manhattan jail determined that portions of the site at 124 White Street that have not been fully disturbed as a result of the construction of buildings on the site in the 19th and 20th centuries have a “low sensitivity” associated with “the precontact occupation of Manhattan.” I also understand

that the undisturbed portions of the street bed of White Street were determined to have “low to moderate sensitivity for archaeological resources associated with the precontact occupation of Manhattan and moderate sensitivity for resources associated with the historic period.” Exhibit A (FEIS Chapter 4.5) at p. 4.5-2.

22. The FEIS also states that, with respect to the southwestern and undeveloped corner of 124 White Street, additional archeological analysis in the form of soil borings would be completed *after approval of the Proposed Project*, “as part of the project planning and design phase” to determine whether peat deposits are present, and that if peat deposits are not present, no further archaeological analysis would be recommended “as the site would be unlikely to have potential precontact sensitivity and historic fill deposits would be assumed to have been disturbed.” *Id.* at 4.5-3.

23. With respect to the White Street street bed, again, *after approval of the Proposed Project*, additional archeological analysis in the form of Phase IB archeological testing or monitoring ... would be completed in consultation with LPC [the New York City Landmarks Preservation Committee].” *Id.* The LPC would review and approve the Phase IB Work Plan, and if the testing confirms the presence of archeological resources, there would be further investigations and consultation with LPC and, finally, LPC concurrence with the conclusions of those investigations. *Id.*

24. Thus, the entire process of determining whether “archeological resources” are present on the site and, if they are determined to be present, what to do next, will occur *after the Proposed Project has already been approved.*

25. I understand that CEQR requires city agencies to assess, disclose, and mitigate to the greatest extent practicable the significant environmental consequences of their decisions to

fund, directly undertake, or approve a project, and that this assessment, disclosure and mitigation must be identified before city agencies make their decisions. There seems to be absolutely no reason why the City could not have attempted to discover whether there are archeological resources in the yet unbuilt areas of the Proposed Project site *before the Proposed Project was approved.*

26. If history is any guide, there can be no doubt that any discovery of “archeological resources” after the Proposed Project has been approved and during “project planning and design phase” or during post-approval investigation will have *absolutely no effect on whether the Proposed Project continues to move forward.* The time for considering whether the site is a valuable and meaningful place for Native Americans, and whether further desecration of the site is appropriate, will have passed completely, and it will just be a question of how to remove western-defined “archeological resources” from the site where they currently live so that the jail can continue to be built.


27. Moreover, all the post-approval investigation and decision-making will be non-public and without any participation of or consent by the Native American community, the original stewards and occupants of the land.

Conclusion

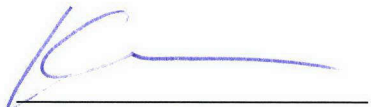
28. That the current jail was located on lands formerly occupied by Native Americans without their consent or consultation is tragically consistent with the treatment of Indigenous peoples post-colonization. The fact that a new jail will be placed yet again on these lands is a continued affront to the values and relations of Native Americans. The lack of inclusion, consultation and consent of Native Americans both in the process for determining whether the site is an appropriate location for a new jail and in the post-approval investigation and decision-

making is a further insult and affront, and violates the principles of the United Nation's Declaration on the Rights of Indigenous Peoples, AIRFRA, and the Two Row Wampum living treaty.

29. I respectfully urge the Court to nullify the various approvals of the Manhattan jail and order the City to conduct a proper evaluation of the impact of the project on archeological resources, and to actively consult with Native Americans in that process. Allowing the City to proceed with the project without any meaningful consideration of Native American concerns is not only contrary to the United Nations Declaration on the Rights of Indigenous Peoples, AIRFRA, and the Two Row Wampum living treaty, but it would result in further suffering of Native Americans and desecration of the earth at the hand of the City. We believe that both the victims and the perpetrator will suffer the consequences of this desecration.


Iakowi:He'Ne' / *Melissa Aakes*

Sworn to before me this
9th day of February 2020


Notary Public

KAREN L. MINTZER
Notary Public, State of New York
NO. 02MI6010798
Qualified in Kings County
Commission Expires September 13, 2014