

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

PASTOR KEITH H. SCOTT, SR.
418 Louisiana Street
Buffalo, New York 14204

DORA RICHARDSON
320 Perry Street, Apt. 3A
Buffalo, New York 14204

JOSEPHINE RUSH
320 Perry Street, Apt. 6A
Buffalo, New York 14204

JOHN and SHELLEY McKENDRY,
79 Perry Street
Buffalo, New York 14203

GEOFFREY D. BUTLER
250 Perry Street, Unit 20-A
Buffalo, New York 14204

Petitioners,

For a Judgment Pursuant to Article 78 of the
Civil Practice Laws and Rules

Against

GEORGE E. PATAKI, in his official capacity
as Governor of the State of New York;
State Capitol
Albany, New York 12224

STATE GAMING OFFICIALS OF THE NEW
YORK STATE WAGERING BOARD;
1 Watervilet Avenue Extension; Suite 2
Albany, New York 12206

**NOTICE OF
PETITION**

Index No.

CITY OF BUFFALO;
City Hall
65 Niagara Square
Buffalo, New York 14202

COMMON COUNCIL OF THE CITY OF
BUFFALO;
City Hall
65 Niagara Square
Buffalo, New York 14202

ANTHONY MASIELLO, in his previous
Official Capacity as Mayor of the City of
Buffalo,
City Hall
65 Niagara Square
Buffalo, New York 14202

BYRON BROWN, in his Official Capacity as
Mayor of the City of Buffalo
City Hall
65 Niagara Square
Buffalo, New York 14202

CITY OF BUFFALO DEPARTMENT OF
PUBLIC WORKS
City Hall
65 Niagara Square
Room 502
Buffalo, New York 14202

BUFFALO SEWER AUTHORITY
City Hall
65 Niagara Square
Room 1038
Buffalo, New York 14202

The NIAGARA FRONTIER
TRANSPORTATION AUTHORITY
181 Ellicott Street
Buffalo, New York 14203

Respondents.

TO THE ABOVE-NAMED RESPONDENTS

PLEASE TAKE NOTICE, that upon the annexed Verified Petition of the abovementioned Petitioners, the undersigned will make an application before the Hon. _____, at a Special Term of this Court to be held in and for the County of Erie, at the Erie County Courthouse, in the City of Buffalo, on the ____ day of _____, 2006, at _____ o'clock in the forenoon/afternoon of that day, or as soon thereafter as counsel can be heard for a review under Article 78 of the Civil Practice Laws and Rules of the actions taken by or failed to be undertaken by the Respondents GEORGE E. PATAKI, in his official capacity as Governor of the State of New York; STATE GAMING OFFICIALS OF THE NEW YORK STATE WAGERING BOARD; CITY OF BUFFALO; COMMON COUNCIL OF THE CITY OF BUFFALO; ANTHONY MASIELLO, in his previous Official Capacity as Mayor of the City of Buffalo; BYRON BROWN, in his Official Capacity as Mayor of the City of Buffalo; CITY OF BUFFALO DEPARTMENT OF PUBLIC WORKS; BUFFALO SEWER AUTHORITY; and the NIAGARA FRONTIER TRANSPORTATION AUTHORITY, with regard to the siting and development of a casino complex in the City of Buffalo, County of Erie; for an injunction preventing any further action on the proposed casino complex until such time as all laws, rules, regulations, ordinances, and any other governmental dictates have been complied with, in particular the New York State Environmental Quality Review Act, Article 8 of the Environmental Conservation Law; §14.09 of the New York State Parks, Recreation and Historic Preservation Law; New York Public Buildings Law; New York Freedom of Information Law; the City of Buffalo Environmental Review Ordinance, and for such other and further relief as this Court believes just and proper.

DATED: Buffalo, New York
January 27, 2006

Yours etc.

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VERIFIED PETITION

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The Petitioners, PASTOR KEITH H. SCOTT, SR., DORA RICHARDSON, JOSEPHINE RUSH, JOHN and SHELLEY McKENDRY, and GEOFFREY D. BUTLER, by their attorneys, Knoer, Crawford & Bender, LLP, complaining of the Respondents, GEORGE E. PATAKI, in his official capacity as Governor of the State of New York; the STATE GAMING OFFICIALS OF THE NEW YORK STATE WAGERING BOARD; the CITY OF BUFFALO, more specifically the COMMON COUNCIL, ANTHONY MASIELLO, in his previous Official Capacity as Mayor of the City of Buffalo, BYRON BROWN, in his Official Capacity as Mayor of the City of Buffalo, and the DEPARTMENT OF PUBLIC WORKS; the BUFFALO SEWER AUTHORITY; and the NIAGARA FRONTIER TRANSPORTATION AUTHORITY, allege and say:

1. Petitioners bring this Petition to challenge the siting and construction of a casino in the City of Buffalo by the Seneca Nation of Indians on 18 parcels of land located in a neighborhood characterized by great poverty and significant historical assets that is ill-equipped to absorb the impact of the proposed casino.

2. This situation is facilitated by State and City officials permitting the construction of the massive casino complex on a site prior to compliance with State and local laws.

3. Petitioners seek an injunction against any activity by Governor George E. Pataki, the State Gaming Officials of the New York State Wagering Board, the City of Buffalo, the Buffalo Sewer Authority, and the Niagara Frontier Transportation Authority to assist in, facilitate, or encourage the development of a casino complex in the City of Buffalo.

PARTIES

4. PASTOR KEITH H. SCOTT, SR., as Pastor of the Commodore Perry Chapel, conducts outreach services for the benefit of the residents of the Commodore Perry Homes and is a resident of the City of Buffalo. The Commodore Perry Chapel is an outreach fellowship ministry located in the heart of the Commodore Perry Projects and the Commodore Perry Homes Extensions. As pastor he ministers to the community and addresses spiritual and social needs of the community in the immediate vicinity of the proposed casino site.

5. DORA RICHARDSON is a resident of the Commodore Perry Homes. Dora Richardson is concerned about the effects a gambling casino will have on her neighborhood, including the blight that such a facility may cause, the increased crime from such a facility, the lack of parking it will create, and the increase in traffic, air pollution, and noise, as well as the loss of the views she has of the architecturally and historically significant structures on the proposed site. Dora Richardson is already impacted by the demolition of the H-O Oats complex on the proposed casino site and the streets and sidewalks that have been blocked as a result of the casino project.

6. JOSEPHINE RUSH is a resident of the Commodore Perry Homes. Josephine Rush is concerned about the effects a gambling casino will have on her neighborhood, including the blight that such a facility may cause, the increased crime from such a facility, the lack of parking it will create, and the increase in traffic, air pollution, and noise, as well as the loss of the view she has of the architecturally and historically significant structures on the proposed site. Josephine Rush is already impacted by the demolition of the H-O Oats complex on the proposed casino site and the streets and sidewalks that have been blocked as a result of the casino project.

7. Petitioners JOHN and SHELLEY MCKENDRY own property at 79 Perry Street, in the City of Buffalo, County of Erie. John and Shelley McKendry operate their business, Hi-

Temp Fabrications, from 79 Perry Street. They and their 15 employees are concerned about the effects a gambling casino will have on their neighborhood, including the blight that such a facility may cause, the increased crime from such a facility, the lack of parking it will create, and the increase in traffic, air pollution, and noise. John and Shelley McKendry are already impacted by the demolition of historical structures on the proposed casino site and the streets and sidewalks that have been blocked as a result of the demolition.

8. Petitioner GEOFFREY D. BUTLER resides at 250 Perry Street, Unit 20A, in the City of Buffalo, County of Erie. He is concerned about the effects a gambling casino will have on his neighborhood, including the blight that such a facility may cause, the increased crime from such a facility, the lack of parking it will create, and the increase in traffic, air pollution and noise, as well as the loss of the view he has of the proposed site and its architecturally and historically significant historical structures, which he looks at every day. Geoffrey D. Butler is already impacted by the demolition of part of historical structures and the streets and sidewalks that have been blocked as a result of the demolition.

9. Respondent GEORGE E. PATAKI is the governor of New York State and executed a casino compact with the Seneca Nation of Indians purportedly permitting the transfer of undesignated property in the City of Buffalo to the Seneca Nation of Indians for the development of a casino gambling site.

10. Respondent STATE GAMING OFFICIALS OF THE NEW YORK STATE WAGERING BOARD (hereinafter "SGOs") are defined in paragraph 1(bb) of a casino compact executed by Governor George E. Pataki as the officials designated by the State "to fulfill the State's responsibility to ensure the Nation Gaming Operation and [Seneca Gaming Authority] compliance with the terms of th[e] Compact."

11. The CITY OF BUFFALO, a municipal corporation created by the laws of New York State, has permitted or is permitting the development and construction of a casino through the actions of the COMMON COUNCIL, ANTHONY MASIELLO (the former mayor of the City), BYRON BROWN (the current mayor of the City of Buffalo), and the CITY'S DEPARTMENT OF PUBLIC WORKS among other departments.

12. The BUFFALO SEWER AUTHORITY is a public benefit corporation created pursuant to Article 5, Title 8 of the Public Authorities Law of New York State. The Buffalo Sewer Authority is responsible for determining whether to take action permitting the abandonment of public sewers and easements at the proposed casino site and/or permitting new hook-ups or connections to the public sewer.

13. The NIAGARA FRONTIER TRANSPORTATION AUTHORITY (hereinafter "NFTA") is a public benefit corporation created pursuant to Article 5, Title 11-A of the Public Authorities Law of New York State. The NFTA owns the DL&W Railroad Terminal. The NFTA is, upon belief and information, currently negotiating with the Seneca Nation of Indians for the sale or lease of part or all of the DL&W Railroad Terminal into a gambling casino or related uses.

STATEMENT OF FACTS

The Location and Description of the Proposed Buffalo Casino Site

14. The Seneca Nation of Indians (hereinafter "SNI") is attempting to develop a site for casino gambling within the City of Buffalo (also referred to hereinafter as "City").

15. On October 4, 2005 the SNI first announced to the public that it planned to build a casino in the City of Buffalo on a patchwork of land comprised of 18 separate parcels and

dissected by at least one City street. *See Buffalo News Article, dated October 5, 2005, submitted herewith as Exhibit A, pg. 15 and see map below.*

16. Together the 18 parcels total 9+/- acres of land that is bounded by Michigan Avenue (a/k/a Harriet Tubman Way), South Park Avenue, Perry Street and Marvin Street (hereinafter the “Proposed Buffalo Site”). *Id.*



Map of the Proposed Buffalo Site and a section of the DL&W Terminal.
Source: <http://www.google.com>.

17. Only limited information is available about the actual scope of the casino complex on the Proposed Buffalo Site.

18. However, publicly announced plans of the SNI call for the construction of a 100,000 square foot casino open 24 hours per day with 2,200 slot machines and 50 gaming tables, a 2,500 vehicle plus parking ramp (a parking ramp more than twice the size of the Fernbach Ramp in Downtown Buffalo), plus space for back of house operations, a loading and warehouse area, casino offices, and banquet facilities/restaurants. *See Buffalo News Article,*

dated December 9, 2005, submitted herewith as Exhibit A, pg. 26, and see SEC Filing Excerpt submitted herewith as Exhibit B.

19. The SNI is also planning future expansion with a 250-room, low-to mid-rise hotel. *Id.*

20. Upon information and belief, an SNI casino in Buffalo, like the SNI casino located in Niagara Falls, will attract hundreds of thousands of visitors per month resulting in significant traffic, environmental, infrastructural, and other municipal service impacts.

21. In addition to the Proposed Buffalo Site, the SNI has publicly stated its desire to incorporate the DL&W Railroad Terminal into its Buffalo gambling establishment. *See Buffalo News Article, dated December 9, 2005, submitted herewith as Exhibit A, pg. 26.*

22. The DL&W Railroad Terminal is currently owned by the Niagara Frontier Transportation Authority. *Id.*

Environmental Justice Implications

23. The area surrounding the Proposed Buffalo Site is listed on both State and federal databases as an area susceptible to imposition on disenfranchised groups of improperly sited development. *See NY Environmental Justice Map submitted herewith as Exhibit C and EPA Environmental Justice Map submitted herewith as Exhibit D.*

24. The concept of environmental justice is the idea that unwanted development should not be imposed upon disenfranchised communities just because it is easier.

25. Those with means are often able to defend against the imposition of unwanted development as was shown in the Town of Cheektowaga where residents with the funding and

political wherewithal were able to rally together and successfully oppose an SNI casino (discussed further *infra*).

26. The mostly residential area surrounding the Proposed Buffalo Site statistically does not have the same wherewithal to defend itself against the unwanted imposition of a casino development.

27. New York State has determined that the location of the Proposed Buffalo Site is in an area where people are vulnerable to the imposition of unwanted development. *See NY Environmental Justice Map submitted herewith as Exhibit C.*

28. Environmental justice is an issue which must be addressed by the Respondents in a proper review process.

29. The Buffalo Casino Site is located in census tract 36029001302 (abbreviated by the City as 13.02) and block group 2. *See EPA Environmental Justice Map submitted herewith as Exhibit D.*

30. The EPA lists the following demographic statistics for the Proposed Buffalo Site's census block group:

- **Per Capita Income:** \$10,714.00
- **Percent Below the Poverty Level:** 65.62%
- **Percent Minority:** 95.27%
- **Percent with an Education Below the 12th Grade:** 62.68%
- **Percent with a High School Diploma:** 21.77%
- **Percent with a Bachelors Degree and Up:** 2.39%
- **Percent that Speak English Less than Well:** 12.81%

Id.

31. In addition, 28.94% of the residents within the block group of the Proposed Buffalo Site are below the age of 18. *Id.*

32. This age group is particularly vulnerable to environmental and social influences.

33. The impacts of air pollution are magnified among children and these same children are more susceptible to pressure from negative social influences such as drugs, prostitution, and other crimes.

34. The consideration of whether the development will be detrimental to the cohesiveness of the neighborhood and whether it will impose unwanted and untenable environmental burdens will only be determined if a complete review of the proposed development is undertaken pursuant to the State Environmental Quality Review Act.

**Characteristics of the Proposed Casino Site
Unexamined by Review**

35. The neighborhood which encompasses the Proposed Buffalo Site and the DL&W Terminal is historically and environmentally significant and, as currently configured, is not capable of hosting a massive casino complex.

36. The Proposed Buffalo Site is situated in the Old First Ward of Buffalo – the City’s historical cradle.

37. The insertion of a large gambling complex in the midst of this historic district will undeniably change the character and integrity of this important historic venue.

38. The Proposed Buffalo Site contains at least two significant historical sites.

39. The proposed site encompasses part of the historic Elk Street Market area which incorporates East Market Street and West Market Street. *See map of the Elk Street Market*

located at http://wnyheritagepress.org/photos_week_2004/elk_st_series/elk_st_market.htm (last visited January 27, 2006).



Picture of the Elk Street Market circa 1900.

Source: http://wnyheritagepress.org/photos_week_2004/elk_st_series/elk_st_market.htm, (last visited January 27, 2006).

40. The Elk Street Market was established in 1845 and served as a wholesale and retail food market where the ethnic traditions of the City's varied residents intermingled. *Id.*

41. In addition to the Elk Street Market, the Proposed Buffalo Site includes the historic H-O Oats grain elevator and associated buildings. *See Buffalo News Article, dated December 9, 2005, submitted herewith as Exhibit A, pg. 26.*

42. The H-O Oats Company moved to Buffalo in 1895. *See <http://www.buffalohistoryworks.com/grain/history/history.htm> (last visited January 27, 2006).*

43. The H-O Oats Company opened a grain mill on the Proposed Buffalo Site in 1912 and constructed the grain elevators in 1931. *See http://greaterbuffalo.blogs.com/gbb/2006/01/the_campaign_fi.html#more (last visited January 27, 2006).*

44. The grain elevators in Buffalo have significance as monuments of early industrial engineering and in the indirect role they played in the evolution of modern architecture. *See* <http://ah.bfn.org/h/elev/hist/3/index.html> (last visited January 27, 2006).

45. In 2002 the Historic and Architectural Resources of the Buffalo Grain Elevator Multiple Property Submission sought the inclusion of grain elevator sites within the City of Buffalo in the National Register of Historic Places. *See* <http://ah.bfn.org/h/elev/hist/1/index.html> (last visited January 27, 2006).

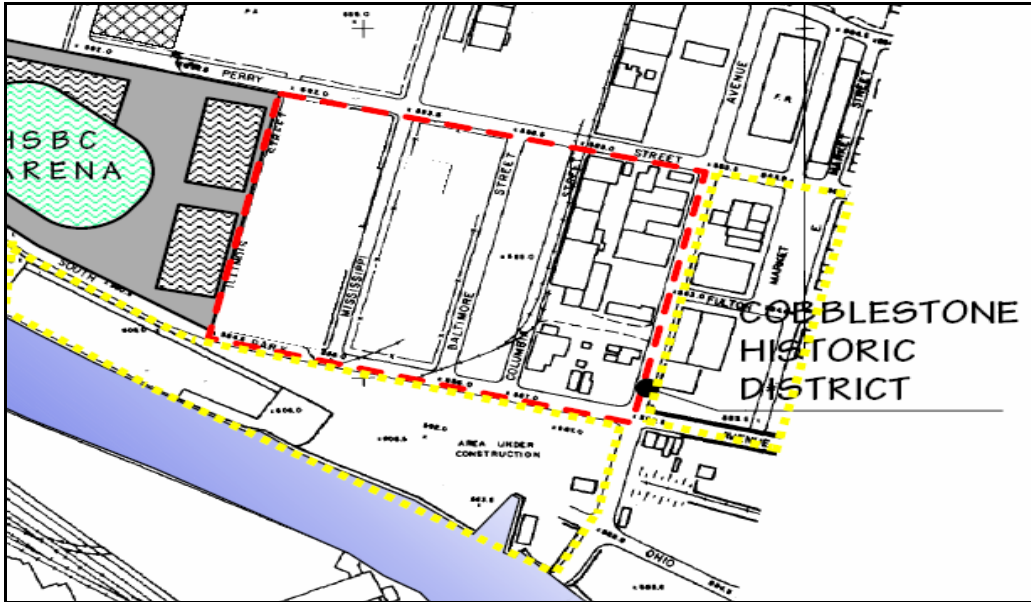
46. The 2002 submission includes eighteen significant properties (the H-O Oats facility among them) which are eligible for inclusion on the National Register of Historic Places. *Id.*

47. Presently, the SNI is in the process of demolishing the H-O Oats facility. *See Preservation Online Article, dated December 28, 2005, submitted herewith as Exhibit A, p.28; and Site Photos submitted herewith as Exhibit E.*

48. As mentioned above, the SNI is also considering the DL&W Terminal for a casino and related activities.

49. Built in 1917, the DL&W Terminal complex served rail passenger and freight traffic as well as lake ships that would dock alongside. *See* <http://biniasz.com/pages/29/index.htm> (last visited January 27, 2006).

50. Aside from the important historical nature of the sites themselves, the Proposed Buffalo Site and the DL&W Terminal abut the historic Cobblestone District. *See Downtown Map Excerpt below.*



The Cobblestone District is outlined in red by the City. Petitioners have outlined the visible sections of the Proposed Buffalo Site and the DL&W Terminal in yellow.
 Excerpt from Map of Downtown Buffalo submitted herewith as Exhibit F.

51. The Cobblestone District consists of streets and buildings dating from before the Civil War era, and has been designated a historic district by the City of Buffalo. See http://greaterbuffalo.blogs.com/gbb/2006/01/the_campaign_fi.html (last visited January 27, 2006).

52. Both the municipal government of the City of Buffalo and other public entities have invested significant sums and efforts in restoring the Cobblestone District. *Id.*

53. The DL&W Terminal lies next to the Erie Canal Harbor, which is an American historical landmark being developed as a national destination for tourists exploring the history of the United States.

54. The historic terminus of the Erie Canal is located in close proximity to the Proposed Buffalo Site. *Id.*

55. The U.S. Department of Transportation has, within the past several years, committed over \$40,000,000.00 to the development of a historic district commemorating the Erie Canal at this site. *Id.*

56. Environmentally, the DL&W Terminal is within the Coastal Management Zone designated area and the Proposed Buffalo Site is located less than 100 feet from the Coastal Management Zone. *See Coastal Management Zone Map submitted herewith as Exhibit G.*

57. From the viewpoint of the urban environment, the area surrounding the Proposed Buffalo Site is not designed to handle the hundreds of thousands of monthly casino visitors as is evident from the picture of Marvin Street below.

58. As it stands, the area surrounding the Proposed Buffalo Site cannot handle the traffic caused by events at the HSBC Arena.



Picture of Marvin Street abutting the east side of the Proposed Casino Site.
January 10, 2006.

59. The above picture and other pictures submitted herewith as Exhibit “E” clearly demonstrate that the City’s sidewalks and streets in and surrounding the Proposed Buffalo Site

are in a state of disrepair, and even if they were in good condition, are not designed to handle the influx of hundreds of thousands of visitors a month.

60. The negative consequences from this dramatic increase in traffic will have a particular impact on the 28.94% of the residents within the block group of the Proposed Buffalo Site that are below the age of 18. *See EPA Environmental Justice Map submitted herewith as Exhibit D.*

The Secrecy Surrounding the Development of the Casino Project

61. Activities leading up to and including the transfer of the Buffalo Casino Properties to the SNI occurred outside of the realm of public oversight.

62. At various times it was publicly speculated that the Statler Building, the Convention Center, the Courtyard Mall, the Outer Harbor, the Central Terminal, the Adams Mark, WNED's building, several sites in Cheektowaga, and the DL&W Railroad Terminal were potential locations for a Seneca casino complex. *See News Articles submitted herewith as Exhibit A.*

63. Up until a public announcement by the SNI on October 4, 2005 the public was not aware of the proposed location of the casino complex.

64. This barrier to information has continued since the transfer of the properties that comprise the Proposed Buffalo Site.

65. Since the announcement, both the City of Buffalo and the Office of the Governor of the State of New York have ignored attempts by the Petitioners' counsel to obtain information about the process that led to the proposed location of the casino complex. *See FOIL Requests submitted herewith as Exhibits H.*

66. On December 16, 2005 Rachel L. Jackson, Esq., submitted a Freedom of Information Law (“FOIL”) request pursuant to Public Officers Law §83 *et seq.* on behalf of the Petitioners to both the City of Buffalo and the Office of the Governor of the State of New York requesting basic information such as: communications regarding the approval and/or non-approval of the Compact between New York State and the SNI; communications regarding the SNI’s submission of the Class III Gaming Ordinance; communications between the City of Buffalo, and the federal government with regard to the negotiations and approval of a Compact between the State of New York and the SNI; communications between the City of Buffalo and the federal government with regard to the designation of the site for a casino in Erie County, including but not limited to, sites which were later rejected and specifically, including but not limited to, the site in the City of Buffalo bordered by Michigan Street, Perry Street, Marvin Street and South Park.

67. To date, neither the City of Buffalo nor the Office of the Governor of the State of New York have provided any of the requested documents.

68. The City of Buffalo and the Office of the Governor of the State of New York are in default of their legal obligation to comply with the Public Officer’s Law.

69. The failure of these public agencies to provide the requested information has hindered the ability of the Petitioners to completely and accurately state the facts which underlie the activities which are sought to be vacated and/or enjoined.

70. Respondents City of Buffalo and Governor George E. Pataki must comply with the FOIL requests if this Court is to have a more complete understanding of the activities that surround this proceeding.

The Purported Authority for a Casino in Buffalo

71. The New York State Constitution Article 1 §9 forbids casino gaming in New York State.

72. Nonetheless, the Governor and Indian nations have been able to evade New York's constitutional prohibition.

73. In an attempt to limit casino gaming on eligible tribal lands Congress enacted the Indian Gaming Regulatory Act of 1988 (hereinafter "IGRA") to address regulatory and jurisdictional concerns between Indian nations and states (P.L. 100-497; 25 USC §§2701 *et seq.* and 18 U.S.C. §§1166-1168).

74. Congress' attempt to limit casino gaming actually facilitated casino gaming in New York State.

75. IGRA authorizes state governments to enter into compacts with tribal governments in accord with the defined procedures of the Act.

76. In August 2001, the New York State Legislature enacted L.2001, c. 383, pt B, §2 purporting to enable the establishment and operation of casinos in specified areas of New York state by the SNI in accordance with IGRA.

77. This legislation became Executive Law §12.

78. Executive Law §12[a] authorizes the Governor to execute a tribal-state compact with the SNI pursuant to IGRA that is "consistent with" a June 20, 2001 Memorandum of Understanding between the Governor and the SNI.

79. On August 18, 2002, the Governor and the SNI entered into the Nation-State Gaming Compact (hereinafter "Compact") pursuant to Executive Law §12. *See Compact excerpts submitted herewith as Exhibit I.*

80. Paragraph 11 of the Compact involves "Sites for Gaming Facilities" and provides in pertinent part:

(a) Subject to the provisions of this paragraph 11, the Nation may establish Gaming Facilities:

* * *

(2) in Erie County, at a location in the City of Buffalo to be determined by the Nation, or at such other site as may be determined by the Nation in the event a site in the City of Buffalo is rejected by the Nation for any reason; * * *

(See Exhibit I - Compact ¶11[a][2])

81. The Compact was submitted to the Secretary of the Interior Gale A. Norton (hereinafter "Secretary") for her review in September 2002 in alleged compliance with IGRA. *See Secretary of the Interior's Letter submitted herewith as Exhibit J.*

82. The Secretary determined, and memorialized in a letter dated November 12, 2002, to neither approve nor disapprove the Compact; rather, the Secretary permitted the Compact to take effect without action. *Id.*

83. The Secretary cited strong reservations as the basis for not approving the Compact, including the increased pervasiveness of "off-reservation gaming." *Id.*

84. A letter dated November 26, 2002, to the SNI President and the Chairman of the National Indian Gaming Commission approved the SNI Class III Gaming Ordinance submitted on November 25, 2002, thus purportedly permitting a casino at an undetermined location in the City of Buffalo.

**The Determination of the Proposed
Buffalo Casino Site**

85. As discussed above, the SNI conducted much of its site location process for a casino in Buffalo outside the realm of public oversight.

86. As a result, the information regarding the SNI's site selection process for a casino in Buffalo is limited.

87. Numerous locations for a casino were discussed inside and outside the media including:

- the Statler Building,
- the Convention Center,
- the Courtyard Mall,
- the Outer Harbor,
- the Central Terminal,
- the Adam's Mark,
- WNED's building,
- several sites in Cheektowaga,
- the Main Place Mall, and
- the DL&W Railroad Terminal.

See News Articles submitted herewith as Exhibit A.

88. At one point the SNI decided on a location for the casino in the Town of Cheektowaga outside of the corporate boundaries of the City of Buffalo.

89. The SNI selected a +/- 57 acre site located near the Buffalo-Niagara International Airport, which was owned by Uniland Development Company. *See discussion in CONCERN, Inc. Decision pgs. 5, 10-11 submitted herewith as Exhibit K.*

90. On information and belief, the SNI intended to construct a casino, a luxury hotel, a corporate headquarters for all the SNI's gaming operations, residential facilities for its employees, and extensive parking for its thousands of projected daily visitors. *Id.*

91. The SNI formally notified the City of Buffalo of its intentions to locate in the Town of Cheektowaga with a letter dated April 16, 2004. *See Seneca Nation Letter to City of Buffalo dated April 16, 2004 submitted herewith as Exhibit L.*

92. In response on May 3, 2004 the Huron Group, Inc., the City of Buffalo, and other City business interests sued the Governor of the State of New York, the State of New York, the Town of Cheektowaga, and the Uniland Development Company seeking a declaration that the Compact only permitted the SNI to locate a casino within the City of Buffalo and enjoining the defendants from taking any further action to authorize, approve, or facilitate the location of a casino in Erie County anywhere other than the City of Buffalo. *See Huron Complaint submitted herewith as Exhibit M.*

93. In addition, on May 21, 2004 CONCERN, Inc., a not-for-profit organization with over 5,000 supporters organized to oppose a casino in Cheektowaga, along with other petitioners, commenced an Article 78 action against the Governor of the State of New York, the State of New York, the Town of Cheektowaga, and Uniland Development Company alleging the Respondents failed to comply with the State Environmental Quality Review Act; the Parks, Recreation, and Historic Preservation Law; Town Law §73; and the Freedom of Information Law. *See CONCERN, Inc. Verified Petition submitted herewith as Exhibit N.*

94. Both of the cases were heard by the Honorable Joseph G. Makowski.

95. The petitioners/plaintiffs in each case were ultimately successful.

96. Justice Makowski rendered a decision in the *CONCERN, Inc.* case on May 25, 2005 enjoining the State of New York via Governor George E. Pataki and the SGOs until they complied with the State Environmental Quality Review Act. *See CONCERN, Inc. Decision submitted herewith as Exhibit K.*

97. On June 16, 2004, Justice Makowski rendered a decision in the *Huron* case holding that the SNI cannot locate a casino in any town, village, or city in Erie County other than the City of Buffalo. *See Huron Decision submitted herewith as Exhibit O.*

98. In light of these decisions the SNI recommitted itself to search for a location within the City of Buffalo upon which it would attempt to conduct casino operations.

99. Speculation began once again on where the SNI would locate a casino within the City of Buffalo, and as before, numerous sites were mentioned. *See News Articles submitted herewith as Exhibit A.*

100. Finally on October 4, 2005, the SNI announced that it was purchasing the properties that comprise the Proposed Buffalo Site. *See Buffalo News Article, dated October 5, 2005, submitted herewith as Exhibit A, pg. 15.*

101. Prior to that announcement, there was no public information that the Proposed Buffalo Site was even under consideration.

The Current Legal Status of the Proposed Buffalo Casino Site

102. As part of the transfer of the Proposed Buffalo Site, the Seneca Erie Gaming Corp. purchased the parcels of property from various businesses and individuals on October 3, 2005. *See Deeds to Seneca Erie Gaming Corp. submitted herewith as Exhibit P.*

103. The Seneca Erie Gaming Corporation immediately transferred the property to the SNI on the same date - October 3, 2005. *See Deeds to Seneca Nation of Indians submitted herewith as Exhibit Q.*

104. Upon information and belief, on or about October 3, 2005, the SNI requested the U.S. Secretary of the Interior to have the Proposed Buffalo Site placed into restricted fee status pursuant to Section 8(c) of the Seneca Nation Settlement Act of 1990, 25 U.S.C. §1774f(c).

105. The pertinent statute reads, “Unless the Secretary determines within [a certain time period] that such lands should not be subject to the provisions of Section 2116 of the Revised Statutes (25 U.S.C. §177), such lands shall be subject to the provisions of that Act, and shall be held in restricted fee status by the Seneca Nation.”

106. Upon information and belief, the SNI considered the properties that comprise the Proposed Buffalo Site to be in restricted fee on December 8, 2005, the same date that the SNI held a press conference on the Proposed Buffalo Site. *See News Article dated December 9, 2005, pg. 26 submitted herewith as Exhibit A.*

107. Upon information and belief, the SNI commenced demolition of the historically significant H-O Oats complex almost immediately after the Proposed Buffalo Site was considered to have been taken into restricted fee.

108. The SNI has continued demolition of the H-O Oats complex to the point where only the grain silos remain standing. *See Site Photos submitted herewith as Exhibit E.*

109. On January 3, 2006 concerned citizens and organizations commenced an action against Secretary Gale Norton and James Cason of the U.S. Department of the Interior and the National Indian Gaming Commission among others. *See Federal Complaint submitted herewith as Exhibit R.*

110. The complaint alleges that the transfer of property comprising the Proposed Buffalo Site and the subsequent determination by the Secretary of the Interior to take such property into restricted fee is improper and in violation of law, rules, and regulations. *Id.*

111. The complaint seeks:

- a declaration of whether the Compact violates IGRA and whether the Secretary's actions were arbitrary, capricious and an abuse of discretion;
- a declaration that the Secretary's decision to allow the Compact to be approved by her silence is arbitrary, capricious, and an abuse of discretion; and
- to set aside the decision of the Secretary of the Interior and others approving the Seneca Nation Class III Gaming Ordinance and to enjoin the defendants in that action from taking any further actions which would condone, allow, permit, or otherwise further casino gambling on such lands.

Id.

112. This federal action holds the potential to nullify the restricted fee status of the Proposed Buffalo Site.

The Seneca Nation of Indian's Interaction with State Bodies Since the Transfer of the Proposed Buffalo Casino Site

113. Even though the SNI currently considers the Proposed Buffalo Site to be in restricted fee, the SNI must still seek approvals from the City and State for critical aspects of any casino it intends to build upon the site.

114. In fact, if the SNI fails to obtain certain approvals, it can hamper, if not cripple, the SNI's plans for a casino at the Proposed Buffalo Site.

115. As of the filing of this Petition, the SNI is seeking approval from the City of Buffalo and, upon information and belief, from the Buffalo Sewer Authority as part of constructing its proposed casino complex. *See Letter to Common Council submitted herewith as Exhibit S.*

116. Specifically, the SNI is looking for the City of Buffalo and Buffalo Sewer Authority to abandon any of its utility interests along East and West Market Street.

117. The SNI is also seeking approval from the City to impede the City's right-of-way with things such as signs and awnings. *Id.*

118. Upon information and belief, the SNI is seeking to build a pedestrian walkway over Fulton Street connecting a casino to a parking ramp.

119. Upon information and belief, the SNI must reach agreements with the City of Buffalo and other state agencies for access to water and sewer hook-ups, fire and police services, permission to construct objects over city right-of-ways, permission to access city streets, etc.

120. The City's authority to control the activity affecting its streets and utilities is well-established in the Charter and Code of the City of Buffalo. *See e.g.*, Article 1 §491-9 (no person will be permitted to tap or make any connections with the mains or distribution pipes of the City of Buffalo); Article 1 §491-10 (no plumber shall alter or tap any pipe or other fixtures attached to the pipes of the water system without first having obtained a permit therefore); Article 1 §413-1, §413-2, and §413-3 (dictate how parties may use the streets and encroach upon the streets); Article 2 §2-1 (discusses the City's authority with rights-of-way). *See Relevant City Code Provisions submitted herewith as Exhibit T.*

121. Ordinances and laws of this kind mandate that the SNI obtain approval from the City of Buffalo and from other municipal and state agencies if it is to supply its casino complex with basic services and connect to the urban area outside its proposed casino site.

122. The necessity for approvals from public bodies would apply equally to the possible casino located at the DL&W Terminal.

123. In addition, prior to purchasing or leasing part or all of the DL&W Terminal, the SNI must obtain approval for the transfer from the NFTA - a New York State public benefit corporation subject to the provisions of SEQRA and PRHPL.

State and Federal Legislation
Considerations of the Impact on the
Community

124. The legislation purportedly permitting a casino in Buffalo originally intended that public input and the impact of a casino on the surrounding neighborhood be considered in the site determination process.

125. L.2001, c. 383, pt. B, §1 contains the legislative intent behind Executive Law §12, which states in part:

[T]he legislature finds that gaming should be conducted in a manner which adequately protects the environment and the public health and safety, which is a stated requirement for the conduct of class III gaming activities pursuant to the Indian Gaming Regulatory Act.

126. IGRA states:

(2) The Chairman [of the National Indian Gaming Commission] shall approve any tribal ordinance or resolution concerning the conduct, or regulation of...gaming on the Indian lands within the tribe's jurisdiction if such ordinance or resolution provides that--* * * (E) the construction and maintenance of the gaming facility, and the operation of that

gaming is conducted in a manner which adequately protects the environment and the public health and safety

25 U.S.C 2710(b)(2)(E)

127. In addition, regulations promulgated pursuant to IGRA require that a Class III gaming ordinance approved by the Chairman of the National Indian Gaming Commission must provide that a Tribe "shall construct, maintain and operate a gaming facility in a manner that adequately protects the environment and the public health and safety." (25 CFR 522.4[b][7], incorporated into 25 CFR 522.6[b]).

128. The State Environmental Quality Review Act and the New York Parks, Recreation and Historic Preservation Law both require significant consideration by public entities and the availability for public input prior to agencies taking actions which may have a significant impact on environmental conditions and/or historic assets.

129. Neither the State Environmental Quality Review Act nor the New York Parks, Recreation and Historic Preservation Law (which require conscience consideration of certain criteria and/or public input) have been followed in this case thus eviscerating the original intent of the legislation cited above.

LEGAL ARGUMENT

SUMMARY OF THE ARGUMENT

130. The basic legal argument being put forth by Petitioners is that the actions of the Respondent government officials and entities were improper in that they failed to comply with State Environmental Quality Review Act (hereinafter "SEQRA") and the City Environmental

Review Ordinance as well as the Parks Recreation Historic Preservation Law and the Freedom of Information Law.

131. All acts taken to date without such compliance must be vacated and considered void *ab initio*. SEQRA applies to the Governor’s activities with regard to the original Compact signing. Until such time as the actual location was determined in the City of Buffalo, the Petitioner’s right to protest the actions of the state officials did not ripen.

132. Upon the designation by the SNI of the Proposed Buffalo Site, the Petitioners’ right to pursue (through CPLR Article 78) relief from the failure of Respondents to comply with legal mandates and enjoin the Respondents from taking further action in violation of such mandates ripened.

133. In addition, the Petitioners seek relief from this Court in the nature of a direction to the Respondents to provide all documents previously requested through Freedom of Information Law request to which Respondents have not replied.

FIRST STATE ENVIRONMENTAL QUALITY REVIEW ACT (“SEQRA”) CLAIM

**Governor George E. Pataki and the State Gaming Officials
 (“SGOs”)**

134. For purposes of the following claim for relief, the paragraphs designated 1 through 133 are hereinafter referenced and realleged in full as if set forth fully herein.

135. The State Environmental Quality Review Act (“SEQRA”) requires that the State, its agencies, and its subdivisions serve as protectors of the environment.

136. SEQRA mandates that, when approving any action or funding any project that might have a significant effect on the environment, these state and municipal actors must consider environmental impacts (see Environmental Conservation Law §8-0103[7]).

137. SEQRA's fundamental policy is to inject environmental considerations directly into governmental decision making.

138. SEQRA forces agencies to strike a balance between social and economic goals and concerns about the environment.

139. SEQRA provides for public input on decisions which may have a significant adverse impact on the environment.

140. Pursuant to SEQRA, section 8-0109:

All agencies * * * shall prepare, or cause to be prepared by contract or otherwise an environmental impact statement on any action they propose or approve which may have a significant effect on the environment

141. The purpose of an environmental impact statement is to provide detailed information about the effect which a proposed action is likely to have on the environment, to list ways in which any adverse effects of such an action might be minimized, and to suggest alternatives to such an action so as to form the basis for a decision whether or not to undertake or approve such action.

142. "Actions" are defined by SEQRA in ECL 8-0105[4] as:

(i) projects or activities directly undertaken by any agency; or projects or activities supported in whole or part through contracts, grants, subsidies, loans, or other forms of funding assistance from one or more agencies; or projects or activities involving the issuance to a person of a lease, permit, license, certificate or other entitlement for use or permission to act by one or more agencies;
(ii) policy, regulations, and procedure-making

143. Governor George E. Pataki and the SGOs failed to consider environmental factors during the Nation-State compacting process and casino siting process which resulted in the SNI's purchase of the parcels comprising the Proposed Buffalo Site.

144. The combined activities which led to the State's agreement to or approval of the SNI's choice of the Proposed Buffalo Site for its Erie County casino project constitute an "action" taken by the State which invokes SEQRA.

145. Here, the set of steps in this "action" includes the execution of the Compact by the Governor; State funding for the Project; the decision of the SNI to choose the Proposed Buffalo Site for a casino; and the State's (i.e., the SGOs' or other State officers') approval of that site for the construction of a casino.

146. That set of steps must be considered the "action" and that action, carried out in part by state officials other than the Governor and involving State funding, invokes the provisions of SEQRA.

147. The final activity of this siting action was the transfer of property to the SNI, which occurred on October 3, 2005. *See Deeds to Seneca Nation of Indians submitted herewith as Exhibit Q.*

148. Until that time, it was not possible for a challenge to these siting actions since the specific harms and the petitioners who would be harmed could not be determined as a site for a casino had not been chosen.

149. No environmental review of the proposed casino has been performed by any entity at any time.

150. The Governor and SGOs have violated SEQRA by failing to comply with the Environmental Conservation Law.

151. Wherefore Petitioners respectfully request that the Court declare pursuant to 7803(1) the actions of the Governor and SGOs to be in violation of law in that they failed to perform a duty enjoined upon them by law and that pursuant to 7803(3) the determinations were

made in violation of lawful procedure, were arbitrary and capricious, and an abuse of the discretion.

152. The Petitioners have no adequate remedy at law.

SECOND SEQRA CLAIM

City of Buffalo (Mayor Anthony Masiello and the Common Council)

153. For purposes of the following claim for relief, the paragraphs designated 1 through 152 are hereinafter referenced and realleged in full as if set forth fully herein.

154. Mayor Anthony Masiello and/or the City of Buffalo Common Council participated in the site determination process for an SNI casino.

155. The Seneca Nation (New York) Land Claim Settlement Act provides that:

State and local governments shall have a period of 30 days after notification by the Secretary or the Seneca Nation of acquisition of, or intent to acquire such lands to comment on the impact of the removal of such lands from real property tax rolls of State political subdivisions.

25 USCA 1774f(c)

156. Mayor Anthony Masiello's and the Common Council's response to that opportunity to comment are an "action" as defined under SEQRA, consequently requiring an environmental review.

157. Upon information and belief, Mayor Masiello either commented positively on the proposal or consciously chose not to comment.

158. Upon information and belief, the Common Council either commented positively on the proposal or consciously chose not to comment.

159. The failure of Mayor Masiello and the Common Council to conduct an environmental review of the Proposed Buffalo Site prior to commenting and/or choosing not to comment violated the mandates of SEQRA.

160. Wherefore Petitioners respectfully request the Court issue relief pursuant to CPLR Article 78 in the form of a declaration that the action of Mayor Anthony Masiello and the Common Council in responding to the opportunity to comment was a violation of SEQRA.

161. The Petitioners have no adequate remedy at law.

THIRD SEQRA CLAIM

City of Buffalo (Mayor Byron Brown, Common Council, and the Department of Public Works) and the Buffalo Sewer Authority

162. For purposes of the following claim for relief, the paragraphs designated 1 through 161 are hereinafter referenced and realleged in full as if set forth fully herein.

163. The SNI requires approvals from the City of Buffalo (Mayor Byron Brown, the Common Council, and the Department of Public Works) and the Buffalo Sewer Authority as part of developing and expanding its proposed casino site.

164. These actions are in addition to and separate from the siting actions which culminated in the designation of the Proposed Buffalo Site.

165. Upon information and belief, the SNI has sought and will seek approvals from various officials and departments within the City of Buffalo and the Buffalo Sewer Authority regarding abandoning street and sidewalk rights-of-way, constructing objects on or above rights-of-way, abandoning or utilizing sewer and water hook-ups, etc.

166. Upon information and belief, the City of Buffalo and the Buffalo Sewer Authority continue to have property interests, such as title to right-of-ways and other easements along the

sidewalks and streets of East and West Market Street, as well as buildings abutting therewith, within the Proposed Buffalo Site.

167. The City of Buffalo, the Common Council, Mayor Byron Brown, the Department of Public Works, and the Buffalo Sewer Authority are violating and will violate SEQRA by failing to conduct the appropriate environmental reviews prior to taking action on the approvals sought by the SNI.

168. Wherefore Petitioners respectfully request the Court declare that the actions of the abovementioned Respondents are violating SEQRA and issue an order enjoining the Respondents from engaging in any further activities, allocating any further funds or personnel time to the development of or the consideration of the project at the Proposed Buffalo Site until such time as SEQRA has been complied with through the creation of an Environmental Impact Statement and the proper process for public input on that statement and its findings has been conducted.

169. The Petitioners have no adequate remedy at law.

FOURTH SEQRA CLAIM

NFTA, Governor George E. Pataki, and SGOs

170. For purposes of the following claim for relief, the paragraphs designated 1 through 169 are hereinafter referenced and realleged in full as if set forth fully herein.

171. The SNI has publicly stated its intention to locate a casino at the DL&W Terminal.

172. The NFTA, a public benefit corporation of the State of New York, currently owns the DL&W Terminal.

173. The sale or lease of all or part of the DL&W Terminal to the SNI by the NFTA will constitute an “action” under SEQRA.

174. As explained under the first SEQRA claim above, Governor George E. Pataki and the SGOs will also be involved in an “action” if the SNI purchases the DL&W Terminal from the NFTA.

175. The NFTA is in serious negotiations with the SNI regarding the sale of the DL&W Terminal.

176. SEQRA requires that the NFTA commence environmental review proceedings as early in the planning process as possible.

177. Upon information and belief, the NFTA, Governor George E. Pataki, and the SGOs have not commenced an environmental review for the possible sale or lease of part or all of the DL&W Terminal to the SNI.

178. The failure of the NFTA, Governor George E. Pataki, and the SGOs to commence an environmental review of the possible sale of the DL&W Terminal to the SNI violates the mandates of SEQRA.

179. Wherefore Petitioners respectfully request the Court declare that the actions of the abovementioned Respondents are violating SEQRA and issue an order enjoining the Respondents from engaging in any further activities, allocating any further funds or personnel time to the development of or the consideration of the DL&W Terminal until such time as SEQRA has been complied with through the creation of an Environmental Impact Statement and the proper process for public input on that statement and its findings has been conducted.

180. The Petitioners have no adequate remedy at law.

**FIRST PARKS, RECREATION, HISTORIC PRESERVATION LAW (“PRHPL”)
CLAIM**

Governor George E. Pataki and the SGOs

181. For purposes of the following claim for relief, the paragraphs designated 1 through 180 are hereinafter referenced and realleged in full as if set forth fully herein.

182. Pursuant to the New York State Parks, Recreation and Historic Preservation Law (hereinafter PRHPL), the State and its agencies must consult with the Commissioner of the New York State Office of Parks, Recreation and Historic Preservation as early in the planning process as possible and prior to "an action of approval or entitlement of any private project by a State agency." (see PRHPL §14.09[1]).

183. The PRHPL section at issue provides in pertinent part:

As early in the planning process as may be practicable and prior to the preparation or approval of the final design or plan of any project undertaken by a state agency, or prior to the funding of any project by a state agency or prior to an action of approval or entitlement of any private project by a state agency, the agency's preservation officer shall give notice, with sufficient documentation, to and consult with the commissioner concerning the impact of the project if it appears that any aspect of the project may or will cause any change, beneficial or adverse, in the quality of any historic, architectural, archeological, or cultural property that is listed on the national register of historic places or property listed on the state register or is determined to be eligible for listing on the state register by the commissioner

PRHPL §1409[1]

184. The choice of the Proposed Buffalo Site triggered the need for PRHPL compliance.

185. As discussed in more detail above, the Proposed Buffalo Site contains the H-O Oats facility (which is eligible for listing on the National Register of Historic places) and the historic Elk Street Market, and it abuts the Cobblestone District.

186. Accordingly, the Governor and the SGOs were required to comply with the PRHPL with regard to the Proposed Buffalo Site.

187. The Governor and the SGOs violated PRHPL by failing to take any of the mandatory actions when the Proposed Buffalo Site was determined.

188. Wherefore Petitioners respectfully request the Court issue relief in the form of a declaration that the Governor and the SGOs are violating PRHPL and further issue an injunction against the Governor and the SGOs from taking any further action with regard to a Buffalo casino, negotiations for ancillary issues and/or in any way involving or supporting the development of a Buffalo casino on the Proposed Buffalo Site until such time as PRHPL has been fully complied with.

189. The Petitioners have no adequate remedy at law.

SECOND PRHPL CLAIM

Buffalo Sewer Authority

190. For purposes of the following claim for relief, the paragraphs designated 1 through 189 are hereinafter referenced and realleged in full as if set forth fully herein.

191. The Buffalo Sewer Authority is a public benefit corporation of the State of New York.

192. The PRHPL defines “state agencies” to include public benefit corporations.

193. Upon information and belief the Buffalo Sewer Authority owns, or has right, title, or interest in certain real property easements or rights contained within the Proposed Buffalo Site.

194. Upon information and belief the Buffalo Sewer Authority is being asked to abandon easements and approve connections to the municipal sewer system which will allow for

the development of a casino complex and such actions will impact historically significant structures on and in close proximity to the Proposed Buffalo Site.

195. The PRHPL mandates that the Buffalo Sewer Authority notify the Commissioner of Parks, Recreation, and Historic Preservation “[a]s early in the planning process as may be practicable and prior to the preparation or approval of the final design or plan of any project undertaken.”

196. Upon information and belief the Buffalo Sewer Authority has not notified the Commissioner of Parks, Recreation, and Historic Preservation of its actions pertaining to the Proposed Buffalo Site and therefore it is acting in violation of the PRHPL.

197. Wherefore Petitioners respectfully request the Court issue relief in the form of a declaration that the Buffalo Sewer Authority is violating PRHPL and further issue an injunction against the Buffalo Sewer Authority from taking any further action with regard to a Buffalo casino, negotiations for ancillary issues and/or in any way involving or supporting the development of a Buffalo casino on the Proposed Buffalo Site until such time as PRHPL has been fully complied with.

198. The Petitioners have no adequate remedy at law.

THIRD PRHPL CLAIM

NFTA, SGOs, and Governor George E. Pataki

199. For purposes of the following claim for relief, the paragraphs designated 1 through 198 are hereinafter referenced and realleged in full as if set forth fully herein.

200. Upon information and belief the SNI is negotiating a contract for the purchase or lease of all or part of the DL&W Terminal from the NFTA.

201. The DL&W Terminal is an historically significant site which abuts the historic Cobblestone District and is located in close proximity to the Erie Canal terminus.

202. The Governor, NFTA and SGOs are state agencies as defined under the PRHPL.

203. The PRHPL mandates that the Governor, NFTA, and SGOs notify the Commissioner of Parks, Recreation, and Historic Preservation “[a]s early in the planning process as may be practicable and prior to the preparation or approval of the final design or plan of any project undertaken.”

204. Upon information and belief the Governor, NFTA, and SGOs have not contacted the Commissioner of Parks, Recreation, and Historic Preservation regarding the pending purchase of the DL&W Terminal by the SNI and are violating the PRHPL.

205. Wherefore Petitioners respectfully request the Court issue relief in the form of a declaration that the Governor, NFTA, and the SGOs are violating PRHPL and further issue an injunction against the Governor, NFTA and the SGOs from taking any further action with regard to a Buffalo casino, negotiations for ancillary issues and/or in any way involving or supporting the development of a Buffalo casino at the DL&W Terminal until such time as PRHPL has been fully complied with.

206. The Petitioners have no adequate remedy at law.

FIRST CITY ENVIRONMENTAL REVIEW ORDINANCE (“CERO”) CLAIM

City of Buffalo (Mayor Anthony Masiello and the Common Council)

207. For purposes of the following claim for relief, the paragraphs designated 1 through 206 are hereinafter referenced and realleged in full as if set forth fully herein.

208. Chapter 168 of the Charter and Code of the City of Buffalo is the City Environmental Review Ordinance (“CERO”).

209. CERO mandates:

No agency involved in an action may undertake, fund or approve the action until it has complied with the provisions of SEQRA and this chapter.

210. Neither the Common Council nor Mayor Masiello complied with CERO when commenting or choosing not to comment on the Proposed Buffalo Site because, as stated above, neither the Common Council nor Mayor Masiello complied with SEQRA.

211. Wherefore Petitioners respectfully request the Court issue a declaration that the actions of the Mayor Masiello and the Common Council with regard to the Proposed Casino Project are violative of the City Environmental Review Ordinance and that any actions undertaken in furtherance of the casino complex should be considered void and vacated and further issue an injunction prohibiting the City of Buffalo and the Common Council from taking any further steps with regard to the development of a casino in the City of Buffalo until such time as the City Environmental Review Ordinance has been properly complied with.

212. The Petitioners have no adequate remedy at law.

SECOND CERO CLAIM

**City of Buffalo (Mayor Byron Brown, the Common Council,
and the Department of Public Works)**

213. For purposes of the following claim for relief, the paragraphs designated 1 through 212 are hereinafter referenced and realleged in full as if set forth fully herein.

214. The SNI requires approvals from the City of Buffalo (Mayor Byron Brown, the Common Council, and the Department of Public Works) as part of developing and expanding the Proposed Buffalo Site.

215. Upon information and belief, the SNI has sought and will seek further approvals from various officials and departments within the City of Buffalo regarding abandoning rights-of-way, constructing objects on or above rights-of-way, abandoning or utilizing water hook-ups , etc.

216. The City of Buffalo (Mayor Byron Brown, the Common Council, and the Department of Public Works) is violating CERO by failing to conduct the appropriate environmental reviews prior to taking any action on the approvals sought by the SNI.

217. Wherefore Petitioners respectfully request the Court issue a declaration that the actions of the Mayor of the City of Buffalo, the Common Council, and the Department of Public Works with regard to the Proposed Casino Site are violative of the City Environmental Review Ordinance and that any actions undertaken in furtherance of the casino complex should be considered void and vacated and further issue an injunction prohibiting the City of Buffalo, the Common Council, and the Department of Public Works from taking any further steps with regard to the development of a casino in the City of Buffalo until such time as the CERO has been properly complied with.

218. The Petitioners have no adequate remedy at law.

FREEDOM OF INFORMATION LAW CLAIM

Governor George E. Pataki and City of Buffalo

219. For purposes of the following claim for relief, the paragraphs designated 1 through 218 are hereinafter referenced and realleged in full as if set forth fully herein.

220. Both the City of Buffalo and Governor George E. Pataki received requests pursuant to the New York Freedom of Information Law (“FOIL”), Public Officer Law Article 6, submitted on behalf of Petitioners in December 2005. *See December FOIL requests submitted herewith as Exhibit H.*

221. FOIL mandates that the public have access to documents held by public agencies upon request as long as the documents are not protected by limited exceptions. Public Officers Law § 87.

222. The limited exceptions of Public Officers Law § 87 do not apply to the Petitioners’ request for documents.

223. Although a cursory reply was provided, no documents have been forthcoming.

224. To date, neither party has complied with the mandates of Article 6 of the Public Officer Law.

225. Wherefore Petitioners respectfully request the court issue a declaration that the City of Buffalo and Governor George E. Pataki are in violation of the Public Officers Law Article 6 and further issue a declaration that the City and the Governor must comply in full with the request for relief.

WHEREFORE, Petitioners respectfully request the Court:

- (a) Direct that the Respondents, and each of them, fully comply with SEQRA, the PRHPL, and the CERO in considering and acting on a request for “actions” as those terms are defined under SEQRA, CERO, and PRHPL prior to taking any further action and that such Respondents comply with SEQRA for the preparation of an

environmental impact statement concerning the proposed designation of a casino complex in the City of Buffalo.

- (b) Direct that the Respondents, and each of them, comply with SEQRA and CERO with regard to requests for participation by funding, approvals, policy making, or other activities which constitute “actions” under SEQRA and CERO and comply with PRHPL prior to participating in the consideration and/or development of a casino complex in the City of Buffalo.
- (c) Restrain the Respondents by preliminary injunction from taking any further action in furtherance of, or which relates to, the acquisition and transfer of certain property including the abandonment or use of Respondents’ rights or easements in the City of Buffalo to the SNI for the establishment of a casino and related facilities thereon pending a hearing on the Verified Petition;
- (d) Restrain the City of Buffalo, the Common Council, and their agents, including Mayor Byron Brown, from taking any action in furtherance of, or which relates to, the acquisition and development of the Proposed Buffalo Site to the SNI for the establishment of a casino and related facilities thereon pending a hearing on the Verified Petition;
- (e) Enjoin and bar the State Respondents or any of them and/or their agents, employees, and anyone acting on their behalf from taking any action in furtherance of the siting constructing, maintaining, or operating a gaming facility and/or any related facilities or

improvements on land located in the City of Buffalo unless and until the State and/or the SGOs have complied with SEQRA;

- (f) Issue a permanent injunction restraining the City of Buffalo, the Common Council, and their agents, employees, and/or any person acting on their behalf from taking any action in furtherance of, or which relates to, the acquisition and demolition or development of the Proposed Buffalo Site or services to or for the benefit of the Proposed Buffalo Site to the SNI for the purpose of construction, establishment, or operation of a casino and related facilities thereon until the SEQRA and PRHPL have been complied with;
- (g) Issue a permanent injunction restraining the NFTA from negotiating for the transfer of or transferring any property interests to the SNI or to any entity or person acting as a representative of, or on behalf of, the SNI for the purpose of construction, establishment, or operation of a Type III casino and related facilities thereon;
- (h) Order the City of Buffalo and the Governor to produce, at the time of service of its answer, records in its possession responding to Petitioners' FOIL requests of December 2005, as well as records concerning the development of the casino, the abandonment of City rights-of-way, the connection to city infrastructure, and the permission for encroachments upon or over city property.
- (i) For attorney's fees and cost pursuant to the Equal Access to Justice Law and the Public Officer's Law.

- (j) For costs and disbursements of this action on behalf of Petitioner; and
- (k) For such other and further relief as to this court seems just and proper.

DATED: Buffalo, New York
January 27, 2006

Yours etc.

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TO: GEORGE E. PATAKI, in his official capacity as Governor of the State of New York;
State Capitol
Albany, NY 12224

STATE GAMING OFFICIALS OF THE NEW YORK STATE WAGERING BOARD;
1 Watervilet Avenue Extension; Suite 2
Albany, New York 12206

CITY OF BUFFALO;
City Hall
65 Niagara Square
Buffalo, New York 14202

COMMON COUNCIL OF THE CITY OF BUFFALO;
City Hall
65 Niagara Square
Buffalo, New York 14202

BYRON BROWN (formerly ANTHONY MASIELLO), in his
Official Capacity as Mayor of the City of Buffalo;
City Hall
65 Niagara Square
Buffalo, New York 14202

The NIAGARA FRONTIER TRANSPORTATION AUTHORITY;
Mary S. Martino (Acting Chairperson)
181 Ellicott Street
Buffalo, New York 14203

STATE OF NEW YORK)
COUNTY OF ERIE) SS:

PASTOR KEITH H. SCOTT, SR., being duly sworn, deposes and says:

1. That he is a petitioner in the within action;
2. That he has read the foregoing verified petition and knows the contents thereof;
3. That the same is true to the knowledge of the deponent, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

Pastor Keith H. Scott, Sr.

State of New York)
County of Erie) ss:

On the ____ day of _____ in the year 2006 before me, the undersigned, a Notary Public in and for said State, personally appeared Pastor Keith H. Scott, Sr., personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
COUNTY OF ERIE) SS:

DORA RICHARDSON, being duly sworn, deposes and says:

1. That she is a petitioner in the within action;
2. That she has read the foregoing verified petition and knows the contents thereof;
3. That the same is true to the knowledge of the deponent, except as to the matters therein stated to be alleged on information and belief, and that as to those matters she believes it to be true.

Dora Richardson

State of New York)
County of Erie) ss:

On the ___ day of _____ in the year 2006 before me, the undersigned, a Notary Public in and for said State, personally appeared Dora Richardson, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
COUNTY OF ERIE) SS:

Josephine Rush, being duly sworn, deposes and says:

1. That she is a petitioner in the within action;
2. That she has read the foregoing verified petition and knows the contents thereof;
3. That the same is true to the knowledge of the deponent, except as to the matters therein stated to be alleged on information and belief, and that as to those matters she believes it to be true.

Josephine Rush

State of New York)
County of Erie) ss:

On the ___ day of _____ in the year 2006 before me, the undersigned, a Notary Public in and for said State, personally appeared Josephine Rush, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
COUNTY OF ERIE) SS:

John McKendry, being duly sworn, deposes and says:

1. That he is a petitioner in the within action;
2. That he has read the foregoing verified petition and knows the contents thereof;
3. That the same is true to the knowledge of the deponent, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

John McKendry

State of New York)
County of Erie) ss:

On the ___ day of _____ in the year 2006 before me, the undersigned, a Notary Public in and for said State, personally appeared John McKendry, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
COUNTY OF ERIE) SS:

Shelley McKendry, being duly sworn, deposes and says:

1. That she is a petitioner in the within action;
2. That she has read the foregoing verified petition and knows the contents thereof;
3. That the same is true to the knowledge of the deponent, except as to the matters therein stated to be alleged on information and belief, and that as to those matters she believes it to be true.

Shelley McKendry

State of New York)
County of Erie) ss:

On the ___ day of _____ in the year 2006 before me, the undersigned, a Notary Public in and for said State, personally appeared Shelley McKendry, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
COUNTY OF ERIE) SS:

Geoffrey D. Butler, being duly sworn, deposes and says:

1. That he is a petitioner in the within action;
2. That he has read the foregoing verified petition and knows the contents thereof;
3. That the same is true to the knowledge of the deponent, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

Geoffrey D. Butler

State of New York)
County of Erie) ss:

On the ___ day of _____ in the year 2006 before me, the undersigned, a Notary Public in and for said State, personally appeared Geoffrey D. Butler, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public