

STATE OF NEW YORK  
SUPREME COURT

## SUFFOLK COUNTY

TOWN OF SOUTHAMPTON, NEW YORK  
and CHARLES McARDLE in his official  
capacity as Superintendent of Highways,

Plaintiffs,

-against-

Plaintiffs designate Suffolk County as the  
place for trial as the property at issue in the  
verified complaint is located in Suffolk  
County

Index No. \_\_\_\_\_

LISA GOREE, LANCE GUMBS, SENECA  
BOWEN, BIANCA COLLINS, GERMAIN  
SMITH, DANIEL COLLINS, SR., and  
LINDA FRANKLIN, in their official  
capacities as members of the Council of  
Trustees of the Shinnecock Indian Nation,

Defendants.

**SUMMONS**

---

**TO THE ABOVE-NAMED DEFENDANTS:**

**YOU ARE HEREBY SUMMONED** to answer the complaint in this action and to serve a copy of your answer or, if the complaint is not served with this summons, to serve a notice of appearance, on Plaintiffs' attorneys within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded herein.

Dated: December 20, 2024  
New York, New York.

Respectfully Submitted,

MORGAN, LEWIS & BOCKIUS LLP

By: 

Jason R. Scherr

Jason R. Scherr  
Michael T. Paslavsky  
101 Park Avenue

New York, NY 10178-0060  
jr.scherr@morganlewis.com  
michael.paslavsky@morganlewis.com  
Telephone: +1.212.309.6000  
Facsimile: +1.212.309.6001

Bryan M. Killian (*pro hac vice* forthcoming)  
1111 Pennsylvania Ave., NW  
Washington, DC 20004  
bryan.killian@morganlewis.com  
Telephone: +1.202.739.3000  
Facsimile: +1.202.739.3001

*Attorneys for Plaintiffs The Town of  
Southampton and Superintendent McArdle*

Defendants' addresses:

Lisa Goree, Chairwoman  
Shinnecock Indian Nation  
Shinnecock Indian Territory  
P.O. Box 5006  
100 Church St., Shinnecock Community Center  
Southampton, NY 11969

Lance Gumbs, Vice Chairman  
Shinnecock Indian Nation  
Shinnecock Indian Territory  
P.O. Box 5006  
100 Church St., Shinnecock Community Center  
Southampton, NY 11969

Seneca Bowen, Treasurer  
Shinnecock Indian Nation  
Shinnecock Indian Territory  
P.O. Box 5006  
100 Church St., Shinnecock Community Center  
Southampton, NY 11969

Bianca Collins, Secretary  
Shinnecock Indian Nation  
Shinnecock Indian Territory  
P.O. Box 5006  
100 Church St., Shinnecock Community Center  
Southampton, NY 11969

Germain Smith, General Council Secretary  
Shinnecock Indian Nation  
Shinnecock Indian Territory  
P.O. Box 5006  
100 Church St., Shinnecock Community Center  
Southampton, NY 11969

Daniel Collins, Sr., Sachem  
Shinnecock Indian Nation  
Shinnecock Indian Territory  
P.O. Box 5006  
100 Church St., Shinnecock Community Center  
Southampton, NY 11969

Linda Franklin, Sunksqua  
Shinnecock Indian Nation  
Shinnecock Indian Territory  
P.O. Box 5006  
100 Church St., Shinnecock Community Center  
Southampton, NY 11969

STATE OF NEW YORK  
SUPREME COURTSUFFOLK COUNTY

---

TOWN OF SOUTHAMPTON, NEW YORK  
and CHARLES McARDLE in his official  
capacity as Superintendent of Highways,

Plaintiffs,

Index No. \_\_\_\_\_

-against-

LISA GOREE, LANCE GUMBS, SENECA BOWEN, BIANCA COLLINS, GERMAIN SMITH, DANIEL COLLINS, SR., and LINDA FRANKLIN, in their official capacities as members of the Council of Trustees of the Shinnecock Indian Nation,

VERIFIED COMPLAINT

Defendants.

---

Plaintiffs the Town of Southampton, New York (the “Town”) and Charles McArdle in his official capacity as Superintendent of Highways (“McArdle”) bring this action for declaratory and injunctive relief against Defendants Lisa Goree, Lance Gumbs, Seneca Bowen, Bianca Collins, Germain Smith, Daniel Collins, Sr., and Linda Franklin (“Trustee Defendants”) in their official capacities as members of the Council of Trustees of the Shinnecock Indian Nation (the “Nation”) for violations of state and local laws and regulations in connection with development activity on certain fee land within the jurisdiction of the Town.

### **PARTIES**

1. Plaintiff the Town is a municipal corporation located in Suffolk County, New York and organized under the laws of the state of New York.
2. Plaintiff Charles McArdle is the Superintendent of Highways of the Town. He brings this action in his official capacity as the Superintendent of Highways.



3. Defendant Lisa Goree is the Chairwoman of the Council of Trustees of the Nation. The Council of Trustees is the governing body of the Nation. The Nation is a federally recognized Indian tribe as of October 1, 2010 that occupies and controls the Shinnecock Reservation in Suffolk County. The Nation also claims to own in fee simple an 80-acre parcel of land located in the Hampton Bays area of the Town, known as "Westwoods." Ms. Goree is hereby named in her official capacity as Chairwoman of the Council of Trustees.

4. Defendant Lance Gumbs is the Vice Chairman of the Council of Trustees of the Nation. Mr. Gumbs is hereby named in his official capacity as Vice Chairman of the Council of Trustees.

5. Defendant Seneca Bowen is the Treasurer of the Council of Trustees of the Nation. Mr. Bowen is hereby named in his official capacity as Treasurer of the Council of Trustees.

6. Defendant Bianca Collins is the Secretary of the Council of Trustees of the Nation. Ms. Collins is hereby named in her official capacity as the Secretary of the Council of Trustees.

7. Defendant Germain Smith is the General Council Secretary of the Council of Trustees of the Nation. Mr. Smith is hereby named in his official capacity as the General Council Secretary of the Council of Trustees.

8. Defendant Daniel Collins, Sr. is the Sachem of the Council of Trustees of the Nation. Mr. Collins is hereby named in his official capacity as the Sachem of the Council of Trustees.

9. Defendant Linda Franklin is the Sunksqua of the Council of Trustees of the Nation. Ms. Franklin is hereby named in her official capacity as the Sunksqua of the Council of Trustees.

10. The Trustee Defendants collectively comprise the Council of Trustees of the Nation. They are all named in their official capacities as members of the Council of Trustees.

## VENUE AND JURISDICTION

11. Venue is appropriate pursuant to CPLR 507 since Westwoods, the property at issue in this action, is located within Suffolk County, and the Trustee Defendants' violations of state and local law took place within Suffolk County.

12. Notwithstanding tribal sovereign immunity, tribal officials may be sued for injunctive relief in New York state courts in their official capacities for off-reservation violations of state law. *See Comm'r of N.Y. State Dept. of Transp. v. Polite*, No. 2020-05137, at \*8 (N.Y. App. Div. 2nd Dept. Dec. 4, 2024); *see also Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 796 (2014) (holding that, even when Indian tribes have sovereign immunity, a state or local government can "bring suit against tribal officials or employees (rather than the Tribe itself) seeking an injunction" related to violations of state or local law).

13. The Trustee Defendants collectively comprise the Council of Trustees of the Nation, which is the governing body of the Nation. Each Trustee Defendant is named in his or her official capacity as a member of the Council of Trustees.

14. This action for declaratory and injunctive relief is brought against the Trustee Defendants in connection with their oversight and direction of development activity occurring on the Westwoods parcel in violation of state and local laws. Westwoods is not an Indian reservation. *See Polite*, No. 2020-05137, at \*30.

15. Pursuant to N.Y. Highway Law § 140, a town's Superintendent of Highways shall: "Bring an action in the name of the town, against any person or corporation, to sustain the rights of the public, in and to any town highway in the town, and to enforce the performance of any duty enjoined upon any person or corporation in relation thereto, and to recover any damages sustained

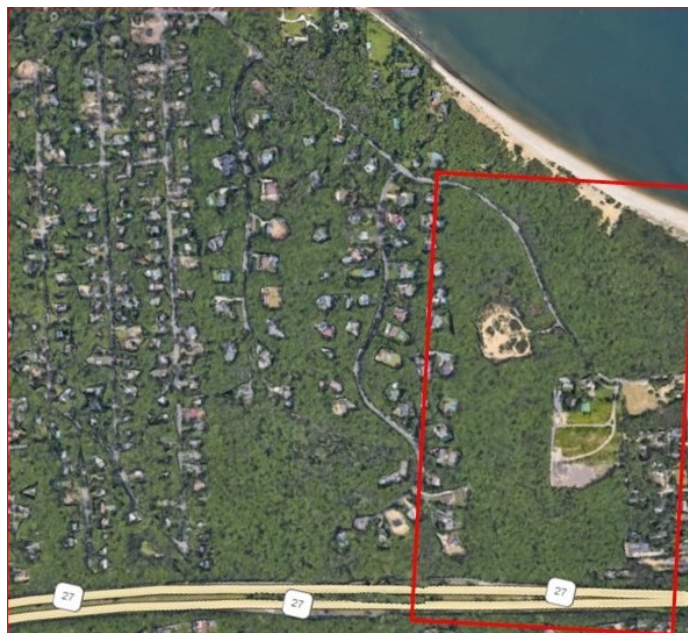
or suffered, or expenses incurred by such town, in consequence of any act or omission of any such person or corporation, in violation of any law or contract in relation to such highway.”

16. As the Town’s Superintendent of Highways, Mr. McArdle has authority to bring this action against the Trustee Defendants in his official capacity for their violations of the law in relation to Newtown Road.

## FACTS

### Jurisdiction Over Westwoods

17. At issue is the proposed and ongoing development by the Nation and its agents on the Westwoods parcel. Westwoods is an approximately 80-acre piece of property located in Suffolk County in the Hampton Bays area of the Town west of the Shinnecock Canal, just north of Rte. 27 Sunrise Highway, as approximately indicated by the red rectangle below:



18. Westwoods is distinct from the Shinnecock Indian Reservation, which is located east of the Shinnecock Canal. The Nation occupies and claims to own the Westwoods parcel in fee simple.

19. Unlike the Shinnecock Reservation, which is not at issue here, Westwoods is not “Indian Country” under federal law. *See Polite*, No. 2020-05137, at \*30-31.

20. The term “Indian Country” is defined in 18 U.S.C. § 1151 as follows: “(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.”

21. No part of the Westwoods parcel is Indian reservation land. *See Polite*, No. 2020-05137, at \*30.

22. The federal government does not hold the Westwoods parcel in trust for the Nation. *See id.*

23. The Westwoods parcel has not been set aside by the federal government for the use of the Nation, nor is it subject to federal superintendence such that it can be considered a dependent Indian community. *See id.* at \*31.

24. The Westwoods parcel is not an Indian allotment.

25. Because the Westwoods parcel is not Indian Country, the laws and regulations of the Town and the state of New York apply to Westwoods just as those laws and regulations apply to any parcel of land, owned in fee, located within the Town.

26. The Nation does not have aboriginal title to Westwoods. Any aboriginal title the Tribe may have had to Westwoods was extinguished in the 17th century when the Nation sold the land to non-Indians and the land was subsequently acquired by the Town.

27. “Aboriginal title refers to the Indians’ exclusive right to use and occupy lands they have inhabited ‘from time immemorial,’ but that have subsequently become ‘discovered’ by European settlers.” *Seneca Nation of Indians v. New York*, 382 F.3d 245, n.4 (2d Cir. 2004).

28. “Indians were secure in their possession of aboriginal land until their aboriginal title was ‘extinguished’ by the sovereign discoverer.” *Id.*

29. Once aboriginal title has been extinguished, it cannot be revived even if the tribe re-acquires the land. *See Polite*, No. 2020-05137, at \*32; *Cass County v. Leech Lake Band of Chippewa Indians*, 524 U.S. 103, 115 (1998).

30. The Nation possessed the land, which is now the Town, including the Westwoods parcel, at the time European settlers arrived in 1640. *See New York v. Shinnecock Indian Nation*, 523 F.Supp.2d 185 (E.D.N.Y 2007), Defendants’ Tr. Ex. 3 at I – XI (True copies of the frontispiece and introduction of the First Book of Records of the Town of Southampton, written by William S. Pelletreau, Southampton Town Clerk from 1862 to 1870, under the authority of the Town).

31. On December 13, 1640, the tribal leadership of the Nation executed a deed conveying all of the Nation’s rights, title, and interest in the eight square miles of land east of Canoe Place, in what is now the portion of the Town east of the Shinnecock Canal, where the Shinnecock Indian Reservation is currently located. *See id.*, State Plaintiff’s Tr. Ex. 66 at 266 – 67 (History of the Town of Southampton (East of Canoe Place), by James T. Adams, Hampton Press, Bridgehampton, N.Y. (1918)).

32. On May 12, 1659, Sachem Wyandanch conveyed by deed the land west of Canoe Place, including what is now known as Westwoods, to the European settler John Ogden on behalf of the Nation under his authority as a tribal leader (the “Ogden Deed”). *See id.*, Town Plaintiff’s



Tr. Ex. 50 at 162 (Wyandanch's Deed to John Ogden, as transcribed in The First Book of Records of the Town of Southampton).

33. On April 10, 1662, Sachem Wyandanch's successor, Weany Sunk Squaw, conveyed by deed additional lands west of Canoe Place, including what is now known as Westwoods, to the European settler Thomas Topping on behalf of the Nation under his authority as a tribal leader (the "Topping Deed"). *See id.*, Town Plaintiff's Tr. Ex. 191 (New York State Archives, Albany, Deed Book 2).

34. The Nation's conveyance of this land by deed to Ogden and Topping, European settlers, thereby extinguished the Nation's aboriginal title to Westwoods.

35. On October 3, 1666, Governor Nicolls of the Province of New York issued a determination recognizing the validity of the Topping Deed and the extinguishment of the Nation's aboriginal title to the land now known as Westwoods and the ownership of this land exclusively by the Town. *See id.*, Town Plaintiff's Tr. Ex. 66 at 54 – 56 (1666, a document (the 'Nicolls Determination') transcribed in the Minutes of the Board of Trustees of the Freeholders and Commonality of the Town of Southampton, Book 1).

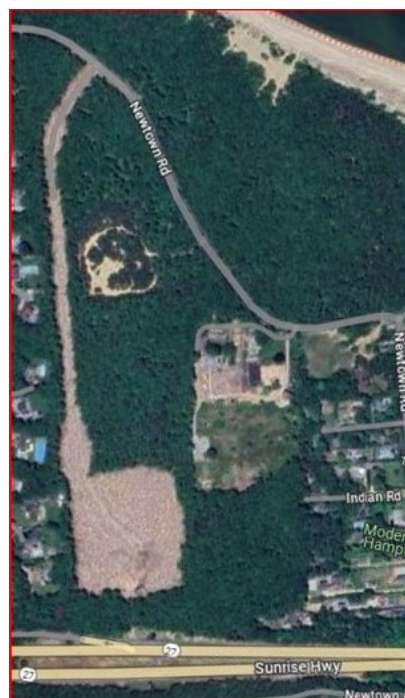
36. From the 17th to 18th century, there is little to no evidence that the Nation occupied or used the Westwoods parcel, which is consistent with the Nation's conveyance of the land by deed to European settlers. *See id.*, Town Plaintiff's Tr. Ex. 73 (1703, Indian Lease for Shinnecock and Shinnecock Hills, as transcribed in the Minutes of the Board of Trustees of the Freeholders and Commonality of the Town of Southampton, Book 1); Town Plaintiff's Tr. Ex. 121 at 541 (Trustees Records of the Town of Southampton N.Y. 1741-1826).

37. The Nation's claimed re-acquisition of Westwoods did not restore the Nation's aboriginal title in Westwoods because, once aboriginal title has been extinguished, it cannot be revived. *See Polite*, No. 2020-05137, at \*32; *Cass County*, 524 U.S. at 115.

38. Because the Nation's aboriginal title to the Westwoods parcel has been extinguished, the Nation cannot claim sovereignty over Westwoods as to avoid compliance with applicable state and local law.

39. Even if the Nation's aboriginal title to Westwoods had not been extinguished, the Nation would not be able to do whatever it wants on the land because, under settled federal law, an Indian Tribe cannot exercise its sovereignty in ways that significantly disrupt settled expectations. *See City of Sherrill v. Oneida Indian Nation of N.Y.*, 544 U.S. 197 (2005).

40. The Trustee Defendants are directing the construction of a travel plaza (the "Travel Plaza") in a residential area, including a large gas station and convenience store, on the Westwoods parcel. In contrast to the image at ¶ 17, an aerial view shows that significant forested land has been cleared at the proposed site abutting residential properties on Quail Run, with a 1,000-foot clearing along the backs of other residences up to Newtown Road:



41. Early plans for the Travel Plaza contemplate fueling locations for 20 vehicles and some 56 parking spaces, in addition to a commercial kitchen, smoke shop, retail, and “drive-thru” areas. A rendering of the Travel Plaza prepared by the Nation presents a vision for displacing acres of forest with asphalt to support increased traffic and commercial activity, as shown here:



42. The Westwoods parcel is not zoned for the operation of a Travel Plaza. Westwoods is located in a residential area and is zoned only for residential use.

43. The Trustee Defendants have neither sought nor obtained the Town’s permission to construct or operate the Travel Plaza on the Westwoods parcel.

44. In addition to construction-related impacts discussed below, the clearing of a substantial number of trees and other natural growth without adhering to state and local environmental requirements risks directly injuring the fragile natural environment.

45. Indeed, the clearing and construction work to date already has had a material impact on the character of the forested residential property at issue, as depicted here:



46. Paving this week on the proposed Travel Plaza site is making more permanent the already destructive clearing activity off the backyards of community residents in the previously-forested neighborhood:



47. The Westwoods parcel and those working on it are subject to the laws and regulations of the Town and the state of New York, including applicable zoning ordinances and permitting requirements.

#### **Construction of the Travel Plaza**

48. The Trustee Defendants, acting in their official capacities, have engaged contractors to construct the Travel Plaza, which will include a 20-bay gas station and convenience store, on the Westwoods parcel.

49. The Travel Plaza is the first phase of an extended development plan by which the Trustee Defendants intend to build a resort area on the Westwoods parcel.

50. Over the past three years, the Town has met with certain Trustee Defendants several times to discuss the Nation's intent to develop the Westwoods parcel. At no point during these discussions did the Trustee Defendants, any affiliates of the Nation, or their agents or contractors present to the Town a formal proposal or timetable regarding the construction of the Travel Plaza.

51. At no point during this period did the Trustee Defendants, any affiliates of the Nation, or their agents or contractors apply for or obtain permits for development from any governing agency outside the Nation itself.

52. Notwithstanding these failures, the Trustee Defendants have caused the Nation and its agents and contractors to clear the Westwoods parcel of trees and other natural growth, lay asphalt, and begin construction of the Travel Plaza, which continues at a rapid pace.

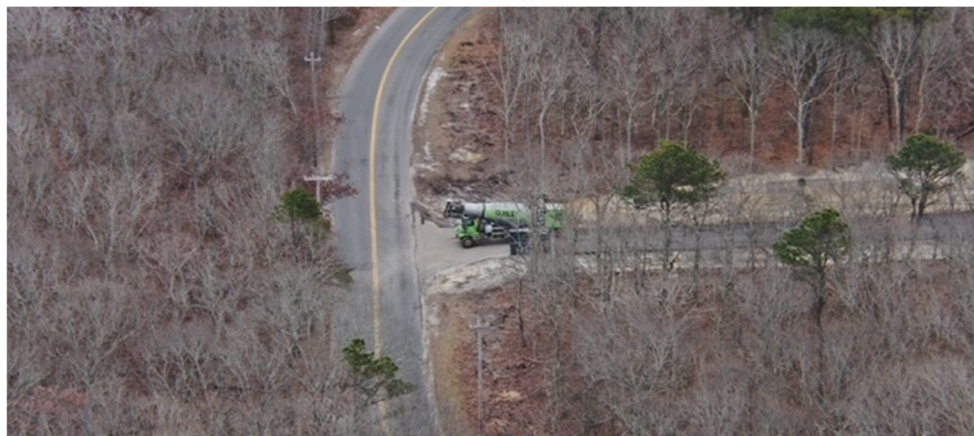
53. Town Code § 330-184 requires the submission of a site development plan and a conference with the Town's Planning Board prior to the construction of a new nonresidential building or structure. Neither the Trustee Defendants, the Nation's affiliated entities, nor its agents or contractors has complied with the requirements of § 330-184.



54. Town Code § 287-7 states: “No person shall utilize the lands within the bounds of any public highway for private use, including the construction of driveways, except with the written permission of the Town Superintendent of Highways as may be allowed by law.”

55. Town Code § 287-13 states: “No person, firm or corporation shall change or alter the grade of any Town highway or of any sidewalk upon or in a Town highway of the Town of Southampton, or in any manner alter or change the line or height of any curb in any Town highway in said Town, or open the surface of any Town highway of the Town of Southampton, or make any excavation under the surface thereof for any purpose, or place or erect any pole for any purpose in or upon any Town highway of said Town, or alter or change the location of any existing pole in any Town highway of said Town without first having obtained the written consent of the Town Superintendent of Highways and upon payment of a permit fee of \$50.”

56. Personnel under the direction of the Trustee Defendants were observed removing a portion of Newtown Road’s right of way to install curb cuts and a driveway connecting Newtown Road to the Travel Plaza without permission from the Town Superintendent of Highways. Newtown Road runs through Westwoods adjacent to the site of the construction of the Travel Plaza, as indicated in ¶ 40. The removed portion of Newtown Road’s right of way, driveway entry, and one of the curb cuts are depicted here:



57. On August 23, 2024, having observed the excavation and clearing of vegetation on the Westwoods parcel, the Town issued a Stop Work Order to halt construction at the site of the Travel Plaza. The Nation and its agents and contractors disregarded the Stop Work Order.

58. The Stop Work Order was displayed on a wooden post at the site of the Travel Plaza. The post was knocked down, unheeded, while construction work continued at the site of the planned Travel Plaza. The Town then returned and re-posted the Stop Work Order at the site.

59. Through the Stop Work Order, the Town instructed the Nation, its agents, and contractors to cease ongoing activity at the Travel Plaza site in clear and unequivocal language:

**The Division of Code Enforcement, in consultation with the Highway Department, has reasonable grounds to believe activity is being conducted in violation of the provisions of the applicable laws, ordinances or regulations or not in conformity with the provisions of an application, plans or specifications on the basis of which a permit(s) was issued, or in a manner that damages or endangers natural resources . . . It shall be unlawful for any person, firm or corporation, or their agents or other servants, to resume work without receiving a Stop Work Lift Letter from the Building Department.**

60. On August 28, 2024, the Town issued complaints against the Nation and against one of its contractors for violations of Town Code § 287-7 and § 287-13 with respect to the installation of a driveway and curb cuts for the purpose of connecting Newtown Road to the Travel Plaza.

61. Under the direction of the Trustee Defendants, the Nation and its agents and contractors have continued to develop the parcel in derogation of the Stop Work Order and complaints.

62. The Trustee Defendants have acknowledged the existence of the Stop Work Order, yet they continue to direct their agents to flout the Order.

63. As of October, gasoline storage tanks and steel columns have been installed in violation of the Stop Work Order, as depicted in this image reflecting the scale of the construction:



64. The construction of filling stations is subject to the requirements of Town Code § 330-132.

65. Pursuant to Town Code § 330-133, the recommendation of the Fire Chief and Town Bureau of Fire Prevention shall be considered prior to approval of land use involving the installation of flammable liquids or gas. Conduits for hazardous materials are clearly visible in this image:



66. Town Code § 330-175 concerns applications for and issuance of building permits. Procedures with respect to building permits shall conform with the provisions of the Town Building Code at § 123, through which the Town enforces the New York State Uniform Fire Prevention and Building Code Act, N.Y. 18 §§ 370–383.

67. The Town Building Code states, among other requirements, that “[n]o person, firm or corporation shall commence the erection, construction, enlargement, alteration, improvement, conversion or change in the use or nature of the occupancy of any building or structure or cause the same to be done without first obtaining a building permit, separate and distinct from that required by the Zoning Ordinance, from the Building Inspector for each such building or structure.” *See* Town Code § 123-9.

68. As recently as this week, contractors were observed laying asphalt on portions of the parcel without a building permit and in derogation of the Stop Work Order at the direction of the Trustee Defendants, despite having acknowledged the existence of the Stop Work Order the day prior. The process of laying asphalt is highly disruptive to the environment and the residents’ quiet enjoyment of the surrounding area.

69. At the direction and supervision of the Trustee Defendants, the Nation and its contractors have begun paving the nearly 1,000 feet access driveway to the Travel Plaza site, as shown here:



70. As of the date of this Complaint, construction of the Travel Plaza has not ceased, despite the failure of the Trustee Defendants, the Nation's affiliated entities, or its agents or contractors to obtain the necessary approval or permits from the Town or to demonstrate compliance with the laws and regulations of the Town and the state of New York.

71. The construction activity at Westwoods without adherence to state and local laws has caused and continues to cause material injury to the Town and its residents.

72. Defendants' unauthorized construction of the Travel Plaza has increased traffic congestion, noise, pollution, and debris on local roads not designed to accommodate heavy equipment or the increased load.

73. Apart from the environmental impacts of land clearing activity, construction of a gas station of any capacity, including the Travel Plaza, involves the handling of flammable and hazardous materials, which poses a danger to the health and safety of the Town's residents and environment.

74. Failure to obtain the necessary approval or permitting regarding building and fire codes, property access, parking, lighting, drainage, public utilities, and noise impacts risks irreparable environmental and community harm.

75. Operation of the Travel Plaza would require a significant expenditure of state and local resources to fund essential services, such as police, fire, and ambulance services.

76. Defendants' operation of the Travel Plaza on the Westwoods parcel will disrupt the Town's transportation infrastructure in an area with already high levels of traffic congestion.

77. Construction and operation of the Travel Plaza is and will be highly disruptive to settled expectations. *See Polite*, No. 2020-05137, at \*36.



78. The Town has received numerous complaints from the residents of the Town regarding the construction of the Travel Plaza.

### COUNT I

*(Trustee Defendants' Violation of Zoning Ordinances and State and Local Laws Concerning Development of the Travel Plaza)*

79. Plaintiffs repeat and reaffirm each of the preceding paragraphs of this Complaint and incorporate each by reference as if fully stated herein.

80. The Trustee Defendants, acting in their official capacities as tribal leaders, are overseeing and directing the construction of the Travel Plaza on the Westwoods parcel. The Trustee Defendants have directed the clearing of trees and other natural growth, as well as the installation of gas storage tanks and construction of other structures on the property. *See* Photographs at ¶¶ 45, 63, 65.

81. Despite certain Trustee Defendants meeting with the Town several times over the course of the last three years, at no point did the Trustee Defendants, any affiliates of the Nation, or its agents or contractors present a formal proposal or timetable to the Town regarding the construction of the Travel Plaza.

82. At no point prior to beginning construction did the Trustee Defendants, any affiliates of the Nation, or its agents or contractors apply for or obtain permits for development from any governing agency outside the Nation itself.

83. In directing the construction of the Travel Plaza without first submitting a development plan for approval to the Town, the Trustee Defendants have failed to comply with the requirements of Town Code § 330-184, which mandates the submission of a site development plan and a conference with the Town's Planning Board prior to the construction of a new nonresidential building or structure.

84. The Trustee Defendants also have continued to direct and supervise the construction of the Travel Plaza in violation of the Town's Stop Work Order, which required the Nation and its agents to cease all construction activity.

85. While unlawfully continuing to construct the Travel Plaza, the Nation, under the direction and supervision of the Trustee Defendants, has violated Town Code § 287-7 and § 287-13 by removing a portion of the Town's right of way and installing a driveway and curb cuts without permission from the Town Superintendent of Highways.

86. The Trustee Defendants also have violated various zoning ordinances through the construction of the Travel Plaza. The Westwoods parcel is not zoned for the operation of a Travel Plaza, as Westwoods is located in a residential area and is zoned only for residential use. The Trustee Defendants have not filed an application for a use variance.

87. The Trustee Defendants have not sought the recommendation of the Fire Chief and Town Bureau of Fire Prevention prior to the installation of gas storage tanks at the site of the Travel Plaza as required by Town Code § 330-133.

88. In failing to apply for or obtain a building permit from the Town prior to beginning construction, the Trustee Defendants have violated the Town Building Code at § 123, through which the Town enforces the New York State Uniform Fire Prevention and Building Code Act, N.Y. 18 §§ 370–383.

89. The Trustee Defendants' direction and supervision of unlawful construction activity has harmful impacts on the Town and its residents.

90. Construction of the Travel Plaza contributes to traffic congestion, noise, pollution, and debris on local roads not designed to accommodate the increased load.

91. Clearing the natural growth and laying asphalt without adhering to state and local environmental requirements risks directly injuring the fragile natural environment.

92. Construction of a gas station, requiring the handling of flammable and hazardous materials, poses a danger to the health and safety of the Town's residents.

93. Because the Westwoods parcel and those working on it are subject to the laws and regulations of the Town and the state of New York, the Trustee Defendants must abide by those laws and regulations in effectuating the development of the land.

## COUNT II

### *(Trustee Defendants' Creation of a Public Nuisance)*

94. Plaintiffs repeat and reaffirm each of the preceding paragraphs of this Complaint and incorporate each by reference as if fully stated herein.

95. "A public nuisance exists for conduct that amounts to a substantial interference with the exercise of a common right of the public, thereby offending public morals, interfering with the use by the public of a public place or endangering or injuring the property, health, safety or comfort of a considerable number of persons." 532 *Madison Ave. Gourmet Foods, Inc. v. Finlandia Ctr., Inc.*, 750 N.E.2d 1097, 1104 (N.Y. 2001).

96. "A public nuisance is a violation against the State and is subject to abatement or prosecution by the proper governmental authority." *Id.*

97. The Trustee Defendants' direction and supervision of the unlawful construction of the Travel Plaza in violation of zoning ordinances and other state and local permitting requirements has endangered the surrounding environment and the health and safety of the Town's residents.

98. Construction activity contributes to traffic congestion, noise, pollution, and debris on local roads not designed to accommodate the increased load, which interferes with the Town residents' use of the Town's roadways.

99. Clearing the natural growth and laying asphalt without adhering to state and local environmental requirements risks directly injuring the fragile natural environment, which the Town's residents have the right to enjoy. Further, damage to the surrounding environment may have significant consequences for the health and safety of the Town's residents.

100. Construction of a gas station, involving the handling of flammable and hazardous materials, also poses a danger to the health and safety of the Town's residents.

101. The Town has received numerous complaints from the residents of the Town, who have been impacted, and who will continue to be impacted, by construction of the Travel Plaza, which poses a threat to their health and safety and their use and enjoyment of the Town's resources.

### COUNT III

#### *(Trustee Defendants' Violations Under New York Highway Law)*

102. Plaintiffs repeat and reaffirm each of the preceding paragraphs of this Complaint and incorporate each by reference as if fully stated herein.

103. Plaintiff Mr. McArdle is the Town's Superintendent of Highways. He brings this cause of action in his official capacity against the Trustee Defendants for violations of New York Highway Law pursuant to N.Y. Highway Law § 140, which provides that the Superintendent of Highways shall "[b]ring an action in the name of the town, against any person or corporation, to sustain the rights of the public, in and to any town highway in the town, and to enforce the performance of any duty enjoined upon any person or corporation in relation thereto, and to recover any damages sustained or suffered, or expenses incurred by such town, in consequence of any act or omission of any such person or corporation, in violation of any law or contract in relation to such highway."

104. Newtown Road runs through the Westwoods parcel adjacent to the site of the construction of the Travel Plaza. Newtown Road is a Town Road maintained by the Town. "Town

highways are those constructed, improved or maintained by the town with the aid of the state or county, under the provisions of this chapter, including all highways in towns, outside of incorporated villages constituting separate road districts which do not belong either of the two preceding classes.” N.Y. Highway Law § 3.

105. Town Code § 287-7 states: “No person shall utilize the lands within the bounds of any public highway for private use, including the construction of driveways, except with the written permission of the Town Superintendent of Highways as may be allowed by law.” Town Code § 287-13 states: “No person, firm or corporation shall change or alter the grade of any Town highway or of any sidewalk upon or in a Town highway of the Town of Southampton, or in any manner alter or change the line or height of any curb in any Town highway in said Town, or open the surface of any Town highway of the Town of Southampton, or make any excavation under the surface thereof for any purpose, or place or erect any pole for any purpose in or upon any Town highway of said Town, or alter or change the location of any existing pole in any Town highway of said Town without first having obtained the written consent of the Town Superintendent of Highways.”

106. During construction of the Travel Plaza, under the direction of the Trustee Defendants, the Nation and its contractors have altered Newtown Road’s right of way by removing a portion of the right of way and installing a driveway and two curb cuts for egress of construction vehicles onto the Westwoods parcel. *See Photograph at ¶ 56.*

107. For one curb cut, the Nation and its contractors, under the direction of the Trustee Defendants, connected the Westwoods site to Newtown Road by paving a driveway onto the property. At the direction of Trustee Defendants, the Nation and its contractors have begun paving the nearly 1,000-foot access driveway to the Travel Plaza. *See Photograph at ¶ 69.*

108. For the other, the Nation and its contractors, also under the direction of the Trustee Defendants, removed pre-existing concrete barriers that for decades had prevented vehicular traffic from entering the Westwoods parcel. *See* Photograph at ¶ 56.

109. The construction of the two curb cuts in the right of way of Newtown Road violates the Stop Work Order issued by the Town on August 23, 2024, which states: “It shall be unlawful for any person, firm or corporation, or their agents or other servants, to resume work without receiving a Stop Work Lift Letter from the Building Department.”

110. The construction of the two curb cuts within the county’s right-of-way also violates Town Code § 287-7 and § 287-13, which prevent the utilization of the lands within the bounds of any public highway or the alteration of a Town highway without the permission of the Town Superintendent of Highways. Neither the Trustee Defendants, any of the Nation’s affiliated entities, nor its agents or contractors obtained the permission of Mr. McArdle prior to installing the driveway or curb cuts connecting Newtown Road to the Travel Plaza.

111. N.Y. Highway Law § 140 provides that the Superintendent of Highways can bring an action against any person to enforce the performance of any duty in relation to a Town highway. Because the Trustee Defendants have an obligation to seek permission from the Town Superintendent of Highways prior to constructing a driveway and curb cuts connecting Newtown Road to the Travel Plaza under Town Code § 287-7 and § 287-13, Mr. McArdle seeks to enforce that obligation.

112. This alteration of Newtown Road’s right of way and the construction of curb cuts contributes to traffic congestion, noise, pollution, and debris on Newtown Road, which is not designed to accommodate the increased load.



**PRAYER FOR RELIEF**

WHEREFORE, the Town hereby requests that the Court order the following relief and enter a judgment as follows:

- a. Declare that construction of the Travel Plaza in the absence of the Town's approval and without the requisite permits violates the laws and regulations of the Town and of the state of New York;
- b. Declare that Westwoods is subject to the jurisdiction of the Town and all of its laws and regulations, including but not limited to, applicable zoning ordinances.
- c. Permanently enjoin the Trustee Defendants from directing construction or operation of a Travel Plaza on the Westwoods parcel without first complying with applicable Town and state law;
- d. Grant an award of costs and reasonable attorney's fees; and
- e. Grant any other relief that the Court deems just and proper.

Dated: December 20, 2024

Respectfully submitted,

MORGAN, LEWIS & BOCKIUS LLP

By: 

Jason R. Scherr

Michael T. Paslavsky  
101 Park Avenue  
New York, NY 10178-0060  
michael.paslavsky@morganlewis.com  
Telephone: +1.212.309.6000  
Facsimile: +1.212.309.6001

Jason R. Scherr  
Bryan M. Killian (*pro hac vice* forthcoming)  
1111 Pennsylvania Ave., NW  
Washington, DC 20004  
jr.scherr@morganlewis.com  
bryan.killian@morganlewis.com  
Telephone: +1.202.739.3000  
Facsimile: +1.202.739.3001

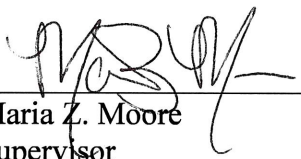
*Attorneys for Plaintiffs The Town of  
Southampton and Superintendent McArdle*

**VERIFICATION**

I am the Supervisor for the Town of Southampton and am fully familiar with the facts of this proceeding. I have read the within complaint and know the contents thereof in relation to my role and authority to be true to the best of my knowledge, except as to matters stated to be alleged upon information and belief, and as to those matters, I believe them to be true.

I affirm this 20th day of December, 2024, under the penalties of perjury under the laws of New York, pursuant to CPLR 2106, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

Dated: Southampton, New York  
December 20, 2024


  
\_\_\_\_\_  
Maria Z. Moore  
Supervisor  
Town of Southampton

**VERIFICATION**

I am the Superintendent of Highways for the Town of Southampton and am fully familiar with the facts of this proceeding. I have read the within complaint and know the contents thereof in relation to my role and authority to be true to the best of my knowledge, except as to matters stated to be alleged upon information and belief, and as to those matters, I believe them to be true.

I affirm this 20th day of December, 2024, under the penalties of perjury under the laws of New York, pursuant to CPLR 2106, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

Dated: Southampton, New York  
December 20, 2024

  
Charles McArdle  
Superintendent of Highways  
Town of Southampton