SUPREME COURT OF THE STATE OF NEW YORK
SUFFOLK COUNTY

TOWN OF SOUTHAMPTON, NEW YORK and CHARLES McARDLE in his official capacity as Superintendent of Highways, Plaintiffs, -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, Defendants.	:	Index No. 631610/2024

REPLY MEMORANDUM OF LAW
IN SUPPORT OF MOTION FOR A PRELIMINARY INJUNCTION BY
PLAINTIFFS TOWN OF SOUTHAMPTON, NEW YORK AND CHARLES McARDLE

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PRELIMINARY STATEMENT

Trustee Defendants admit they have no intention of complying with Town law but assert that this Court is powerless to act if the Bureau of Indian Affairs ("BIA") records the Nation's ownership of Westwoods as "restricted fee" rather than "fee simple." Trustee Defendants are wrong.

The fundamental premise from which all their arguments flow is that Westwoods is "Indian country" over which "this Court does not have jurisdiction" and "[t]he Town has no authority." Dkt. 74 ("Opp'n") at 4 & 7. Trustee Defendants assert that the BIA's recordation ousted civil jurisdiction over Westwoods in favor of the Nation as the sole non-federal governmental power, while conceding that the parcel is not part of the Shinnecock Indian Reservation. The BIA itself does not even claim to have worked such a change. Becoming Indian country requires more, and Trustee Defendants' repeated conflation of "Indian land(s)" and "tribal land" definitions from inapplicable regulatory frameworks simply does not meet the test.

Because the Trustee Defendants are acting outside the bounds of Indian country, the reasoning of *Ex parte Young* precludes their avoidance of generally applicable civil law. Because the Nation's fee ownership interest will not be impaired by its trustees complying with Town law, neither it nor the federal government are necessary parties. And because constructing a massive travel plaza in residential backyards disrupts settled expectations not compensable by money damages, preliminary injunctive relief is warranted to preserve what remains of the status quo.

STATEMENT OF FACTS AND PROCEDURAL BACKGROUND

Westwoods has been undeveloped forest for centuries with no permanent residents. The most recent effort to develop anything was the Nation's effort to build a casino in June 2003. The state and Town sued to enjoin that construction for failure to comply with state law, and the Nation (with its trustees) defended on the grounds that Westwoods was "Indian country" not subject to state or Town law, asserting that aboriginal title had not been extinguished. Following removal by the Nation, the U.S. District Court concluded following a 7-month trial that "the evidence overwhelmingly demonstrated in a plain and unambiguous manner that aboriginal title held by the Shinnecock Indian Nation to the Westwoods land was extinguished in the 17th century." *New York v. Shinnecock Indian Nation*, 523 F. Supp. 2d 185, 188 (E.D.N.Y. 2007). Observing that this non-reservation land had not been used for centuries except for timber and recreation, the Court further concluded that a proposed casino would cause "highly disruptive consequences . . . on the neighboring landowners, as well as the Town and the greater Suffolk County community," including disruptions in administering governmental affairs and in transportation infrastructure, such that equitable considerations precluded an assertion of sovereignty by the Nation. *Id.* at 189, citing *City of Sherrill v. Oneida Indian Nation*, 544 U.S. 197 (2005). The resulting permanent injunction was vacated by the Second Circuit in 2012 for lack of federal question jurisdiction, *New*

York v. Shinnecock Indian Nation, 686 F.3d 133 (2d Cir. 2012), but the Nation has since not attempted to develop Westwoods prior to the current travel plaza construction, as shown in 2018:

Reply Affirmation of Michael T. Paslavsky ("Paslavsky Reply Aff."), ¶ 3, Ex. A. There is no commercial activity in the area. Paslavsky Reply Aff., at ¶ 4. The only non-natural activity on Westwoods in decades was the expansion of Newtown Road, which Trustee Defendants admit the Town maintains. Opp'n at 6. There is no commercial site accessible from Newtown Road; the closest gas station is located at 250 E Montauk Highway, accessible from Montauk Highway. Paslavsky Reply Aff., at ¶ 5.

The only oversight of the Nation is by Eastern Woodlands Petroleum, Inc., "a governmental instrumentality of the Shinnecock Indian Nation." Dkt. 77 ("Wingert Aff.") ¶ 4 & Ex. 1. The only work permit alleged to exist was to itself. *Id.* ¶ 5 & Ex. 2. Trustees Defendants do not dispute that they plan to build fueling locations for 20 vehicles, an additional 56 parking spaces, retail, and "drive-thru" areas. Opp'n at 5. They admit to ignoring Stop Work orders and violation notices for the reason that the Town has "no authority over the Nation's restricted fee land" and that Westwoods "is 'Indian Country' over which local governments lack power to impair the Nation's exercise of sovereignty." Opp'n at 6-7.

The Town filed suit for permanent injunction in December 2024. Dkt. 3. Trustee Defendants stipulated to refrain from covering the underground storage tanks, filling them, or connecting them to fuel pumps until resolution of the instant motion for preliminary injunction, Dkt. 73.

ARGUMENT

Westwoods is not Indian country under 28 U.S.C. § 1151.[1] It was not Indian country in 2003 when the Nation began construction of a casino. It was not Indian country in 2007 when the Judge Bianco rejected Professor Hermes' arguments and found that "colonial-era extinguishment of aboriginal title to Westwoods is clear, unmistakable, and valid." *Shinnecock*, 523 F. Supp. 2d at 189. It was not Indian country in 2012 when the Second Circuit rejected the Nation's contention that Town zoning violations necessarily implicated federal law. *New York v. Shinnecock Indian Nation*, 686 F.3d 133, 139-41 (2d Cir. 2012).[2] It was not Indian country in 2020 when the Supreme Court disagreed with the analysis in Tela Troge's affidavit and denied the Trustee Defendants' motion to dismiss on sovereign immunity grounds. *Commissioner of New York State Dept. of Transp. v. Polite*, (No. 610010/19), Dkt. 176 at 6-7. And it was not Indian country in 2024 when the Appellate Division reversed the denial of a preliminary injunction for the reason that the challenged conduct took place "beyond reservation boundaries." *Polite*, 2024 WL 4964811, 225 N.Y.S.3d 106, 119 (N.Y. App. Div. 2d Dept. Dec. 4, 2024).

Trustee Defendants now point to a January 2, 2025 letter from outgoing Department of Interior Assistant Secretary Bryan Newland instructing the regional BIA director to record Westwoods in the DOI's land recordation system as "restricted fee." *See* Opp'n at 9 ("The DOI letter specifically rebuts Plaintiffs' assertion that aboriginal title was extinguished"), 17 ("Aboriginal title has never been extinguished"). That's not what the letter does. It merely

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[1] For the Court's convenience, attached hereto as Exhibit B to the Paslavsky Reply Aff. are true and correct copies of 28 U.S.C. § 1151 and 25 C.F.R. 1.4, 169.9, and 169.10.

[2] *Accord*, *e.g.*, Br. of Def.-Appellant The Shinnecock Indian Nation, *New York v. Shinnecock Indian Nation*, No. 08-1194-cv(L), Dkt. 76 at 36 ("The Nation also argued that the Town's right to relief necessarily depended on the resolution of substantial questions of federal law.").

instructs BIA to record a restriction against alienation on the Nation's fee ownership of the Westwoods parcel. The record status of the Nation with the Department of the Interior has nothing whatsoever to do with the title status of Westwoods as Indian country for purposes of Section 1151. "Restricted fee land" does not convert into "Indian country" no matter how many times Trustee Defendants conflate those terms in their citations.

For the instant proceeding, the Court need observe only that the challenged conduct represents a dramatic departure from settled community expectations, such that newfound assertions of sovereignty—irrespective of their merit or lack of merit—fail to ameliorate the disruptive consequences that mandate enjoining further construction under principles announced in *City of Sherrill*.

1. *City of Sherrill* precludes the exercise of Tribal sovereignty over Westwoods

Trustee Defendants are wrong that "tribal ownership, use, and occupation of [Westwoods] is and has been reality for centuries" so there are "no [s]ettled [e]xpectations to affect." Opp'n at 14-15. The Nation has not developed or resided upon the Westwoods parcel "for centuries," while the Town has subdivided the land, regulated timber harvesting, widened and improved Newtown Road, and provided police, fire, and emergency services. *Shinnecock*, 523 F. Supp. 2d at 228, 284 (relying on Town trial exhibits 12 (regulated timber harvesting), 97 (subdivided land) 208 (widened and improved Newtown Road)). Neither Trustee Defendants nor the BIA (in response to a FOIA request) has identified any materials on which Mr. Newland's January 2 letter might rely, even though Mr. Newland's January 2 letter is the sole basis on which Trustee Defendants assert consistent "use." *E.g.*, Opp'n at 14-15 & 17. Their argument is flawed in two respects.

First, insofar as the January 2 letter addresses residence at all, it states only that Westwoods is "within" the boundaries of the Nation's aboriginal territory, and that the Nation also "has resided

within its aboriginal territory" without having been removed. Dkt. 76 at Ex. 1. No one disputes that the Nation's aboriginal territory covered a swath of Long Island that encompassed Westwoods, as well as the Nation's reservation, as well as the entire Town of Southampton, among other areas. But that says nothing about the use to which Westwoods has been put in the time since (which is none) or the use to which the surrounding area has been put.

Mr. Newland's January 2 letter, Dkt. 76 at Ex. 1, invokes a December 23, 2024 "memorandum" in which he directed recordation of Westwoods as "restricted fee." Paslavsky Reply Aff Ex. C. The December 23 memo reveals that BIA was only acknowledging that Westwoods is within the same aboriginal territory that "encompasses the Town of Southampton and other lands on eastern Long Island, NY." *Id.* But neither the January 2 letter nor the December 23 memorandum support the logical leap that the Nation has therefore "resided" or "used" *the Westwoods parcel in particular* in some manner that determines any settled expectations of the community beyond forested land for recreational use.

Second, the concern raised in *City of Sherrill* and its progeny is the impact on the settled expectations of the surrounding community. 544 U.S. at 220. Permitting Trustee Defendants to assert Tribal sovereignty to operate a commercial travel plaza would adversely affect non-Indian neighboring landowners and the Town more broadly. Like in *City of Sherrill*, the demographics of the area surrounding Westwoods have become almost entirely non-Indian. Paslavsky Reply Aff. ¶ 8. But unlike the Oneida in *City of Sherrill*, the Nation has not operated any commercial enterprises on Westwoods. *Id.* The area surrounding Westwoods consists entirely of residential homes and, until recently, Westwoods itself has been dormant and forested. *Id.* at Ex. D;[3] Compl.,

[3] *See Cento Properties Co. v. Assessor*, 71 A.D.3d 1015, 1017, 898 N.Y.S.2d 159, 161 (N.Y. App. Div. 2d Dept. 2010) (court may take judicial notice of information on government website).

¶ 40; NYSCEF Doc. 13, ¶ 8. Like in *City of Sherrill*, these "dramatic changes in the character of" Westwoods preclude the unilateral reestablishment of sovereign control. 544 U.S. at 216-217.

Also, like in *City of Sherrill*, displacing the Town in favor of exclusive sovereign control by the Nation would "seriously burde[n] the administration of" Town government. 544 U.S. at 219-220. This is not just about impacts on "local tax rolls." *Id.* at 220. If the Nation were to supplant the Town as the sovereign government over Westwoods, the Town's ability to enter the parcel would be entirely contingent on being "required to negotiate with the Nation . . . subject to agreed-upon conditions." Opp'n at 19. The whole premise of the Travel Plaza is to serve patrons who are not members of the Shinnecock Nation and thereby generate revenues for the Nation. Dkt. 76 ¶¶ 10-13, 20. In a 20-bay service station with 56 parking spaces the potential for accidents and injuries to non-Tribal members is real, as well as theft, fire, human trafficking, health emergencies—not to mention fuel drips and spills that wash into the surrounding land with every rain. Trustee Defendants envision Town police, fire, ambulance, and other emergency response having no governmental right to enter the property to respond to emergencies. The cost for maintaining those services is borne by Town taxpayers—including utilities, social services, emergency response, refuse handling, recycling, and the countless other services delivered by local government. Foisting the burdens of government on the Town while denying the Town's ability to function as a government is anathema to the equitable considerations that led the *City of Sherrill* Court to reject an assertion of sovereignty over land not within Indian country.[4]

[4] Even the Department of the Interior appears to reject the notion that its agreement to record the Nation's interest as "restricted" could have the effect of stripping governmental power from the Town. In light of the interpretation advanced by Trustee Defendants, Plaintiffs noted an appeal of the December 23 memorandum with the Department of Interior's Interior Board of Indian Appeals ("IBIA"). In its Pre-Docketing Notice, the IBIA questioned the Town's standing to appeal from the action, for failure to state an injury by the agency. *See* Pre-Docketing Notice at 2-3, attached as Exhibit E to the Paslavsky Reply Aff. Because the BIA action "did not purport to

2. Westwoods is not "Indian country."

a. The Nation's aboriginal title was extinguished by valid conveyances centuries ago, leaving the Nation's ownership in fee.

Neither the January 2 letter nor the December 23 memorandum even mentions "aboriginal title." The December 23 memorandum reports that the Nation had ***fee*** ownership "as of approximately 1830." Paslavsky Reply Aff. Ex. C. Mr. Newland acknowledges that the Nation was found to hold title not by continuous aboriginal right but by ***adverse possession***. *See id.*, citing *Shinnecock Tribe of Indians v. Hubbard* (Suffolk Cnty. Sup. Ct. Dec. 24, 1922) ("holding that the Nation 'has good title' to Westwoods by means of adverse possession"). By its very nature, adverse possession requires that the possessor be adverse to the true owner of real property. RPAPL 501.[5] Had the Nation's aboriginal title not been extinguished, it would be nonsensical to claim an adverse possessory interest in its own land.

The Court need not rely on inferences to reject that aboriginal title survived conveyance by the Ogden Deed and the Topping Deed. *Compare* Dkt. 9 at 7-8. The Nation itself has conceded the point in direct contravention to the arguments advanced by Trustee Defendants here. In a 1978 petition to the Department of the Interior, the Nation repeatedly acknowledged that "the Tribe's domain to the west of Canoe Place was conveyed to non-Indian individuals in 1659, 1662." *See* "Litigation Request and Statement in Compliance with 25 CFR § 54.6 by the Shinnecock Indian

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make any determination concerning the Town's longstanding jurisdiction over that parcel," as distinct from Trustee Defendants' assertions of displaced jurisdiction, the IBIA contends that the complained-of injury—supposed loss of governmental jurisdiction—is not an injury "caused by action of the Regional Director." *Id.* at 3.

[5] The same conclusion follows from the nature of adverse possession as a creature of the New York state sovereign. *Joseph v. Whitcombe*, 279 A.D.2d 122, 125, 719 N.Y.S.2d 44, 46 (1st Dept. 2001). By asserting an ownership interest derived from adverse possession rather than aboriginal title, the Nation concedes that New York sovereignty is the source of their claimed ownership interest.

Tribe," attached as Exhibit F to the Paslavsky Reply Aff., at 2-3 (mem. pp. 8, 16) (internal citations omitted). As Judge Bianco observed:

> Finally, ***perhaps the most compelling statement by the Shinnecock nation indicating their understanding that aboriginal title in Westwoods had been extinguished*** was in connection with a document submitted by the Tribe to the federal government thirty years ago. Specifically, in the 1978 Litigation Request, the Shinnecock did not contest or refuse to recognize, the legality of the Ogden and Topping Deeds in connection with Westwoods; rather, ***the Tribe conceded the validity and legality of these deeds***.

Shinnecock, 523 F. Supp. 2d at 274 (emphasis added). Trustee Defendants cannot unwind that concession now through unsupported inferences from Mr. Newland's correspondence.

b. 18 U.S.C. § 1151 does not recognize "Restricted fee land" as Indian country

"Indian country" is defined by 18 U.S.C. § 1151. Jurisdiction over land in the enumerated categories of 18 U.S.C. § 1151 "rests with the Federal Government and the Indian tribe inhabiting it." *Alaska v. Native Vill. of Venetie*, 522 U.S. 520, 527 n. 1 (1998). Trustee Defendants do not assert that Westwoods is an Indian reservation under Section (a), that it has been set aside and subject to federal superintendence as a dependent Indian community under Section (b), or that it is an Indian allotment under Section (c). In fact, Trustee Defendants do not address 18 U.S.C. § 1151 at all. Their silence concedes that Westwoods does not fit any of the enumerated categories. *See Krupnik v. NBC Universal, Inc.*, 37 Misc. 3d 1219(A), 964 N.Y.S.2d 60 (N.Y. Sup. Ct. New York Cnty. 2010). They otherwise misapply regulations unrelated to defining Indian country.

c. Restrictions on alienation alone are insufficient to establish Indian country

In *Buzzard v. Oklahoma Tax Comm'n*, the Tenth Circuit affirmed summary judgment against a Tribe who challenged state tobacco taxing statutes on land the Tribe purchased subject to a restriction against alienation. 992 F.2d 1073, 1075 (10th Cir. 1993). After observing that "[f]or purposes of both civil and criminal jurisdiction, the primary definition of Indian country is 18 U.S.C. § 1151," the *Buzzard* court noted that, while "[a] restriction against alienation requiring

government approval may show a desire to protect the [Tribe] from unfair dispositions of its land," that "does not of itself indicate that the federal government intended the land to be set aside for [the Tribe's] use." *Id.* 1076.

Westwoods may be restricted against alienation, but the Nation acquired fee title through adverse possession, not through federal allotment. Paslavsky Reply Aff., Ex. C. Trustee Defendants here assert the opposite of federal superintendence: "the tribal restricted fee owner retains the full bundle of landowner's rights with one exception: the tribal owner may not alienate the land . . . ." Opp'n at 8.

d. 25 C.F.R. 1.4, 169.9 & 169.10 do not relate to 18 U.S.C. § 1151

Trustee Defendants' cited regulations implement statutes other than 18 U.S.C. § 1151 and do not create Indian country. 25 C.F.R. 1.4 is prescribed by 5 U.S.C. § 301, which relates to Executive department heads generally, and 25 U.S.C. § 2, which broadly concerns "the management of all Indian affairs and all matters arising out of Indian relations." Parts 169.9 and 169.10 are prescribed to administer 25 U.S.C. § 323, which relates to federal authorization to grant rights-of-way over Indian trust or restricted lands. Even where these regulations touch on Indian rights, they apply only to property leased from an Indian owner:

> none of the laws . . . regulating, or controlling the use or development of any real property . . . shall be applicable to any such property ***leased from or held or used under agreement with*** and belonging to any Indian or Indian tribe . . . that is . . . subject to a restriction against alienation imposed by the United States.

25 C.F.R. 1.4(a) (emphasis added). The regulation does not apply to Westwoods at all. *See Cayuga Indian Nation of New York v. Village of Union Springs*, 317 F.Supp.2d 128, n. 16 (N.D.N.Y. 2004) (rejecting Tribe's argument that 25 C.F.R. 1.4 "prohibits state and local regulation" because "the Property is not *leased from* the [Tribe] nor is it *held or used under*

agreement with the [Tribe], but is instead *owned* by the Nation . . . this regulation is inapplicable here"); *accord*, 30 FR 7520 (June 9, 1965).

The plain language of 25 C.F.R. 169.10 states only that a BIA-issued right-of-way "does not diminish" tribal jurisdiction insofar as it otherwise exists. *Id.* As the BIA confirms, 25 C.F.R. 169.10 "does not grant or add any jurisdiction to tribes" as distinct from "not diminish[ing] the tribe's jurisdiction." 80 FR 72504.

3. The United States is not a necessary party under CPLR 1001(a)

The United States is not a necessary party under CPLR 1001(a) because the Town asserts no property interest in Westwoods. Even if Plaintiffs were seeking to enforce zoning regulations (which they are not), zoning violations do not encumber title and, therefore, do not impact any property interest in Westwoods. "[M]arketability of title is concerned with impairments on title to a property, i.e., the right to unencumbered ownership and possession, not with legal public regulation of the use of the property." *Voorheesville Rod & Gun Club, Inc. v. E.W. Tompkins Co.*, 82 N.Y.2d 564, 571, 626 N.E.2d 917, 920 (N.Y. 1993).

4. The Nation is not an indispensable party under CPLR 1001(b)

Plaintiffs' state law and Town Code claims advance no property interest in Westwoods. Trustee Defendants' assertion of federal defenses do not make the Nation an indispensable party under the five factors set out by CPLR 1001(b):

> (1) whether the plaintiff has another effective remedy in case the action is dismissed on account of the nonjoinder; (2) the prejudice which may accrue from the nonjoinder to the defendant or to the person not joined; (3) whether and by whom the prejudice might have been avoided or may in the future be avoided; (4) the feasibility of a protective provision by order of the court or in the judgment; and (5) whether an effective judgment may be rendered in the absence of the person who is not joined.

First, should Plaintiffs prevail on the merits, denying a remedy as to Trustee Defendants would deny any remedy at all. *See Polite*, 225 N.Y.S.3d at 134. *Second*, the risk of prejudice to the Nation from failure to join is outweighed by the presence of the Trustee Defendants, who may raise any argument the Nation would have made. *Third*, the Nation's voluntary absence from this case should not deprive Plaintiffs of any ability to enjoin illegal conduct. *Fourth*, Trustee Defendants have every incentive to advocate for the Nation's interest, the Court has discretion to set conditions or terms on an order for preliminary relief, and the Nation has *chosen* to not participate. *Fifth*, this Court may render an effective judgment, in the absence of the Nation, enjoining the Trustee Defendants from illegal construction of the Travel Plaza on property that is not part of the reservation.

5. Plaintiffs are likely to succeed on the merits, will suffer irreparable harm absent a preliminary injunction, and the balance of the equities favors entry of an injunction

a. Trustee Defendants fail to put forth sufficient evidence to rebut Plaintiffs' evidence that the Travel Plaza poses a risk of irreparable harm

Trustee Defendants mischaracterize the harm of unobserved construction. Compliance with Town Code would have enabled review of myriad safety precautions, including designs of fire lanes, fire protection water supply, alarms and sprinklers, exit signs, extinguishers, electrical panels, and more—matters that invite judgment and discretion. Dkt. 9 at 11-12; Rankin Aff. ¶¶ 18-19. Asserting that construction complies with other standards does not address that discretion or restore the Town's ability to approve in advance work that is already complete. Even assuming identical written standards, there is independent value in the inspection and oversight, else no municipality would ever require physical inspection over self-certification by the owner responsible for the work—particularly where Mr. Wingert limits his testimony to compliance with standards governing fuel storage, but not to construction standards more generally. Dkt 77 ¶ 11.

Whatever the evidence ultimately may show, the existence of a fact dispute is not sufficient to deny a preliminary injunction that seeks to maintain the status quo. *See* CPLR Rule 6312(c); *see Ma v. Lien*, 198 A.D.2d 186, 187, 604 N.Y.S.2d 84, 85 (N.Y. App. Div. 1st Dept. 1993). The same is true with respect to Trustee Defendants' credibility attacks on Janice Scherer. Opp'n at 13.[6]

b. Plaintiffs are likely to succeed on the merits because Trustee Defendants still do not dispute that they are in violation Town Code and State law

Trustee Defendants do not dispute that Plaintiffs are likely to succeed on the merits so long as the Town has jurisdiction over the Nation's restricted fee land. Opp'n at 14. To be sure, Trustee Defendants dispute jurisdiction on the basis of their assertion of aboriginal title, but that just begs the question.[7]

c. The balance of the equities weighs in favor of Plaintiffs

The Nation's "interest in their right to make their own laws and to be governed by them" and their "interest in economic development" are relevant only insofar as Westwoods is assumed to be Indian country. This action is to enforce civil law crafted to protect residents and the traveling

[6] Trustee Defendants misconstrue Plaintiffs' reasoning for not seeking a TRO. As explained at the Feb. 21, 2025 conference, Plaintiffs initially wanted to provide notice and an opportunity to fully brief arguments for the Court's consideration by February 19, 2025. Dkt. 8. Instead, Trustee Defendants chose to engage in self-help to extend their response date, while proceeding to install underground storage tanks for hazardous materials. *Those events* led Plaintiffs to move for the TRO, a portion of which was rendered unnecessary by stipulation. Plaintiffs had not moved for preliminary injunction in April 2024 because it was attempting to balance the relative impact of land clearing, as distinct from heavy construction, with the time necessary for the *Polite* court to clarify the state of the law.

[7] Whether Westwoods does or doesn't meet the definition of "Indian land" under 25 U.S.C. § 2703(4) has no bearing here where gaming operations are not at issue, but as with Trustee Defendants' other arguments, it merely begs the question to assert that the Nation "exercises governmental power" over Westwoods as an element of that test, because its ability to oust Town jurisdiction in favor of Tribal "governmental power" depends entirely on whether Westwoods is Indian country.

public. Trustee Defendants are free to press their claim that generally applicable law should not apply to them, but advancing such a defense should not be a free pass to disregarding standard safety, planning, and oversight measures in the interim.

CONCLUSION

For all the foregoing reasons, Plaintiffs have met their burden of showing that a preliminary injunction is warranted under CPLR 6301, 6311, and Rule 6312, and respectfully request that this Court grant their motion to preliminarily enjoin the Trustee Defendants from their continued illegal construction of the Travel Plaza.

Dated: New York, New York

Date: March 7, 2025

Respectfully submitted,

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CERTIFICATE OF WORD COUNT COMPLIANCE

The undersigned counsel hereby certifies pursuant to Section 202.8-b(e) of the Uniform Rules for the Supreme Court of the State of New York that this document contains 4,142 words (based on the Microsoft word-count function) and complies with the word count limit and page limit of those Rules.

Dated: New York, New York

Date: March 7, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that copies of the foregoing reply memorandum of law in support of Plaintiffs' motion for preliminary injunction and Affirmation of Michael T. Paslavsky in support thereof and accompanying exhibits were filed electronically via NYSCEF, emailed to Trustee Defendants' counsel listed below, and, after electronic filing, subsequently deposited in a first-class postage-paid envelope addressed to counsel at the address below, in an official depository under the exclusive care and custody of the United States Post Office in the State of New York:

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