

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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STATE OF NEW YORK, NEW YORK :
STATE RACING AND WAGERING BOARD, :
NEW YORK STATE DEPT. OF :
ENVIRONMENTAL CONSERVATION, :
and TOWN OF SOUTHAMPTON, :

Plaintiffs, :

– against – :

THE SHINNECOCK INDIAN NATION, :
RANDALL KING, JAMES W. ELEAZER, JR., :
LANCE A. GUMBS and FREDERICK C. BESS, :

Defendants. :

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TOWN OF SOUTHAMPTON, :

Plaintiff, :

– against – :

THE SHINNECOCK TRIBE a/k/a THE :
SHINNECOCK INDIAN NATION, :
RANDALL KING, JAMES W. ELEAZER, JR., :
and LANCE A. GUMBS, :

Defendants. :

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JOSEPH F. BIANCO, District Judge:

These consolidated actions having come on for trial before the Court, the Honorable Joseph F. Bianco, United States District Judge, presiding, and the issues having been tried and a Memorandum and Order constituting the Court’s decision after trial having been filed on October 30, 2007, which is incorporated by reference herein, it is hereby

ORDERED AND ADJUDGED that:

1. Defendant the Shinnecock Indian Nation, the individual defendants acting in an official capacity, and their trustees, officers, agents, servants, employees, representatives, and attorneys, including but not limited to the Shinnecock Nation Gaming Authority, and its trustees, officers, agents, servants, employees, representatives, and attorneys (collectively, the “Shinnecock Indian Nation”), and all persons in active concert or

participation with the Shinnecock Indian Nation who receive actual notice of this judgment by personal service or otherwise, are hereby permanently enjoined and restrained from:

- a. engaging in gambling, or constructing or operating a facility in which it is intended that the conduct of bingo or any other game of chance will occur, including clearing, excavating, grading, regrading, bulldozing, removing trees or other activities preparatory to the construction of such a facility and related facilities, at the property known and hereafter referred to as “Westwoods,” as defined in paragraph 2 below, or any portion thereof, without first:
 - i. in the case of bingo, obtaining a bingo identification number from the New York State Racing and Wagering Board as described in § 435(1)(i) of the New York Executive Law, and bingo license from the Town of Southampton, as described at § 481(1) of the New York General Municipal Law;
 - ii. in the case of other games of chance, obtaining a game of chance identification number from the New York State Racing and Wagering Board, as described at § 188-a(8) of the General Municipal Law, and a license for the conduct of games of chance from the Town of Southampton, as described at § 191(1) of the General Municipal Law;
 - iii. obtaining from the New York State Department of Environmental Conservation (“NYS DEC”), when required by New York State Environmental Conservation Law (“NYECL”), such permits or other written authorizations as are required by the NYECL, including without limitation:
 - (1) in the event that the Shinnecock Indian Nation proposes, in connection with such a facility, construction of any facility that will discharge sewage, treated sewage, or other pollutants or contaminants into the surface or groundwater of the State of New York, a State Pollutant Discharge Elimination System permit, as described at NYECL Article 17, Titles 7 and 8 and 6 N.Y.C.R.R. Parts 750-757.
 - (2) in the event that the Shinnecock Indian Nation proposes, in connection with such a facility, the installation of a groundwater well with an installed pumping capacity in excess of forty-five gallons per minute, a Long Island well permit, as described at NYECL § 15-1527 and 6 N.Y.C.R.R. Part 602;
 - (3) in the event that the Shinnecock Indian Nation proposes, in connection with such a facility, any form of draining, dredging, excavation or removal, either directly or indirectly, of soil, mud,

sand, shells or other aggregate; any form of dumping, filling, or depositing, either directly or indirectly, of any soil, stones, sand, gravel, mud, rubbish, or fill of any kind; the erection of any structures or construction of any facilities or roads, the driving of any pilings or placing of any other obstructions, whether or not changing the ebb and flow of the tide; any form of pollution; any other new activity that directly or indirectly may substantially alter or impair the natural condition or function of any tidal wetland within either of the following areas: (a) the tidal wetlands along the northern boundary of Westwoods, which tidal wetlands extend northward from the mean high water mark on the shore of Great Peconic Bay to the points within the littoral zone at which lands under tidal waters are deeper than six feet at mean low water; or (b) the area from the southern edge of such tidal wetlands southward to the topographical crest of the bluff adjacent to the Great Peconic Bay, in each case located within the portion of Westwoods shown on the Suffolk County Tax Map as District No. 0900, Section 186, Block No. 2, Lot No. 38, a tidal wetlands permit, as described at NYECL Article 25 and 6 N.Y.C.R.R. Part 661; provided that nothing in this subsection (3) shall require a tidal wetlands permit for a use not requiring one under 6 N.Y.C.R.R. § 661.4 or 6 N.Y.C.R.R. § 661.7(a);

- iv. in the event that the Shinnecock Indian Nation proposes, in connection with such a facility, any construction activity that disturbs more than one acre of land at Westwoods, submitting to NYS DEC a Notice of Intent to obtain coverage of General Permit GP 02-01 for Stormwater Discharges from Construction Activity, provided that coverage following such submission is not suspended or denied by the NYS DEC;
- b. clearing, excavating, grading, regrading, bulldozing, removing trees, or engaging in any other work in preparation for the future use of Westwoods or any portion thereof as a facility in which it is intended that the conduct of bingo or any other game of chance will occur, without prior site plan approval or written permission of the Southampton Town Planning Board, as required under Southampton Town Code § 330-184 (I);
- c. erecting, constructing, enlarging, altering, removing, improving, demolishing, converting, or changing the use or nature of the occupancy of any building or structure at Westwoods as a facility in which it is intended that the conduct of bingo or any other game of chance will occur or causing same to be done without first obtaining a building permit from the Town of Southampton, as required under Southampton Town Code § 123-9(A)(1);
- d. clearing, excavating, grading, regrading, bulldozing, removing trees, or engaging in any other work for which a building permit or administrative wetlands permit is

required by § 123-9(A)(2) and/or § 325-6 of the Southampton Town Code, in preparation for the future use of Westwoods or any portion thereof as a facility in which it is intended that the conduct of bingo or any other game of chance will occur, on Westwoods or within 200 feet of a “wetlands boundary” at Westwoods as those terms are defined in § 325-3 of the Southampton Town Code, without first obtaining such required permits;

- e. clearing, excavating, grading, regrading, bulldozing, removing trees, or engaging in any other work in preparation for the future use of Westwoods or any portion thereof as a facility in which it is intended that the conduct of bingo or any other game of chance will occur, unless and until permission to do so first is obtained from the Town of Southampton acting through its authorized instrumentalities and relief is granted by the Town of Southampton acting through its authorized instrumentalities from the restrictions of R-60 zoning under Southampton Town Code § 330-6 and the Table of Use Regulations (Residence Districts) set forth at Southampton Town Code § 330-10; and
 - f. utilizing Westwoods, or any portion thereof, for any use that is identified as a special exception use for properties classified as R-60 zoning districts under Southampton Town Code § 330-6 and the Table of Use Regulations (Residence Districts) set forth at Southampton Town Code § 330-10, in preparation for the future use of Westwoods or any portion thereof as a facility in which it is intended that the conduct of bingo or any other game of chance will occur, without first obtaining to the extent required by law a special exception use permit from the Town of Southampton Planning Board.
2. “Westwoods” is a parcel of land approximately 80 acres in total area, located in the Hampton Bays area of the Town of Southampton, New York, and consists of the following three tax lots: (i) Suffolk County Tax Map, District No. 0900, Section 186, Block No. 2, Lot No. 38; (ii) Suffolk County Tax Map, District No. 0900, Section 187, Block No. 2, Lot No. 78; and (iii) Suffolk County Tax Map, District No. 0900, Section 207, Block No. 1, Lot No. 1.
 3. The reasons for issuance of this permanent injunction, required by Federal Rule of Civil Procedure 65(d), are contained and set forth in this Court’s Memorandum and Order filed on October 30, 2007, which is incorporated in this permanent injunction by reference.
 4. From and after the entry of this permanent injunction, the preliminary injunction heretofore entered in Civil Action No. 03 Civ. 3243 shall be dissolved and shall cease to have any force or effect.

AND IT IS FURTHER DECLARED, ADJUDGED, AND DECREED, pursuant to 28 U.S.C. § 2201, that

- A. The Shinnecock Indian Nation’s aboriginal title to Westwoods was extinguished in the 17th century.

- B. Westwoods is not an Indian reservation under the jurisdiction of the United States government and has never been set aside and superintended by the United States government.
- C. The Shinnecock Indian Nation does not appear on the list of “tribal entities recognized and eligible for funding and services from the United States Bureau of Indian Affairs by virtue of their status as Indian tribes” as most recently published by the Department of the Interior in the Federal Register.
- D. At present, the Shinnecock Indian Tribe is not an “Indian Tribe,” as defined in the Indian Gaming Regulatory Act, 25 U.S.C. § 2703(5).
- E. Westwoods is not “Indian Lands,” as defined by the Indian Gaming Regulatory Act, 25 U.S.C. § 2703(4).
- F. Westwoods is not “Indian Country,” as defined by 18 U.S.C. § 1151.
- G. The Shinnecock Indian Nation is the owner of Westwoods and has fee simple title to Westwoods.
- H. The Shinnecock Indian Nation is not an “authorized organization” under either New York General Municipal Law §§ 186(4) or 476(4) and does not qualify to be licensed to conduct bingo or “games of chance” under New York General Municipal Law §§ 191(a) or 481, respectively, and any gaming activity conducted at Westwoods by the Shinnecock Indian Nation would constitute gaming for profit in New York that would violate New York’s criminal laws and is against public policy pursuant to New York General Municipal Law §§ 189(14), 195-k, 479.9, 495-a, and New York Penal Law § 225.30.
- I. The Shinnecock Indian Nation is subject to the application of New York State and Town of Southampton laws, statutes, ordinances, and regulations in connection with any use or development of Westwoods, including but not limited to the development and operation of a gaming facility.
- J. The Shinnecock Indian Nation may not invoke sovereign immunity from New York State and/or Town of Southampton laws, statutes, ordinances, and regulations in connection with any use or development of Westwoods, including but not limited to the development and operation of a gaming facility, and/or any suit, action, proceeding, or claim of the State of New York and/or the Town of Southampton, seeking enforcement and/or enjoining violations of such laws, statutes, ordinances, and regulations, in connection with any such use or development.
- K. The Shinnecock Indian Nation violated Southampton Town Code § 330-184(I) by failing to apply for and receive site plan approval or written permission of the Southampton Planning Board before engaging in the following activities at Westwoods in July 2003: clearing of land, removal of trees, grading, regrading, bulldozing, and/or excavating (the

“site preparation activities”).

- L. The Shinnecock Indian Nation violated Southampton Town Code § 123-9 by failing to obtain a building permit from the Town of Southampton prior to engaging in the aforementioned site preparation activities in July 2003.
- M. The Shinnecock Indian Nation’s use of Westwoods as a site for the conduct of gambling or games of chance would violate Southampton Town Code §§ 330-6 and 330-10.
- N. The northern tax lot of Westwoods (Suffolk County Tax Map, District No. 0900, Section 186, Block No. 2, Lot No. 38) contains or lies adjacent to wetlands that are regulated as wetlands under Chapter 325 of the Southampton Town Code.
- O. Any construction or development on “wetlands” located on Westwoods or within 200 feet of a “wetlands boundary” at Westwoods, as those terms are defined in § 325-3 of the Southampton Town Code, would implicate Chapter 325 of the Southampton Town Code.

AND IT IS FURTHER ORDERED, that this is the final judgment of this Court, these consolidated actions are closed, and the Clerk of the United States District Court for the Eastern District of New York shall enter this final judgment in the Civil Docket of the United States District Court for the Eastern District of New York.

SO ORDERED.

JOSEPH F. BIANCO
UNITED STATES DISTRICT JUDGE

Dated: February 12, 2008
Central Islip, New York