

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN  
GREEN BAY DIVISION**

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VILLAGE OF HOBART, WISCONSIN,

Plaintiff,

v.

UNITED STATES DEPARTMENT  
OF THE INTERIOR,

DEB HAALAND, in her official capacity as  
United States Secretary of the Interior,

Case No. 23-cv-1511

BUREAU OF INDIAN AFFAIRS,

TAMMIE POITRA, in her official capacity as  
the Midwest Regional Director,  
Bureau of Indian Affairs,

ACTING MIDWEST REGIONAL DIRECTOR,  
Bureau of Indian Affairs, and

INTERIOR BOARD OF INDIAN APPEALS,

Defendants.

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**ANSWER OF ONEIDA NATION**

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Plaintiff Village of Hobart (the “Village”) invokes this Court’s jurisdiction to make claims against the United States that are distinctly prejudicial to the governmental and property interests of Defendant-Intervenor Oneida Nation (the “Nation”), that the Village has lost against the Nation in other contexts, that have been uniformly rejected when made against the United States and/or Indian tribes in other district courts and federal circuit courts of appeal, or that the

Village lacks standing to assert.

Pursuant to Federal Rule of Civil Procedure 8(b) and Civil L.R. 10(b), the Nation responds to the allegations in each corresponding paragraph of the Village's Complaint (ECF No. 1) as set forth below. The headings correspond to those used in the Complaint and reflect the Village's characterization of its claims.

1. The Nation admits the allegations, except that *Hobart II* denominates Defendant-Intervenor Oneida Nation as the "Nation."

2. The Nation admits the allegations, and alleges the eight properties at issue (the "Parcels"), consisting of 21 tax parcels, are located within the exterior boundaries of the Oneida Indian Reservation (the "Reservation"), and are owned in fee by the Nation.

3. The Nation admits the Bureau of Indian Affairs (BIA) processed and approved fee-to-trust applications (the "Applications") submitted by the Nation for the Parcels; denies the Nation paid the salaries of the BIA employees who processed the Applications; alleges the Nation and other Indian tribes entered into a Memorandum of Understanding (the "Midwest MOU") with the Midwest Regional Office of the BIA under which the Nation and the other Indian Tribes re-program federal funding for the Tribes in order to fund employment positions within the Midwest Regional Office to process the fee-to-trust applications of the Midwest MOU Tribes; alleges the persons who hold the employment positions funded under the Midwest MOU are federal employees subject to Title 5 of the United States Code; and denies the actions of Defendants were in any way biased or unconstitutional.

4. The Nation admits the Complaint arises from the actions of the Regional Director and the Acting Regional Director (collectively, the "Regional Director") to approve the

Applications; denies that the Regional Director abused her discretion; denies the Regional Director or the Interior Board of Indian Appeals (the “IBIA”) failed to consider the cumulative effects of all tax revenue losses resulting from the removal the Parcels from the tax rolls, failed to consider and respond to jurisdictional issues, or failed to properly analyze environmental concerns; and denies the IBIA erred in *Hobart II*.

5. The Nation admits the Complaint challenges the constitutionality of Indian Reorganization Act (the “IRA”) and 25 C.F.R. § 1.4; denies either the IRA or 25 C.F.R. § 1.4 are unconstitutional; alleges the IRA, at 25 U.S.C. § 5108, validly authorizes the Secretary of the Interior to acquire land in trust for Indians; alleges 25 C.F.R. § 1.4 affirms the continuing applicability of the federal common law rules of pre-emption with respect to trust land leased to third parties or otherwise held or used by third parties; and admits the IBIA lacks jurisdiction to determine the constitutionality of laws or regulations.

6. The Nation denies the allegations.

#### **JURISDICTION AND VENUE**

7. The Nation admits the allegations.

8. The Nation admits the allegations.

9. The Nation admits the allegations.

10. The Nation admits the allegations.

#### **PARTIES**

11. The Nation admits the Village is a political subdivision of the State of Wisconsin; admits the Parcels lie within the boundaries of the Village; admits the Village has authority to levy real property taxes against the Parcels until they are placed into trust; alleges the Parcels are

owned in fee by the Nation and are located within the boundaries of the Reservation; alleges the Village lacks jurisdiction over the Parcels while held in fee by the Nation absent congressional authorization or exceptional circumstances, neither of which has been alleged by the Village; alleges the Village is bound by the court's judgment in *Oneida Nation vs. Village of Hobart*, 968 F.3d 664 (7th Cir. 2020), holding the Village generally lacks jurisdiction over the Nation's fee and trust lands on the Reservation and specifically the Village's special event ordinance is inapplicable to the Nation and its fee and trust lands located on the Reservation; admits the Village is a local government within the meaning of that term as used in 25 C.F.R. § 151.10; denies the Defendants' actions to accept the Parcels in trust create a checkerboard pattern of jurisdiction or strip the Village of jurisdiction over the Parcels; and admits the Village will lack authority to levy real property taxes against the Parcels after they are accepted in trust.

12. The Nation admits the allegations.

13. The Nation admits the allegations.

14. The Nation admits the BIA is a federal agency within the United States Department of the Interior (DOI); admits the BIA approved the Applications to have the Parcels acquired in trust; and alleges the IRA, at 25 U.S.C. § 5108, authorizes the Secretary of the Interior to acquire land in trust for Indians and the Secretary has delegated this authority to the BIA.

15. The Nation admits Tammie Poitra is currently the Midwest Regional Director of the BIA, and admits the Regional Director holds authority to and did authorize the acceptance of the Parcels into trust, whether under the signature of an acting or appointed Regional Director.

16. The Nation admits that on January 19, 2017, the then-Acting Midwest Regional Director issued a Notice of Decision (NOD) to accept the Parcels into trust status; denies that “Acting Regional Director” is a permanent office within the BIA that is vacant; alleges that, in the event the permanent office of Midwest Regional Director is vacant, an official acting in that capacity is authorized to perform the functions of that office; and denies that decisions that are part of *Hobart II* are adverse in the abstract.

17. The Nation admits the IBIA is an appellate review body within the Department of the Interior, Thomas A. Blaser is the Chief Administrative Judge of the IBIA, and Kenneth A. Dalton and James A. Maysonett are Administrative Judges of the IBIA. The Nation denies the IBIA authorized the acceptance of the Parcels into trust, inasmuch as the IBIA only has authority to review appeals from decisions made by officials holding delegated authority to make such decisions.

### **GENERAL ALLEGATIONS**

18. The Nation admits it adopted 27 resolutions on April 12, 2006, requesting the BIA to accept land in the Village into trust, and alleges the Nation adopted the following eight resolutions on that date regarding the Parcels that are the subject of the Complaint: BC Resolution No. 4-12-06-N (Boyea Property); BC Resolution No. 4-12-06-Q (Buck Property); BC Resolution No. 4-12-06-R (Calaway Property); BC Resolution No. 4-12-06-S (Catlin Property); BC Resolution No. 4-12-06-U (Cornish Property); BC Resolution No. 4-12-06-Y (DeRuyter Property); BC Resolution No. 4-12-06-Z (Gerbers Property); and BC Resolution No. 4-12-06-FF (Lahay Property). On January 31, 2007, the Nation adopted BC Resolution No. 1-31-07-C correcting the stated use of the Calaway Property.

19. The Nation admits submitting two fee-to-trust applications to the BIA in 2007 for parcels located in the Village; alleges the precise number of such applications varies, depending on how the applications are grouped at different stages of the administrative process; and alleges that only the eight Parcels, consisting of 21 separate tax parcels and approximately 499 acres, are relevant as being the subject of the Complaint.

20. The Nation admits the Regional Director issued six NODs in 2010 to acquire the Parcels in trust; and alleges the Regional Director issued the NODs with respect to the Parcels on March 17, 2010 (Boyea Property), March 17, 2010 (Cornish Property), May 5, 2010 (Gerbers Property), July 8, 2010 (Buck Property), August 16, 2010 (Catlin, Calaway and DeRuyter Properties), and November 23, 2010 (Lahay Property).

### ***Hobart I***

21. The Nation admits the allegations.

22. The Nation admits the IBIA issued a decision on May 9, 2013 (*Hobart I*); admits the IBIA determined the Regional Director has authority to acquire the Parcels in trust for the Nation pursuant to the IRA; denies the IBIA declined to consider the constitutionality of the IRA; and alleges the IBIA determined it did not possess jurisdiction to rule on the Village's constitutional challenges.

23. The Nation admits the IBIA remanded the NODs for further consideration by the BIA; denies the IBIA vacated the NODs; alleges the IBIA consolidated the NODs, affirmed each of the NODs in part, and vacated each of them in part; and admits the IBIA concluded the Regional Director did not give adequate consideration to the Village's claims regarding tax loss, potential land use conflicts, and alleged jurisdictional problems.

24. The Nation admits the IBIA concluded the Regional Director should consider the Village's allegations of bias in the first instance on remand; alleges the IBIA otherwise rejected the Village's procedural challenges to the Applications; and denies the IBIA characterized the Village's allegations of bias as relating to the constitutionality of the Regional Director's decision to accept the Parcels into trust.

25. The Nation admits the allegations.

26. The Nation admits the allegation.

**Midwest Division of Fee-to-trust — Memorandum of Understanding between  
Midwest Regional Office Bureau of Indian Affairs and Consortium Tribes**

27. The Nation admits the Village claimed in its briefs on appeal before the IBIA that the January 19, 2017 NOD should be vacated and remanded because the NOD was allegedly the product of bias due to the Midwest MOU. The Nation lacks knowledge or information sufficient to form a belief as to whether the Village otherwise communicated its allegations of bias to the IBIA, and therefore denies the Village otherwise "informed" the IBIA. The Nation denies that the January 19, 2017 NOD was the product of bias due to the Midwest MOU.

28. The Nation admits the quoted sentence fragments appear in the Midwest MOU and in the Village's briefs on appeal before the IBIA. The Nation lacks knowledge or information sufficient to form a belief as to whether the Village otherwise communicated with the IBIA regarding the quoted language, and therefore denies the Village otherwise "informed" the IBIA.

29. The Nation admits the allegation.

30. The Nation denies salaries of Division employees are paid by funds generated by the Nation's enterprises; alleges the Nation and other participating Tribes reprogram funds they

are entitled to receive from the federal government in order to fund employment positions within the Midwest Regional Office; alleges the Division employees are federal employees under Title 5 of the United States Code, as are all other employees of the Midwest Regional Office of the BIA; denies the Division employees' "sole duties and responsibilities" benefit the Nation and the other participating Tribes; and denies the Midwest MOU describes the reprogramming of federal funding as a "pay-to-play" structure.

31. The Nation admits the allegations.

32. The Nation admits the allegations, and alleges the Midwest MOU further specifies Division employees are "responsible for assuring that each request for trust acquisition shall fulfill completely all of the administrative requirements of 25 CFR Part 151 for the request under consideration."

33. The Nation admits the allegations, and alleges the stated subject of the Inspector General (IG) report is the "California Fee to Trust Consortium," also referred to as the "Pacific Regional Officer Memorandum of Understanding" or "PRO MOU."

34. The Nation admits the quoted sentence fragments appear in the IG Report, denies the Midwest MOU is the subject of the IG Report, alleges the PRO MOU is the stated subject of the IG Report, and alleges the IG report documents differences between the PRO MOU and the Midwest MOU.

35. The Nation admits the quoted sentence fragments appear in the IG Report, denies the quoted sentence fragments pertain to the Midwest MOU, alleges the quoted sentence fragments pertain to the PRO MOU, and denies the IG Report documented that Midwest Regional Office employees felt they worked directly for tribes.

36. The Nation admits the IBIA in *Hobart I* directed the Regional Director to address the outcome of the IG investigation and its relevance, if any, to the Village's allegations of bias; alleges Regional Director on remand considered the outcome of the IG Report and concluded it had no bearing on the Village's allegations of bias because the IG Report found no instances of actual bias, centered on the terms of the PRO MOU then in use, and considered MOUs which had long since expired and been replaced by restructured MOUs. The Nation lacks knowledge or information as to whether the Village otherwise communicated its complaints regarding the Regional Directors review of the IG report to the IBIA, and therefore denies the Village otherwise "informed" the IBIA.

37. The Nation admits the quoted language and sentence fragments appear in the IG Report without italics supplied by the Village; denies the Defendants failed to consider the quoted language and sentence fragments; and denies any findings in the IG report regarding the appearance of a conflict of interest or the appearance of unfairness are sufficient to overcome the presumption of regularity in the Defendant's decision-making.

38. The Nation admits the Village's brief on appeal before the IBIA contained allegations about several communications by Midwest Regional employees hired under the Midwest MOU, denies such communications substantiate the Village's allegations of bias and prejudgment, and denies the communications attached as Exhibit F to the Complaint substantiate the Village's allegations of bias and prejudgment. The Nation lacks knowledge or information as to whether the Village otherwise communicated its allegations of substantiated claims of bias and prejudgment and, therefore, denies that the Village otherwise "noted" such allegations to the IBIA.

39. The Nation admits it periodically publishes the number and the acreage of trust acquisitions made by the United States on its behalf; otherwise denies the allegations regarding its public communications, and alleges that data published by the Nation since 2008 does not include trust acquisitions within the boundaries of the Village because the United States has not accepted land located in the Village in trust since 2008. The Nation lacks knowledge and information sufficient to form a belief as to “boasts” allegedly made by Midwest Regional Office employees, and therefore denies the allegations.

**25 C.F.R. • 151.10 Factors,  
Including Tax Impacts and Jurisdictional Conflicts**

40. The Nation admits that the Village’s briefs on appeal before the IBIA contain allegations the Regional Director should consider the cumulative effect of all tax revenue loss on all lands within the Village; alleges the Regional Director considered the cumulative effect of all tax revenue loss with respect to the Parcels in the NOD issued on January 19, 2017; denies the Regional Director, when evaluating a specific fee-to-trust application or consolidated NODs, is required to consider the cumulative tax loss which might result from potential future trust acquisitions. The Nation lacks knowledge and information sufficient to form a belief as to whether the Village otherwise communicated its allegations about potential cumulative tax losses to the IBIA, and therefore denies the Village otherwise “informed” the IBIA.

41. The Nation admits the Village’s briefs on appeal to the IBIA contain the quoted sentence fragment and sentence from the Beacon Hill Institute study. The Nation lacks sufficient knowledge and information as to how the Beacon Hill Institute tabulated the number of then-pending fee-to-trust applications, and denies there were 133 pending applications in 2009. The Nation alleges the Village commissioned the Beacon Hill Institute to prepare and issue the study,

and the study's conclusions do not take into account either the limiting factor the Nation can only purchase lands that are available for sale on the open market or a possible service agreement as an alternative source of revenue for the Village. The Nation lacks knowledge and information sufficient to form a belief as to whether the Village otherwise communicated the contents of the study to the IBIA, and therefore denies the Village otherwise "informed" the IBIA.

42. The Nation admits the study contains the statements referenced.

43. The Nation admits it has stated various aspirations regarding the reacquisition of ownership of land within its Reservation and placement of the land in trust, including the Oneida Land Division's goal of reacquiring land located within the boundaries of the Reservation created in the 1838 treaty, a plan formulated by the Oneida Land Division to reacquire 75% of the Reservation, a goal set by the Oneida General Tribal Council to reacquire all property within the Reservation, and a plan formulated by the Oneida Land Division to reacquire 50% of the Reservation by 2020. The Nation alleges its ability to fulfill such aspirational goals is limited by the fact it can only purchase land from willing sellers; denies such aspirational goals affect the legality or appropriateness of the United States' acceptance of the Parcels in trust under the IRA and 25 C.F.R. Part 151 or are otherwise relevant to acceptance of the Parcels in trust.

44. The Nation admits the Regional Director has not rejected a fee-to-trust application submitted by the Nation since 2008, and alleges no lands located within the Village have been placed in trust since 2008.

45. The Nation admits it currently has no legal obligation to make payments in lieu of taxes to the Village with respect to lands located in the Village which are held in trust by the United States. The Nation alleges it was previously obligated under a Service Agreement

between the Nation and the Village to make annual payments to the Village to offset the cost of services provided to trust lands; the term of the Service Agreement commenced on November 16, 2004, and expired on November 16, 2007; during this time period, the Village received a total of \$491,694.00 in payments from the Nation. The Nation further alleges it has indicated it “will enter into service agreement negotiations if the Village of Hobart recognizes the [Nation] as a government organized pursuant to federal law with inherent authority to regulate its members and its land on the Oneida Reservation,” and the Village has not taken any steps to renew the Service Agreement or to enter into a new service agreement with the Nation.

46. The allegations are vague as to taxes paid and pending fee-to-trust applications, and the Nation lacks sufficient knowledge and information as to how the Village determined which applications are pending and the amount of taxes paid, and on that basis denies the allegations. The Nation alleges the number of pending trust applications varies over time as applications may lapse or be withdrawn, various taxing authorities assess taxes and other charges against fee land, and the Village cannot demonstrated a concrete or particularized injury with respect to taxes and charges paid to other taxing authorities and lacks standing to assert the interests of any other taxing authorities. The Nation denies the relevance of any taxes paid for parcels other than the Parcels and the relevance of taxes paid to other taxing authorities.

47. The Nation lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore denies the allegations. The Nation alleges the Village expends a large portion of its annual budget on legal expenses over land use disputes with the Nation, which revenues would otherwise be available to fund Village services; and further alleges the Village placed its expenditure for such expenses at \$310,000 in fiscal year 2009.

48. The Nation admits the Village's briefs on appeal before the IBIA included complaints regarding the loss of tax revenue, and alleges the Regional Director considered the amount of taxes assessed by the Village with respect to the Parcels, the fact the Nation enters into services agreements with other municipalities to offset the cost of services provided to trust lands, and the fact the Village does not currently have a service agreement with the Nation. The Nation lacks knowledge and information sufficient to form a belief as to whether the Village otherwise communicated its complaints regarding the loss of tax revenue to the IBIA, and therefore denies the Village otherwise "informed" the IBIA.

49. The Nation admits the Village's briefs on appeal before the IBIA contained complaints regarding the Regional Director's consideration of jurisdictional concerns and claims regarding a checkerboard pattern, and alleges the Regional Director considered the Village's jurisdictional concerns and the existing checkerboard pattern of jurisdiction on the Reservation, and concluded a service agreement is the best mechanism to address such concerns. The Nation lacks knowledge and information sufficient to form a belief as to whether the Village otherwise communicated its jurisdictional concerns to the IBIA, and therefore denies the Village otherwise "informed" the IBIA.

50. The Nation admits that the Village identified the stated concerns in its letters to the Regional Director and in its briefs on appeal before the IBIA, and alleges the Village's stated concerns were unsupported and hypothetical, the Regional Director and the IBIA considered the Village's stated concerns with respect to the Parcels, and the Regional Director concluded a service agreement between the Village and the Nation is the best mechanism to address such concerns. The Nation denies the stated concerns warrant denial of the Applications. The Nation

alleges the Village is barred by *Oneida Tribe of Indians v. Village of Hobart*, 732 F.3d 837 (7th Cir. 2013), from alleging jurisdictional conflicts regarding its stormwater management programs.

51. The Nation admits the Village made allegations about environmental concerns and compliance with environmental laws in its letters to the Regional Director and its briefs on appeal before the IBIA, and denies the allegations. The Nation alleges the Village's allegations were based in part upon misstatements regarding the applicable environmental laws, regulations and policies; the Regional Director and the Interior Board of Indian Appeals considered the Village's allegations; and the allegations do not warrant denial of the Nation's Applications for the Parcels. The Nation further alleges the Village cannot demonstrate a concrete or particularized injury respecting any potential liability of the United States for environmental conditions on land it might acquire in trust and lacks standing to assert the interests of the United States in this regard.

### ***Hobart II***

52. The Nation admits the allegations.

53. The Nation admits the IBIA rejected the Village's contentions.

54. The Nation admits the IBIA rejected the Village's contentions.

55. The Nation admits the IBIA rejected the Village's assertion.

56. The Nation admits the IBIA rejected the Village's argument regarding the IG report, and denies the Regional Director failed to address the findings of the IG report, or engaged in a cursory review of the IG report.

57. The Nation admits the IBIA rejected the Village's contention.

58. The Nation admits the allegations.

**COUNT I**  
**CONSTITUTIONALITY OF 25 U.S.C. § 5108**

59. The Nation realleges and incorporates by reference each and every one of the foregoing paragraphs as if fully set out herein.

60. The Nation denies the allegation.

61. The Nation denies the allegations.

62. The Nation denies the allegations.

**COUNT II**  
**CONSTITUTIONALITY OF 25 U.S.C. § 5108**

63. The Nation realleges and incorporates by reference each and every one of the foregoing paragraphs as if fully set out herein.

64. The Nation denies the allegations.

65. The Nation denies the allegations.

66. The Nation denies the allegations.

67. The Nation denies the allegations.

**COUNT III**  
**CONSTITUTIONALITY OF 25 U.S.C. § 5108**

68. The Nation realleges and incorporates by reference each and every one of the foregoing paragraphs as if fully set out herein.

69. The Nation denies the allegations, and alleges Article 1, Section 8, Clause 17 of the United States Constitution authorizes Congress “[T]o exercise exclusive Legislation in all Cases whatsoever...over all Places purchased by Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards and other needful Buildings...” The Nation alleges the clause requires only state consent to the creation of federal

enclaves and the Village cannot demonstrate a concrete and particularized injury under the clause, and the Village lacks standing to assert the rights of the State of Wisconsin or any other State thereunder.

70. The Nation denies the allegations.

71. The Nation denies the allegations.

**COUNT IV  
CONSTITUTIONALITY OF 25 U.S.C. § 5108**

72. The Nation realleges and incorporates by reference each and every one of the foregoing paragraphs as if fully set out herein.

73. The Nation denies the allegations, and alleges the Tenth Amendment to the United States Constitution provides, “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” The Nation alleges the Village cannot demonstrate a concrete and particularized injury under the Tenth Amendment and lacks standing to assert the rights of the State of Wisconsin or any other State thereunder.

74. The Nation denies the allegations.

75. The Nation denies the allegations.

**COUNT V  
CONSTITUTIONALITY OF 25 U.S.C. § 5108**

76. The Nation realleges and incorporates by reference each and every one of the foregoing paragraphs as if fully set forth herein.

77. The Nation denies the allegations, and alleges the Village cannot demonstrate a concrete or particularized injury to any rights held by non-Indians and lacks standing to assert

the rights of non-Indians who live on or pass through land accepted into trust or the rights of any other persons.

78. The Nation denies the allegations.

79. The Nation denies the allegations, and alleges that the rights alleged are those of individual non-Indians, the Village cannot demonstrate a concrete and particularized injury under the 5th or 14th Amendments to the United States Constitution, and lacks standing to assert the privileges and immunities of non-Indian citizens.

**COUNT VI  
CONSTITUTIONALITY OF 25 U.S.C. § 5108**

80. The Nation realleges and incorporates by reference each and every one of the foregoing paragraphs as if fully set forth herein.

81. The Nation denies “Article 3, Section 4” of the United States Constitution guarantees every State a republican form of government, and alleges Article IV, Section 4 of the United States Constitution provides, “The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on the Application of the Legislature, of the Executive (when the Legislature cannot be convened) against domestic violence.”

82. The Nation denies the allegation.

83. The Nation admits the Village lacks authority to tax trust lands, denies the Village possesses authority to regulate the Parcels under Article IV, Section 4 of the United States Constitution or otherwise, and denies acceptance of the Parcels in trust will deprive the Village of authority to regulate the Parcels inasmuch as the Village lacks authority to regulate fee land owned by the Nation on the Reservation under federal common law, absent congressional

authorization or exceptional circumstances, neither of which has been alleged by the Village.

84. The Nation denies the allegations, and alleges the guarantee of a republican form of government extends to States, the Village cannot demonstrate a concrete or particularized injury thereunder, and the Village lacks standing to assert the rights of the State of Wisconsin or any other State under Article IV, Section 4, of the United States Constitution.

85. The Nation denies the allegations.

86. The Nation denies the allegations.

#### **COUNT VII CONSTITUTIONALITY OF 25 C.F.R. § 1.4**

87. The Nation realleges and incorporates by reference each and every one of the foregoing paragraphs as if fully set out herein.

88. The Nation admits the quoted language appears in 25 C.F.R. § 1.4.

89. The Nation denies the Village loses jurisdictional control over the subject Parcels as a result of 25 C.F.R. § 1.4, and denies that Defendants interpret the regulation to have that effect. The Nation alleges that, under established principles of federal common law, the Village lacks jurisdictional control over fee lands owned by the Nation on the Reservation, including the Parcels, absent congressional authorization or exceptional circumstances, neither of which has been alleged. The Nation further alleges the Village is bound by the judgment in *Oneida Nation vs. Village of Hobart*, 968 F.3d 664 (7th Cir. 2020), in which the Seventh Circuit, applying the established principles of federal common law, determined the Village lacks jurisdiction to impose its special event ordinance on fee land owned by the Nation on the Reservation and, as a consequence, lacks jurisdictional control over the Parcels as well.

90. The Nation denies the allegations.

91. The Nation denies the allegations.

92. The Nation admits the allegations, and alleges 25 C.F.R. § 1.4 affirms the continuing applicability of the established principles of federal common law to trust land which has been leased to third parties or is held or used by third parties under an agreement with an Indian tribe.

93. The Nation denies 25 C.F.R. § 1.4 is unconstitutional, denies 25 C.F.R. § 1.4 violates the Village's rights, and denies Defendants are required to satisfy the requirements of 25 C.F.R. § 1.4 for any purpose or reason related to acceptance of the Parcels in trust.

94. The Nation denies the allegations.

#### **COUNT VIII DUE PROCESS VIOLATIONS**

95. The Nation realleges and incorporates by reference each and every one of the foregoing paragraphs as if fully set out herein.

96. The allegations characterize rights guaranteed by provisions of the United States Constitution, which provisions are the best evidence of the content. To the extent that an answer is required, the Nation denies the allegations.

97. The Nation denies the allegations.

98. The Nation denies the allegations.

99. The Nation denies the allegations.

100. The Nation denies the allegation.

101. The Nation denies the allegation.

102. The Nation denies the allegation.

**COUNT IX**  
**ADMINISTRATIVE PROCEDURE ACT VIOLATIONS**

103. The Nation realleges and incorporates by reference each and every one of the foregoing paragraphs as if fully set out herein.

104. The Nation admits the allegations.

105. The Nation admits the Regional Director oversees the implementation of the Midwest MOU, admits Division employees assist in drafting decisions to acquire land in trust, admits the Defendants did not require the Nation to submit new fee-to-trust applications after the NODs were affirmed in part and vacated in part in *Hobart I*, and otherwise denies the allegations.

106. The Nation denies the allegations.

107. The Nation denies the allegations.

108. The Nation denies the allegations.

**PRAYER FOR RELIEF**

The remaining paragraphs of the Complaint, beginning with the word “Wherefore,” consist of a prayer for relief, to which no response is required. To the extent that the statements are deemed to be factual allegations, the Nation denies the allegations. The Nation denies the Village is entitled to the requested relief or any relief whatsoever.

**AFFIRMATIVE DEFENSE I**  
**PRECLUSIVE EFFECT OF ONEIDA NATION v. VILLAGE OF HOBART, 968 F.3d 664**  
**(7th Cir. 2020)**

1. The Nation and Village were Plaintiff and Defendant, respectively, in an action titled *Oneida Nation v. Village of Hobart*, 968 F.3d 664 (7th Cir. 2020) (the “Big Apple Fest Case”), which was vigorously contested in this Court and appealed to the United States Court of

Appeals for the Seventh Circuit.

2. In the Big Apple Fest Case, the Village asserted it had jurisdiction to impose its special event permitting ordinance with respect to the Nation's use of its fee and trust lands located within the boundaries of the Reservation. Among other things, the Village contested in its pleadings whether the boundaries of the Reservation remained intact and land within the boundaries of the Reservation constituted Indian Country for jurisdictional purposes, whether the Nation was under federal jurisdiction within the meaning of the IRA so as to be eligible for the fee-to-trust administrative process, and whether the Village may exercise jurisdiction over the Reservation even if it constitutes Indian Country.

3. This Court entered judgment that the Reservation had been diminished, that fee land owned by the Nation on the Reservation no longer constituted Indian Country and was subject to the Village's jurisdictional authority, and that lands held in trust by the United States for the Nation under authority of the IRA were immune from Village jurisdictional authority. 371 F. Supp. 3d 500, *rev'd in part*, 968 F.3d 664.

4. The Nation appealed this Court's judgment regarding diminishment of the Reservation and the Village's claimed jurisdictional authority over the Nation's fee land on the Reservation. The Village did not cross-appeal the judgment that the Village lacked jurisdictional authority over trust land on the Reservation.

5. The Seventh Circuit reversed the judgment regarding diminishment of the Reservation, holding that the Reservation remained intact and all parcels within the boundaries of the Reservation constitute Indian Country for jurisdictional purposes. 968 F.3d at 685. The Seventh Circuit further held that, under applicable principles of federal common law, the Nation,

its fee land, and its trust land, are immune from the Village's jurisdictional authority absent congressional consent or the presence of extraordinary circumstances. *Id.* at 688-89.

6. In its Complaint, the Village again alleges the Nation was not under federal jurisdiction within the meaning of the IRA and, hence, is ineligible for the administrative fee-to-trust process. The Village raised this issue in the Big Apple Fest Case, it was litigated by the parties, and this Court's determination on the issue was essential to the judgment that the Nation's trust land constituted Indian Country and was immune from Village regulation as such. The Village was a fully represented party, is bound by the judgment in the Big Apple Fest Case, and is precluded from relitigating the issue whether the Nation was under federal jurisdiction within the meaning of the IRA and eligible for the administrative fee-to-trust process.

7. In its Complaint, the Village again alleges it holds jurisdictional authority over the Nation's fee land on the Reservation, at least unless and until such land is placed into trust. The Village raised this issue in the Big Apple Fest case, it was litigated by the parties, and the Seventh Circuit's determination of the issue was essential to the judgment that the Village lacked jurisdictional authority over the Nation's fee land on the Reservation absent congressional consent or the presence of exceptional circumstances. The Village was a fully represented party, is bound by the judgment in the Big Apple Fest Case, and is precluded from relitigating whether it has jurisdictional authority over the Nation's fee land on the Reservation.

8. The Village is bound by the judgment in the Big Apple Fest Case and is barred from relitigating claims with respect to its alleged authority over fee and trust land on the Reservation which it raised or could have raised in the Big Apple Fest Case, including its claim that it possesses jurisdiction over the Nation's fee land on the Reservation.

**AFFIRMATIVE DEFENSE II**  
**PRECLUSIVE EFFECT OF ONEIDA TRIBE OF INDIANS v. VILLAGE OF HOBART,**  
**732 F.3d 837 (7th Cir. 2013)**

1. The Nation and Village were Plaintiff and Defendant, respectively, and the United States was Third-Party Defendant, in an action titled *Oneida Tribe of Indians v. Village of Hobart*, 732 F.3d 837 (7th Cir. 2013) (the “Stormwater Case”), which was vigorously contested in this Court, appealed to the United States Court of Appeals for the Seventh Circuit, and review on certiorari denied by the United States Supreme Court.

2. In the Stormwater Case, the Village asserted it had jurisdiction to impose its stormwater charges on the Nation’s trust land located within the boundaries of the Reservation. Among other things, the Village pleaded as an affirmative defense that the Oneida Tribe of Indians (now Nation) was not under federal jurisdiction within the meaning of the IRA so as to be eligible for the fee-to-trust administrative process, and the Village asserted it may regulate stormwater on the Nation’s trust land within the Reservation under alleged congressional authorization to do so.

3. The Nation moved to strike the Village’s affirmative defenses regarding the Nation’s eligibility under the IRA as under federal jurisdiction and the unconstitutionality of the IRA for various reasons. This Court denied the motion to strike. On the Nation’s motion for summary judgment, the Court entered judgment that the Village lacked authority to regulate stormwater on the Nation’s trust land within the Reservation, effectively rejecting the Village’s affirmative defenses and explicitly rejecting the Village’s claimed congressional authority to regulate stormwater as lacking necessary congressional consent. 891 F. Supp.2d 1058, *aff’d*, 732 F.3d 837.

4. The Village appealed this Court's judgment regarding the Village's lack of authority to regulate stormwater on the Nation's trust land within the Reservation.

5. The Seventh Circuit affirmed this Court's judgment, holding that Village regulation of stormwater on the Nation's trust lands within the Reservation required congressional consent and such consent was lacking. 732 F.3d 837.

6. The Village petitioned for review by the United States Supreme Court and the Supreme Court denied the petition. Order, May 27, 2014, 13-847.

7. In its Complaint, the Village again alleges the Nation was not under federal jurisdiction within the meaning of the IRA and, hence, ineligible for the fee-to-trust administrative process. The Village raised this issue as an affirmative defense in the Stormwater Case and the issue was necessary to the judgment that the Village lacks authority to regulate trust lands within the Reservation. The Village was a fully represented party, is bound by the judgment in the Stormwater Case, and is precluded from relitigating the issue whether the Nation was under federal jurisdiction within the meaning of the IRA and eligible for the fee-to-trust administrative process.

8. In its Complaint, the Village again alleges the IRA is unconstitutional for the same reasons the Village alleged in the Stormwater Case. The Village raised these issues as affirmative defenses in the Stormwater Case and the issues were necessary to the judgment that the Village lacks authority to regulate stormwater on trust lands within the Reservation. The Village was a fully represented party, is bound by the judgment in the Stormwater Case, and is precluded from relitigating the same claimed constitutional defects of the IRA.

9. The Village is bound by the judgment in the Stormwater Case and is barred from relitigating claims it raised or could have raised in the Stormwater Case with respect to the Nation's eligibility for the administrative fee-to-trust process under the IRA and constitutionality of the IRA.

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