

**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.

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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**COMPLAINT**

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1. This action seeks declaratory and injunctive relief that arises under the Administrative Procedure Act (the “APA”), 5 U.S.C. § 701, *et seq.*, the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, the Indian Reorganization Act of 1934, 25 U.S.C. § 5101, *et seq.*, (the “IRA”), 25 C.F.R. § 1.4, and the United States Constitution, for judicial review of a September 21, 2023 decision, *Village of Hobart, Wisconsin v. Acting Midwest Regional Director, Bureau of Indian Affairs*, 69 IBIA 84 (2023) (“*Hobart II*” or the “Decision”), issued by

the Interior Board of Indian Appeals (“IBIA”), which arose from the appeal of a decision made by the Acting Midwest Regional Director (the “Regional Director”)<sup>1</sup>, Bureau of Indian Affairs (“BIA”) on January 19, 2017, to accept lands into trust by the United States for the Oneida Nation (the “Tribe”) that are located within the Village of Hobart, Wisconsin (the “Village”). A copy of the IBIA’s Decision in *Hobart II* is attached as **Exhibit A**.

2. The action seeks to declare as illegal, null, and void and to enjoin permanently the implementation of Defendants’<sup>2</sup> actions to have real property located within the Village, which consists of eight properties totaling 21 parcels and approximately 499 acres (the “Parcels”)<sup>3</sup>, acquired into trust by the United States for the benefit of the Tribe.

3. The action stems from the biased and unconstitutional actions of Defendants, in which the BIA processed and approved fee-to-trust applications submitted by the Tribe that led to the Decision – all while the Tribe paid the salaries of the very BIA employees entrusted to process the applications that are the subject of the Decision.

4. The action further stems from the Regional Director’s abuse of her discretion and the IBIA’s erroneous Decision as it relates to several topics that are the basis of the Decision, including the failure to consider the cumulative effects of all tax revenue losses within the Village as a result of removal of the Parcels from the Village’s tax rolls, the failure to consider

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<sup>1</sup> As noted in the Decision and the Regional Director’s January 19, 2017 decision, the underlying decisions to accept lands into trust were made by both the Regional Director and Acting Regional Director acting under the Regional Director’s authority. Both the Acting Regional Director and Regional Director are referred herein to as the “Regional Director.”

<sup>2</sup> Together the United States Department of Interior, Deb Haaland, in her capacity as the United States Secretary of Interior, the Bureau of Indian Affairs, Tammie Poitra, in her capacity as the Midwest Regional Director of the Bureau of Indian Affairs, the Acting Midwest Regional Director of the Bureau of Indian Affairs, and the Interior Board of Indian Appeals are the referred herein as the “Defendants”.

<sup>3</sup> The Parcels are known as the Boyea, Buck, Calaway, Catlin, Cornish, DeRuyter, Gerbers, and Lahay parcels and further legally described in the administrative record and decisions.

and respond to jurisdictional issues, and the failure to properly analyze environmental concerns underlying the Decision.

5. The action also challenges the constitutionality of the Indian Reorganization Act of 1934, 25 U.S.C. § 5101, *et seq.* and the constitutionality of 25 C.F.R. § 1.4, which the IBIA lacked authority to adjudicate.

6. For the separate and independent reasons stated in this Complaint, the Defendants' actions are also unconstitutional, illegal, arbitrary, capricious, an abuse of discretion, or not otherwise in accordance with the law.

### **JURISDICTION AND VENUE**

7. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because this is a civil action arising under the Constitution and laws of the United States, namely, the Administrative Procedure Act, 5 U.S.C. § 701, *et seq.*, the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, the Indian Reorganization Act of 1934, 25 U.S.C. § 5101, *et seq.*

8. The IBIA's Decision constitutes final agency action and no further agency appeal is available.

9. The sovereign immunity of the United States has been waived with respect to the subject matter of this action and the relief requested herein by 5 U.S.C. § 702.

10. Venue is proper in this Court under 28 U.S.C. § 1391(b) and (e) in that this is a civil action against the United States, an agency of the United States, and officials and employees thereof, and a substantial part of the events or omissions giving rise to this action occurred within the Eastern District of Wisconsin, Green Bay Division. Moreover, all the

property that is the subject of this action is situated within the Eastern District of Wisconsin, Green Bay Division.

### **PARTIES**

11. The Village is a political subdivision of the State of Wisconsin with jurisdiction and regulatory authority, including taxing authority, over the Parcels at issue in the Decision, which lie within the Village's borders and which, due to the Decision, are to be removed from the Village's jurisdiction. The Village is one of the local governments that must be given notice, pursuant to 25 C.F.R. § 151.10, to provide written comments regarding the impacts on political subdivisions resulting from the removal of the land from the tax rolls and the jurisdictional and potential conflicts of land use which may arise as a result of the land being acquired into trust. As a result of the Decision and the Defendants' actions to accept the Parcels into trust and create a checkerboard pattern of jurisdiction within, the Village has lost and been stripped of its tax revenue, regulatory authority, and jurisdiction over the Parcels.

12. Defendant United States Department of the Interior is an executive agency of the United States government, established pursuant to 43 U.S.C. § 1451, *et. seq.* It intends to take the Parcels into trust.

13. Defendant Deb Haaland is the United States Secretary of the Interior, an office established by 43 U.S.C. § 1451. She intends to take the Parcels into trust.

14. Defendant Bureau of Indian Affairs is a United States federal agency within the Department of the Interior. It authorized the acceptance of the Parcels to be taken into trust.

15. Defendant Tammie Poitra is the Midwest Regional Director of the Bureau of Indian Affairs. She authorized the acceptance of the Parcels to be taken into trust.

16. Defendant Acting Midwest Regional Director, Bureau of Indian Affairs, is a vacant office within the BIA, but is responsible for adverse decisions issued that are part of the Decision. It authorized the acceptance of the Parcels to be taken into trust.

17. Defendant Interior Board of Indian Appeals is an appellate review body within the United States Department of the Interior that exercises delegated authority of the Secretary of the Interior to issue final decisions for the Department of the Interior in appeals involving Indian matters. Thomas A. Blaser is the Chief Administrative Judge of the IBIA, and Kenneth A. Dalton and James A. Maysonett are both Administrative Judges of the IBIA. It authorized the acceptance of the Parcels to be taken into trust.

### **GENERAL ALLEGATIONS**

#### **Fee-to-Trust Application**

18. On April 12, 2006, the Tribe's Business Committee enacted several resolutions requesting the BIA to accept into trust several parcels of fee land – located within the Village – that are owned by the Tribe.

19. The following year, in 2007 the Tribe submitted 56 fee-to-trust applications to the BIA totaling 133 parcels with a combined acreage of 2,673 acres in the Village to be transferred into trust, which included applications for the Parcels.

20. Following the Tribe's application to have the Parcels placed into trust, in 2010 the Regional Director issued six notices of decision to accept the Parcels into trust for the Tribe.

#### ***Hobart I***

21. The Village timely appealed the six notices of decision issued by the Regional Director in 2010 to the IBIA, and the IBIA, for various reasons, affirmed in part, vacated in part, and remanded the matter to the Regional Director for further consideration. *See Village of*

*Hobart, Wisconsin v. Midwest Regional Director*, 57 IBIA 4 (2013) (“*Hobart I*”). A copy of the IBIA’s decision in *Hobart I* is attached as **Exhibit B**.

22. On May 9, 2013, in *Hobart I*, the IBIA issued a decision determining that the Regional Director had authority to take the land into trust for the Tribe pursuant to the IRA, but declined to consider the constitutionality of the IRA.

23. The IBIA remanded the matter for further proceedings and vacated the notices of decision, concluding that the Regional Director failed to adequately address the Village’s comments concerning tax loss, potential land use conflicts, and jurisdictional problems.

24. The IBIA further concluded that the Regional Director should address the Village’s bias argument in the first instance on remand in which the Village claimed that the BIA and its employees were unconstitutionally biased against the Village as it related to the processing and acceptances of fee-to-trust applications under a “Memorandum of Understanding” entered into between the BIA and the Tribe regarding a Midwest Region Division of Fee-to-Trust (the “Midwest MOU”). Copies of the Memorandum of Understanding for the Midwest MOU from 2005 through 2017 are attached as **Exhibit C**.

25. On January 19, 2017, the Regional Director issued decision on remand adverse to the Village. A copy of the Regional Director’s January 19, 2017 notice of decision is attached as **Exhibit D**.

26. The Village timely appealed the Regional Director’s decision to the IBIA on February 22, 2017.

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

27. On appeal from the Regional Director's notice of decision from January 19, 2017, the Village informed the IBIA that the Regional Director's decision should be vacated and/or remanded for several reasons, including that the Regional Director's decision was the product of bias due to the Midwest MOU.

28. The Village informed the IBIA that since 2005 the Midwest MOU's stated purpose is "facilitating the expeditious processing of Fee-to-Trust applications" for participating tribes due to a "need for increased land base" and "widening gap" between tribal applications and land being "accepted into trust" for tribes.

29. Under the Midwest MOU the BIA employs individuals for the specific and sole purpose of processing solely the Tribe's and other participating tribes' fee-to-trust applications.

30. The salaries of the Midwest MOU's Division's employees, whose sole duties and responsibilities benefit the Tribe, are paid by the Tribe and other participating tribes. Under this pay-to-play structure, the Midwest MOU division staff employees rely on the Tribe for the very existence of their jobs, as the Tribe may cut funding at any time for the arrangement, should it feel it is not getting its desired results.

31. The Division's activities under the Midwest MOU include "[p]reparing the Notice of Decision on a requested parcel" for the Tribe. Under the Midwest MOU it is the Division staff employees who are responsible for preparing Notices of Decision for accepting properties into trust.

32. The Regional Director along with a representative from each tribe form an Advisory Council for the Division to assure the Midwest MOU's purposes are being fulfilled by

BIA employees that make up the Division's staff. The Division's BIA staff and any consultants are required to report directly to the Regional Director.

33. In 2006, the Interior Office of Inspector General ("IG") completed an investigation and report, which stemmed from a Government Accountability Office report that identified "two separate agreements between groups of tribes and two BIA regional offices, designed to expedite the processing of certain applications" which raised serious concerns about the tribes' funding of those agreements and whether the BIA was favoring trust applications from those tribes. *United States Govt. Accountability Office, Report to Congressional Committees, Indian Issues: BIA's Efforts to Impose Time Frames and Collect Better Data Should Improve the Processing of Land in Trust Applications*, GAO-06-781, p. 15-16 (July 2006). One of those agreements included the Midwest MOU, under which the Tribe was and still is a participating member. A more complete copy of the IG Report than the Regional Director considered in its decision, which the Village was able to obtain, is attached as **Exhibit E**.

34. The IG Report investigated a similar consortium and noted that such consortiums created "tenuous funding structures" and led to certain employees to seek different jobs due to the stress associated with the potential to have an entire group of staff lose their jobs if MOU funding was not renewed. In fact, the IG Report states, in the midst of its stated concerns, that "BIA-MRO [Midwest Division] has a similar MOU." Additionally, in a section of the IG Report separately entitled "BIA Midwest Region's MOU," the Inspector General noted that "similar to the BIA-PRO's MOU, under the BIA-MRO's MOU, the salaries of the consortium staff are dependent upon TPA funding" from the participating tribes.

35. The IG Report documented that certain employees paid more attention to applications from "higher donating tribes" because a successful processing would "result in more



gifts and award recommendations.” It also documented that consortium staff felt they worked directly for the tribes because the tribes paid their salaries and expected certain results.

36. Among other issues, the Village informed the IBIA that as part of the Regional Director’s decision, which the IBIA required the Regional Director to address the IG Report’s investigation and relevance to the Village’s bias concerns as it related to the Midwest MOU, that the Regional Director simply referenced and cited to a redacted, incomplete version of the IG Report that did not contain any of the 19 attachments upon which the IG Report was based.

37. In the Decision and the underlying decisions in which the Decision was based, the Defendants failed to consider:

- a. The 2006 IG Investigation report concluded that: “On July 7, 2006, SOL issued its legal opinion regarding the legality of the consortiums being utilized in BIA-PRO [Pacific] and BIA-MRO [Midwest]. . . . In the opinion, SOL determined that they ‘do not believe that the consortiums violate the government-wide ethics rules or appropriations laws.’ However, the opinion recognized the *patent appearance of a conflict of interest* created by the consortiums by pointing out that the consortium’s structure and use by the tribes and BIA ‘reflects an insufficient separation of organizational functions, *the possibility of the appearance of unfairness of the fee-to-trust application process*, and a concentration of resources within regional BIA offices in a way that *favours consortium tribes over other tribes served by the regional offices.*’”
- b. The IG Report described the Solicitor’s legal opinion and three different ways the MOU consortium structure gives the “*appearance of unfairness [that] also extends to the approval process itself,*” ; that employees hired directly as a result

of tribes' funding to work exclusively on those tribes' applications "*raises serious questions about the independence of judgment[,]*" and that there is no evidence to suggest the BIA employees' contractible functions are "sufficiently separated from the final review and approval of the applications. . . ." As a result, the Solicitor concluded that it "*did not believe BIA can assure that the final decisions on the consortium fee-to-trust applications are fair and unbiased, and also are perceived as such.*"

38. The Village also noted that several communications by Midwest MOU Division employees substantiated the Village's bias concerns and the prejudgment of the decisions to accept the Parcels into trust. Examples of these communications, including communications between the Midwest MOU staff and the Tribe concerning the bias issue and drafting notices of decision are attached as **Exhibit F**.

39. The Midwest MOU Division employees and the Tribe further boast their accomplishments of accepting land into trust for the Tribe by identifying in semi-annual and annual meetings the number of notices of decision, acceptances of conveyances, and completions and associated acres brought into trust.

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

40. The Village also informed the IBIA that, pursuant to 25 C.F.R. § 151.10(e), the Regional Director should consider the cumulative effect of all tax revenue losses on all lands within the Village's jurisdictional boundaries.

41. The Village informed the IBIA that according to a 2009 study issued by the Beacon Hill Institute, which evaluated the Tribe's then currently pending 133 fee-to-trust applications totaling 2,673 acres within the Village, a determination was made that "within 50

years all of the land in [the Village's] tax base would be transferred into [the Tribe's] federal trust, completely eliminating property tax revenue." The study concluded: "[U]nless the Village secures legal relief or finds an alternative revenue resource, if the [Tribe] continue its trends of transferring land from fee to trust, the Village will face fiscal and geographical extinction."

42. At the time of the Beacon Hill Institute study, the acceptance of the land into trust would have increased the trust land owned by the United States for the benefit of the Tribe to approximately 4,254 acres or 17% of the Village's tax base.

43. At the time the Tribe submitted its applications, which include the Parcels at issue in this matter, the Tribe announced that its goal was to own two thirds of the former reservation by 2030. The Tribe's stated goal is to place ultimately 100% of the Village's land in trust.

44. Upon information and belief, since 2008, the Regional Director has not rejected one application from the Tribe to have land placed into trust.

45. The Village does not receive any payment in lieu of taxes from the Tribe to offset the loss of tax revenue it suffers from land already placed into trust. The Tribe has no legal obligation to make payments in lieu of taxes.

46. Since 2008 the Tribe has paid over \$2,740,000 in taxes that are the subject of the Tribe's fee-to-trust applications pending within the Village, which includes the Parcels.

47. The Village's budget to conduct all operations including payment of salaries, road repair, infrastructure costs, policing, fire protection, and administrative services will be diminished due to tax loss revenue as a result of trust acquisition of the Parcels; accordingly, forcing a reduction in the numerous services provided by the Village.

48. The Village informed the IBIA that the Regional Director failed to address and appropriately respond under 25 C.F.R. § 151.10(e) to the Village's comments. The Regional

Director provided nothing but conclusory statements concerning the tax impacts to the Village and that the Village must go uncompensated for services it must still provide to its residents.

49. The Village also informed the IBIA that, pursuant to 25 C.F.R. § 151.10(f), the Regional Director should consider numerous jurisdictional concerns, all of which contribute to a jurisdictional checkerboard pattern of fee and trust land within the Village.

50. The Village's concerns included jurisdictional conflicts involving storm water management programs, zoning and comprehensive planning conflicts, and the delivery of emergency services.

51. The Village also raised the issue that, under 25 C.F.R. § 151.10(h), the Regional Director failed to adequately consider certain environmental matters. These matters included the failure to address previously raised arguments, reliance on outdated phase one environmental site assessments, and non-compliance with various federal environmental laws.

### ***Hobart II***

52. On September 21, 2023, over six years after the Village's initial appeal, the IBIA issued the Decision affirming the Regional Director's decision following remand.

53. Addressing the Village's argument that the fee-to-trust process was tainted by bias and violated the Village's right to due process, the IBIA concluded the Midwest MOU did not create an unlawful structural bias and the Village had failed to identify any evidence that demonstrated that the Regional Director prejudged the fee-to-trust applications.

54. The IBIA rejected the Village's contentions that the Midwest MOU fostered improper *ex parte* communications and that it created an impermissible conflict of interest whereby the Consortium of tribes under the Midwest MOU, including the Tribe, paid the salaries of BIA employees.

55. The IBIA rejected the Village's assertion that the Midwest MOU is, in and of itself, contrary to the Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 5301, *et seq.*, and the Tribal Self-Governance Act, 25 U.S.C. § 5361, *et seq.*

56. The IBIA rejected the Village's argument that the Regional Director failed to complete the IBIA's order on remand in *Hobart I*, due to the Regional Director's failure to address the Inspector General Report findings and its cursory review of a redacted and incomplete version of the report.

57. The IBIA also rejected the Village's contention that the Regional Director failed to properly consider the criteria set forth in 25 C.F.R. §§ 151.10(e), (f), and (h) relating to the impact on tax rolls, jurisdictional problems and land use conflicts, and compliance with environmental laws.

58. Accordingly, the IBIA affirmed – in its entirety – the Regional Director's decision, dated January 19, 2017, to accept the Parcels into trust.

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

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

60. 25 U.S.C. § 5108 (formerly 25 U.S.C. § 465), pursuant to which the United States Department of Interior, through the actions of the Midwest Acting Regional Director and Regional Director, the BIA, and the IBIA, approved the applications for the Parcels, is unconstitutional as an unlawful delegation of legislative power from Congress to the executive branch under the United States Constitution.

61. The Village requests a ruling that 25 U.S.C. § 5108 is unconstitutional and violates its rights under the Constitution.

62. The Village has been harmed as a result of the Defendants' actions under 25 U.S.C. § 5108, which is in violation of the Constitution.

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

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

64. Congress lacks constitutional authority under the Commerce Clause, Article 1, Section 8, Clause 3 of the United States Constitution, to accept fee land, such as the Parcels, within the jurisdiction of State and local governments, such as the Village, into trust for an Indian tribe, such as the Tribe.

65. Neither the Commerce Clause, nor any amendment to the United States Constitution, empowers Congress or any official of the United States Government to acquire land in any State so as to remove it from State and local jurisdiction and sovereignty over that land.

66. The Village requests a ruling that 25 U.S.C. § 5108 is unconstitutional and violates its rights under the Constitution.

67. The Village has been harmed as a result of the Defendants' actions under 25 U.S.C. § 5108, which is in violation of the Constitution.

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

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

69. Congress lacks constitutional authority under the Enclave Clause, Article 1, Section 8, Clause 17 of the United States Constitution to accept fee land, such as the Parcels,

within the jurisdiction of State and local governments, such as the Village, into trust for an Indian tribe, such as the Tribe.

70. The Village requests a ruling that 25 U.S.C. § 5108 is unconstitutional and violates its rights under the Constitution.

71. The Village has been harmed as a result of the Defendants' actions under 25 U.S.C. § 5108, which is in violation of the Constitution.

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

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

73. The United States Constitution does not delegate to Congress the authority to accept land into trust for the benefit of an Indian Tribe, and as such, the authority over such lands was reserved to the individual states by the Tenth Amendment.

74. The Village requests a ruling that 25 U.S.C. § 5108 is unconstitutional and violates its rights under the Constitution.

75. The Village has been harmed as a result of the Defendants' actions under 25 U.S.C. § 5108, which is in violation of the Constitution.

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

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

77. By accepting land into trust pursuant to 25 U.S.C. § 5108, Defendants abridge the privileges and immunities of non-Indians who live on, or pass through, the land accepted into trust, and deny such non-Indians equal protection due to their inability to participate in

government of the area; as such, 25 U.S.C. § 5108 is unconstitutional under the Fifth and Fourteenth Amendments.

78. The Village requests a ruling that 25 U.S.C. § 5108 is unconstitutional and violates its rights under the Constitution.

79. The Village has been harmed as a result of the Defendants' actions under 25 U.S.C. § 5108, which is in violation of the Constitution.

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

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

81. Article 3, Section 4 of the United States Constitution guarantees to every State a republican form of government.

82. It is integral to a republican form of government that the residents of the Village be able to fully participate in its governance.

83. The acceptance of the Parcels into trust deprives the Village of its authority to tax and its authority to regulate the Parcels and its uses for its residents.

84. Accordingly, the Village's loss of its jurisdiction and authority over the Parcels deprives it of its right to a republican form of government.

85. The Village requests a ruling that 25 U.S.C. § 5108 is unconstitutional and violates its rights under the Constitution.

86. The Village has been harmed as a result of the Defendants' actions under 25 U.S.C. § 5108, which is in violation of the Constitution.



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

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

88. 25 C.F.R. § 1.4(a) provides that “. . . none of the laws, ordinances, codes, resolutions, rules or other regulations of any State or political subdivision thereof limiting, zoning or otherwise governing, regulating, or controlling the use or development of any real or personal property, including water rights, shall be applicable to any such property leased from or held or used under agreement with and belonging to any Indian or Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States.”

89. If the Parcels are accepted into trust, the Village will, as a result of the Defendants’ interpretation of 25 C.F.R. § 1.4, lose jurisdictional controls over the land negatively impacting the Village’s ability to cohesively manage the Village’s zoning affairs, stormwater management, and the enactment of all and other ordinances affecting the Parcels that relates to zoning and development.

90. The harm sustained by the placement of the Parcels into trust and application of 25 C.F.R. § 1.4 is evidenced by the fact the applicable Code of Federal Regulations mandates that the BIA notify the Village of the fee to trust application and provide the Village with an opportunity to object to the application.

91. Even if the IRA is constitutional, 25 C.F.R. § 1.4 is unconstitutional as it exceeds the scope and authority of the IRA because the IRA does not permit the removal and loss to the Village of jurisdictional and zoning authority as provided in 25 C.F.R. § 1.4.

92. Alternatively, even if 25 C.F.R. § 1.4 is constitutional, there is no evidence of any lease or agreement between the United States and the Tribe regarding the Parcels, which is a requirement for the application of 25 C.F.R. § 1.4.

93. The Village requests a ruling that 25 C.F.R. § 1.4 is unconstitutional and violates its rights under the Constitution, and alternatively, if 25 C.F.R. § 1.4 is constitutional, that the Defendants have not satisfied the requirements of 25 C.F.R. § 1.4.

94. The Village has been harmed as a result of the Defendants' actions that implicate 25 C.F.R. § 1.4, which is in violation of the Constitution.

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

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

96. The Due Process Clauses of the Fifth and Fourteenth Amendments guarantee the Village of the right to a neutral, unbiased and independent decision maker who is not predisposed and prejudged against it.

97. The United States Department of Interior and the BIA's, including the Regional Director and Acting Regional Director, involvement in the fee-to-trust application process under the Midwest MOU was predisposed against the Village and blatantly biased in favor of the Tribe.

98. The Midwest MOU causes the United States Department of Interior and the BIA, including the Regional Director and Acting Regional Director, to act in a biased manner against the Village.

99. Upon information and belief, the Regional Director does nothing more than rubber stamp the notices of decision prepared by the BIA employees funded by the Tribes under

the Midwest MOU, thereby causing the United States Department of Interior to unlawfully accept land into trust for the Tribe.

100. The Midwest MOU creates a structural bias against the Village.

101. Accordingly, the Village was denied the Due Process Clause guarantee to a neutral, unbiased and independent decision maker.

102. The Village has been harmed a result of the Defendants' Due Process Clause violations.

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

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

104. The IBIA's Decision is final agency action of the department and is reviewable pursuant to 5 U.S.C. §§ 704 and 706.

105. The IBIA's Decision and the underlying decisions by the Defendants to accept the Parcels into trust are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, because among other reasons that are stated in the administrative record and the Village's briefing before the IBIA:

a. The Regional Director is not an unbiased, independent decisionmaker given the terms of the Midwest MOU and the underlying administrative record;

b. The communications and other evidence from the administrative record show that the Regional Director oversees and is directly involved with the Midwest MOU, which is funded by the Tribe, and delegates to the Division's staff's the drafting of decisions to accept the Parcels into trust for the Tribe;

c. There is no evidence in the administrative record that the Regional Director independently reviewed the decisions drafted by the Midwest MOU Division employees;

d. The Defendants erroneously considered and omitted critical investigative findings from the IG Report, including the Office of Solicitor's review and legal opinion relative to the Midwest MOU, as it relates to the processing and acceptance of the Parcels into trust under consortium type agreements, such as the Midwest MOU;

e. The Midwest MOU and its funding structure violates Congressional policy under the Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 5301, *et seq.*, and the Tribal Self-Governance Act, 25 U.S.C. § 5361, *et seq.*;

f. The Defendants failed to consider and meaningfully respond to the Village's comments and concerns pursuant to 25 C.F.R. § 151.10(a)-(h).

g. The Defendants did not address or failed to require be addressed the Village's comments and concerns raised before the IBIA and in the administrative record concerning tax loss, jurisdictional and land use conflicts, and 25 C.F.R. § 151.10(e), (f), and (h);

h. The IBIA failed to require the United States Department of Interior and the BIA follow its own regulations and guidance regarding environmental matters prior to accepting the Parcels into trust;

i. The Defendants failed to require the Tribe submit new fee-to-trust applications for each parcel on the issues and decisions that the IBIA previously vacated;

j. The Defendants did not allow the Village notice or opportunity to review, comment, or otherwise respond to the Tribe's supplemental submissions after the Tribe's notices of application;

k. The Tribe was not under Federal jurisdiction in 1934 at the time the IRA was enacted in 1934, as required by *Carcieri v. Salazar*, 555 U.S. 379 (2009).

106. The IBIA's Decision is contrary to constitutional right, power, privilege or immunity.

107. For the reason stated in this Complaint, the IBIA's Decision is in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.

108. For the reasons stated in this Complaint, the IBIA's Decision is without observance of procedure required by law.

109. The Village has been harmed as a result of the IBIA's violations of the APA.

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## **REQUESTED RELIEF**

**WHEREFORE**, Plaintiff, the Village of Hobart, Wisconsin, respectfully requests that this Court enter orders and judgment:

- A. Declaring 25 U.S.C. § 5108 unconstitutional;
- B. Declaring 25 C.F.R. § 1.4 unconstitutional;
- C. Declaring, alternatively if 25 U.S.C. § 5108 and 25 C.F.R. § 1.4 are constitutional, the Village does not lose its jurisdictional and zoning authority under 25 C.F.R. § 1.4 because the Defendants have not complied with the requirements of 25 C.F.R. § 1.4;
- D. Declaring the Village was denied due process by the Defendants;
- E. Declaring that the Defendants' decisions, including the September 21, 2023 decision of the IBIA, to accept land into trust were arbitrary, capricious, an abuse of discretion, or otherwise not supported by the record or law, and therefore, violates the Administrative Procedure Act, 5 U.S.C. §§ 704, 706 and the Constitution;
- F. Vacating, or alternatively, remanding for further consideration the Defendants' decisions, including the September 21, 2023 decision of the IBIA, to accept land into trust;
- G. Staying the Defendants' decisions, including the September 21, 2023 decision of the IBIA, to accept land into trust pending the resolution of this dispute and further remand, if required; or alternatively, ordering the Defendants to remove the land from purported trust status and enjoin the Defendants from refusing to do so;
- H. Declaring that the Midwest MOU is unconstitutional and violates Congressional policy under the Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 5301, *et seq.*, and the Tribal Self-Governance Act, 25 U.S.C. § 5361, *et seq.*, and therefore, should be discontinued and any decisions accepting land into trust under the Midwest MOU are void;

- I. Awarding the Village its attorney's fees and costs; and
- J. Ordering such other further relief to the Village as this Court may deem just and proper.

Dated: November 10, 2023.

VON BRIESEN & ROPER, S.C.

s/ Frank W. Kowalkowski

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