UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

ONEIDA TRIBE OF INDIANS OF WISCONSIN,

Plaintiff,

v.

VILLAGE OF HOBART, WISCONSIN,

Case No. 10-CV-00137-WCG

Defendant/Third-Party Plaintiff

v.

UNITED STATES OF AMERICA, et al.,

Third-Party Defendants.

VILLAGE OF HOBART'S MEMORANDUM IN SUPPORT OF MOTION TO AMEND STIPULATION OR AMEND ITS JUDGMENT OR ORDER UNDER FED. R. CIV. P. 60

INTRODUCTION

Contemporaneous to this motion, the Village of Hobart (Village) has opposed the Oneida Tribe of Indians of Wisconsin's (Tribe) motion for contempt. That contempt motion argues the Village is legally restricted by a joint Stipulation of Fact (Stipulation) from assessing storm water fees to twenty parcels containing an abandoned railroad (subject parcels),[1] despite the fact that those parcels are not held in trust by the United States under the Indian Reorganization Act (IRA), or otherwise. In that opposition, the Village argues this Court need not make any amendments to either the Stipulation or the Judgment in order to enforce the Court's Judgment

[1] The Village has now been given at least limited information evidencing some level of U.S. acknowledgement or approval that the other disputed 22 parcels may be in trust, per the IRA, thus the only disputed parcels for the purpose of this motion are the twenty parcels containing the abandoned railroad.

and deny the motion for contempt. In the event the Court finds the Stipulation or its prior Judgment requires the Court to treat the subject parcels as if they were "in trust," despite not being "in trust," the Village moves this Court to amend its stipulation, and, if necessary, to have the Court amend its Judgment or Order under Federal Rule of Civil Procedure Rule 60, to exclude the subject parcels because they are not legally held "in trust." Because the United States refuses to acknowledge these parcels are "in trust," despite years-worth of requests from the Tribe to give such recognition, they are not entitled to trust status. As a result, a motion to amend the stipulation or a motion for relief from judgment is proper, especially considering that such an amendment will not disturb the essence of the Judgment—that a municipality may not assess a storm water fee on land "in trust."

ARGUMENT

I. Motion to Amend the Stipulation

"Stipulations regarding the nature of trial proceedings are crucial to the prompt and efficient disposition of litigation. Therefore, once made, a stipulation is binding unless relief from the stipulation is necessary to prevent a "manifest injustice" or the stipulation was entered into through inadvertence or based on an erroneous view of the facts or law." *Graefenhain v. Pabst Brewing Co.*, 870 F.2d 1198, 1206 (7th Cir. 1989). "Although stipulations are to be encouraged in order to economize on the costs of litigation, a judge has the power to relieve a party from a stipulation when it is reasonable to do so . . . ." *Cates v. Morgan Portable Bldg. Corp.*, 780 F.2d 683, 690 (7th Cir 1985).

Again, the Village argues this Court need not make any amendments to either the Stipulation or the Judgment in order to enforce the Court's Judgment and deny the Tribe's motion for contempt. However, in the event this Court disagrees, the Court may relieve the

Village from this portion of the Stipulation because "it is reasonable to do so." *Cates*, 780 F.2d at 690. For all the reasons stated within the Village's Opposition to the Motion to Compel, "[b]ecause the question of whether land is "in trust" is a legal one, to be decided by the federal government; because the parties cannot stipulate to facts that do not exist; because all evidence contradicts this stipulated fact; because enforcement of that provision would visit a manifest injustice upon the Village, property owners within the Village who may be affected by this transfer, and an unwilling federal government that would have this land foisted upon it; and because this would reward the Tribe for its lack of candor, this Court may [amend] that portion of the Stipulation." *Brief in Support of Opposition to Motion for Contempt* [Dkt. # 87]. Such relief would not rob the Court's Judgment of any of its true substance and would, in fact, enforce the terms of that Judgment in a measured and consistent fashion, ensuring all lands "in trust" are similarly treated and all lands not "in trust" are similarly treated.

II. Motion to Amend Judgment

Similarly, if the Court does amend the Stipulation, it need not alter the Judgment. The Judgment does not even identify certain parcels or the amount of parcels, instead asserting the essence of the case—municipalities cannot tax trust lands. The Judgment states:

> **IT IS HEREBY ORDERED AND ADJUDGED** that the Oneida Tribe of Indians of Wisconsin's trust land is immune from the Village of Hobart, Wisconsin's Storm Water Management Utility Ordinance and that the Village lacks authority to impose charges under the Ordinance on the Tribe's land directly or indirectly.
>
> **IT IS FURTHER ORDERED** that the Village of Hobart, Wisconsin is enjoined from attempting to impose and collect "charges" under the Ordinance from the Tribe or from foreclosing on the Tribe's lands.
> **IT IS FURTHER ORDERED** that the Village of Hobart, Wisconsin's claims against the United States are dismissed for lack of subject matter jurisdiction.

Judgment [Dkt. # 69]. While the Decision and Order ([Dkt. # 68]) references the amount of parcels, this Court should find that information to be dicta, for the same reasons stated within the Village's Opposition to the Motion to Compel. *Brief in Support of Opposition to Motion for Contempt* [Dkt. # 87]. As noted there, the amount and identity of parcels is not an "integral part of the earlier opinion . . . [and] can be sloughed off without damaging the analytical structure of the opinion;" the "passage was not grounded in the facts of the case;" and "the issue addressed in the passage was not presented as an issue, hence was not refined by the fires of adversary presentation." *United States v. Crawley*, 837 F.2d 291, 292-93 (7th Cir. 1988). Because the identity of parcels to which this principle applies is dicta, the portion of the Decision and Order that identifies the number of parcels can be disregarded by the Court.

However, in the event the Court finds the Judgment needs to be altered, Federal Rule of Civil Procedure Rule 60 provides several ways in which a final Judgment can be altered, which are applicable to the matter at hand.

A. Corrections Based Upon Oversights And Omissions.

"The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice." Fed. R. Civ. P. 60(a). While substantive mistakes cannot be corrected under Rule 60(a), such as instances where the court changes its mind, mere "blunders in execution" of an order can be corrected under the rule. *See United States v. Griffin*, 782 F.2d 1393, 1397 (7th Cir. 1986). For instance, a court could correct an inaccurate description of the metes and bounds of property to which a judgment applied under Rule 60(a) when the record indicated that the terms of the order were different from the relief that the court

intended to award when it entered the order. *See In Re Village By The Sea, Inc.*, 98 B.R. 93, 95 (Bankr. S.D. Fla. 1989).

That is precisely the case here. In this matter, the Brown County Register of Deeds' office mistakenly listed the subject parcels as "USA in Trust for Oneida Tribe of Indians of Wisconsin," solely because the Tribe told it to, without the federal government's knowledge, permission, or imprimatur. (Affidavit of Frank W. Kowalkowski (Kowalkowski Aff.) ¶ 5 - 7, Exs. 18 – 19). This improper recording was used by the Tribe to then make its claim that the subject parcels were "in trust." The Village and the Court, not knowing the true reason why the County identified these parcels "in trust," relied upon that recording to accept the disputed subject parcels were "in trust." The Tribe failed to mention that the federal government specifically disclaimed this fact: "Department of the Interior has not issued any decision accepting the parcels into trust for the benefit of the Tribe." (Kowalkowski Aff.¶ 6, Ex. 18).

Notwithstanding the incorrect information that the Tribe created and then filed with the Brown County Register of Deeds' office, this Court intended to apply its ruling in the underlying action only to lands properly held "in trust," not the subject parcels, which are not trust lands. As a result, this Court issued a Decision and Order based upon an inaccurate description of land to which that ruling applied. This Court is authorized, under Fed. R. Civ. P. 60(a), to correct such an oversight or omission. Should this Court feel it is even necessary to amend the Judgment, this subsection provides one possible means.

B. Relief Based Upon Fraud Upon The Court.

i. The Law under Fed. R. Civ. P. 60(d)(3).

A Court also has the authority to grant relief to set aside or amend a judgment for fraud on the court. Fed. R. Civ. P. 60(d)(3). "If it is fraud on the court, the motion may be made at

any time, but if it is just fraud on an opposing party, the motion must be made within a year after the judgment sought to be vacated becomes final." *Ty Inc. v. Softbelly's Inc.*, 353 F.3d 528, 536 (7th Cir. 2003). "Precisely because there is no deadline for asserting "fraud on the court," such a motion must allege 'the kind of fraud that ordinarily couldn't be discovered, despite diligent inquiry, within a year,' such as in cases where 'there are no grounds for suspicion and the fraud comes to light serendipitously.'" *Ventre v. Datronic Rental Corp*., 2012 WL 1948781, *3 (7th Cir. May 31, 2012) (citation omitted).

One leading case dealing with fraud on the court is *Hazel Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944), in which the United States Supreme Court set aside a patent infringement judgment on the ground that it was procured by fraud not only on the Patent Office, but on the court as well. The plaintiff's attorney submitted fraudulent information to the Patent Office to obtain a patent, which the Patent Office had declined to grant prior to the submission of the fraudulent information. When deciding to vacate the judgment, the Supreme Court explained:

> This [was] not simply a case of a judgment obtained with the aid of a witness who, on the basis of after-discovered evidence, is believed possible to have been guilty of perjury. Here . . . we find a deliberately planned and carefully executed scheme to defraud not only the Patent Office by the Circuit Court of Appeals. . . . [T]ampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot be complacently tolerated.

Id. at 245-46.

ii. The Fraud on the Court.

Much like in *Hazel Atlas*, this Court has been defrauded into concluding the federal government holds this land "in trust." It does not. The federal government has never recognized

this land as trust land, despite years-worth of requests by the Tribe to do so. The Tribe has consistently represented to this Court that the subject parcels are "in trust," without once confessing to the Court that the federal government does not share this view.

The Tribe further convinced the Brown County Register of Deed's office to change the deed to "USA in Trust for Oneida Tribe of Indians of Wisconsin," without the federal government's knowledge, permission, or imprimatur. (Kowalkowski Aff. ¶¶ 5 - 7, Exs. 18 – 19). Desperate for a way to avoid the federal government's refusal to acknowledge these parcels "in trust," the Tribe unilaterally drafted, re-worded, and filed with the Brown County Register of Deed's office an Affidavit of Easement Cancellation, which directed the County to thereafter change the ownership to the United States in trust for the Tribe. (Kowalkowski Aff., Ex. 18). The Tribe's tampering with the administration of justice continued with the Tribe then using the County's records, now showing the parcels as trust land (because of the Tribe's unilateral actions to manipulate this information), to form the basis of its claim that 148 parcels are "in trust." (*See* Affidavit of Rebecca M. Webster ¶¶ 6 - 7 [Dkt. # 84]). The Village relied upon that designation to sign its Stipulation, which was presented to this Court for consideration, and was used to render its Decision and Order. *See id.* ¶¶ 8, 10.

In furtherance of its scheme, the Tribe argued in its case the IRA was the source of its ability to be shielded from municipalities charging storm water fees, and thus was the source of its claim that its land was "in trust." It presented no other theory upon which that land was "in trust." But, it argued an entirely different theory to the executive branch. In viewing its correspondence with the federal government, the Tribe argued to the executive branch that the subject parcels always retained trust status, and thus did not need to be placed "in trust" under the IRA. (Kowalkowski Aff. ¶¶ 10 – 21). The Tribe never argued, or even informed the Court

about this theory, despite making this argument at the time of the lawsuit to the executive branch. Importantly, the executive branch has not agreed to this theory. Nor should it.

iii. The parcels are not "in trust" even under the Tribe's other theory.

In fact, should it decide it necessary, the Court should alter its Judgment to remove the subject parcels from the Decision and Order because those parcels are not "in trust," even according to the theory advanced by the Tribe to the executive branch. The Tribe argues that the subject parcels never left the trust of the United States. This theory does not consider the effect of the Dawes Act on these parcels.

Under the Dawes Act, land then held in trust by the federal government for the collective benefit of tribes was divided into parcels, called allotments. These allotments were then assigned to individual tribal members for their use, management, and ownership. After a twenty-five year waiting period, the individuals were then issued patents in fee, a final act signaling the termination of federal responsibility for both the lands and the persons involved.

Section 5 of the Dawes Act says that after approval of the allotment: "the United States will convey the same by patent to said Indian, or his heirs, as aforesaid, in fee, discharged of said trust and free of all charges or encumbrances whatsoever." 25 U.S.C. § 5. In the year of its enactment, the Commissioner himself described the purpose and effect of the Dawes Act as follows: "I fail to comprehend the full import of the allotment act if it was not the purpose of Congress which passed it and the Executive whose signature made it a law ultimately to dissolve all tribal relations and to place each adult Indian on the broad platform of American citizenship." (Kowalkowski Aff., Ex. 39). Approximately twenty years after the Dawes Act was enacted, a federal judge for the Eastern District of Wisconsin, when discussing the Dawes Act, as it applied to the Tribe, described the effect of this law as follows:

> That the emancipation of the Indian from further federal control was the purpose of Congress is so plain from the language of the act of 1887 that no argument could make it plainer. . . . The jurisdiction has been distinctly renounced by the United States, and is now clearly vested in the states.

U.S. v. Hall, 171 F. 214, 218 (1909); (Kowalkowski Aff., Ex. 49). The Tribe's reservation was **fully allotted** except for 85 acres held for future Indian allotments if/as needed. (Kowalkowski Aff., Ex. 39) (emphasis added).

The twenty-five year waiting period, contained in the Dawes Act, was shortened by the Burke Act, for those Indians deemed "competent" by the Secretary of the Interior. 25 U.S.C. § 349, 34 Stat. 182 (1906). The Burke Act resulted in many fee patents being issued sooner than would have otherwise have been allowed under the Dawes Act. Yet another Act, dealing specifically with the Oneida Tribe, was enacted on June 20, 1906, and authorized the Secretary of Interior to immediately issue fee patents to certain individuals who previously received trust allotments as well as to "any Indian of the Oneida reservation in Wisconsin." [2]

In a report entitled "Some Observations on the Results of the Allotment System Among the Oneidas of Wisconsin," dated January 24, 1933, the following observations were made:

> In choosing the Oneidas as the first to be studied, the allotment system has been given perhaps the fairest trial that can be instanced, for several reasons.
>
> In the first place, the Oneidas were as nearly ready for allotment as any people can be ready to step from tutelage into independence….

[2] 34 Stat. 325, 380-381. The Oneida special provision was part of a larger Act, 34 Stat. 325, which also references the Stockbridge-Munsee tribe in Shawano County, Wisconsin. The portion relating to the Stockbridge-Munsees and the Oneidas are the same in that they both authorized the immediate issuance of fee patents of the former reservations to individual tribal members. In interpreting that Act, as it applied to the Stockbridge-Munsee, the 7th Circuit Court of Appeals noted that "the circumstances surrounding the Act show that Congress wanted to extinguish what remained of the reservation when it passed the Act." *State of Wisconsin v. The Stockbridge-Munsee Community, et al.*, 554 F.3d 657, 664. It distinguished the 1906 Act from other allotment Acts that required the patents to be held in trust for a period of time. The court stated "[w]hy include this peculiar provision? Because the reservation could not only be abolished if the tribal members held their allotments in fee simple." *Id.*

> In the second place, ***the entire reservation was allotted, so that no surplus lands were left*** to create a tribal fund with its consequent pull away from individualization.
>
> . . . .
>
> The Oneida Indians were listed for allotment and the roll closed May 21, 1889. Allotting followed during the next three years and the trust patents bear the date of June 13, 1892. The 25 year trust period was thus due to expire June 13, 1917.

(Kowalkowski Aff., Ex. 42).

In 1933, the Eastern District again addressed the impact of the Dawes Act. In *Stevens v. County of Brown*, C.A. No. 307, E.D. Wis. 10 November 3, 1933, Samson Stevens, an Oneida tribal member, on behalf of himself and others, challenged the right of local governments, that had been established by the state of Wisconsin and that were within the boundaries of the original Oneida Reservation, to tax land owned by tribal members. (Kowalkowski Aff., Ex. 48). Stevens' argument was based on the Treaty of 1838 which established the original reservation. The court rejected the argument and held:

> Even if it be assumed that in a treaty with the Oneida Indians many years ago, language was used which supports the contention that there was a purpose to assure the Indians perpetual immunity against the incorporation of the lands into any state or governmental subdivision of a state, the uniform judicial recognition of the efficacy of the Dawes Act since its passage is entirely repugnant to the right of the Indians, after congressional action, to insist upon the treaty provision; and likewise against the existence of judicial power to enforce the treaty stipulation. . . . That is to say, the congressional power is recognized as 'plenary', and not subject to review or control by the judicial department of the Government.. . . **Therefore, there is no escape from the proposition that the Government, in passing and applying the Dawes Act, but conceived itself in duty bound to carry out its provisions in the interest of the tribe and its members. Plainly, this resulted in a discontinuance of the reservation, and a recognition of the power of the state to incorporate the lands in the towns in question**.

(Kowalkowski Aff., Ex. 48).

Consequently, pursuant to the Dawes Act of 1887, the Burke Act of 1906, and the Oneida special provision of 1906, the reservation was fully allotted in fee. In short, the Tribe cannot claim the subject parcels have always been "in trust" because the Dawes Act (and subsequent Acts) ensured that trust status was extinguished—and the land patents confirm this fact.

A patent for land, that is regular on its face and issued in a case in which the U.S. Department of the Interior has jurisdiction, constitutes an implied finding of fact of every fact which is made a prerequisite to the patent's issuance, including the nature of the land and whether it is of the class which is subject to entry. *U.S. v. Price*, 111 F.2d 206, 208 (10th Cir. 1940) (citing *Burke v. Southern Pacific R.R. Co.*, 234 U.S. 669 (1914)). The determinations made by Department of Interior officers regarding such facts are conclusive in judicial proceedings. *Id*. Upon collateral attack, a court cannot go behind the patent and look to antecedent proceedings or investigate facts on which it was founded. *Id*.; *see also Bagnell v. Broderick*, 38 U.S. 436, 445-46 (1939). Courts are bound to presume the acts of officers, entrusted by the laws of Congress to inquire into claims of land, were not irregular and that the decisions of these officers are binding and effectual. *Bagnell*, 38 U.S. at 446 ("As the records are of great importance to the country and sanctioned by the government, their contents must always be considered and are received in courts as evidence of the facts stated."). Therefore, a patent issued within the jurisdiction of the Department of Interior passes title to land and determines the nature of the land. *See Burke*, 234 U.S. at 710.

These land patents corresponding to the subject parcels conclusively show the allotments were provided to the allottee in fee without any reservation by the United States that it retained some trust interest for that part of the patent that included the railroad right-of-way.

(Kowalkowski Aff., Exs. 30 – 33). Further, when reviewing the description of the Indian Claim Numbers and Lots designated by the County that are referenced within those land patents, those Indian Claim Numbers and Lots also do not mention the United States is reserving the railroad portion in trust. (Kowalkowski Aff., Ex. 34). Even the source maps, referenced on the Brown County website, do not exclude the railroad parcels from the land being patented. (Kowalkowski Aff., Exs. 35 – 36). The entirety of this evidence proves that neither the railroad nor any other portion was reserved "in trust."

Whether through the theory argued before this Court, or the theory secreted from this Court, these parcels are not "in trust." The Tribe's actions, representations, and omissions to block this knowledge from the Court and the Village represents a scheme to defraud the administration of justice, which is precisely what Rule 60(d)(3) contemplates when it authorizes a court to correct judgments procured through fraud. As such, this Court can use its inherent power under Rule 60(d)(3) to amend the Judgment due to the fraud on this Court.

C. Corrections Based Upon Inequitable Prospective Application And For Any Other Reason That Justifies Relief.

Lastly, a party may also move the court within a reasonable time to relieve a party from a final judgment or order for the following reasons:

> (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
> (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b). Rule 60(b)(5) is particularly applicable when there is a change in circumstances and the judgment involves the public interest or governmental entities. *See Rufo v. Inmates of Suffolk Jail*, 502 U.S. 367, 380-83 (1992). Rule 60(b)(6), known as the "catch-all" provision, further vests courts with power to vacate or amend judgments whenever such action is

appropriate to accomplish justice. *See Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863-64 (1988). Rule 60(b)(6) requires that the reason justifying relief must amount to "extraordinary circumstances" in order to balance the competing interest in justice and finality of judgments. *Id.* For instance, the Seventh Circuit has found "extraordinary circumstances" and approved of relief from a stipulated dismissal under Rule 60(b)(6) where the stipulation was procured by fraudulent means that deprived the litigant of his day in court. *See Ervin v. Wilkinson*, 701 F.2d 59, 61-62 (7th Cir. 1983).

The Brown County Register of Deeds' office's mistake and the true trust status of the subject parcels having now been brought to light, it would be inequitable to apply the Judgment to the parcels that are not "in trust." Prospective application of the incorrect Judgment harms not only the Village's rights at issue in this litigation, but Brown County's, and all other adjoining landowners, whose rights may be affected by the Tribe's claim of trust status. As stated within the Village's Opposition to the Tribe's motion for contempt, the IRA provides a structural framework to ensure due process concerns of all potentially affected parties will be countenanced and analyzed. It would be inequitable to circumvent this statutorily-provided framework and simply declare this land "in trust."

Therefore, this Court has grounds to amend the Judgment under Rule 60(b)(5). However, should this Court determine that Rule 60(b)(5) or the other grounds for relief discussed herein are not applicable, this Court has the discretion to grant the relief requested under Rule 60(b)(6), if extraordinary circumstances exist and justice requires that the Judgment be amended.

The effect of allowing the subject parcels trust status cannot be overstated—it would wreak havoc on the Village, Brown County and the landowners on whose property these railroad sections adjoin, amounting to the extraordinary circumstances envisioned under Rule 60(b)(6).

Adjoining landowners could be held hostage by the conferral of trust status to these subject parcels, as those parcels provide ingress/egress to adjoining landowners' property, including, for example, access to Brown County's public golf course.[3] The Tribe would have every authority to simply refuse passage over those railroad sections, despite decades of use as the primary source of ingress/egress to most of these lands. Without accessibility, properties will certainly become less valuable. No title company would insure title for a prospective buyer. No bank would provide a loan for property that has no access or access granted at the mercy of a third-party.

Moreover, those landowners would be left without any recourse, as the Tribe has sovereign immunity and cannot be sued without consent. *Three Affiliated Tribes of Fort Berthold Reservation v. Wold*, 476 U.S. 877, 891 (1986). Additionally, land held by the federal government is not subject to adverse possession. *Kingman Reef Atoll Investments, L.L.C. v. United States*, 541 F.3d 1189, 1199 (9th Cir.2008) (citing *United States v. California*, 332 U.S. 19, 40, (1947) and *United States v. Pappas*, 814 F.2d 1342, 1343 n. 3 (9th Cir.1987)). An owner would have no way to force both the Tribe and the Secretary of the Interior to grant an easement. And even if a suit were possible, the Quiet Title Act specifically exempts any claims against an Indian Tribe or the United States if there is even a "colorable" claim the land is "in trust." 28 U.S.C. § 2409a(a); *see Alaska v. Babbitt*, 182 F.3d 672, 675 (9th Cir. 1999). In fact, the Quiet Title Act may be applied even if the colorable claim turns out to be wrong. The Tribe's motion for contempt is an attempt to obtain at least a colorable claim, the consequence of which could be devastating. In short, the adjacent landowners would be left without any remedy or due process if the Court allowed its Judgment to turn those subject parcels into trust land.

[3] *See* Kowalkowski Aff., Ex. 47, for chart referencing all owners of the former railroad parcels, as prepared by the Tribe.

This is precisely why "Congress has provided a mechanism for the acquisition of lands for tribal communities that takes account of the interests of others with stakes in the area's governance and well-being." *City of Sherrill, N.Y. v. Oneida Indian Nation of New York*, 544 U.S. 197, 220 (2005). In that case, where an Indian tribe also alleged it had always retained sovereign control over a parcel, the Supreme Court "recognized the impracticability of returning to Indian control land that generations earlier passed into numerous private hands," and found that the proper mechanism to do so was through the IRA: "Title 25 U.S.C. § 465 authorizes the Secretary of the Interior to acquire land in trust for Indians and provides that the land 'shall be exempt from State and local taxation.'" *City of Sherrill, N.Y.*, 544 U.S. at 220.

Because a determination by this Court that the subject parcels are trust land will visit tremendous hardship on multiple third parties that have had no notice or opportunity to contest this claim (as the IRA would provide, in principle), this judgment must be altered to exclude those parcels as trust land due to the extraordinary circumstances that would result from such a judgment.

CONCLUSION

For the reasons set forth above, and only to the extent this Court finds it necessary to allow an amendment to the Stipulation or amend the Judgment to deny the Tribe's motion to compel, this Court should grant the Village's Motion To Amend the Stipulation or Amend the Judgment or Order.

Dated this 2nd day of June, 2015

Respectfully Submitted,
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