UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ONEIDA NATION,

Plaintiff,

v. Case No. 16-C-1217

VILLAGE OF HOBART, WISCONSIN,

Defendant.

DECISION AND ORDER

In this action, the Oneida Nation challenges the legal authority of the Village of Hobart, Wisconsin to regulate public events held by the Nation, specifically the Nation's Big Apple Fest. Before the court are the Nation's motion for a protective order to relieve it of its obligation to respond to the Village's discovery request and the Village's motion to allow time for discovery pursuant to Federal Rule of Civil Procedure 56(d). For the following reasons, the Nation's motion will be granted-in-part and denied-in-part and the Village's motion will be granted.

BACKGROUND

On September 9, 2016, the Nation filed a motion for a preliminary injunction seeking to enjoin the Village from requiring that the Nation's Big Apple Fest comply with the provisions of Hobart's Special Event Permit Ordinance. (ECF No. 2.) The court denied the Nation's motion on September 13, 2016, finding that the Nation did not demonstrate irreparable harm. The Nation held the Big Apple Fest as planned on September 17, 2016, and on September 21, 2016, the Village's Chief of Police issued Citation No. 7R80F51TJS against the Nation for failing to act in accordance with the Ordinance. (ECF No. 10 at ¶¶ 12, 19.)

The Nation filed an amended complaint on September 28, 2016, asserting that it, its officials, and its employees are immune from the Ordinance in the conduct of special events on the Nation's trust land and Reservation and that the Village lacks the authority to enforce the Ordinance against the Nation, its officials, and its employees. (*Id.* at 8–9.) It seeks to enjoin the Village's attempt to impose the Ordinance on the Nation, its officials, and its employees and to enforce the Ordinance through citation or municipal court proceedings. (*Id.* at 9.) It also seeks to enjoin the Village from enforcing Citation No. 7R80F51TJS against the Nation. (*Id.*) On October 3, 2016, the Village filed a counterclaim seeking declaratory and monetary judgment. (ECF No. 12.) At the parties' Rule 16 scheduling conference on November 3, 2016, the court found that the case was open for discovery and noted that the parties could file motions for summary judgment.

On November 14, 2016, the Village served on the Nation its first set of interrogatories and requests for production of documents. (ECF No. 29-1.) On December 2, 2016, the Nation filed motions for summary judgment and for a protective order restricting discovery. (ECF Nos. 21, 24.) The Nation requests a protective order to relieve it of its obligation to respond to the Village's discovery request or suspend its obligation to respond until thirty days after the court denies its motion for summary judgment. It argues the Village's discovery requests are wide-ranging, burdensome, and immaterial to the Nation's motion for summary judgment. On January 3, 2017, the Village filed a motion to allow time for discovery pursuant to Federal Rule of Civil Procedure 56(d), asserting that it needs time to discover facts necessary to its defense of the Nation's premature motion for summary judgment. (ECF No. 34.) On the same day, the court stayed briefing on the Nation's motion for summary judgment until the court issued a decision on the Nation's motion for

a protective order and the Village's motion to allow time for discovery. These motions are now fully briefed and ready for resolution.

LEGAL STANDARD

A court retains considerable discretion to limit the scope of discovery so as to secure a "just, speedy, and inexpensive determination." Fed. R. Civ. P. 1; *see also* Fed. R. Civ. P. 26(c)–(d). A court may, for good cause, stay discovery "to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." Fed. R. Civ. P. 26(c). A stay of discovery is often appropriate when a pending dispositive motion can resolve the case and "the requested discovery is unlikely to produce facts necessary to defeat the motion." *Sprague v. Brook*, 149 F.R.D. 575, 577 (N.D. Ill. 1993). However, summary judgment should not be entered "until the party opposing the motion has had a fair opportunity to conduct such discovery as may be necessary to meet the factual basis for the motion." *Celotex Corp. v. Catrett*, 477 U.S. 317, 326 (1986). Federal Rule of Civil Procedure 56(d) "allows the nonmoving party to submit an affidavit or declaration requesting the court to defer or deny judgment in order to allow for appropriate discovery to address matters raised by the motion." *Spierer v. Rossman*, 798 F.3d 502, 506–07 (7th Cir. 2015) (citing Fed. R. Civ. P. 56(d)). The party invoking Rule 56(d) must make a good faith showing that it cannot present sufficient facts to respond to the motion for summary judgment. *Waterloo Furniture Components, Ltd. v. Haworth, Inc.*, 467 F.3d 641, 648 (7th Cir. 2006); *Woods v. City of Chicago*, 234 F.3d 979, 990 (7th Cir. 2000).

The purpose of Rule 56(d) is to "ensure that a diligent party is given a reasonable opportunity to prepare the case." 10B Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 2741 (4th ed. 2016). Courts construe this rule liberally. *See King v. Cooke*, 26 F.3d 720, 726 (7th

Cir. 1994); *see also Am. Family Life Assur. Co. of Columbus v. Biles*, 714 F.3d 887, 894 (5th Cir. 2013) ("Rule 56(d) motions for additional discovery are broadly favored and should be liberally granted because the rule is designed to safeguard non-moving parties from summary judgment motions that they cannot adequately oppose." (internal quotation marks omitted)). A Rule 56(d) motion should be denied if "a party's own lack of diligence is to blame for that party's failure to secure discoverable information." *Grayson v. O'Neill*, 308 F.3d 808, 816 (7th Cir. 2002).

ANALYSIS

In its motion for summary judgment, the Nation makes three arguments: (1) the Nation is a federally-recognized Indian tribe; (2) the Treaty of 1838 set aside a reservation for the Nation and no act of Congress has disestablished or diminished the reservation; and (3) the Village cannot regulate the Nation's activities within Indian country. The issue before the court is whether the Village is entitled to conduct discovery in order to sufficiently respond to the arguments made in support of the Nation's motion for summary judgment. Through its motion for a protective order, the Nation seeks to avoid responding to what it describes as "unduly burdensome and unnecessarily expensive" discovery requests because it believes that there are no disputed, material issues of fact that preclude judgment in its favor. (Pl.'s Br. at 1, ECF No. 22.)

Conversely, the Village asserts that the Nation is attempting to block all discovery that it needs to oppose the Nation's motion and that more time is needed for discovery pursuant to Rule 56(d). It argues that before it can respond to the Nation's motion for summary judgment, it needs time to conduct wide-ranging discovery. (Kowlakowski Decl. at ¶ 3, ECF No. 32.) The Village's discovery requests are directed to three issues: (1) the Nation's tribal status; (2) the jurisdictional

boundaries of the Nation and local governments; and (3) the extent to which the Village's jurisdiction interferes with the Nation's self-governance. The court will address each issue in turn.

A. Tribal Recognition Discovery

The Village asserts that it should not be prohibited from engaging in discovery to determine the Nation's status as a recognized tribe. "When Congress or the executive branch has found that a tribe exists, courts normally will not disturb that determination." *Cohen's Handbook of Federal Indian Law* § 3.02[4] (2012 ed.). Historically, courts regarded tribal status as a political question inappropriate for judicial review. *See, e.g.*, *United States v. Holliday*, 70 U.S. 407, 419 (1865) ("In reference to all matters of [tribal affairs], it is the rule of this court to follow the action of the executive and other political departments of government, whose more special duty is to determine such affairs."); *Baker v. Carr*, 369 U.S. 186, 215–16 (1962) (discussing tribal status as an example of a political question).

The Seventh Circuit has addressed this specific issue in *Miami Nation of Indians of Indiana, Inc. v. United States Department of the Interior*, 255 F.3d 342 (7th Cir. 2001). In that case, the Miami Nation of Indians of Indiana (the Nation) sought review of the Department of the Interior's (DOI) decision refusing to recognize it as a tribe. *Id.* at 345–46. The court observed that the dispute "lies at the heart" of the political question doctrine. It indicated that the question of whether a tribe constitutes a "'nation' with a 'government' with which the United States might establish relations" is a non-justiciable question. *Id.* at 347. However, the court determined the political question doctrine was not in play because the Nation's challenge was to the DOI's application of 25 C.F.R. § 83.7, the regulation detailing the tribal-recognition criteria. *Id.* at 349. The court reasoned that analyzing whether an agency properly applied its regulations was the sort of legal question "that

courts are equipped to answer." *Id.* The court ultimately found that the DOI did not err in applying § 83.7 to the Nation.

Miami Nation instructs that courts may review the executive branch's decision to recognize or fail to recognize a tribe only when a party asserts that the DOI misapplied its regulations. The issue becomes a non-justiciable one when a party requests that the court supplant Congress' or the executive branch's decision to recognize a tribe. The Village appears to challenge both the Nation's tribal status generally and the executive branch's application of the regulatory criteria in recognizing the Nation as a tribe. (Def.'s Br. at 16, ECF No. 31; Def.'s Reply Br. at 8, ECF No. 41.) Although the Village's challenge to the Nation's tribal status is a non-justiciable question that cannot be addressed by the court, its challenge to the executive branch's application of the regulatory criteria is justiciable.

The Nation asserts that the Village's tribal status claims are time-barred because the Village did not raise them within the six-year statute of limitations. (Pl.'s Resp. Br. at 10, ECF No. 39.) It also argues that the absence of the United States in this action is fatal to the Village's challenge. The court agrees that the Village's claim is barred by the statute of limitations. "[E]very civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues." 28 U.S.C. § 2401(a). Here, the Village could have pursued its tribal recognition challenge at least as early as 2006, when the Nation filed an action in federal court seeking declaratory and injunctive relief against the Village's condemnation of a portion of the Nation's newly-acquired property and its levy of a special assessment on the property. *See Oneida Tribe of Indians of Wis. v. Vill. of Hobart*, 542 F. Supp. 2d 908 (E.D. Wis. 2008). Therefore, the Village's challenge to the Nation's tribal status is barred by the statute of limitations period of 28

U.S.C. § 2401(a). *See Muwekma Ohlone Tribe v. Salazar*, 813 F. Supp. 2d 170, 190–91 (D.D.C. 2011) (finding that the tribe's claim alleging unlawful termination of federal recognition was time-barred because the "most obvious point" at which the tribe could have first brought suit was in 1989 when its petition for federal acknowledgement was denied); *cf. Artichoke Joe's Cal. Grand Casino v. Norton*, 278 F. Supp. 2d 1174, 1182–83 (E.D. Cal. 2003) (holding that the challenge to the Secretary's recognition decision was not time-barred because plaintiff did not have standing to challenge the recognition decision at the time it was made). In short, it seems doubtful that the Village can at this late date challenge the Nation's tribal status. But as the following discussion shows, essentially the same evidence is relevant to determining the boundaries of the Nation's reservation. Under these circumstances, the Village cannot be foreclosed at the outset from inquiring into the history of the Nation's relationship with the federal government and the formation of its reservation. This does not mean, however, that the specific discovery requests made by the Village need be answered. The initial request relating to the Nation's tribal status propounded by the Village reads as follows:

> **REQUEST NO. 22:** All records, documents, and communications that support the Nation's contention that it is a federally recognized tribe.

(ECF No. 29-1.) This request is clearly too broad. After consulting with the Nation, the Village should narrowly tailor its tribal recognition discovery requests to those items that are relevant to the issue.

B. Disestablishment and Diminishment Discovery

The Village also challenges the initial establishment of the Nation's reservation as well as its current boundaries. (Def.'s Br. at 9–12, ECF No. 31.) The Village asserts that the 1838 Treaty with

the First Christian and Orchard Parties that the Nation contends set aside its reservation did not actually create a reservation. The 1838 Treaty set aside "One hundred (100) acres, for each individual." The Village argues that because the Treaty does not indicate that the total acreage is communal reservation land, it is distinguishable from all other reservations. It also asserts that even if a reservation was established for the Nation at one time in the past, it contests the reservation's present-day boundaries. The Village contends that a 1906 congressional act diminished the Nation's reservation and asserts that it should be able to conduct discovery regarding the Act just as the State of Wisconsin did in *Wisconsin v. Stockbridge-Munsee Community*, 554 F.3d 657 (7th Cir. 2009). In *Stockbridge-Munsee*, Wisconsin alleged that the Stockbridge-Munsee Tribe violated the Indian Gaming Regulatory Act by operating slot machines on land located outside its reservation boundaries. *Id.* at 659. The district court found that the reservation was extinguished by two congressional acts: the 1871 Act which intended to remove opened lands from the reservation and the 1906 Act which abolished the reservation. *Id.* at 660.

The Seventh Circuit affirmed the lower court's determination that the 1906 Act disestablished the tribes' reservation. This 1906 congressional act is the same one the Village relies upon in this case. With respect to the Stockbridge-Munsee Tribe, the 1906 Act instructed the Secretary of the Interior to give the Tribe and its descendants allotments of the reservation land in fee simple. By 1910, all of the land was either allotted in fee simple or sold to non-Indians. *Id.* at 664–65. The court found that although the 1906 Act "included none of the hallmark language suggesting the Congress intended to disestablish the reservation," the circumstances surrounding the Act demonstrated that Congress intended to extinguish what remained of the reservation established

in 1856. *Id.* at 664. The Village asserts that because the Nation is subject to the same 1906 Act, it is entitled to conduct extensive discovery related to the Act and the events following the Act.

The framework for determining whether a reservation has been diminished is well settled. "'Only Congress can divest a reservation of its land and diminish its boundaries,' and its intent to do so must be clear." *Nebraska v. Parker*, 136 S. Ct. 1072, 1078–79 (2016) (quoting *Solem v. Bartlett*, 465 U.S. 463, 47 (1984)). The Supreme Court recently clarified that the question of diminishment requires analyzing three factors: the statutory text, the Act's history, and the demographic history and the federal government's treatment of the lands. *Id.* at 1079–81. Courts begin with the statutory text, "the most 'probative evidence' of diminishment." *Id.* at 1079 (quoting *Solem*, 465 U.S. at 470). Then courts turn to "[t]he history surrounding the passage of [the Act]," as the history may "unequivocally reveal a widely held, contemporaneous understanding that the affected reservation would shrink as a result of the proposed legislation." *Id.* at 1080 (quoting *Solem*, 465 U.S. at 471). Finally, courts "consider both the subsequent demographic history of opened lands, which serves as 'one additional clue as to what Congress expected would happen once land on a particular reservation was opened to non-Indian settlers' . . . as well as the United States' 'treatment of the affected areas, particularly in the years immediately following the opening,' which has 'some evidentiary value.'" *Id.* at 1081 (quoting *Solem*, 465 U.S. at 471–72).

The Nation argues that the Village does not need discovery pertaining to the 1906 Act because the court can clearly construe the Act as failing to demonstrate a clear congressional intent to diminish the reservation. However, the 1906 Act is not as straightforward as the Nation suggests. Indeed, the Oneida-related provisions in the Act are separate and distinct from the provisions

disestablishing the Stockbridge-Munsee reservation. Nevertheless, the Act specifies that the Secretary of the Interior is

> authorized, in his discretion, to issue a patent in fee to any Indian of the Oneida Reservation in Wisconsin for the lands heretofore allotted him, and the issuance of such patent shall operate as a removal of all restrictions as to the sale, taxation, and alienation of the lands so patented.

34 Stat. 325 ch. 3504. This language suggests that the original reservation may have been diminished and its boundaries may not be the same as those of the current reservation. Accordingly, the Village should be able to conduct discovery so that it may obtain all of the necessary records to effectively engage in the diminishment analysis outlined in *Parker*.

The Nation asserts that even if the discovery requests regarding its reservation boundaries are relevant, the sheer volume of material sought by the Village is unduly burdensome and expensive. The court agrees that the Village's requests are overly broad, and many of the documents it seeks can be easily accessed through the public record. Nevertheless, the court concludes that the Nation must provide or make available for copying all documents and records identifying the lands held in trust by the United States for the benefit of the Nation. The court will also allow the Village time to conduct its own investigation to independently verify the establishment of the Nation's reservation and its current boundaries.

C. Local Regulation within Indian Country Discovery

The Village argues that even if the court finds that the Nation's activities regarding the Big Apple Fest occurred within the reservation, it should be able to conduct discovery to determine whether it is authorized to regulate the Nation and its tribal members' activity within Indian country. The Supreme Court has recognized that "there is no rigid rule by which to resolve the question

whether a particular state law may be applied to an Indian reservation or to tribal members." *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 142 (1980). Ordinarily, a state "may not regulate the property or conduct of tribes or tribal-member Indians in Indian country." *Cohen*, *supra* at § 6.03[1][a] (citations omitted). Stated differently, state and local laws "are not applicable to tribal Indians on an Indian reservation except where Congress has expressly provided." *McClanahan v. State Tax Comm'n of Ariz.*, 411 U.S. 164, 170–71 (1973). "Indian country" is defined as:

> (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation,
>
> (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and
>
> (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

18 U.S.C. § 1151. Although this definition derives from the criminal code, many courts have applied § 1151's definition of "Indian country" in the civil context. *See, e.g.*, *Indian Country, U.S.A., Inc. v. State of Oklahoma*, 829 F.2d 967 (1987) (citing *Solem*, 465 U.S. 463); *DeCoteau v. District Cnty. Court*, 420 U.S. 425 (1975); *Kennerly v. District Court*, 400 U.S. 423 (1971); *Cheyenne-Arapaho Tribes of Okla. v. Oklahoma*, 618 F.2d 665 (10th Cir. 1980). Courts have acknowledged that two barriers prevent a state from asserting regulatory authority in Indian country: Congress' authority to regulate tribal affairs and tribal sovereign immunity. *Bracker*, 448 U.S. at 142.

The Nation argues that because all activity related to the Big Apple Fest occurred in Indian country, the Village's attempt to regulate the Nation's conduct is pre-empted by the rules of self-governance. (Pl.'s Br. in Opposition at 9, ECF No. 36.) The notion of Indian country is less than

clear, however, especially where as here the entire Village of Hobart is within the area the Nation identifies as Indian country. This has profound implications on the Village's authority to regulate activity within its own borders. The Village asserts that the court should balance the interests of the Village, the Nation, and the federal government to determine whether it can regulate the Nation's activities. To support its argument, the Village relies on *Nevada v. Hicks*, 533 U.S. 353 (2001). In *Hicks*, both state and tribal officers conducted an unsuccessful search of Hicks' on-reservation home, to find evidence that Hicks had illegally killed a California Bighorn sheep off the reservation. *Id.* at 355–56. Hicks subsequently filed suit in tribal court pursuant to 42 U.S.C. § 1983 against the State of Nevada and the state officers in their individual capacities. The State and its officials filed a claim in federal district court, seeking a declaratory judgment that the tribal court lacked jurisdiction over Hicks' action. *Id.* at 357. The district court found that the tribal court had jurisdiction over Hicks' claim, and the Ninth Circuit affirmed. *Id.*

The Supreme Court held the tribal court did not have jurisdiction to adjudicate the claim. *Id.* at 364. The Court determined that "the Indians' right to make their own laws and be governed by them does not exclude all state regulatory authority on the reservation." *Id.* at 361. The Court recognized that States may not exert the same degree of regulatory authority within a reservation as they do without, and in these circumstances, the court must balance "the interest of the Tribes and the Federal Government, on the one hand, and those of the State on the other." *Id.* at 362 (quoting *Washington v. Confederated Tribes of Colville Reservation*, 447 U.S. 134, 156 (1980)). When the Nation's on-reservation conduct only involves its members, "state law is generally inapplicable, for the State's regulatory interest is likely to be minimal and the federal interest in encouraging tribal self-government is at its strongest." *Id.* (quoting *Bracker*, 448 U.S. at 144). Conversely, when

"state interests outside the reservation are implicated, States may regulate the activities even of tribe members on tribal land." *Id.* (citing *Confederated Tribes*, 447 U.S. at 151).

The Court found that the State's interest in the execution of process related to an off-reservation violation of state law was "considerable," and even though process related to fee lands, "it no more impairs the tribe's self-government than federal enforcement of federal law impairs state government." *Id.* at 364. The Court concluded that the tribal authority to regulate state officers in executing process was not essential to tribal self-government or internal relations. *Id.* Accordingly, the Court held that the Tribal Court had no jurisdiction over the § 1983 claims. *Id.* at 369.

In short, the *Hicks* Court used the interest-balancing test to find that the tribe did not have jurisdiction over the activity of *non-members* on the reservation. The issue in this case, however, is whether the court should apply the balancing test to determine whether the Village can regulate the activity of *the Nation and its members* on the reservation. The Supreme Court has observed that the interest-balancing test applies only when "a State asserts authority over the conduct of non-Indians engaging in activity on the reservation." *Wagnon v. Prairie Band Potawatomi Nation*, 56 U.S. 95, 110 (2005) (quoting *Bracker*, 448 U.S. at 144–45). Notwithstanding this clear pronouncement, however, the Supreme Court itself has applied the interest-balancing test to determine whether a State may assert jurisdiction over the on-reservation activities of tribal members in "exceptional circumstances." *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 215 (1987) (quoting *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 331–32 (1983)).

One of these exceptional circumstances is the State's ability to regulate certain activities of tribes and their members regarding the sale and taxation of cigarettes to non-members. In *Moe v. Confederated Salish & Kootenai Tribes*, the Court found that even in the absence of express

congressional authorization, Montana could require tribal members to collect state sales tax from their non-member customers on the reservation. 425 U.S. 463, 483 (1976). The Court reasoned that the State's interest in assuring the collection of a "concededly lawful tax" from non-members was sufficient to warrant the marginal burden imposed on the tribal members selling the cigarettes. *Id.*

Similarly, in *Washington v. Confederated Tribes of the Colville Indian Reservation*, the Court weighed the State's interest in enforcing a valid cigarette tax against the economic interests of the tribe. 447 U.S. 134 (1980). The Court concluded the principles of federal law do not authorize tribes or their members to "market an exemption from state taxation to persons who would normally do their business" outside the reservation. *Id.* at 155. Accordingly, the Court held that the State could tax cigarettes sold by tribal smokeshops to non-Indians, even though it would eliminate their competitive advantage and reduce revenues used to provide tribal services. *Id.* at 154–55; *see also Dep't of Taxation & Fin. v. Milhelm Attea & Bros., Inc.*, 512 U.S. 61 (1994) (allowing state to impose a detailed regulation of reservation cigarette sales by Indians to both non-Indians and Indians).

The Supreme Court has also balanced the interests of the State, the tribe, and the federal government in determining whether a State and one of its counties could regulate bingo and card games within the reservation. *See California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987). In *Cabazon*, the tribes sought a declaratory judgment that the county had no authority to apply ordinances restricting bingo and draw poker inside the reservation and an injunction against their enforcement. *Id.* at 206. The district court found that neither the State nor the county had any authority to enforce its gambling laws within the reservation, and the Ninth Circuit affirmed. *Id.*

The tribe argued that because the state and county laws at issue are imposed directly on the tribes that operate the games, and are not expressly permitted by Congress, the Supreme Court should affirm the judgment below without more. *Id.* at 214. The Court noted, however, that its cases "have not established an inflexible *per se* rule precluding state jurisdiction over tribes and tribal members in the absence of express congressional consent." *Id.* at 214–15. "Under certain circumstances a State may validly assert authority over the activities of nonmembers on a reservation, and . . . in exceptional circumstances a State may assert jurisdiction over the on-reservation activities of tribal members." *Id.* (quoting *Mescalero*, 462 U.S. at 331–32).

The Court noted that the case involved a state burden on tribal Indians in the context of their dealings with non-Indians. *Id.* at 216. In applying the balancing test, the Court concluded that the State's interest in preventing the infiltration of organized crime within the tribal bingo enterprises did not justify regulating tribal bingo in light of the compelling federal and tribal interests supporting it. *Id.* at 221–22. The Court reasoned that the State did not allege any present criminal involvement in the tribes' enterprises, and this suspicion did not outweigh the "'overriding goal' of encouraging tribal self-sufficiency and economic development." *Id.* at 216 (quoting *Mescalero*, 462 U.S. at 334–35). In short, the State's interests did not justify state and county regulation of the tribe's activities.

Based on the inconsistency in the Supreme Court's application of the interest-balancing test and the fact that the entire Village of Hobart is within the Nation's purported reservation boundaries, the court concludes that the Village is entitled to conduct and obtain discovery to determine the local, tribal and federal interests implicated by the Village's enforcement, or non-enforcement, of its Special Event Permit Ordinance on the Nation and its members' activities within Indian country.

CONCLUSION

The blanket stay of discovery requested by the Nation will tactically disadvantage the Village because it prevents the Village from effectively responding to the Nation's motion for summary judgment or presenting its case. Rather than render a decision based on a less than complete record, the court finds that the Village is entitled to a reasonable opportunity to discover and present all evidence pertinent to the Nation's challenge to enforcement of its Special Event Permit Ordinance and the Village's defense thereof. For these reasons, the Nation's motion for summary judgment (ECF No. 24) is **DENIED** as premature. The Nation's motion for a protective order (ECF No. 21) is **GRANTED-IN-PART** and **DENIED-IN-PART** and the Village's motion to allow time for discovery under Rule 56(d) (ECF No. 34) is **GRANTED**. Pursuant to the scheduling order, the Village shall have until August 28, 2017 to conduct discovery consistent with this Order.

SO ORDERED this 19th day of April, 2017.

s/ William C. Griesbach
William C. Griesbach, Chief Judge
United States District Court