

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

VILLAGE OF HOBART, WISCONSIN,

Plaintiff,

Case No. 1:23-cv-01511-WCG

v.

UNITED STATES DEPARTMENT OF THE
INTERIOR et al.,

Defendants.

DEFENDANTS' ANSWER TO PLAINTIFF'S COMPLAINT

Defendants United States Department of the Interior (“Interior”); Deb Haaland, in her official capacity as Secretary of the Interior; Bureau of Indian Affairs (“BIA”), Tammie Poitra, in her official capacity as Midwest Regional Director, BIA; the Acting Midwest Regional Director, BIA; and the Interior Board of Indian Appeals (“IBIA”) (collectively, “Defendants” or “United States”), state the following in response to Plaintiff Village of Hobart’s Complaint, filed on November 10, 2023. The United States denies any and all allegations in Plaintiff’s Complaint, whether express or implied, that are not expressly and specifically admitted, denied, or qualified herein, and the United States specifically denies any violation of law. Responses in the numbered paragraphs of this Answer correspond to the allegations in the corresponding numbered paragraphs and sections of the Complaint. The topic headings used below are duplicated from the Complaint and are inserted for ease of reference. Use of these topic headings below does not constitute an admission or acknowledgement by Defendants of the headings’ relevance or accuracy.

1. The allegations in the first sentence of Paragraph 1 consist of Plaintiff's characterization of this suit challenging the January 19, 2017 decision issued by the Acting Midwest Regional Director ("Regional Director Decision") and the September 21, 2023 decision issued by the Interior Board of Indian Appeals ("IBIA") affirming the Regional Director Decision ("IBIA Decision") (collectively, "Decisions") to acquire parcels of land located in the Village of Hobart ("Parcels") for the Oneida Nation ("Tribe") and request for relief. Defendants admit that Plaintiff seeks this relief but deny that Plaintiff is entitled to any relief. Defendants admit the allegations in footnote 1, Paragraph 1.

2. The allegations in the first clause of Paragraph 2 consist of a description of the relief Plaintiff seeks. Defendants admit that Plaintiff seeks this relief but deny that Plaintiff is entitled to any relief. Defendants admit the allegations in footnote 2, Paragraph 2. The allegations in the remainder of Paragraph 2 consist of a statement of the number of properties, parcels, and total acreage of the challenged acquisition, which Defendants admit. Defendants admit the allegations in footnote 3, Paragraph 2.

3. Defendants deny the allegations in Paragraph 3.

4. Defendants deny the allegations in Paragraph 4.

5. The allegations in Paragraph 5 consist of Plaintiff's characterization of this action, as well as Plaintiff's argument and legal conclusions. Defendants admit that Plaintiff's action challenges the constitutionality of the Indian Reorganization Act and 25 C.F.R. § 1.4, but Defendants specifically deny that either the Indian Reorganization Act of 1934, 25 U.S.C. § 5101, *et seq.*, or 25 C.F.R. § 1.4 is unconstitutional.

6. Defendants deny the allegations in Paragraph 6.

JURISDICTION AND VENUE

7. Based on the Complaint, Defendants admit the allegations in Paragraph 7.

8. Defendants admit the allegations in Paragraph 8.
9. Defendants admit the allegations in Paragraph 9.
10. Based on the Complaint, Defendants admit the allegations in Paragraph 10.

PARTIES

11. Defendants admit the allegations in Paragraph 11 that Plaintiff is a political subdivision of the State of Wisconsin. Defendants admit the allegation that 25 C.F.R. § 151.10(d) requires the Secretary to notify State and local governments with regulatory jurisdiction over the land to be acquired and that such entities may provide written comments within 30 calendar days. Defendants deny the remainder of the allegations in Paragraph 11.

12. Defendants admit the allegations in the first sentence of Paragraph 12. The second sentence of Paragraph 12 is vague and ambiguous such that Defendants lack sufficient information or knowledge to formulate a response and deny the allegations on that basis. Defendants aver that the regulations governing this acquisition provide that when a decision to acquire land in trust is final and not subject to further administrative review, Interior “shall . . . [i]mmediately acquire the land in trust under [25 C.F.R.] § 151.14 upon expiration of the time for filing a notice of appeal or upon exhaustion of administrative remedies under part 2 of this title, and upon the fulfillment of the requirements of § 151.13 and any other Departmental requirements.” 25 C.F.R. § 151.12(d)(2) (iv) (2013).¹

13. Defendants admit the allegations in the first sentence of Paragraph 13. The second sentence of Paragraph 12 is vague and ambiguous such that Defendants lack sufficient information or knowledge to formulate a response and deny the allegations on that basis.

¹ Defendants further aver that, effective January 11, 2024, Interior promulgated revised regulations governing the land into trust process, codified at 25 C.F.R. Part 151. Such revised regulations do not apply to the Decisions challenged in this suit. Defendants note, however, that that Section 151.12(d)(2)(iv) was recodified as 25 C.F.R. § 151.13(d)(2)(iv) in the revised regulations.

Defendants aver that the regulations governing this acquisition provide that when a decision to acquire land in trust is final and not subject to further administrative review, Interior “shall . . . [i]mmediately acquire the land in trust under [25 C.F.R.] § 151.14 upon expiration of the time for filing a notice of appeal or upon exhaustion of administrative remedies under part 2 of this title, and upon the fulfillment of the requirements of § 151.13 and any other Departmental requirements.” 25 C.F.R. § 151.12(d)(2) (iv) (2013).

14. Defendants admit the allegations in the first sentence of Paragraph 14. Defendants aver that the Regional Director Decision was affirmed by the IBIA Decision, rendering the Decisions final for the agency and subject to the requirements of 25 C.F.R § 151.12(d)(2) (iv) (2013).

15. Defendants admit the allegations in Paragraph 15. Defendants aver that the Regional Director Decision was affirmed by the IBIA Decision, rendering the Decisions final for the agency and subject to the requirements of 25 C.F.R § 151.12(d)(2) (iv) (2013).

16. The allegation in the first clause of sentence one of Paragraph 16 consists of Plaintiff’s characterization of a vacant position within the Bureau of Indian Affairs, to which no response is required. Defendants deny the allegations in the second clause of the first sentence of Paragraph 16. With respect to the allegations in the second sentence of Paragraph 16, Defendants aver that the Regional Director Decision was affirmed by the IBIA Decision, rendering the Decisions final for the agency and subject to the requirements of 25 C.F.R § 151.12(d)(2) (iv) (2013).

17. Defendants admit the allegations in the first two sentences of Paragraph 17. Defendants deny the allegation in the third sentence of Paragraph 17 and aver that the Regional Director Decision was affirmed by the IBIA Decision, rendering the Decisions final for the agency and subject to the requirements of 25 C.F.R § 151.12(d)(2) (iv) (2013).

GENERAL ALLEGATIONS

Fee-to-Trust Application

18. Defendants admit the allegations in Paragraph 18.

19. The allegations in Paragraph 19 are vague and ambiguous such that Defendants lack sufficient information or knowledge to formulate a response and thus, Defendants deny the allegations on that basis. Defendants aver that in 2010, the Regional Director issued six Notices of Decision that together approved the Tribe's request to acquire in trust approximately 499 acres of land ("Property"). Plaintiff challenged the six Notices of Decision to the IBIA. The IBIA consolidated the appeals and affirmed the Notices of Decision in part, vacated them in part, and remanded the Notices of Decision back to the Regional Director. On January 19, 2017, the Regional Director issued the Regional Director Decision, which again approved the acquisition of the Property in trust following the remand. The IBIA Decision affirmed the Regional Director Decision on September 21, 2023. The allegations in Paragraph 19 reference 133 parcels of land. The Decisions at issue in this case involve only the Property—8 properties that together comprise 21 parcels of land consisting of approximately 499 acres. Any applications submitted by the Tribe pertaining to lands other than the Property at issue here are still pending with the agency, not final agency action, and thus outside the scope of this suit. Accordingly, no response is required. To the extent a response is required, Defendants deny the allegations.

20. Defendants admit that in 2010, the Regional Director approved six Notices of Decision that together approved the acceptance of the Property in trust. Those Notices of Decision were appealed to the IBIA. The IBIA affirmed the Notices of Decision in part, vacated them in part, and remanded the Notices of Decision back to the Regional Director. On January 19, 2017, the Regional Director issued the Regional Director Decision, which was affirmed by the IBIA through the IBIA Decision issued on September 21, 2023.

Hobart I

21. Defendants admit the allegations in Paragraph 21.

22. Defendants admit the allegation in Paragraph 22 that on May 9, 2013, the IBIA issued its decision in *Village of Hobart v. Midwest Regional Director*, 57 IBIA 4, 5 (2013) (*Hobart I*). Defendants deny the remainder of the allegations in Paragraph 22.

23. Defendants admit the allegation in Paragraph 23.

24. Defendants admit the allegations in Paragraph 24.

25. Defendants admit the allegations in Paragraph 25.

26. Defendants admit the allegations in Paragraph 26.

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

27. With respect to the allegations in Paragraph 27, Defendants admit that Plaintiff made the described statements to the IBIA. Defendants aver that the IBIA considered Plaintiff's arguments and deny any allegation that the Board's consideration was insufficient.

28. With respect to the allegations in Paragraph 28, Defendants admit that Plaintiff made the described statements to the IBIA. Defendants aver that the IBIA considered Plaintiff's arguments and deny any allegation that the Board's consideration was insufficient.

29. Defendants deny the allegations in Paragraph 29.

30. Defendants deny the allegations in Paragraph 30.

31. Defendants deny the allegations in Paragraph 31.

32. Defendants deny the allegations in the first sentence of Paragraph 32 and aver that the Midwest MOU further specifies Division employees are "responsible for assuring that each request for trust acquisition shall fulfill completely all of the administrative requirements of 25

CFR Part 151 for the request under consideration.” Defendants admit the allegations in the second sentence of Paragraph 32.

33. Defendants admit that the reports referenced in Paragraph 33 exist. Defendants deny Plaintiff’s subjective characterization of those reports. Defendants aver that the subject of the 2006 Inspector General report (“IG Report”) is the “California Fee to Trust Consortium,” also known as the “Pacific Regional Officer Memorandum of Understanding” or “PRO MOU.”

34. Defendants admit that the IG Report contains the portions quoted by Plaintiff in Paragraph 34. Defendants deny Plaintiff’s subjective characterizations of the IG Report and aver that the PRO MOU is the stated subject of the IG Report and that the IG Report documents differences between the PRO MOU and the Midwest MOU.

35. Defendants admit that the IG Report contains the portions quoted by Plaintiff in Paragraph 35. Defendants deny Plaintiff’s subjective characterizations of the IG Report.

36. With respect to the allegations in Paragraph 36, Defendants admit that Plaintiff made the described statements to the IBIA. Defendants aver that the IBIA considered Plaintiff’s arguments and deny any allegation that the Board’s consideration was insufficient.

37. Defendants admit that the IG Report contains the portions quoted by Plaintiff in Paragraph 37. Defendants deny Plaintiff’s subjective characterizations of the IG Report.

38. With respect to the allegations in Paragraph 38, Defendants admit that Plaintiff made the described statements to the IBIA. Defendants aver that the IBIA considered Plaintiff’s arguments and deny any allegation that the Board’s consideration was insufficient.

39. Defendants deny the allegations in Paragraph 39.

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

40. With respect to the allegations in Paragraph 40, Defendants admit that Plaintiff

made the described statements to the IBIA. Defendants aver that the IBIA considered Plaintiff's arguments and deny any allegation that the Board's consideration was insufficient.

41. With respect to the allegations in Paragraph 41, Defendants admit that Plaintiff made the described statements to the IBIA, but Defendants deny Plaintiff's subjective characterizations of the Beacon Hill Institute study.

42. The allegations in Paragraph 42 are vague and ambiguous such that Defendants lack sufficient information or knowledge to formulate a response and thus, Defendants deny the allegations on that basis.

43. The allegations in Paragraph 43 are vague and ambiguous such that Defendants lack sufficient information or knowledge to formulate a response and thus, Defendants deny the allegations on that basis.

44. The allegations in Paragraph 44 are vague and ambiguous such that Defendants lack sufficient information or knowledge to formulate a response and thus, Defendants deny the allegations on that basis.

45. The allegations in the first sentence of Paragraph 45 are vague and ambiguous such that Defendants lack sufficient information or knowledge to formulate a response and deny the allegations on that basis. Defendants admit the allegation in the second sentence of Paragraph 45.

46. The allegations in Paragraph 46 are vague and ambiguous such that Defendants lack sufficient information or knowledge to formulate a response and thus, Defendants deny the allegations on that basis.

47. The allegations in Paragraph 47 are vague and ambiguous such that Defendants lack sufficient information or knowledge to formulate a response and thus, Defendants deny the allegations on that basis.

48. With respect to the allegations in Paragraph 48, Defendants admit that Plaintiff made the described statements to the IBIA. Defendants aver that the IBIA considered Plaintiff's arguments and deny any allegation that the Board's consideration was insufficient.

49. With respect to the allegations in Paragraph 49, Defendants admit that Plaintiff made the described statements to the IBIA. Defendants aver that the IBIA considered Plaintiff's arguments and deny any allegation that the Board's consideration was insufficient.

50. With respect to the allegations in Paragraph 50, Defendants admit that Plaintiff made the described statements to the IBIA. Defendants aver that the IBIA considered Plaintiff's arguments and deny any allegation that the Board's consideration was insufficient.

51. With respect to the allegations in Paragraph 51, Defendants admit that Plaintiff made the described statements to the IBIA. Defendants aver that the IBIA considered Plaintiff's arguments and deny any allegation that the Board's consideration was insufficient.

Hobart II

52. Defendants admit the allegations in Paragraph 52.

53. Defendants admit that the IBIA in *Hobart II* rejected Plaintiff's arguments described in Paragraph 53.

54. Defendants admit that the IBIA in *Hobart II* rejected Plaintiff's arguments described in Paragraph 54.

55. Defendants admit that the IBIA in *Hobart II* rejected Plaintiff's arguments described in Paragraph 55.

56. Defendants admit that the IBIA in *Hobart II* rejected Plaintiff's arguments described in Paragraph 56.

57. Defendants admit that the IBIA in *Hobart II* rejected Plaintiff's arguments

described in Paragraph 57.

58. Defendants admit the allegation in Paragraph 58.

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

59. Paragraph 59 is a statement in which Plaintiff realleges and reincorporates prior paragraphs. In response, Defendants incorporate their responses to all prior paragraphs.

60. Defendants deny the allegations in Paragraph 60.

61. The allegations in Paragraph 61 consist of Plaintiff's characterizations of the relief sought. Defendants admit that Plaintiff seeks this relief but deny that Plaintiff is entitled to any relief.

62. Defendants deny the allegations in Paragraph 62.

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

63. Paragraph 63 is a statement in which Plaintiff realleges and reincorporates prior paragraphs. In response, Defendants incorporate their responses to all prior paragraphs.

64. Defendants deny the allegations in Paragraph 64.

65. Defendants deny the allegations in Paragraph 65.

66. The allegations in Paragraph 66 consist of Plaintiff's characterization of the relief sought. Defendants admit that Plaintiff seeks this relief but deny that Plaintiff is entitled to any relief.

67. Defendants deny the allegations in Paragraph 67.

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

68. Paragraph 68 is a statement in which Plaintiff realleges and reincorporates prior paragraphs. In response, Defendants incorporate their responses to all prior paragraphs.

69. Defendants deny the allegations in Paragraph 69.

70. The allegations in Paragraph 70 consist of Plaintiff's characterization of the relief sought. Defendants admit that Plaintiff seeks this relief but deny that Plaintiff is entitled to any relief.

71. Defendants deny the allegations in paragraph 71.

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

72. Paragraph 72 is a statement in which Plaintiff realleges and reincorporates prior paragraphs. In response, Defendants incorporate their responses to all prior paragraphs.

73. Defendants deny the allegations in Paragraph 73.

74. The allegations in Paragraph 74 consist of Plaintiff's characterization of the relief sought. In response, Defendants admit that Plaintiff seeks this relief but deny that Plaintiff is entitled to any relief.

75. Defendants deny the allegations in Paragraph 75.

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

76. Paragraph 76 is a statement in which Plaintiff realleges and reincorporates prior paragraphs. In response, Defendants incorporate their responses to all prior paragraphs.

77. Defendants deny the allegation in paragraph 77.

78. The allegations in Paragraph 78 consist of Plaintiff's characterization of the relief sought. In response, Defendants admit that Plaintiff seeks this relief but deny that Plaintiff is entitled to any relief.

79. Defendants deny the allegations in paragraph 79.

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

80. Paragraph 80 is a statement in which Plaintiff realleges and reincorporates prior paragraphs. In response, Defendants incorporate their responses to all prior paragraphs.

81. Defendants deny the allegations in Paragraph 81.

82. Defendants deny the allegations in Paragraph 82.

83. With respect to the allegations in Paragraph 83, Defendants admit that the Village lacks authority to regulate, through taxation or otherwise, the parcels. Defendants deny the remainder of the allegations in Paragraph 83.

84. Defendants deny the allegations in Paragraph 84.

85. The allegations in Paragraph 85 consist of Plaintiff's characterization of the relief sought. In response, Defendants admit that Plaintiff seeks this relief but deny that Plaintiff is entitled to any relief.

86. Defendants deny the allegations in Paragraph 86.

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

87. Paragraph 87 is a statement in which Plaintiff realleges and reincorporates prior paragraphs. In response, Defendants incorporate their responses to all prior paragraphs.

88. Defendants admit the quoted language in Paragraph 88 appears in 25 C.F.R.

§ 1.4(a).

89. Defendants deny the allegations in Paragraph 89.

90. Defendants admit that 25 C.F.R. § 151.10 provides that the BIA will “notify the state and local governments having regulatory jurisdiction over the land to be acquired” of a request to acquire such land in trust, and will provide such governments “30 days in which to provide written comments as to the acquisition’s potential impacts on regulatory jurisdiction, real property taxes and special assessments.” Defendants deny the remaining allegations of Paragraph 90.

91. Defendants deny the allegations in Paragraph 91.

92. Defendants deny the allegations in Paragraph 92.

93. The allegations in Paragraph 93 consist of Plaintiff’s characterization of the relief sought. In response, Defendants admit that Plaintiffs seek this relief but deny that Plaintiff is entitled to any relief.

94. Defendants deny the allegations in Paragraph 94.

COUNT VIII
DUE PROCESS VIOLATIONS

95. Paragraph 95 is a statement in which Plaintiff realleges and reincorporates prior paragraphs. In response, Defendants incorporate their responses to all prior paragraphs.

96. Defendants deny the allegations in Paragraph 96.

97. Defendants deny the allegations in Paragraph 97.

98. Defendants deny the allegations in Paragraph 98.

99. Defendants deny the allegations in Paragraph 99.

100. Defendants deny the allegations in Paragraph 100.

101. Defendants deny the allegations in Paragraph 101.

102. Defendants deny the allegations in Paragraph 102.

COUNT IX

ADMINISTRATIVE PROCEDURE ACT VIOLATIONS

103. Paragraph 103 is a statement in which Plaintiff realleges and reincorporates prior paragraphs. In response, Defendants incorporate their responses to all prior paragraphs.

104. Defendants admit the allegations in Paragraph 104.

105. Defendants deny the allegations in Paragraph 105.2

- a. Defendants deny the allegations in Paragraph 105(a).
- b. Defendants admit the Regional Director oversees the implementation of the Midwest MOU and admit Division employees assist in drafting decisions to acquire land in trust but deny the remaining allegations Paragraph 105(b).
- c. Defendants deny the allegations in Paragraph 105(c).
- d. Defendants deny the allegations Paragraph 105(d).
- e. Defendants deny the allegations in Paragraph 105(e).
- f. Defendants deny the allegations in Paragraph 105(f).
- g. Defendants deny the allegations in Paragraph 105(g).
- h. Defendants deny the allegations in Paragraph 105(h).
- i. Defendants deny the allegations in Paragraph 105(i).

² Throughout Paragraph 105, Plaintiff refers to the “administrative record.” For the sake of clarity, Defendants aver that the administrative record referred to therein is the record before the IBIA in *Hobart II*. The Administrative Record in this matter will be lodged by Defendants in accordance with any applicable scheduling order entered by the Court in this case.

- j. Defendants deny the allegations in Paragraph 105(j).
- k. Defendants deny the allegations in Paragraph 105(k).
- 106. Defendants deny the allegations in Paragraph 106.
- 107. Defendants deny the allegations in Paragraph 107.
- 108. Defendants deny the allegations in Paragraph 108.
- 109. Defendants deny the allegations in Paragraph 109.

REQUESTED RELIEF

Defendants deny that Plaintiff is entitled to the requested relief, including Paragraphs A through J, or any relief whatsoever.

AFFIRMATIVE DEFENSES

- 1. Plaintiff lacks standing for one or more claims.
- 2. Plaintiff has failed, for one or more reasons, to state a claim upon which relief may be granted.
- 3. Defendants reserve the right to assert additional defenses, including affirmative defenses, which may be revealed subsequent to this filing.

DATED: February 15, 2024.

Respectfully submitted,

TODD KIM
Assistant Attorney General
United States Department of Justice
Environment and Natural Resources Division

/s/ Charmayne G. Staloff
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CERTIFICATE OF SERVICE

I, Charmayne G. Staloff, hereby certify that on February 15, 2024, I caused the foregoing DEFENDANTS' ANSWER TO PLAINTIFF'S COMPLAINT to be sent electronically to the registered participants as identified on the Notice of Electronic Filing.

/s/ Charmayne G. Staloff

Charmayne G. Staloff, Trial Attorney
Indian Resources Section
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