IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

TOWN OF LAC DU FLAMBEAU,

Plaintiff, Case No. 23-cv-541-wmc

v.

BRYAN NEWLAND, et al.

Defendants.

FEDERAL DEFENDANTS' REPLY IN SUPPORT OF MOTION TO DISMISS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Federal Cases

Federal Statutes and Public Laws

Federal Regulations

Federal Rules

Other

INTRODUCTION

The controversy underlying the Town of Lac du Flambeau's ("Town") Administrative Procedure Act ("APA") challenge to the Federal Defendants'[1] removal of Annie Sunn Lane, Center Sugarbush Lane, East Ross Allen Lake Lane, and Elsie Lake Lane (the "Roads") from the Tribal Transportation Program's ("TTP") National Tribal Transportation Facility Inventory ("NTTFI") is whether the Town has a legal right to use the sections of the Roads located on trust and restricted-fee land within the exterior boundary of the Lac du Flambeau Band of Lake Superior Chippewa Indians Reservation (the "Reservation") even though the rights-of-way for the Roads are long expired. Invoking the Federal-Aid Highway Act, 23 U.S.C. § 101, the Federal Lands Highway Program and the TTP, 23 U.S.C. §§ 201, 202, and the TTP implementing regulations, 25 C.F.R. Part 170 (together, the "Highway Act"), as "the statute whose violation is the gravamen of the complaint," *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 886 (1990), the Town asserts that the Highway Act "directly provide[s]" an express legal right to access and travel the Roads by virtue of their inclusion on the NTTFI. *See* Town of Lac du Flambeau's Resp. in Opp'n to Fed'l Defs.' Mot. to Dismiss (Dkt. 14) ("Town Resp.") at 2; *see also id.* at 18 ("explicit language under 25 C.F.R. § 170.114, 25 C.F.R. § 170.5 and 23 U.S.C. § 101 . . . grant[s] the Town and the public rights to access and travel the Roads"). And the Town further asserts that this right arises independently

[1] The Federal Defendants are Bryan Newland, in his official capacity as Assistant Secretary for Indian Affairs ("Assistant Secretary"), Tammie Poitra, in her official capacity as Midwest Regional Director, Bureau of Indian Affairs ("Regional Director"), Deb Haaland, in her official capacity as Secretary of the Interior ("Secretary"), the United States Department of the Interior ("Interior"), and the Bureau of Indian Affairs ("BIA").

of—and is unaffected by—the Indian Right-of-Way Act, 25 U.S.C. §§ 323-328 and its implementing regulations, 25 C.F.R. Part 169 ("ROW Act"). *See id.* at 2 (this action is "not about rights under the [ROW Act]"); at 19 ("The Act and the TTP regulations clearly provide the Town with a legal interest . . . regardless of what the ROW Act may also 'independently' say.").

But in asserting that the Highway Act is the sole source of the legal rights in this APA suit, the Town fails to establish that the Highway Act grants legal rights to use Indian land in the face of Congress' clear directive to the contrary in the ROW Act and the Indian Nonintercourse Act, 25 U.S.C. § 177 ("INA"). This question goes to the heart of the Town's ability to plead a viable APA action. If the Highway Act does not—indeed, cannot—grant the legal rights upon which the Town relies, then, in the absence of any legally cognizable injury, the Town can neither demonstrate standing to challenge the removal of the Roads from the NTTFI nor state a plausible claim for relief. *See*, *e.g.*, *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 571 (1992) (standing test not satisfied if "relief the District Court could have provided . . . was not likely to produce" outcome sought); *Loud Recs. LLC v. Minervini,* 621 F. Supp. 2d 672, 677 (W.D. Wis. 2009) ("A claim should be dismissed 'when the allegations in a complaint, however true, could not raise a claim of entitlement to relief.'" (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 558)).

The Highway Act and the ROW Act operate in separate regulatory spheres, but with statutory purposes that overlap. The Highway Act and TTP allow Tribes to direct funds from the Department of Transportation toward planning, construction, improvement, and maintenance of roads and bridges listed on the NTTFI. The ROW

Act ensures that the use of Indian lands by third parties for roads and other transportation facilities are approved by the Tribal landowners. As the Federal Defendants demonstrate below, consistent with the purposes of the two Acts, the Highway Act could not have granted the Town a property interest or other legal right in the lands underlying the Roads the Town claims, because to do so would render the requirements of the ROW Act (and the INA) a nullity, rather than harmonize them with the Highway Act. Without such rights under the Highway Act, the Town lacks the necessary particularized injury to bring an APA challenge. The Federal Defendants also address below the other arguments in the Town's Response in need of clarification.

ARGUMENT

I. BECAUSE THE HIGHWAY ACT DOES NOT EXPRESSLY OR IMPLIEDLY REPEAL THE ROW ACT, THE TOWN ACQUIRED NO RIGHT TO USE OR OCCUPY THE INDIAN LANDS ON WHICH THE ROADS ARE LOCATED UNDER 25 C.F.R. § 170.114(a)

In asserting its alleged access rights under the Highway Act as the basis for its APA challenge, the Town ignores the ROW Act. *See* Town Resp. at 19 ("The [Highway] Act and the TTP regulations clearly provide the Town with a legal interest as the public authority maintaining the Roads that are to remain open to the public *regardless of what the ROW Act may also 'independently' say*.") (emphasis added). That ignores the law. "When two federal statutes" (or statutory schemes) work independently of each other, "address[ing] the same subject in different ways" (and for different purposes), one statute cannot be ignored at the expense of the other. *Randolph v. IMBS, Inc.*, 368 F.3d 726, 730 (7th Cir. 2004). Rather, "the right question is whether one implicitly repeals the

other—and repeal by implication is a rare bird indeed." *Id.* (citing *Branch v. Smith*, 538 U.S. 254, 273 (2003) and *J.E.M. AG Supply, Inc. v. Pioneer Hi-Bred Int'l, Inc.*, 534 U.S. 124, 141-44 (2001)); *see also Swinomish Indian Tribal Cmty. v. BNSF Railway Co.*, 951 F.3d 1142, 1153 (9th Cir. 2020) ("When a 'case involves the interplay between two statutory schemes created by Congress for different reasons and at different times,' we typically ask whether the later statute *repeals* the prior one." (quoting *Ray v. Spirit Airlines, Inc.*, 767 F.3d 1220, 1224 (11th Cir. 2014))).

As the Federal Defendants have explained, the ROW Act, since its enactment in 1948, has provided the exclusive means by which the Secretary of the Interior may issue an easement granting rights of entry to trust or restricted-fee Indian land of the sort that the Town claims. *See* Fed'l Defs.' Mem. of Law in Support of Mot. to Dismiss (Dkt. 11) ("Opening Brief") at 5-6. To the extent the Town had such interests in the Roads, they all expired by 2018. None of the transportation-funding laws that comprise the Highway Act, including the TTP, *see* 23 U.S.C. §§ 201, 202, expressly repealed or even altered the ROW Act.[2] "When a later-enacted statute does not expressly repeal existing

[2] Those laws include:

- Surface Transportation Assistance Act of 1982, Pub. L. No. 97-424, 96 Stat. 2097 (Jan. 6, 1983);
- Surface Transportation and Uniform Relocation Assistance Act of 1987, Pub. L. No. 100-17, 101 Stat. 132 (Apr. 2, 1987);
- Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. No. 102-240, 105 Stat. 1914 (Dec. 18, 1991);
- Transportation Equity Act for the 21st Century, Pub. L. No. 105-178, 112 Stat. 107 (June 9, 1998);
- Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Pub. L. No. 109-59, 119 Stat. 1144 (Aug. 10, 2005);

federal law, we ask whether the later-enacted statute implicitly repeals earlier law." *Swinomish Indian Tribal Cmty.*, 951 F.3d at 1156.

"The cardinal rule is that repeals by implication are not favored." *Posadas v. Nat'l City Bank*, 296 U.S. 497, 503 (1936). "In the absence of some affirmative showing of an intention to repeal, the only permissible justification for a repeal by implication is when the earlier and later statutes are irreconcilable." *Morton v. Mancari*, 417 U.S. 535, 550 (1974). The Town, in contrast, fails to even assert such an implied repeal. Instead, the Town summarily seeks to elevate the Highway Act and minimize the ROW Act, claiming a legal right only available under the latter. *See* Opening Br. at 23. But "[t]he courts are not at liberty to pick and choose among congressional enactments, and when two statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective." *Mancari*, 417 U.S. at 551. There is no such contrary congressional intention here. Therefore, the Highway Act and 25 C.F.R. § 170.114(a) do not repeal the ROW Act and, once the ROWs expired, the Town lost any enforceable legal right to use and occupy the Roads. This leaves the Town without any cognizable legal injury redressable under the APA.

- Moving Ahead for Progress in the 21st Century Act, Pub. L. No. 112-141, 126 Stat. 405 (July 6, 2012); and
- Fixing America's Surface Transportation Act, Pub. L. No. 114-94, 129 Stat. 1312 (Dec. 4, 2015).

None of the laws mentions the ROW Act. The last three of the listed laws are specifically addressed in the Final Rule adopting the current version of 25 C.F.R. Part 170. *See* Tribal Transportation Program, 81 Fed. Reg. 78456-01, 78456 (Nov. 7, 2016). The TTP's predecessor—the Indian Reservation Roads Program—was originally established in 1928. Act of May 26, 1928, c. 756, 45 Stat. 750 (codified at 25 U.S.C. § 318a). That statute too says nothing about rights-of-way for roads on Indian lands.

First, nothing in the text of any of the laws comprising the Highway Act or their legislative histories indicates that Congress intended that the Highway Act repeal the ROW Act. As mentioned, none of those laws so much as mentions the ROW Act. And while the Highway Act obviously mentions Indian Tribes—the TTP is, after all, a funding program for the benefit of federally recognized Tribes—it does not mention the acquisition of rights-of-way or access to Indian lands.[3] Nor could the Federal Defendants find a single reference to the ROW Act in the voluminous legislative histories of the laws comprising the Highway Act. "The intention of the legislature to repeal must be clear and manifest." *United States v. Borden*, 308 U.S. 188, 198 (1939) (citation and internal quotations omitted). Neither the Highway Act nor its legislative history provides any indication of such congressional intent.

Second, the ROW Act "is a specific provision applying to a very specific situation"—the issuance of rights-of-way that permit third parties to use Indian trust or restricted-fee lands for, among other things, roads. *See Mancari*, 417 U.S. at 550. The Highway Act, on the other hand, deals in the broadest sense with surface transportation issues in Indian Country (and in the United States generally). In such a situation,

[3] The Final Rule announcing the current version of 25 C.F.R. Part 170 mentions the ROW Act's implementing regulations, 25 C.F.R. Part 169, in several places to make clear that nothing in the TTP excuses compliance with the ROW Act. *See* 81 Fed. Reg. at 78459 ("Other regulations address the requirements for rights-of-ways on Tribal lands held in trust by the United States.") (response to comment), at 78460 ("25 CFR part 169 controls the requirements for obtaining or otherwise administering right-of-ways, not 25 CFR part 170") (response to comment).

"[w]here there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one, regardless of the priority of enactment." *Id.* at 550-51.[4]

Finally, the Highway Act and the ROW Act, like the Interstate Commerce Commission Termination Act and the ROW Act at issue in *Swinomish Indian Tribal Cmty.*, "are easily reconcilable." 951 F.3d at 1160. Under the ROW Act, Tribes "retain sovereign authority to control their own lands and to enforce the terms of right-of-way easement agreements" setting forth the conditions under which access to their lands is permitted. *Id.* And the Federal Government, by issuing grants of easement consented to by Tribes, complies with the INA's mandate. Congress passed the Highway Act, in contrast, "to assist tribes in providing safe and adequate transportation and public road access to and within Indian lands, . . . while at the same time respecting Tribal self-determination and self-governance." *Pollard v. Johnson*, No. 23-cv-135-wmc, 2023 WL 6276403, at *4 (W.D. Wis. Sept. 26, 2023) (citations omitted).

In light of the two statutes' separate, but overlapping purposes, the Highway Act's references to public road access and availability for public use must be placed in proper context. Congress understood that, where federal transportation funds were appropriated and used for particular roads, those roads would be available for use by the public. But, at the same time, there is no suggestion, as the Town would have it, that Congress intended to suspend operation of the ROW Act *sub silentio* and make all roads

[4] That the ROW Act implements, for right-of-way access to trust and restricted-fee Indian lands, the Federal Government's obligations under the INA only strengthens application of this proposition to the circumstances presented here.

on the NTTFI crossing trust and restricted-fee Indian land permanently open to one and all in the absence of a valid right-of-way easement. Such an outcome would not only turn the Highway Act's respect for Tribal self-determination and self-governance on its head, but would also nullify the INA.[5] "Overlapping statutes do not repeal one another by implication; as long as people can comply with both, then courts can enforce both." *Randolph*, 368 F.3d at 731. The Highway Act seeks to ensure that public roads in Indian country are safe and adequate. 23 U.S.C. §§ 201, 202. The ROW Act seeks to condition the use of roads located on trust and restricted-fee Indian land on proper Tribal or individual-Indian consent and with the payment of just compensation. 25 U.S.C. §§ 324, 325. In other words, the public authority responsible for a public road under the Highway Act must have a valid legal right to use and occupy the land underlying said public road *when the road is located on trust or restricted-fee Indian land*. Harmonizing the ROW Act and the Highway Act in this way does not interfere with the purposes of either statutory scheme, with the authorities of the relevant federal departments and agencies assigned to carry them out, or with surface transportation in Indian country.

[5] Such an interpretation would also nullify the Band's right "to exclude non-Indians and non-tribal members from their lands, and the commensurate right to grant admission to, or use of, their lands on such terms as the [Band] see[s] fit to impose." *Swinomish Indian Tribal Cmty.*, 951 F.3d at 1153; *see also Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 141, 144 (1982) ("[A] hallmark of Indian sovereignty is the power to exclude non-Indians from Indian lands" and "[n]onmembers who lawfully enter tribal lands remain subject to the tribe's power to exclude them"). This right arises from the 1854 Treaty with the Chippewa, 10 Stat. 1109, in which the United States agreed "to set apart and withhold from sale" what became the Band's Reservation. 10 Stat. 1109, Art. 2.

See Swinomish Indian Tribal Cmty., 951 F.3d at 1160.[6] And it is consistent with the notions of Tribal sovereignty, self-determination, and self-government made express in both statutory schemes.

II. THERE IS NO FUNCTIONAL LEGAL DISTINCTION BETWEEN TRUST LAND AND RESTRICTED-FEE LAND

The Town attempts to undermine the Federal Defendants' position that the United States holds in trust or restricted-fee status the land underlying portions of the Roads for the benefit of the Band and the Allottees by pointing to a corrective statement regarding the land status made in a related case. There, the United States stated:

> In its Complaint, the United States alleges that it owns and holds in trust status for the Band and the Allottees certain tracts of land on which the Roads are in part located. *See* Dkt. 1 at ¶¶ 16, 18, 30, and 44. The United States recently discovered that the allotted tracts of land are in restricted-fee, not trust, status. The United States plans to seek leave to amend its Complaint to reflect this fact.

United States v. Town of Lac du Flambeau, No. 23-cv-355-wmc, United States' Answer to Town of Lac du Flambeau's Counterclaim (Dkt. 30) (W.D. Wis. filed Oct. 30, 2023), at 5

[6] For the reasons stated, because the Highway Act does not repeal the ROW Act, the ROW Act provides the only means for the Town to obtain a valid legal right to use and occupy the trust and restricted-fee lands within the Reservation upon which portions of the Roads are located. 25 C.F.R. § 170.114(a) does not give the Town any legal right to use Indian lands. And the Federal Defendants' removal of the Roads from the NTTFI in no way depended on the Town's compliance with the ROW Act; under the circumstances presented here, the BIA would have removed the Roads whether the Town had a valid right-of-way or not; whether a valid right-of-way exists is not relevant to the removal of a road from the NTTFI. All of this is to say that, because the Town relies solely on the Highway Act as the source of its legal right to use the Roads, and because § 170.114(a) specifically, and the Highway Act generally, grant to a public authority like the Town no rights in Indian land, the Town lacks standing to challenge the removal and fails to state any plausible claims for relief under the APA or the Due Process Clause.

n.2; *see also* Town Resp. at 3-4. Seeing opportunity in this clarification, the Town asserts that "the United States has . . . conceded [that its position on the status of the lands] lacks support," and that the Federal Defendants "have taken positions in litigation that have been conceded as incorrect." *Id.* at 4.

The United States' clarification regarding the status of the Reservation lands underlying the Roads is neither a concession nor incorrect. In fact, for purposes of deciding whether the Town has standing or states plausible claims for relief, the important point is simply that there is no functional difference between trust land and restricted-fee land. "'Tribal trust land' is land owned by the United States in trust for an Indian tribe." *United States v. Stands*, 105 F.3d 1565, 1572 (8th Cir. 1997). "An 'allotment' is a term of art in Indian law, describing either a parcel of land owned by the United States in trust for an Indian ('trust' allotment) or owned by an Indian subject to a restriction on alienation in favor of the United States or its officials ('restricted fee allotment')." *Bear v. United States*, 611 F. Supp. 589, 599 n.17 (D. Neb. 1985) (citations omitted). "As respects both classes of allotments—one as much as the other—the United States possesses a supervisory control over the land and may take appropriate measures to make sure that it inures to the sole use and benefit of the allottee and his heirs throughout the original or any extended period of restriction." *United States v. Bowling*, 256 U.S. 484, 487 (1921). Congress therefore treats the two forms of tenure identically when legislating on behalf of Indians and Tribes. *See*, *e.g.*, 25 U.S.C. § 323 (ROW Act); 28 U.S.C. § 2409a(a) (Quiet Title Act). And so does the Department of the Interior. *See* 25 C.F.R. § 152.22 (Secretarial approval necessary to convey individual-owned trust or

restricted lands or land owned by a Tribe). As a practical matter, then, the Town's attempt to discredit the Federal Defendants is much ado about nothing.

III. THE TOWN LACKS A PROPERTY OR LIBERTY INTEREST UNDER THE HIGHWAY ACT IN THE TRUST OR RESTRICTED FEE LAND ON WHICH THE ROADS ARE LOCATED

The Town relies on its status as the "public authority" for the Roads under the Highway Act as the source of the constitutionally protected property interest that is the basis for the Town's procedural due process challenge to the Federal Defendants' application of 25 C.F.R. § 170.444(c) to remove the Roads from the NTTFI. Town Resp. at 28; *see also* Dkt. 1 at ¶¶ 72-78 (Count V). The Town also claims "the liberty interest of ensuring freedom of travel." Town Resp. at 28. In short, the Town relies solely on the Highway Act and the TTP as the source of its alleged property and liberty interests in the Roads. *See* Town Resp. at 29.

But, as explained above, nothing in the Highway Act or TTP grants to a public authority like the Town any rights in Indian land.[7] Thus, while the Town claims "a unilateral expectation" that the Highway Act and TTP bestow upon it certain property and liberty interests in the Roads, *see* Town Resp. at 29 ("the Town has a property and liberty interest in ensuring the Roads they maintain and own, at least in part, remain open to the public consistent with the explicit language under the Federal-Aid Highway Act and the TTP regulations"), the reality is that the Town lacks any "legitimate claim of

[7] For the same reason, the Acknowledgement of Public Authority Responsibility (APAR) (Dkt. 15-1) does not grant the Town any property rights or liberty interests in the trust and restricted-fee lands on which portions of the Roads are located.

entitlement" to any such rights under the statutes. *See Bd. of Regents v. Roth*, 408 U.S. 564, 577 (1972). In the absence of a constitutionally protected property or liberty interest, there is nothing for the Federal Defendants to have interfered with for procedural due process purposes when removing the Roads from the NTTFI. The Town thus lacks a cognizable legal injury sufficient to provide it with standing or to enable it to state a viable due process claim. Count V of the Complaint fails for this reason.

IV. THE TOWN'S ALLEGATIONS THAT THE FEDERAL DEFENDANTS CONSPIRED WITH THE BAND TO PREVENT USE OF THE ROADS SHOULD BE DISREGARDED

Federal Defendants previously explained that Count III of the Town's Complaint, *see* Dkt. 1 at ¶¶ 16, 25, 48, 60-68, consists entirely of unsupported accusations that the Federal Defendants conspired with the Band to illegally remove the Roads from the NTTFI. Opening Br. at 23, 24-25. The Town, in response, simply repeats a few of the bare allegations "of collusion and improper complicity between the Federal Defendants and the Band" without offering any explanation how those allegations of conspiracy meet the requisite pleading standard. Town Resp. at 27. Review of that standard makes plain that the Town's allegations are insufficient.

"The complaint must allege facts that collectively give rise to a 'plausible account of conspiracy' or reasonable inference of 'improper complicity' by the defendants." *Gaddis v. Demattei*, No. 3:21-CV-179-MAB, 2022 WL 672470, at *13 (S.D. Ill. Mar. 7, 2022) (quoting *Geinosky v. City of Chicago*, 675 F.3d 743, 749 (7th Cir. 2012)). "Neither 'a bare allegation of conspiracy,' nor 'mere suspicion that persons adverse to the plaintiff had joined a conspiracy against him or her' is enough to survive a motion to dismiss for

failure to state a claim." *Id.* (quoting *Cooney v. Rossiter*, 583 F.3d 967, 971 (7th Cir. 2009)). In other words, the Town's Complaint "must include more than a generalized, conclusory allegation of conspiracy." *Id.* (quoting *Redd v. Nolan*, 663 F.3d 287, 292 (7th Cir. 2011)). "Stripped of legal conclusions, does the complaint contain 'enough factual matter (taken as true) to suggest that an agreement'" was struck between the Federal Defendants and the Band to deprive the Town of its alleged legal right under the Highway Act to use and occupy the Roads? *Alarm Dets. Sys., Inc. v. Vill. Of Schaumburg*, 930 F.3d 812, 827 (7th Cir. 2019) (quoting *Twombly*, 550 U.S. at 555-56).

The answer here is plainly no. The Town offers only conclusory allegations, unsupported by facts or inferences. Like in *Gaddis*, the Town may have "identified a basic time frame and a conspiratorial purpose," but no "pattern of clearly related conduct that suggests the existence of an agreement or understanding between" the Federal Defendants and the Band. *Gaddis*, 2022 WL 672470, at *13. Moreover, "the conduct at issue" is not "clearly related or clearly aimed at achieving a collective and illegal goal." *Id.* at *14. That is particularly true here because the Band, in requesting removal of the Roads from the NTTFI, was merely exercising its unilateral right to determine the eligibility of the Roads for the expenditure of TTP funds. The BIA, in turn, was tasked with executing its mandatory obligation under the TTP to remove the Roads from the NTTFI after verifying that the Band had not expended federal transportation funds on the Roads. *See* Opening Br. at 4 and n.3. And for the reasons stated in section I, *supra*, at 3-9, and already understood by this Court, *see Pollard*, 2023 WL 6276403, at *4 ("Nothing in the [Highway] Act suggests that the [TTP] is intended to

promote or protect access rights of the public or individual citizens who want to traverse Indian lands."), the aim of the alleged conspiracy *could not have resulted in the loss of any rights* under the Highway Act.[8] Consequently, in construing the Complaint (Dkt. 1) for purposes of the Motion to Dismiss (Dkt. 10), the Court should not "accept as true" the Town's "assertion of a conspiracy" because that assertion amounts to nothing more than "an unsupported legal conclusion." *Redd*, 663 F.3d at 292 (citing *Kolbe & Kolbe Health & Welfare Benefit Plan v. Medical College of Wisconsin, Inc.*, 657 F.3d 496, 502 (7th Cir. 2011).

CONCLUSION

As a matter of law, the Town possesses *no legal rights* to use or occupy the portions of the Roads located on trust and restricted-fee land within the Reservation. As a result, the Town fails to identify a cognizable legal injury and thus lacks constitutional standing, falls outside the zone of interests protected by the Highway Act, and otherwise cannot state plausible claims for relief under the APA. For all of the reasons stated above and in their Opening Brief, the Federal Defendants respectfully ask the Court to grant their Motion to Dismiss (Dkt. 10) and dismiss this suit in its entirety pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6).

DATED: January 12, 2024

[8] This case did not require the Federal Defendants to consider—and does not require the Court to address—the situation in which the Band requested removal of a road from the NTTFI and the BIA determined that the Band had expended federal transportation funds on the road. That situation might present a closer question. But, even there, the Town would lack a cognizable legal right or property or liberty interest sufficient to demonstrate a particularized and redressable injury for APA purposes.

Respectfully submitted,

TIMOTHY M. O'SHEA, United States Attorney
Western District of Wisconsin

TODD KIM, Assistant Attorney General
Environment and Natural Resources Division

/s/ Samuel D. Gollis
SAMUEL D. GOLLIS, Trial Attorney
Massachusetts BBO No. 561439
Indian Resources Section
Environment and Natural Resources Division
United States Department of Justice
999 18th Street, South Terrace, Suite 370
Denver, CO 80202
Tel.: (303) 844-1351
Fax: (303) 844-1350
Email: samuel.gollis@usdoj.gov

/s/ Hillary K. Hoffman
HILLARY K. HOFFMAN, Trial Attorney
Minnesota Bar No. 0402027
Indian Resources Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044
Tel.: (202) 598-3147
Fax: (202) 305-0275
Email: hillary.hoffman@usdoj.gov

Attorneys for the Federal Defendants

OF COUNSEL:

KARA G. PFISTER, Senior Attorney
Office of the Solicitor – Northeast Region
United States Department of the Interior

ANDREW S. CAULUM, Senior Attorney
Office of the Solicitor – Division of Indian Affairs
United States Department of the Interior