

NEW YORK STATE SUPREME COURT
COUNTY OF ERIE

East Side Parkways Coalition, et al.,

Plaintiffs,

v.

New York State Department of Transportation, et al.,

Defendants.

COMPLAINT

Index No. _____

Plaintiffs East Side Parkways Coalition (ESPC), and multiple individuals, by their attorneys, complain of defendants and seek a declaratory judgment as follows:

INTRODUCTION

1. This action concerns the construction, maintenance and operation by the New York State Department of Transportation (DOT) of a heavily trafficked, limited access, superhighway¹ through one of New York State’s most disadvantaged communities on the east side of Buffalo, New York that suffers from widespread respiratory and other illnesses and that makes it one of the most unhealthful environments in the nation.

2. In this action, plaintiffs complain, *inter alia*, that their constitutional rights to clean air and a healthy environment, guaranteed by Section 19 of Article I of the New York State Constitution (the “Green Amendment”), are being violated as a result of the DOT’s continued maintenance and operation of the Expressway and its insistence on a “level of service” of 75,000 cars daily.

¹ The limited access, superhighway in Buffalo from Michigan Avenue to Main Street, which includes the old Humboldt Parkway, and currently parts of the Kensington Expressway and the Scajagada Expressway, is referred to herein as the “Expressway.”

3. Plaintiffs further complain that much of the Expressway was built by DOT on public parkland belonging to the defendant City of Buffalo (the “City”) in violation of the Public Trust Doctrine and federal law. That public parkland was known as the “Humboldt Parkway” before the Expressway was constructed on it. The taking of Humboldt Parkway and its conversion into non-park use without the direct and specific approval of the New York State Legislature, plainly conferred, was and is a violation of the rights of the surrounding community.

4. As a result of the foregoing, this Court should adjudge and declare the rights of the parties pursuant to CPLR § 3001, including that the DOT’s operation and maintenance of the Expressway violates plaintiffs’ constitutional rights to clean air and a healthful environment, that the taking of Humboldt Parkway for non-park use was unlawfully done without the direct and specific approval of the New York State Legislature, plainly conferred, and should enjoin the defendants to restore the public parkland to its *status quo ante* as Humboldt Parkway.

PARTIES

5. ESPC is an unincorporated association of persons who have residences or offices in the vicinity of the Expressway. ESPC was formed for the purpose, among others, to preserve and to protect the environment for the benefit of residents living in the local community (“Community”) by performing activities such as working with elected officials and the public on environmental issues and ensuring compliance with the New York State Constitution and state law governing land use, zoning, and environmental laws, as well as applicable law, codes, and regulations.

6. ESPC includes at least one among its members who would have standing to sue; the claims herein are representative of the organizational purposes the

ESPC asserts; and this action does not require the participation of individual members other than those who may appear individually as plaintiffs.

7. Plaintiffs Terrence Robinson, Marcia E. Ladiana, Zion Richardson, Tendaji Ya'Ukuu, David Richardson, Joshua Patton, Emere Nieves, Solomon Myree Sr., Darrle Medina, Bernadette M. Ladiana, Saibo Kebbeh, Xavier C. James, Beverly Howard, Tiffany Grace Hill, Bobbie Hicks, Elisa Alex Gilbert, Charlene Fuqua'-Miles, Floyd Echols-Beckham, Eleanor Echols-Beckham, Karen Chavis, Kim Chaney, Scott Brewer, Wayne Blassingame, Dennice Barr, Patrick A. Cray Sr., Kenneth Johnson, Leslie Gardner, Ronald Silman, Fayah Winner, Valencia Scales, Nolan Scales, Shawn Martin, Linda Anderson, Pagan Fraiser, Eve Shippens, Andre R. Betts II, Cheryl Griffin, Cynthia R. Barber, June R. Thompson, Vickie Peyton, Laureen Nichols, Freddie Mills, Claudia N. Bigham, Matthew D. Chase, Terry Ann Patterson, Kimberly Smiley, Denise B. Wilson-Shannon, Joyce Wilson, Heather Craig, Tara Martin, Stephen Rutherford, Ulysses Green, Melissa Virelle, Lorna Peterson, Charles E. Washington, Shirley Hough, Sharon L. Mack, Justin Colvin, Justin Stachowski, Cheryl D. Harris, and Ursula Y. Goodloe, reside in the County of Erie, State of New York in proximity to the Expressway (the "Individual Plaintiffs"). The Individual Plaintiffs have been and are injured by, and will continue to suffer injuries from, the DOT's operation and maintenance of the Expressway.

8. The DOT is an agency of the State of New York. It has an office in the County of Erie, State of New York. DOT is responsible for regulatory oversight as well as the operation and maintenance of the Expressway.

9. Defendants Marie Therese Dominguez and Stephanie Winkelhake reside in the State of New York and are respectively the DOT Commissioner and DOT Chief Engineer. Each has an office in the County of Erie, State of New York.

10. Defendant State of New York (the “State”) maintains offices in the County of Albany, State of New York. The State funds the operations, maintenance, and projected reconstruction of the Expressway.

11. The City is a municipal corporation created and existing under the laws of the State of New York. It has an office at City Hall in Niagara Square in Buffalo, New York. The City owns the parkland upon which the Expressway is operated and maintained by DOT.

**HISTORY OF THE HUMBOLDT PARKWAY,
ONE OF THE NATION’S “MOST FINE-LOOKING AVENUES”**

12. Humboldt Parkway opened to limited use in 1873. It was a 2-mile-long, 200-foot-wide tree-lined parkway with a bridleway down the middle that connected a 350-acre park northward (Delaware Park) and a 56-acre park southward (Martin Luther King Jr. Park) (“MLK Park”). Humboldt Parkway created a park-like neighborhood atmosphere, served as a focal point for the adjacent neighborhoods, and provided a link between the various local streets and nearby recreational attractions, cultural and religious institutions, and local businesses.

13. Humboldt Parkway constituted an integral part of the Buffalo, New York mixed-use park, designed by internationally acclaimed and late 19th century landscape architect Frederick Law Olmsted. Olmsted, who monikered Buffalo “the best planned city in the world,” and who created a park system of continuous park lands, park approaches, and parkways. Overall, the Olmsted plan led some to marvel at Buffalo as a “city within a park.”

14. Frederick Law Olmsted's design of the Olmsted parkways and parks extended more than seven miles in length when constructed, running through and about the city at varying distances from the city limits, including Front Avenue, from the Terrace to the Front, Porter Avenue, Richmond Avenue, and Bidwell Parkway, from the Front to Delaware Park. Humboldt Parkway proceeded from Delaware Park to Humboldt Park. The approaches continued on Fillmore Avenue from Humboldt Park to Seneca Street.

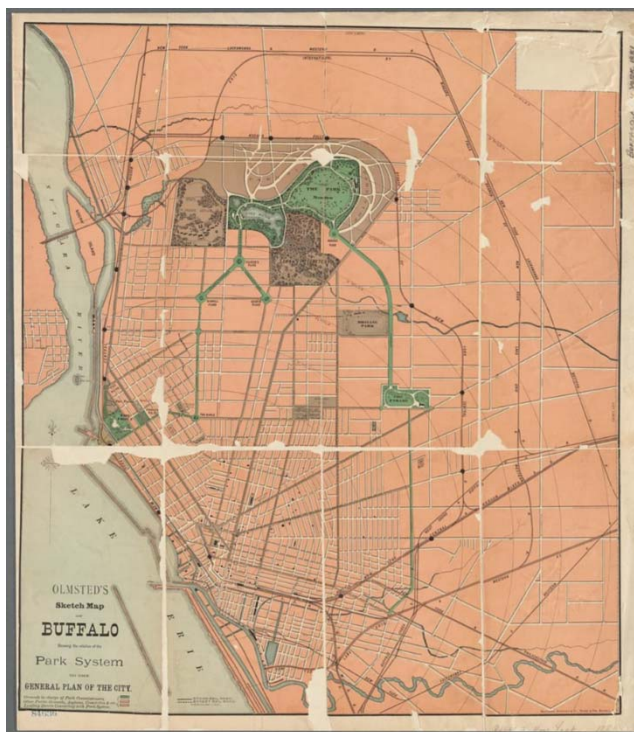


Figure 1- Olmsted Park System 1896

15. Humboldt Parkway's spaciousness and grandeur impressed foreign visitors, one of whom reported back to his readers that it "surpassed anything in Europe and was for generations considered to be one of the nation's "most fine-looking avenues."

16. Humboldt Parkway passes through a number of venerable Buffalo neighborhoods, including Trinidad in the northeast, Hamlin Park in the northwest, Delavan Grider and MLK Park on the east, and Masten Park and the Fruit Belt on the west.

17. Humboldt Parkway's status as parkland cannot be disputed. The National Register of Historic Places nomination for the Buffalo Park and Parkway System lists the Olmsted parkways in Buffalo (e.g. Chapin Parkway, Bidwell Parkway) equally with the parks (Humboldt Parkway, having been destroyed, lacked "integrity" and so was not listed, otherwise it would have been on the list). The Olmsted parkways are recognized by

the Department of the Interior as parkland. The Buffalo Olmsted Parks Conservancy includes the parkways equally with the parks: <https://www.bfloparks.org/mapandguide/>.

18. Humboldt Parkway provided a refuge of park greenery within the bustling city for generations of Buffalonians.

PLAN FOR AND CONSTRUCTION OF THE EXPRESSWAY

19. In 1946, DOT prepared a “Report on New York State Thruways and Arterial Routes for The Buffalo Urban Area, Erie County - New York” (the “1946 Report”).

20. The 1946 Report projected that by 1960, the population of Buffalo would grow to 630,000 from a 1946 estimate of approximately 575,000, and the population of Erie County would grow to 940,000.

21. In fact, census data shows that Buffalo’s population in 1960 declined to about 532,000, and the 2020 population was 278,349, about half the 1946 number.

22. The 1946 Report stated that driving tests showed no extreme congestion encountered at the time, but that there were spots of minor congestion. (The 1946 Report identified street cars, which are no longer present, as a travel impediment.) It projected a 35% increase in traffic volume by 1960 and predicted increasing problems of traffic and congestion.

23. The 1946 Report recommended construction of an underpass for the Humboldt Parkway where it met Main Street, and improvement of the transportation corridor along Kensington Avenue.

24. The 1946 Report did **not** recommend Humboldt Parkway as an arterial route.

25. In or about April, 1947, the Legislature passed an act to amend Article 12-B of the N.Y. Highway Law in relation to state arterial highways in the City of Buffalo. See 1947 Chapter Law 765

(“Chapter 765”). Chapter 765 provided that

a route, as established by the Superintendent of Public Works (the “Commissioner”),² southwesterly from the city line in the vicinity of Kensington Avenue, and from East Delavan to approximately Cherry Street “along Humboldt Parkway,” would be a state arterial highway. This route ultimately came to be known as the “Kensington Expressway” or “Rt. 33.”

26. Chapter 765 also included a route from the Niagara Thruway just north of Forest Avenue at Niagara Street going eastward to East Delavan, to be established by the

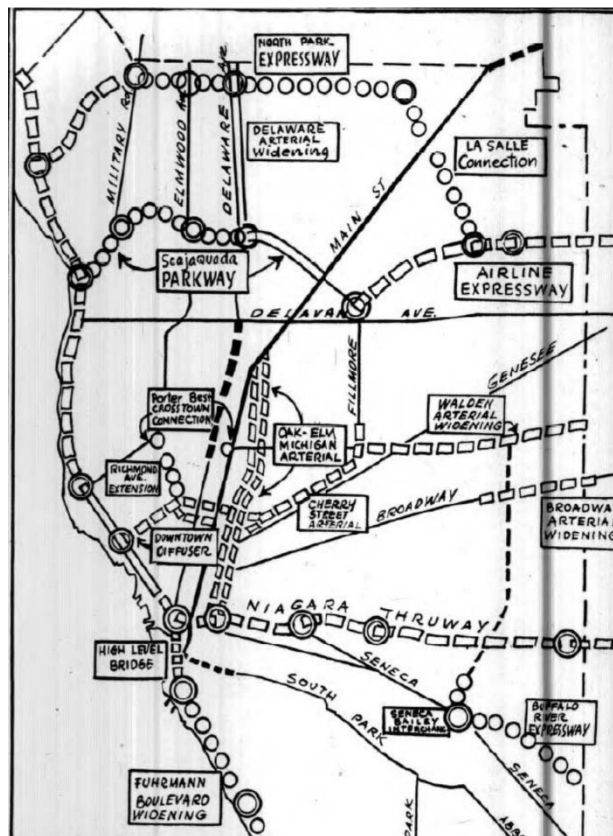


Figure 1- Map of the arterial highway system planned for Buffalo by the State Department of Transportation in 1946. Note the absence of plans for Humboldt Parkway.

² The office of “ Superintendent of Public Works” became the Commissioner of the Department of Transportation in 1967, and is referred to hereinafter as the “Commissioner.”

Commissioner. This route, which in parts traversed Delaware Park as well as the Humboldt Parkway, came to be known as the "Scajaquada Expressway" or "Rt. 198."

27. Pursuant to other provisions of Article 12-B of the N.Y. Highway Law, the Commissioner was given authority "to prepare designs, plans, specifications and estimates for the construction, reconstruction or improvement" of state arterial highways in the City of Buffalo like Rts. 33 & 198. *See* Highway Law § 349-c.

28. At no point did the State or its Legislature in its enactment of Chapter 765, nor in the amended Highway Law 349-e, directly or specifically delegate to, or plainly confer authority upon, the Commissioner to alienate parkland for non-park use. Nor would any such delegation be possible under law.

29. Nonetheless, the Commissioner through a series of projects from around 1954 through 1971 gutted the Humboldt Parkway and constructed a vast cement chasm for the purpose of constructing the six-lane Expressway. Likewise, the Commissioner took parkland in Delaware Park and constructed a four lane limited access expressway.

30. The taking of this parkland and the destruction of Humboldt Parkway was done over Community opposition and as part of a plan to move people faster out of the City and into the suburbs.

31. The Commissioner's plans evolved around 1954 to include an expressway connection to the airport. Demolition and land clearing began in 1957 and approximately 600 households were displaced and relocated (primarily in the Fruit Belt). Several portions of the Humboldt Parkway were removed during the construction in the 1950's and 1960's; however, the segment between Northampton Street and Northland Avenue was initially maintained and became known as the "Humboldt Hourglass."

32. To facilitate travel to and from the suburbs, and upon the pretext of improving safety, the Commissioner directed the removal of the remaining section of the Humboldt Parkway and replacing it with a below grade (depressed) expressway configuration between 1968 and 1971. Local roadway access was provided by at-grade traffic lanes on either side of the depressed Expressway.

33. The Expressway severed several local east-west streets and reduced connectivity between the east and west portions of the neighborhoods. Between Best Street and Sidney Street, east-west street connections (between northbound Humboldt Parkway and southbound Humboldt Parkway) that were terminated by the expressway included: Girard Place, Riley Street, Landon Street, Glenwood Avenue, Winslow Avenue, and Woodlawn Avenue.

34. East-west vehicular, pedestrian and bicycle travel across the expressway was provided on five bridges that carry the local street network (East Ferry Street, East Utica Street, Northampton Street, Dodge Street and Best Street).

35. The loss of the wide park median with mature trees along the Humboldt Parkway destroyed the aesthetic character of the neighborhood and substantially reduced greenspace within the corridor. Scattered street trees are present along the at-grade lanes, but some blocks have few or no trees. The six-lane Expressway and concrete retaining walls are the predominant element of the view shed for residents along this transportation corridor. The Expressway construction and loss of the historical parkway substantially and adversely affected quality of life in adjoining neighborhoods

36. As a result of the Commissioner's destruction of Humboldt Parkway, the Trinidad neighborhood was left at grade, seven traffic lanes away from Hamlin Park, with tens of thousands of vehicles passing close by daily on the Expressway.

37. The Hamlin Park and Delavan-Grider neighborhoods likewise, for much of their abutment of the Expressway, see tens of thousands of vehicles passing by daily at-grade as a result of the Commissioner's acts.

38. The existence of the Expressway amid these urban neighborhoods over the past sixty years has brought with it a frightening magnitude of illness. According to current EPA data, the populations around the Expressway, compared to New York State as a whole, had a higher prevalence of asthma among adults aged 18 and older (98th percentile), higher prevalence of heart disease (98th percentile), low life expectancy (99th percentile), and higher proportion of persons with disabilities (91st percentile).

39. In 2019, the New York State Department of Health reported that in the East Side of Buffalo and Western Cheektowaga, elevated numbers of colorectal, kidney, prostate, oral, esophageal and lung cancers were present among residents.

40. The University of Buffalo's Community Health Equity Research Institute was established in 2019:

[I]n response to the crisis of race-based health disparities, especially in African Americans who live on the city's East Side. Remarkably, compared to White residents of Buffalo, life expectancy of African Americans is 12 years shorter, and serious, chronic, and often preventable diseases, like heart disease, diabetes, asthma and cancer are 300% greater. The primary reason for these disparities is the social determinants of health, which refer to the conditions in which people live, work, learn, play and worship.

41. The construction of the Expressway brought filth and unhealthful physical, mental and social health to the area in which East Side residents live, work, learn, play and worship. Specifically, the Expressway increased the incidence of disease and/or adverse health outcomes and exacerbated pre-existing disease and/or adverse health outcomes to the residents of the aforementioned neighborhoods, which resulted in an unhealthful environment and a lack of clean air.

**DEFENDANTS' VIOLATED THE PUBLIC TRUST DOCTRINE IN
CONSTRUCTING THE EXPRESSWAY ON PUBLIC PARKLAND**

42. The Public Trust Doctrine, which dates back to ancient times and is part of New York and American jurisprudence, provides that parks and other common areas intended for the benefit of the people shall not be alienated for non-park use without specific legislation by the New York State Legislature.

43. Because of the importance of the Public Trust Doctrine, the law requires the “direct and specific approval of the State Legislature, plainly conferred” before parkland may be alienated for non-park use.

44. New York adheres to the longstanding common law Public Trust Doctrine. Indeed, the doctrine has been codified for the special situation of city owned parkland, *see* General City Law § 20(2) (“the rights of a city in and to its. . . parks, and all other public places, are hereby declared to be inalienable”), and the City is limited by its own charter which binds it and requires “special state legislative authorization. . . to discontinue public parkland.”

45. In 1947, Chapter 765 enacted by the Legislature did not include explicit or specific authorization to discontinue public parkland in the City.

46. Chapter 765 referred to arterial streets in the City that did not include parkland, but lumped in routes “along Humboldt Parkway” and from the Niagara Thruway to East Delavan, both of which included parkland. It erroneously committed them all to the discretion of the Commissioner with respect to improvements and construction.

47. Although Chapter 765 provided for modernization and the construction of state arterial highways within the City, at no point did it directly and specifically approve

the alienation of the park land that was Humboldt Parkway and Delaware Park, nor has authority for such alienation ever been plainly conferred by the Legislature.

48. As alleged above, the Commissioner embarked on a program of construction and reconstruction of the Rts. 33 & 198 in the 1950s and 1960s. In doing so, he unlawfully and without authority alienated parkland for non-park use. Stated otherwise, the DOT work of that age destroyed the Humboldt Parkway as well as significant parts of Delaware Park without direct and specific approval by the Legislature.

49. In 2016, the State pronounced that the destruction of Humboldt Parkway was a “mistake.”

50. Congress has declared that it is and has been the national policy that special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites.

51. By his directives and work since conceiving of the Expressway, the Commissioner has violated the Public Trust Doctrine and national policy to the injury of plaintiffs and the Community, the City, and all of its residents.

**CONTINUED MAINTENANCE OF THE EXPRESSWAY AND
DOT PLANS TO ALTER AND CONTINUE THE EXPRESSWAY**

52. The DOT, in agreement with the City of Buffalo, has maintained the Expressway since it was completed.

53. The DOT has annually expended substantial and significant amounts on maintenance of the Expressway with funding appropriated by the State.

54. The state action funding DOT’s maintenance of the Expressway has proximately caused illness and disease to residents residing nearby, injuring the Individual Plaintiffs.

55. Defendants Dominguez and Winkelhake, as part of their duties at DOT, with appropriations by the State and as part of DOT's continuing maintenance and operation, have determined to cover a small portion of the Expressway with a roof (the "Tunnel") in the area from Dodge Street to Sydney Street in the City. The length of the Expressway from Main Street to Michigan Avenue is approximately 3.1 miles, while the extent of the covered portion of the Tunnel is approximately just $\frac{3}{4}$ mile, meaning that only about one-fourth of the Expressway's length will be covered.

56. Lengthy portions of the Expressway outside of the Tunnel from Dodge Street to Michigan Avenue, and from Sydney Street to Main Street, will be left uncovered in its current at-grade condition.

57. The construction of the Tunnel and work on its approaches is proposed to take place between December 2024 and June 2029, over a period of approximately 4.5 years.

58. During construction of the Tunnel, a portion of Expressway traffic will be detoured to local streets. Adverse construction-related effects, including transportation, vibration, visual resources, and air quality, will impact the health of the Community for the 4.5 year period.

59. DOT's intended construction operations will increase particulate matter in the form of fugitive dust, as well as particulate matter and unhealthful gas emissions in exhaust from material delivery trucks, and construction equipment, thus significantly impacting the health of Community residents over the multi-year period.

60. Noise will be of significant concern due to construction noise levels at residences that exceed 80 dB(A) at distances of 100 to 150 feet or less during Project construction.

61. Upon completion, the emissions and fumes in the Tunnel will flow out into the adjacent areas in what the DOT refers to as “plumes,” thus concentrating at the Tunnel portals what had previously been dispersed over the length of the covered area. It is estimated that the increase in pollutants in the plumes as a result of this project will increase particulates by 30% - 40%, adversely affecting the clean air and healthful environment of the area and contemporaneously injuring the Individual Plaintiffs.

**THE CONTINUED OPERATION AND MAINTENANCE OF THE EXPRESSWAY
VIOLATES PLAINTIFFS’ CONSTITUTIONAL RIGHTS**

62. The People of the State of New York voted approval of the Green Amendment in November 2021. The Green Amendment reads in its entirety:

Environmental Rights. Each person shall have a right to clean air and water, and a healthful environment.

The Green Amendment became part of New York’s “Bill of Rights” on January 1, 2022. *See* New York Constitution, Article 1, section 19.

63. Senator Brad Hoylman, Senate Judiciary Committee Chair and co-sponsor, in proposing this constitutional right, said:

Access to clean air and water is a basic civil right. The Green Amendment would ensure that all New Yorkers are shielded from the environmental and public health hazards that all too often disproportionately affect *low-income and underserved communities* across our state. It's clear that Washington won't protect our environment, and now New York must take the lead. (emphasis supplied)

The Community is a low-income and underserved community.

64. The Green Amendment is self-executing and provides standing to any person whose clean air and water, or healthful environment, is threatened by state action.

65. The defendants, by their continuous maintenance and operation of the Expressway, have violated the Individual Plaintiffs' constitutional rights to clean air and a healthy environment.

66. The Individual Plaintiffs are persons whose right to clean air and a healthful environment is violated by the continued operation and maintenance of the Expressway, as well as by the DOT's intended construction for four and one-half years in this urban neighborhood, and by the resulting "plumes" of air pollution once the Tunnel is constructed.

FIRST CAUSE OF ACTION

67. Plaintiffs repeat and reallege all of the above allegations.

68. The Green Amendment recognizes and functions to preserve the constitutional right of each person in the State of New York to clean air and a healthful environment. These inherent and inalienable rights reflect the basic societal contract between citizens and the government of New York.

69. The action of the State in funding and the use of those funds by DOT in maintaining, operating, and reconstructing the Expressway, with the City's agreement, has caused continuing pollution, emissions and fumes to permeate the area along this portion of the Expressway, and caused other unhealthy effects, in violation of the constitutionally protected rights of the Plaintiffs to "clean air . . . and a healthful environment."

70. The defendants have proximately caused and are causing injury to the Individual Plaintiffs by their actions maintaining and operating the Expressway, and injuries to the Individual Plaintiffs will increase with DOT's current plans to construct the Tunnel.

71. Accordingly, the Individual Plaintiffs are entitled to a declaration of the rights of the parties, including that the defendants are acting in a manner injuring plaintiffs in

violation of their constitutional rights to clean air and a healthful environment, and to an injunction prohibiting defendants from maintaining, operating, or reconstructing the Expressway except as directed by this Court.

SECOND CAUSE OF ACTION

72. Plaintiffs repeat and reallege all of the above allegations.

73. The conversion of Humboldt Parkway into the Expressway, and the taking of Delaware Park for the Scajauada Expressway, constituted the alienation of parkland to non-park use in violation of the Public Trust Doctrine.

74. Accordingly, the plaintiffs are entitled to a declaration of the rights of the parties, including that the defendants alienated parkland by converting it for non-park use, and to an injunction enjoining defendants to restore Humboldt Parkway and Delaware Park to their conditions prior to the conversion.

75. No other action or proceeding has been brought for similar relief.

76. Plaintiffs have no adequate remedy at law.

WHEREFORE, plaintiffs pray for judgment of this Court for the following relief:

A. Declaring the rights of the parties, including:

Humboldt Parkway and Delaware Park are parklands created for the use and enjoyment of the people of the City of Buffalo;

The DOT converted Humboldt Parkway and Delaware Park to non-park use;

The New York State Legislature did not grant direct and specific approval, plainly conferred, for the alienation of Humboldt Parkway and parts of Delaware Park to non-park use in the form of expressways;

The conversion of Humboldt Parkway and parts of Delaware Park into expressways was a violation of the Public Trust Doctrine;

The conversion of the Humboldt Parkway into the Expressway resulted in unclean air and an unhealthy environment;

The continued action by the State of operating and maintaining the Expressway, and DOT's proposed reconstruction, has and continues to violate plaintiffs' constitutional rights to clean air and a healthy environment; and

The adverse health effects of the Expressway, and DOT's proposed reconstruction, on clean air and healthy environments is a violation of plaintiffs' constitutional rights to clean air and a healthy environment;

Humboldt Parkway and Delaware Park should be restored to their parkland conditions prior to construction of the Expressway;

B. A permanent injunction prohibiting defendants from expending state funds to maintain, to operate, or to reconstruct the Expressway except as directed by this Court;

C. A permanent injunction enjoining defendants to restore Humboldt Parkway and Delaware Park to their conditions prior to their conversion to non-park use;

D. Awarding attorneys' fees as provided by law or rule or otherwise based, *inter alia*, on plaintiffs' prosecution of this case for the benefit of the People of the State of New York; and

E. Awarding plaintiffs their costs and disbursement, and such other relief as the Court deems right and proper.

Dated: Buffalo, New York
June 13, 2024

HAGERTY & BRADY

PHILLIPS LYTTLE LLP

By: *Daniel Brady*
Daniel Brady
Attorneys for Plaintiffs
69 Delaware Avenue
Buffalo, New York 14202
Telephone No. (716) 856-9443

By: *Alan J. Bozer*
Alan J. Bozer
Adam S. Walters
Lindsey E. Haubenreich
Attorneys for Plaintiffs
One Canalside, 125 Main Street
Buffalo, New York 14203-2887
Telephone No. (716) 847-8400