



July 17, 2017

By First Class and E-mail
Hon. Matthew J. Driscoll
NYS Department of Transportation
50 Wolf Road
Albany, NY 12232

Re: Draft EIS for NYS Route 198 (Scajaquada Expressway)

Dear Commissioner Driscoll:

We have written to you previously about our concerns over the use of public parkland for transportation purposes in violation of the “public trust doctrine” for this reconstruction process. We now bring to your attention the decision last month of New York’s highest court, the Court of Appeals, in the case of *Avella, et al v. City of New York, et al*; 2017 NY Slip. Op. 04383 (June 6, 2017). In the *Avella* case, the Court of Appeals strongly reaffirmed New York’s adherence to the “Public Trust Doctrine” and disallowed the taking of parkland for other than park-use.

We believe the *Avella* case invocation of the Public Trust Doctrine is applicable to the NYSDOT’s proposal in its draft EIS to construct a highway across Delaware Park. The area in Delaware Park referred to is dedicated City parkland. That a highway was placed there in misguided urban planning 60 years ago over strong community opposition does not allow its continued use as such. Only an act of the New York State Legislature can alienate this land, and there has been no such legislative act to date.

We have previously submitted our objections to the draft EIS. The City of Buffalo is on record that it does not agree with the draft EIS and requests further consultation with the community. We have also requested further dialogue. NYSDOT has been unresponsive to these requests.

Numerous groups within the community are steadfastly opposed to the proposals in the draft EIS. Proceeding with those plans will indubitably result in a groundswell of public opposition and probable legal action.

**Scajaquada
Corridor
Coalition**

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**Brian Dold
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We once again call upon NYS DOT to return to the table and respond to the concerns of the community. You can reach me at (716) 504-5700, or at abozer@phillipslytle.com if you would like to discuss. Thank you.

Very truly yours,

A handwritten signature in blue ink, appearing to read "A. Bozer". The signature is fluid and cursive.

Alan J. Bozer
Chairman, Government Relations Committee
Scajaguada Corridor Coalition
Doc #01-3046437.1