

Appendix E3
Response to Public Comments
Received on DDR/EA

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List of Attachments

Attachment 1: List of Commenters and Comment/Response Numbers

Attachment 2: Original Comment Documents Received Between September 12, 2023 and November 10, 2023

Attachment 3: Original Comment Documents Received Between November 11, 2023 and January 10, 2024

Introduction

This appendix contains the responses to substantive comments received on the Draft Design Report/Environmental Assessment (DDR/EA) for the NYS Route 33 Kensington Expressway Project. The public comment period for the DDR/EA began on September 12, 2023 and was originally scheduled to conclude on October 27, 2023 (45 days total). Based on the level of public interest and to afford the public more time to submit comments, the New State Department of Transportation (NYSDOT) extended the comment period to November 10, 2023 (59 days total). The NYSDOT also considered comments received after the end of the formal comment period. Between September 12, 2023 and November 10, 2023, approximately 1,312 comments were received via email, the project website, comment forms, oral comments at the September 27, 2023 Public Hearing, and U.S. mail. Between November 11, 2023 and January 10, 2024, an additional 287 comments were received.

Sections 1 through 9 of this appendix present summaries of substantive public comments received from September 12, 2023 through January 10, 2024 and responses organized by topic. Section 10 presents responses to comments from elected officials, organizations, and other public agencies. Section 10 also includes comments from the Section 106 consulting parties that pertain to issues outside of the scope of the National Historic Preservation Act Section 106 process. Additional comments and responses from the Section 106 consulting parties (as well as copies of the original comment letters from the consulting parties) are provided in Appendix D10: Finding Documentation.

This appendix includes the following three attachments:

- **Attachment 1: List of Commenters and Comment/Response Numbers.** This table includes the name of the commenter (alphabetical by last name or organization name), the date, the source of the comment, and the assigned response number(s) that correspond to Sections 1 through 9 of this appendix. For example, response “2-1” can be found in Section 2: Project Purpose, Objectives and Need. As noted above, elected official, agency and organization comments are responded to individually in Section 10.
- **Attachment 2: Original Comment Documents Received Between September 12, 2023 and November 10, 2023.** A table of contents organized by last name/organization name precedes a compilation of the comments received during the formal DDR/EA comment period.
- **Attachment 3: Original Comment Documents Received Between November 11, 2023 and January 10, 2024.** A table of contents organized by last name/organization name precedes a compilation of the comments received after the formal DDR/EA comment period end date through January 10, 2024.

For additional information regarding public involvement, refer to Chapter 5 of this FDR/EA.

1.0 Project Limits/Study Area

- C1-1** Commenters questioned the project limits and requested a more expansive project definition. Commenters stated that the project would improve aesthetics and quality of life for residents living adjacent to the proposed $\frac{3}{4}$ mile tunnel but not for those living adjacent to the highway beyond the tunnel who would experience increased air pollution. Commenter asked if the northern tunnel portal could be extended from Sidney Street to Northland Avenue. Commenters requested that the project limits match the limits of the Greater Buffalo-Niagara Regional Transportation Council (GBNRTC) Region Central recommended concept at East Delavan Avenue to complete the “One Road” concept reconnecting Martin Luther King (MLK), Jr. Park and Delaware Park. Several commenters objected to the Fruit Belt neighborhood being excluded from the project definition.
- R1-1** As described in Section 1.4.1 of this FDR/EA, the NYSDOT and FHWA established the transportation corridor and proposed tunnel limits for this Project in consideration of the following factors: the presence of the depressed highway section with retaining walls, opportunities for connectivity with existing parkland and community resources, and physical and environmental constraints. Prior to the June 30, 2022 public scoping meeting, the NYSDOT and FHWA had defined the limits of the transportation corridor as Best Street to East Ferry Street. In consideration of public comments received during the scoping comment period, the limits were subsequently extended approximately 600 feet north to Sidney Street. As documented in Section 1.4.1 of this FDR/EA, Best Street and Sidney Street represent logical termini/rational endpoints for this Project.
- As documented in Section 1.4.2 of this FDR/EA, the Kensington Expressway Project has independent utility, and would not preclude the consideration of potential future projects in other portions of NYS Route 33 or in the NYS Route 198 corridor.
- C1-2** Commenters requested that the Project be considered “Phase One” and the tunnel/cap ultimately continue to reconnect MLK, Jr. Park to Delaware Park. A similar comment requested that the Project be built in a way that allows for future extension of the tunnel. Another commenter suggested a specific phased implementation that would involve the current Kensington Expressway Project as Phase 1, the area between Sidney Street and Parkside Avenue as Phase 2, and the remainder of the NYS Route 198/ Scajaquada Expressway as Phase 3.
- R1-2** See response to comment C1-1.
- C1-3** Commenters expressed concern that blasting deep rock for the construction of the tunnel would prevent future connections to Delaware Park because the Scajaquada Creek runs five feet below NYS Route 33 just north of Hamlin Road. Another commenter stated that the tunnel cannot be extended because of the creek and therefore it is not possible for this project to be phase one of a larger plan. A commenter noted that the proposed tunnel will cement in place that Martin Luther King (MLK) Jr. and Delaware Parks will not be connected by a parkway for many generations to come. A related comment asked NYSDOT to provide drawings and cost estimates to the community showing how the two parks can be connected in future phases, and that this information would help the public evaluate the feasibility of potential future phases. Finally, a commenter noted there will be no money for future phases due to New York State’s budget deficit over the next three years.

- R1-3** The Project has been and will continue to be designed to not preclude a future extension of the tunnel as part of a separate, independent project. Any proposal for extension of the tunnel would have to consider the Scajaquada Creek. Although this is a major constraint, there are feasible engineering solutions. The engineering solutions and construction costs associated with any potential future project(s) would need to be studied independent of the current NYS Route 33 Kensington Expressway Project.

- C1-4** Commenters requested that the GBNRTC Region Central planning study recommended concept be integrated or combined with the Kensington Expressway Project. One commenter stated the combined project should be led by GBNRTC. Another commenter observed and provided mapping showing the Region Central study area extends to East Ferry Street and encompasses the location of the Build Alternative tunnel entrance. Commenter stated that NYSDOT inappropriately decided to unlink the NYS Route 33 and NYS Route 198 projects even though they are explicitly linked. This commenter cited the 2007 notice of intent to begin the environmental impact study regarding NYS Route 198, where the project limits were defined as beginning with Interstate 190 (I-190) and ending with the NYS Route 33 interchange.

- R1-4** As documented in Section 1.4 of this FDR/EA, in accordance with 23 CFR § 771.111(f), the Kensington Expressway Project connects logical termini, has independent utility, and does not restrict consideration of alternatives for other reasonably foreseeable transportation improvements. As described in Section 1.4.2 of this FDR/EA, the Region Central Initiative is a planning-level study for the NYS Route 198/Scajaquada Expressway Corridor. The plan proposed by GBNRTC for the Scajaquada Expressway is a conceptual plan that will have to be vetted through engineering analysis to examine its feasibility.

2.0 Project Purpose, Objectives, and Need

- C2-1** Commenter questioned why the Project objectives in the DDR/EA list the creation of greenspace first rather than the creation of additional connections across the Kensington Expressway.

- R2-1** As documented in Section 1.3.1 of this FDR/EA, the purpose of the Project is to reconnect the community surrounding the defined transportation corridor and improve the compatibility of the corridor with the adjacent land uses, while addressing the geometric, infrastructure, and multi-modal needs within the corridor in its current location. The project objectives identified in Section 1.3.1 further refine the Project purpose. Each objective is important to the Project and no particular weight was assigned to one objective compared to the others. In order for a build alternative to be considered reasonable and studied in the EA, it had to meet each of the project objectives.

- C2-2** Commenter stated in light of the climate crisis, NYSDOT needs to do better to encourage a reduction in the number of vehicle miles traveled. Similar comments stated expressed concern that the Project was overly focused on car-centric or traffic objectives.

- R2-2** As stated in Section 1.3.1 of this FDR/EA, one objective of this transportation project is to maintain the vehicular capacity of the existing transportation corridor. This objective is supported by the identified needs within the transportation corridor, as described in Section 1.3.2.3 of this FDR/EA, and traffic study, as documented in the Project Scoping Report and FDR/EA Appendix B8X. As such, Project concepts that involve a reduction in vehicular capacity are not reasonable alternatives for this Project. Other stated objectives of the Project include “reconnect the surrounding community by creating continuous greenspace to enhance the visual and aesthetic environment of the transportation corridor” and “improve

vehicular, pedestrian, and bicycle mobility and access in the surrounding community by implementing Complete Street roadway design features.” To meet these objectives, the Build Alternative incorporates measures that support reduced automobile dependency by improving pedestrian, bicycle, and public transit accommodations and providing additional east-west vehicular connections over the Kensington Expressway. The effects of the Build Alternative on vehicle miles traveled are documented in Section 4.10 of this FDR/EA.

- C2-3** Commenter stated that NYS Route 33 only needs repairs, and a tunnel is not necessary and will not bring the community together. A commenter asked why the NYSDOT is covering something that doesn't need to be covered.
- R2-3** The need for the Project is documented in Section 1.3 of this FDR/EA. As described in Section 3.2 of this FDR/EA, the No Build Alternative (which consists of routine maintenance/repairs) would not meet the purpose and objectives of the Project. The Build Alternative would meet the project purpose and objectives, including the objectives to reconnect the surrounding community by creating continuous greenspace and improve vehicular, pedestrian, and bicycle mobility and access in the surrounding community by implementing Complete Streets roadway design features.
- C2-4** Commenters questioned the objective of maintaining the vehicular capacity of the existing transportation corridor because it serves people coming into Buffalo from the suburbs and not the local community.
- R2-4** NYS Route 33 is used by both regional and local traffic. NYSDOT must consider the needs of all users, including the 75,000 vehicular drivers (plus any passengers) that use the expressway each day. The objective to maintain the vehicular capacity of the existing transportation corridor is supported by the identified transportation needs documented in Section 1.3.2.3 of this FDR/EA.
- C2-5** Commenter stated that the objective to “maintain the existing capacity of the transportation corridor” conflicts with and limits the objective to “reconnect the community.”
- R2-5** The objective to maintain the vehicular capacity of the existing transportation corridor and the objective to reconnect the surrounding community by creating continuous greenspace to enhance the visual and aesthetic environment of the transportation corridor are both supported by the identified needs documented in Section 1.3.2 of this FDR/EA. As described in Section 5.3 of the Project Scoping Report (PSR), the Build Alternative meets both objectives.
- C2-6** Commenters stated that this Project is a once in a lifetime opportunity to repair harms of the past and shape the future of the city, questioned the automobile focus of the Build Alternative, and stated that the NYSDOT should not make a hasty or ill-considered decision.
- R2-6** The NYSDOT acknowledges the detrimental effect that the construction of the Kensington Expressway had on the local communities. As documented in Section 2.1 of this FDR/EA, the effort to address this section of the expressway has been ongoing since 2009 and throughout the process, the NYSDOT has been working with community members and stakeholders. As documented in Section 1.3 of this FDR/EA, the project purpose and objectives were developed based on the identified needs within the transportation corridor; these needs include the need to reconnect the community and maintain the vehicular capacity of the corridor.

- C2-7** Commenters objected to the Project objective “Maintain the vehicular capacity of the existing transportation corridor.” Commenters stated that it automatically removes a restored parkway option from community consideration.
- R2-7** The objective to maintain the vehicular capacity of the existing transportation corridor is supported by the identified needs documented in Section 1.3.2 of this FDR/EA.
- C2-8** Commenter stated that the Project is expressly centered on maintaining vehicle miles traveled which is counter to New York State’s emissions reduction targets in the Climate Leadership and Community Protection Act (CLCPA).
- R2-8** The objective to maintain the vehicular capacity of the existing transportation corridor is supported by the identified needs documented in Section 1.3.2 of this FDR/EA. As documented in Section 4.10.5 of this FDR/EA, the NYSDOT assessed the Project’s consistency with the CLCPA. The Project would be consistent with the CLCPA. As documented in the FDR/EA, the Build Alternative incorporates pedestrian/bicycle and public transportation enhancement measures that will contribute to reduced vehicle miles traveled.
- C2-9** Commenter stated that prior to the Kensington Expressway, the local street grid accommodated traffic of a city twice the current population. Commenter cited population data and accounts of the history of highway planning in Buffalo to state that the population growth anticipated in the 1940’s never materialized and instead the City population declined 48.5% since 1950, making the expressway capacity unnecessary. Commenter stated that Erie County’s population has declined 11%.
- R2-9** Factors beyond overall population influence roadway use. As described in Section 2.1 of this FDR/EA, post-war trends, such as increased automobile adoption and suburban development, created traffic congestion issues that the original highway system was intended to resolve. The needs for the Project are based on current conditions within the transportation corridor, including the current vehicular usage of the Kensington Expressway. For detailed information on the socioeconomic data underlying the traffic analyses, refer to Appendix F of the Project Scoping Report (PSR), *Travel Demand Trends and Projections*. The GBNRTC has updated their population projections since the PSR was prepared. The updated projections show an increase in population growth from the levels assumed in the analysis for the PSR, further supporting that future population trends would not obviate the transportation need for the Kensington Expressway.¹
- C2-10** Commenter stated that NYSDOT treated this project as strictly a transportation issue setting the primary objective “Maintain the vehicular capacity of the existing transportation corridor.” Another commenter stated that this objective is not found in any of the reasons for the project described by the Restore Our Community Coalition (ROCC), so it isn’t a community objective, but a NYSDOT objective. The NYSDOT placed the objective second, after “Reconnecting the community...,” leaving the impression that “reconnecting the community” and meeting ROCC’s goal was the driving force behind the project, when in truth, New York State (NYS) neglected its obligation to maintain the expressway and its bridges until well past their end of life.

¹ 2050 MTP Update Appendix K: Demographic Forecasts to Support 2050 MTP Update
<https://www.gbnrtc.org/metropolitan-transportation-plan>

- R2-10** The project objectives were developed to address the transportation and community needs of the project corridor, as described in FDR/EA Section 1.3. The Project objectives are given equal consideration, regardless of the order in which they are presented, and all objectives must be met in order for the Project to progress. Project objectives included multiple elements, including reconnecting the community with continuous greenspace, improving pedestrian/bicycle mobility and safety by integrating Complete Streets design features, and addressing geometric and infrastructure deficiencies (FDR/EA Section 1.3.1).
- C2-11** Commenter stated that the design of the historical Humboldt Parkway separated the Fillmore district from the Masten district and that the assertion that the Kensington Expressway divided a neighborhood is not true.
- R2-11** The historic Humboldt Parkway delineated the Fillmore and Masten districts, but it was not a physical barrier to east-west mobility of the surrounding neighborhood. As described in FDR/EA Section 1.3.2.1, the construction of the Kensington Expressway severed east-west roadway connections, resulting in a physical and visual barrier between the east and west sides of the expressway and more circuitous trips to reach community services on either side. Pedestrians making east-west trips are currently required to reach the limited number of bridges crossing the Kensington Expressway (which do not meet current standards for sidewalks, crosswalks etc.).
- C2-12** Commenters stated that the main purpose of the tunnel under the Build Alternative is to maintain vehicle miles travelled.
- R2-12** As stated in Section 1.3 of this FDR/EA, the purpose of the Project is to reconnect the community surrounding the defined transportation corridor and improve the compatibility of the corridor with the adjacent land uses, while addressing the geometric, infrastructure, and multi-modal needs within the corridor in its current location. The Project objectives include reconnecting the community by creating continuous greenspace, maintaining the vehicular capacity of the existing transportation corridor, improving vehicular, pedestrian and bicycle mobility and access by implementing Complete Streets design features, and addressing geometric and infrastructure deficiencies (FDR/EA Section 1.3.1). The purpose and objectives were developed to address the transportation and community needs of the project corridor.
- Maintaining vehicle miles traveled is not an objective of the Project. As documented in Sections 4.9 and 4.10 of this FDR/EA, effects on regional vehicle miles travelled were considered as part of the greenhouse gas and mesoscale air quality analyses. As shown, the Build Alternative would result in a slight reduction in overall vehicle miles travelled compared to the No Build Alternative.
- C2-13** Commenter stated that the Kensington Expressway is currently in a state of gross disrepair and will require action soon. Another commenter stated NYSDOT was negligent in the maintenance of the current highway, letting it deteriorate “20 years beyond expected service life” (page 22 of DDR/EA) in order to push this project through.
- R2-13** As documented in Section 1.3.2.5 of this FDR/EA, the Best Street, Dodge Street, and Northampton Street Bridges that were constructed in 1963 are 20 years beyond their expected 40-year service lives (East Utica Street and East Ferry Street bridges were built in 1970 and are 13 years beyond their expected 40-year service life). “Service life” is how long a bridge may be expected to remain in operation, but it is not an absolute or precise metric. Depending on the bridge type and maintenance practices, a bridge can last substantially longer than the expected service life before complete replacement is needed. Section 1.3.2.5

of this FDR/EA acknowledges deck replacements are needed on the Best Street, Dodge Street, Northampton Street, East Utica Street and East Ferry Street bridges in the next 5 to 10 years. Regardless of the Project, normal maintenance has been and will continue to be implemented to maintain public safety.

- C2-14** Commenter stated that a high-speed expressway dividing residential neighborhoods does not serve the goals of complete streets that safely move cars, pedestrians, transit, bikes, and people with disabilities.
- R2-14** As documented in FDR/EA Section 1.3, the project objectives include reconnecting the surrounding community by creating continuous greenspace and improving vehicular, pedestrian, and bicycle mobility and access in the surrounding community by implementing Complete Street roadway design features. As documented in FDR/EA Chapter 3, the Build Alternative meets both of these project objectives.
- C2-15** Commenter stated that the Project is not needed because the community that was divided by the expressway 70 years ago is no longer there. Commenter questioned the NYSDOT's justification to spend a billion taxpayer dollars on this Project to reconnect communities.
- R2-15** FDR/EA Section 1.3 documents the need for this Project. As stated, there is a need for community members to have improved access to amenities and to their overall social networks and reduced social isolation. In addition to reconnecting communities, Project funding would also be used to address identified geometric and infrastructure deficiencies within the transportation corridor and improve vehicular, pedestrian, and bicycle mobility and access in the surrounding community (FDR/EA Section 3.2.2).
- C2-16** Commenter stated that the current health conditions occurring in the project area are a public health disaster, and any transportation facility improvements must prioritize public health above all other considerations.
- R2-16** FDR/EA Section 4.4.2 documents the existing conditions in the study area related to public health based on USEPA's EJSCREEN tool. As documented in Section 4.9 of this FDR/EA, the Project will not result in exceedances of the National Ambient Air Quality Standards (NAAQS), which are criteria established by the USEPA to protect the public health, including protecting the health of sensitive populations such as asthmatics, children, and the elderly. Health-related considerations were included in the project objectives, specifically pedestrian and bicycle mobility and safety improvements using Complete Streets principles and reconnecting the community with continuous greenspace (see FDR/EA Section 1.3). The Build Alternative was developed based on a balanced consideration of the need for safe and efficient transportation; the social, economic, and environmental effects for the Build Alternative; and national, state, and local environmental protection goals.
- C2-17** Commenter stated that the Build Alternative does not restore the heritage landscape of Humboldt Parkway to the maximum extent possible and as a result does not meet one of its foundational imperatives.
- R2-17** The NYSDOT, in consultation with FHWA, has considered the original Humboldt Parkway as part of the environmental review process. As documented in Chapter 1 of the FDR/EA, the purpose of this transportation project is to reconnect the community surrounding the defined transportation corridor and improve the compatibility of the corridor with the adjacent land uses, while addressing the geometric infrastructure, and multi-modal needs within the corridor in its current location. Although restoration of

the original Humboldt Parkway is not the purpose of the Project, the NYSDOT and FHWA recognize the importance of its history to the project area. Transportation decision-making for this Project has incorporated design features of the original Humboldt Parkway to the greatest extent practicable, including but not limited to:

- A planted 90-foot-wide center median that aligns with the entrance area of the Buffalo Museum of Science and the location of the historic southern entrance to the Humboldt Parkway.
- Trees would be planted in diagonal rows ('alternating pairs of trees') based on the Olmsted plan for tree arrangement and would include 24 feet between rows and 60 feet between trees (as scaled from the Olmsted plan beginning just north of the Buffalo Museum of Science).
- Street trees would be planted on the residential sides of Humboldt Parkway to create a parkway feeling (trees on either side of drivers and pedestrians).
- The planting list for the original Humboldt Parkway was considered during the development of the landscape planting plan. Tree species recommendations were developed in coordination with the Buffalo Olmsted Parks Conservancy and the City of Buffalo. Tree species selection also considered tree root systems, mature size, and ability to survive in urban conditions (see FDR/EA Section 3.4.4 and Appendix A1).

The Project's potential effects on identified historic resources were considered through the Section 106 process, as documented in Section 4.6 and Appendix D10 of this FDR/EA.

C2-18 Commenter asked what the context or merit is for measuring community connection. Commenter noted that the design limits access onto and off of the Kensington Expressway.

R2-18 The need to reconnect the community is documented in FDR/EA Section 1.3.2.1. For information regarding access to and from the Kensington Expressway under the Build Alternative, refer to response to comment R6.1-6.

C2-19 Commenters stated the goal of the "Humboldt Parkway restoration project" should be to improve neighborhoods, to actually reconnect the Parks and all adjacent neighborhoods, and spur the greatest amount of economic investment across the whole East Side. Commenters stated the goal should not be to just maintain the current 75,000 vehicle capacity along only one roadway, which brings concentrated levels of pollution for just those nearby communities.

R2-19 As stated in Section 1.3 of this FDR/EA, the purpose of the Project is to reconnect the community surrounding the defined transportation corridor and improve the compatibility of the corridor with the adjacent land uses, while addressing the geometric, infrastructure, and multi-modal needs within the corridor in its current location. The Project objectives include reconnecting the community by creating continuous greenspace, maintaining the vehicular capacity of the existing transportation corridor, improving vehicular, pedestrian and bicycle mobility and access by implementing Complete Streets design features, and addressing geometric and infrastructure deficiencies.

Although restoration of the original Humboldt Parkway is not the purpose of the Project, the NYSDOT and FHWA recognize the importance of its history to the project area. Transportation decision-making for this Project has incorporated design features of the original Humboldt Parkway to the greatest extent practicable (see response to comment C7.5-6).

Increasing economic investment on the East Side is not the purpose of the Project. The economic effects resulting from the Project were assessed, as documented in Sections 4.5 and 4.21 of this FDR/EA.

The air quality effects resulting from the Project were evaluated, as documented in FDR/EA Section 4.9. The results show that the highest concentrations would be well below (better than) health-based air quality standards (see response to comment 7.8-1).

3.0 Build Alternative Considerations

3.1 Greenspace/Tunnel Cap

C3.1-1 Commenter requested that the greenspace be developed to accommodate park-like accessibility, including pedestrian and bicycle paths, flower gardens, and butterfly/bird watching. Commenter made landscaping recommendations for flowers with designs representing Black culture, with a setup similar to the Buffalo Naval Park. Commenter suggested a playground and water fountain. Commenter requested that the greenspace be wheelchair accessible and have nice lighting. A commenter stated that the proposed passive greenspace would not accommodate the active uses needed by residents. Commenter requested that the Project restore as much greenspace as possible.

R3.1-1 The proposed greenspace has been designed in consideration of community input and the historic character of the landscape. As described in Section 3.4.4 of this FDR/EA and based on stakeholder input, the Build Alternative would create a tree-lined parkway setting that resembles the Olmsted-designed landscape to the extent practicable with a wide median separating the northbound and southbound Humboldt Parkway. Flower gardens, active recreation areas, playgrounds and water fountains within the greenspace are not part of the Build Alternative, as they do not align with Olmsted's original design.

Appropriate street lighting would be provided along the outside (residential) side of Humboldt Parkway but has not been included in the design of the center median area.

Bicycle lanes would be provided on the reconstructed Humboldt Parkway. Humboldt Parkway sidewalks and intersecting streets would be improved with ADA-compliant sidewalks and curb ramps.

Pedestrian and bicycle paths were considered but were not included in the design of the parkway median based on the following:

- To meet design standards for shared use pedestrian and bicycle paths, at least 8 feet of width would need to be provided for each direction.
- Usable greenspace would be reduced by the paths and the width of the facility may impact the tree layout.
- The design would create mid-block crossings at cross streets for pedestrians and bicyclists, which are undesirable from a safety perspective.
- The paths would need to end or transition back to Humboldt Parkway before the portal ends.

The City of Buffalo has concurred that paths in the median are not recommended.

C3.1-2 Commenter questioned the plans to control potential long-term rodent problems that could be associated with the proposed greenspace.

R3.1-2 The City of Buffalo Department of Streets and Sanitation has jurisdiction over rodent control issues citywide, and this jurisdiction would include the greenspace on the tunnel cap.

C3.1-3 Commenters stated that the proposed depth of soil on the tunnel deck (three feet) would be inadequate for trees. Commenters stated that greater than three feet of soil depth should be provided so roots can grow deeper and allow for large shade trees to grow. A commenter noted that a highway cap project in Seattle has full size trees and 14-foot deep planters.

R3.1-3 The three-foot minimum soil depth was determined by a registered landscape architect based on experience and a literature review of the soil needs of trees reaching up to 50 feet in height at maturity, see Section 3.4.4.1 of this FDR/EA. The recommended tree species shown on the landscaping plans in Appendix A1 of this FDR/EA involve the use of trees that have lateral (spreading) or oblique root systems. Lateral or oblique root systems grow horizontally, and 80 percent of the tree's roots are in the top 18 to 24 inches of soil. The recommended tree species have been reviewed and approved by the City of Buffalo Department of Parks and Recreation and the Buffalo Olmsted Parks Conservancy.

Similar soil depths to the three feet proposed have led to successful tree development on other projects. One example is the Hoboken Waterfront Redevelopment project, which involved three feet of soil for trees over drainage/insulation layers on pier deck park. The project was completed in the 1990's and successful mature tree plantings have been established (image below).

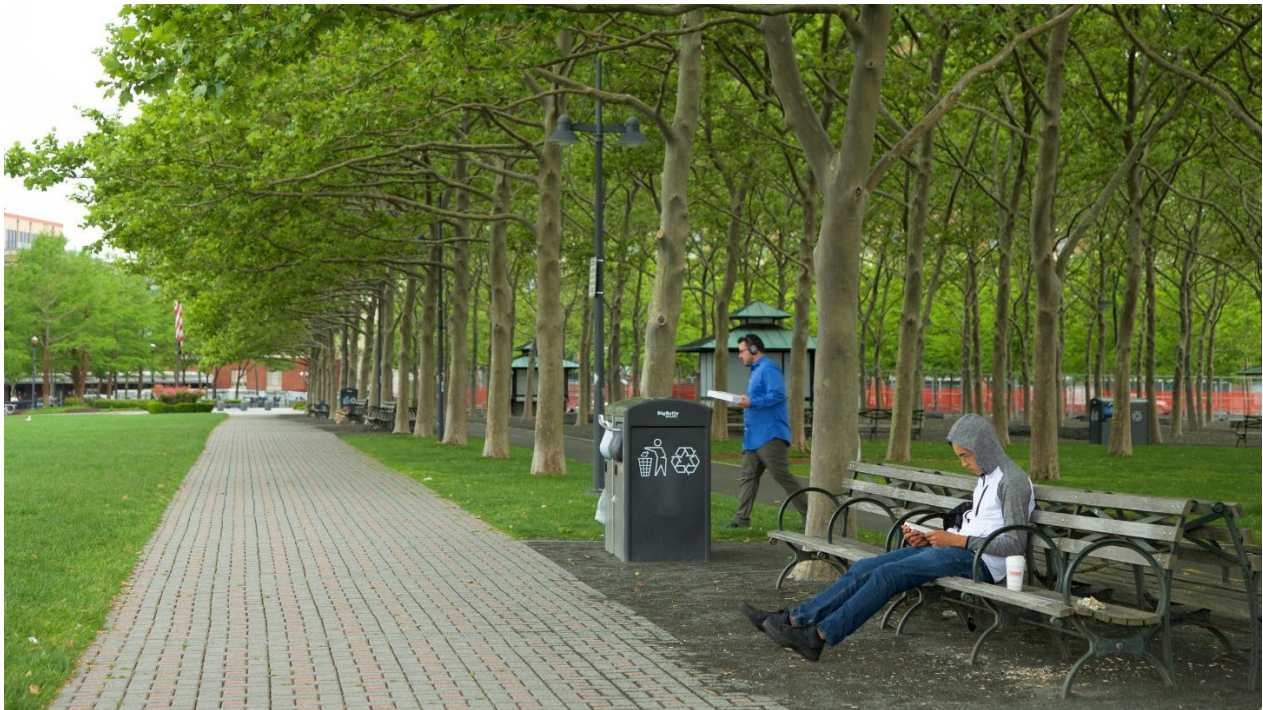


Photo 1: Mature trees growing in three feet of soil on pier deck at Hoboken Riverside Park, New Jersey

C3.1-4 Commenter asked if climate change considerations in terms of severe weather were considered, specifically stronger winds, snowstorms, and rainstorms that could lead to trees being blown over on people or cars in the area. Commenter inquired about the tunnel collapsing due to the weight that could

potentially be added to the structure as result of heavy storms, especially as the structure ages. Commenter stated that the proposed trees on the cap will be imperiled by intense temperature and moisture fluctuations.

R3.1-4 Severe weather events were considered in the landscaping and tunnel structure design. The trees proposed for planting on the tunnel cap are not at a greater risk of falling down during high winds compared to trees planted in natural ground. Trees have been selected for the Project based on their anticipated maximum height, lateral root systems and the concentration of roots in the top layer of soil (80% of roots in top 18 to 24 inches). The City of Buffalo Department of Parks and Recreation has provided specific recommendations on tree species and the locations for particular species taking into account potential windthrow considerations. These recommendations will be incorporated in the final planting plans.

Regarding the structural stability of the tunnel, the design of the tunnel has considered the anticipated load conditions in detail, including that of vehicles, pedestrians, soil, drifted and piled snow, trees, roadways, concrete, and utilities (see Appendix A12 Tunnel Structure Type of this FDR/EA).

Regarding temperature and moisture fluctuations, the primary concern regarding the survivability of the trees is drought. Maintaining the greenspace would include appropriate watering.

C3.1-5 Commenter expressed concern about the impact of additional trees and leaf litter on the gutters of the high roofs on Humboldt Parkway.

R3.1-5 It would take many years for trees to grow high enough above roof lines to the point that any additional gutter maintenance would be required due to leaf accumulation. Given that many of the proposed tree species would have an approximately 50 foot height at maturity, most leaves would fall to the ground below the height of roofs of nearby structures. In addition, the trees would not be taller than many of the existing street trees along Humboldt Parkway.

C3.1-6 Commenter stated that the additional trees would take away the sunshine that the homes on Humboldt Parkway normally receive.

R3.1-6 The proposed tree species will grow to a maximum of 50 feet in height at maturity. It is estimated that it will take approximately 40 to 50 years for trees to achieve this height. Once matured, the new tree plantings would provide additional shade during the growing season. Note that during the winter when daylight hours are the shortest, there would be no effect on sunshine received by residences since the trees would shed their leaves in autumn.

C3.1-7 Commenter expressed concern that residents who did not contribute to the planting on top of the tunnel eating from the vegetable gardens on the tunnel cap.

R3.1-7 The Build Alternative landscaping plan does not include vegetable gardens.

C3.1-8 Commenter stated that the trees planted on the tunnel deck will have to be deforested once they get too big. Commenter goes on to note we cannot count on replacement trees to be planted as needed since the city only plants one tree for every four cut down.

- R3.1-8** As documented in Section 3.4.4 of this FDR/EA, the tree species selected for the tunnel cap would reach approximately 50 feet in height at maturity. Trees of this size would not need to be replaced for growing too large. The City of Buffalo has agreed to maintain the greenspace on the tunnel deck with the exception of the fenced off areas at the portals, which will be maintained by the NYSDOT (See FDR /EA Section 3.4.1.12 Ownership and Maintenance Jurisdiction).
- C3.1-9** Commenter asked how tree roots will be prevented from damaging the roof of the tunnel.
- R3.1-9** Prevention of root damage to the roof of the tunnel has been factored into the Build Alternative based on two approaches: 1) selection of tree species with lateral root systems and avoiding trees with large/deep tap roots; and 2) an approximately 6-inch layer under the soil allowing for drainage, waterproofing, and insulation over the tunnel roof. In addition, the waterproofing will be a durable PVC or HDPE membrane, neither of which are susceptible to root penetration. Based on these considerations, tree root systems are not expected to damage the tunnel roof slab (FDR/EA Section 3.4.4.1).

3.2 Localized Street Improvements

- C3.2-1** Commenter stated that we need to have high expectations for the investment that surrounds the Kensington Expressway. Commenter indicated that these expectations should not be limited to just the highway and a few trees and shrubs and green space, but that it should extend out into the adjacent commercial strips that were decimated and torn apart years ago. Commenter stated that the goal should be to actually create real connection between the neighborhoods, and not just a grass strip with some shrubs.
- R3.2-1** The Project includes local street improvements beyond Humboldt Parkway as shown in Figure 1.2-2 and documented in Sections 3.2.2 and 3.4.3.12 of this FDR/EA. These streets would receive pavement rehabilitation, sidewalk, curb ramp, lighting, and landscaping improvements, as needed. The Build Alternative would create connections between neighborhoods by creating new east-west street connections on the tunnel cap at Riley Street, Winslow Avenue and Sidney Street/Butler Avenue (see FDR/EA Figure 3.2-1). The bicycle and pedestrian improvements included in the Build Alternative would also contribute to neighborhood connections, with 5-foot sidewalks and accessible curb ramps incorporated on the cross streets on the tunnel cap, traffic calming measures for shared use (“neighborhood bikeways” on Northampton Street and East Utica Street, and completion of continuous bicycle lanes on Humboldt Parkway, among others (see FDR/EA Section 3.4.2).

3.3 Roundabouts

- C3.3-1** Commenter inquired about potential conflict zones between cars entering and exiting the proposed Best Street roundabout and requested that more be done to slow the traffic within the roundabout, such as incorporating rumble strips.
- R3.3-1** Roundabouts (which are different from older traffic circles and rotaries) are a traffic calming design because the geometry of the roundabout forces vehicles to slow down. Rumble strips are not a traffic calming measure, as their purpose is to alert drivers that are leaving the travel lane and would not be appropriate for the Best Street roundabout.

Modern roundabouts will enhance safety at the Best Street interchange by reducing potential conflict points between vehicles. Roundabouts are proven to reduce the rate of all crashes, but particularly those that

cause injuries and fatalities.² The number of vehicle-vehicle conflict points for roundabouts decreases from 32 for four-leg intersections to eight. The proposed Best Street roundabouts would reduce vehicular crossing by converting all movements to right turns.

- C3.3-2** Commenters expressed concern that the Best Street roundabout would be dangerous for pedestrians (including school-aged children and senior citizens) to cross. Commenter requested further investigation regarding the safety of pedestrian crossings and movements at roundabouts. Commenter stated that this is a greater concern during summer months when annual events take place at MLK, Jr. Park, which draw crowds of people including out of town visitors. Commenter stated that roundabouts may be advisable in low pedestrian areas but significantly add to pedestrian travel times when implemented in a dense urban grid.
- R3.3-2** The Best Street bridge roundabout design includes a 10-foot-wide multiuse path for pedestrian movements along the roundabout and crosswalks with clearly marked pedestrian priority signage and appropriate lighting at night (See FDR/EA Section 3.4.2.1). In general, roundabouts improve safety for pedestrians by reducing vehicle speeds and reducing crossing distances. The splitter islands provide a refuge such that pedestrians only need to cross one direction of traffic at a time. Design details for the pedestrian crossings of the roundabout and potential measures to increase driver awareness of the need to yield to pedestrians will continue to be developed during final design.
- C3.3-3** Commenter noted concern with the proposed roundabout at Best Street/Herman Street in relation to the Metropolitan United Methodist Church driveway and parking lot. Commenter noted that the church members have a difficult time exiting the parking lot and vehicles have crashed into the building in the past.
- R3.3-3** To address this concern, the NYSDOT has modified the Build Alternative design to add a two-way left turn lane on Best Street on the east side of Best Street/Herman Street/West Parade Avenue roundabout (FDR/EA Figure 3.2-1A and Section 3.4.3.1). The turning lane will allow westbound traffic on Best Street to make the left turn to enter the church parking lot without blocking thru traffic. For vehicles exiting the church parking lot, the turning lane will also make it easier to turn left because a driver would only need to find a gap in one direction of traffic at a time.
- C3.3-4** Commenter requested that the community be educated on the use of the roundabouts. Commenter noted that traffic calming/speed bumps and traffic monitoring are needed on Herman Street due to fast traffic speeds.
- R3.3-4** The NYSDOT's public engagement plans during construction will include providing information to the community about roundabouts. Also, user guidance for roundabouts is available on the NYSDOT website.³

Traffic calming and speed control are among the major advantages of the roundabout design. Thus, it would be expected that traffic speeds on Herman Street near the roundabout would be reduced.

² NCHRP Research Report 1043: Guide for Roundabouts

³ <https://www.dot.ny.gov/main/roundabouts/guide-users>

3.4 Tunnel Systems and Safety

C3.4-1 Commenter asked if snow will be plowed to handle the traffic at the end of the tunnel and who would be responsible in case of an accident or injury.

R3.4-1 NYS Route 33 and the tunnel related infrastructure would be maintained by the NYSDOT, including winter deicing and snow plowing outside the tunnel limits.

The Project would not change New York State laws governing automobile insurance requirements and responsibilities regarding property damage or injuries.

C3.4-2 Commenters asked about the management of emergency events such as accidents or fires in the tunnel, including how the fire department would be able to fight the fire inside the tunnel and how tunnel users would escape from a fire in the tunnel.

R3.4-2 As described in Section 3.4.1.9 of this FDR/EA, in the case of a fire, all entrances to the tunnel would be closed to regular traffic to allow emergency vehicles to access the site. This access would be primarily through the portals of the non-incident tunnel. The tunnel's emergency lighting system would be activated to assist in orientation, while ventilation fans would work to manage smoke, ensuring one tunnel remains clear. Evacuation for motorists caught downstream from the incident would be possible via sliding doors to access the non-incident tunnel, which would serve as the area of refuge. Furthermore, the activation of the water mist system would help control the heat and mitigate the fire, contributing to structural fire protection until emergency services can address the situation. NYSDOT has coordinated with the Buffalo Fire Department (BFD) regarding the concept and design of the tunnel fire and life safety systems.

The NYSDOT will develop an emergency response plan during the final design stage of the Project in collaboration with the BFD, Buffalo Police Department (BPD), and other appropriate organizations. Additionally, a training program in tunnel incident response will be provided for the BFD and other first responders as part of final design.

C3.4-3 Commenter stated that vehicular toxic emissions can easily contaminate the air quality of the enclosed tunnel environment, especially during rush hours with traffic jam events or low vehicle speeds, which poses serious health hazards to vehicle passengers. Commenter noted concerns with the tunnel ventilation design, the complexity of the piston effect and cited three research studies related to tunnel ventilation.

R3.4-3 The tunnel ventilation design described in Section 3.4.3.5 of this FDR/EA is based on international best engineering practices and technology, and information from the design and operation of road tunnel projects worldwide. The Permanent International Association of Road Congresses (PIARC) (World Road Association) guideline "Road Tunnels: Vehicle Emissions and Air Demand for Ventilation" is one of the leading guidelines on this issue. The longitudinal ventilation system design considered typical operations with free flow traffic, traffic congestion events and emergency events. Exceedance of defined pollutant concentrations will trigger jet-fan operation and the jet fans will pull in fresh air and dilute concentrations of pollutants. The thresholds ensure that permissible levels will not be exceeded at any location. Based on experience from similar projects worldwide, operation of jet fans for air quality will be required only very rarely in exceptional cases, e.g., long lasting stand-still congestion in the tunnel and unfavorable wind conditions.

The piston effect is well understood in the field of tunnel ventilation and tunnel safety. The contribution of moving vehicles to the piston effect can be simply described and calculated, can be validated by measurements, and is well documented in most standards and guidelines for tunnel ventilation. The studies cited in the comment are not applicable to the ventilation design for the Build Alternative because they are based on outdated vehicle emission data, outdated computational methods, different tunnel shape/dimensions, or compare different types of jet fans.

Examples of tunnels using longitudinal ventilation systems in the U.S. include the Port of Miami Tunnel (Florida), the State Route 99 Tunnel (Washington), and Tuscarora Tunnel Rehabilitation (Pennsylvania). Longitudinal ventilation systems have also been used extensively in recent tunnel construction and retrofits internationally.

C3.4-4 Commenters expressed general concern with driver safety in a tunnel environment and accidents and high speeds in the tunnel. One commenter noted there is no location for law enforcement to setup radar speed control in the tunnel.

R3.4-4 The Build Alternative (including the tunnel) has been designed in accordance with appropriate design standards to provide safe operating conditions (FDR/EA Section 3.3.1). In general, drivers are typically more cautious and alert when driving in a tunnel environment compared to non-tunnel roadways.⁴ The removal of the interchange ramps within the tunnel limits also serves to increase safety in the tunnel by minimizing conflict points.

The Build Alternative would not change the posted speed limit or design speed of NYS Route 33. Control of speeding is outside the scope of this Project and the responsibility of local law enforcement.

C3.4-5 Commenter is concerned about toxic smoke from electric vehicle fires in the tunnel.

R3.4-5 Electric vehicles were considered in the design of the tunnel fire and life safety systems, which include sensors, a water mist system and jet fans, among other components (See Section 3.4.3.5 of this FDR/EA). In the event of a fire, the water mist system will reduce the spread of smoke and help control it until the Fire Department can further combat the fire.

3.5 Lighting and Utilities

C3.5-1 Commenter inquired how adequate and safe levels of lighting could be provided along Humboldt Parkway at night when the light would be blocked by all the trees. Another commenter asked more generally how lighting would be provided.

R3.5-1 Overhead lighting fixtures along Humboldt Parkway would be provided and would meet City of Buffalo requirements. Many other roadways in Buffalo have mature street trees and provide the sidewalk and roadway lighting required by the City of Buffalo. Lighting would also be provided within the tunnel (see FDR/EA Section 3.4.1.11).

⁴Shy Bassan. Overview of traffic safety aspects and design in road tunnels. IATSS Research <https://www.sciencedirect.com/science/article/pii/S0386111216000066#bb0035>

3.6 Structures

- C3.6-1** Commenter questioned whether the tunnel has been evaluated for stability in the event of an earthquake, noting there was a recent earthquake in Buffalo that shook houses at their foundation.
- R3.6-1** The tunnel structure has been designed to withstand earthquakes. Seismic evaluation of the tunnel structure was conducted per the NYSDOT Load and Resistance Factor Design (LRFD) Bridge Design Specifications (2021). The design standards used in tunnel structural and geotechnical design are listed in Section 3.3.1 of the FDR/EA.

3.7 Right-of-way Requirements

- C3.7-1** Commenter questioned how the Project would affect their property. Similar comments asked about temporary and permanent easements and the impacts to homes for air filtration.
- R3.7-1** Section 3.4.3.1, Table 3.4-6 of this FDR/EA lists the anticipated right-of-way acquisitions for the Build Alternative.

Prior to the September 27, 2023 Public Hearing held September NYSDOT Office of Right of Way staff contacted many of the impacted property owners in person to provide information regarding potential property impacts, describe the impact and answer questions about the right of way process.

After the environmental review process is completed, NYSDOT will prepare an acquisition map for each impacted property. The map will detail the size, location, and type of acquisition (permanent or temporary) impacting the property. NYSDOT Office of Right of Way staff will then meet with the property owner to review the acquisition area, discuss the project impacts on the property, explain the acquisition process and inform the property owner of their rights throughout the acquisition process.

Based on the air quality analysis results documented in Section 4.9 of this FDR/EA, air treatment is not necessary. Air ventilation measures for the Project would not require the taking of homes (FDR/EA Section 3.2.2.2). No acquisitions of homes are required for this Project.

- C3.7-2** Commenter asked what would happen if owners refused to sell their home and expressed general concerns about eminent domain proceedings.
- R3.7-2** No acquisitions of homes are required for this Project. The right-of-way acquisitions and easements involve small portions of land that would not affect structures or change the use of the properties. See FDR/EA Section 3.4.3.1.
- C3.7-3** Commenter asked about the criteria used to determine fair value in the right-of-way acquisition process and what would happen if the affected people don't want to move.
- R3.7-3** No acquisitions of homes are required for this Project. Refer to Section 3.4.3 of this FDR/EA for information related to the proposed right-of-way acquisitions required for the Build Alternative.
- C3.7-4** Commenter asked if their home would be affected by right-of-way acquisitions, whether payments for right-of-way would be taxable, and whether the project would damage their foundation.

R3.7-4 Prior to the September 27, 2023 Public Hearing held September NYSDOT Office of Right of Way staff contacted many of the impacted property owners in person to provide information regarding potential property impacts, describe the impact and answer questions about the right of way process.

After the environmental review process is completed, NYSDOT will prepare an acquisition map for each impacted property. The map will detail the size, location, and type of acquisition (permanent or temporary) impacting the property. NYSDOT Office of Right of Way staff will then meet with the property owner to review the acquisition area, discuss the project impacts on the property, explain the acquisition process and inform the property owner of their rights throughout the acquisition process.

While acquisitions of real property for public purpose are typically non-taxable, there are some taxable circumstances. Affected homeowners should refer to their own legal counsel, tax preparer, the Internal Revenue Service, and the NYS Department of Taxation and Finance for more information related to their specific property acquisition.

Damage to foundations as a result of this Project is not anticipated and measures to conduct pre- and post-construction surveys to inspect for damage related to blasting is detailed in Section 4.20.2 of this FDR/EA.

C3.7-5 Commenter noted that elders in the community would have a difficult time understanding the right-of-way acquisition letters sent by NYSDOT and that the material could be better explained to community members.

R3.7-5 Prior to the September 27, 2023 Public Hearing held September NYSDOT Office of Right of Way staff contacted many of the impacted property owners in person to provide information regarding potential property impacts, describe the impact and answer questions about the right of way process.

After the environmental review process is completed, NYSDOT will prepare an acquisition map for each impacted property. The map will detail the size, location, and type of acquisition (permanent or temporary) impacting the property. NYSDOT Office of Right of Way staff will then meet with the property owner to review the acquisition area, discuss the project impacts on the property, explain the acquisition process and inform the property owner of their rights throughout the acquisition process.

3.8 Construction Means and Methods

C3.8-1 Commenter questioned whether construction work would be ongoing through winter.

R3.8-1 Frozen ground, cold temperatures, and other factors would limit certain construction activities during the winter; however, some activities (as determined by the contractor) could be feasible in the winter months.

C3.8-2 Commenter requested that the NYSDOT work diligently with homeowners who would be impacted by the project to ensure their personal safety and protect their properties from harm. Commenter stated that the project should be completed as fast as possible to reduce disruptions.

R3.8-2 Public engagement efforts would continue through construction (FDR/EA Chapter 5). Measures to mitigate construction effects of the Project, including measures to avoid damage to properties through monitoring and adaptive management, would be implemented as documented in FDR/EA Section 4.20. A Construction Health and Safety Plan to be prepared by contractor during final design (FDR/EA Section

4.20.5). The construction would be completed expeditiously, and the contractor's proposed schedule would be considered in the design-build procurement process.

3.9 Construction Cost, Maintenance Cost, and Maintenance Responsibility

- C3.9-1** Commenters expressed general concerns related to Project construction and/or maintenance costs. Commenter stated that an annual maintenance cost of \$5 million would be an unacceptable financial burden on future generations. Commenter noted that the proposed solutions are complicated and would require constant maintenance. Commenter stated that NYSDOT doesn't have the budget to properly maintain its current infrastructure. Commenter stated that the construction and maintenance costs would make this the most expensive stretch of road ever built in the United States.
- R3.9-1** Comment noted. Maintenance responsibilities are discussed in FDR/EA Section 3.4.1.12. Long-term maintenance of the elements of the Project within NYSDOT maintenance jurisdiction would be included in the NYSDOT capital program and the GBNRTC Transportation Improvement Program (TIP). However, the need to maintain the tunnel would not necessarily require an increase in the requested annual funding of \$5 million because the amount would be at least partially offset by maintenance savings on the aging retaining walls, bridges and pavement in the project corridor that would no longer be required when this infrastructure is replaced by a tunnel. Maintenance funds come from a variety of federal and state funding sources.
- C3.9-2** Commenters asked who will be responsible for maintaining the landscaping on the tunnel cap, including leaf removal, garbage pickup, grass cutting, and tree trimming. Commenter stated that an important lesson from a highway cap project in Seattle is to make sure to know who is responsible for maintaining the cap. Commenter noted the Seattle project has had drainage issues and has been used as a public latrine.
- R3.9-2** The City of Buffalo has agreed to maintain the greenspace on the tunnel deck with the exception of the fenced off areas at the portals, which will be maintained by the NYSDOT (See FDR /EA Section 3.4.1.12 Ownership and Maintenance Jurisdiction). NYSDOT and the City would formalize this arrangement during final design.
- Drainage issues have been an important consideration in the design of the tunnel deck, and the design process considered experiences from other areas where highway caps have been constructed. Waterproofing and a 6-inch-deep drainage layer are included in the tunnel cap design to facilitate proper drainage of any stormwater that is in excess of that which can be absorbed by soil and plantings in the proposed tunnel cap greenspace.
- C3.9-3** Commenter asked if the Project is fully funded and whether the community will end up with property tax increases to help pay for it.
- R3.9-3** The Project is fully funded in the GBNRTC long-range transportation plan and 5-year transportation improvement program.⁵ The construction cost of the Project is funded by federal and state transportation sources and does not rely on revenue from the City of Buffalo or local property taxes.

⁵ FFY 2023-2027 TIP.

- C3.9-4** Commenter asked for an itemized cost of the project.
- R3.9-4** Preliminary construction and maintenance itemized cost estimates for the Build Alternative are provided in Section 3.6.2 of the FDR/EA.
- C3.9-5** Commenters stated that the Build Alternative cost-benefit cannot be justified (in the context of \$1 billion cost for benefit to less than one mile) or that the benefits are not worth the cost. Commenter stated that public funds should be used for the greatest public benefit and that this Project would not provide public benefits because the Project would not foster better communities and quality of life, foster better public health, spawn economic development, or incentivize private investment. Commenter compared the cost of the Project to the Inner Loop East in Rochester (infill of 2/3 mile for \$22 million). Commenter asked what the return on investment would be, and another commenter asked what else the Project would achieve in addition to reconnecting neighborhoods.
- R3.9-5** As documented in Chapter 4 of this FDR/EA, the Build Alternative has numerous public benefits likely to improve quality of life, including reduced noise levels along the tunnel cap, reduction in impervious surface/stormwater runoff, reduction in urban heat island effect, support for increased physical activity with pedestrian/bicycle infrastructure improvements, improved aesthetics, and construction employment/economic benefits.
- C3.9-6** Commenter indicated their preference that the \$5 million/year tunnel maintenance cost be spent on maintaining Humboldt Parkway with the Kensington Expressway filled in. Commenter noted the maintenance cost savings with NYS Route 33 removal—bridges, retaining walls and pavement maintenance costs reduced. Commenter stated the High Street and Jefferson Avenue bridges may be in need of replacement in the near future.
- R3.9-6** NYS Route 33 removal (Concept 10) was dismissed from further consideration during scoping (see response to comment 4.2-1). The Jefferson Avenue and High Street Bridges are outside the limits and scope of this Project (High Street is included in the local street improvements program, but this program involves improvement of existing pavement, not reconstruction or replacement of structures). Regardless of the Project, normal maintenance has been and will continue to be implemented on bridges and other structures to maintain public safety.
- C3.9-7** Commenter questioned where the funds to maintain the tunnel in 10 years would come from, especially considering that there is no plan to pay for the \$5 million per year in maintenance for a partial cap. Commenter noted concern that a ¾ mile long, billion dollar tunnel would only add to the capital expenditures budget.
- R3.9-7** Long-term maintenance of the elements of the Project within NYSDOT maintenance jurisdiction would be included in the NYSDOT capital program and the GBNRTC Transportation Improvement Program (TIP). However, the need to maintain the tunnel would not necessarily require an increase in the requested annual funding of \$5 million because the amount would be at least partially offset by maintenance savings on the aging retaining walls, bridges and pavement in the project corridor that would no longer be required when this infrastructure is replaced by a tunnel. Maintenance funds come from a variety of federal and state funding sources.
- C3.9-8** Commenter indicated a strong preference that NYSDOT not proceed with a tunnel incorporating a \$100 Million ventilation system and requiring \$5-12 Million in maintenance costs.

- R3.9-8** The capital cost of the ventilation system would be approximately \$8.6 million, and the total annual maintenance cost for the tunnel would be \$5 million (including ventilation and other tunnel systems). See Section 3.6 of this FDR/EA.
- C3.9-9** Commenter requested a Maintenance Sustainability Study including estimated annual budgets and maintenance responsibilities for the concept.
- R3.9-9** Information on maintenance costs is provided in Section 3.6.3 of this FDR/EA. Information on ownership and maintenance jurisdiction is provided in Section 3.4.1.12 of this FDR/EA.

3.10 Schedule

- C3.10-1** Commenter questioned when construction would begin and how long it would take.
- R3.10-1** Construction is expected to start in December 2024 and be completed in June 2029, see Section 1.5 of this FDR/EA.

3.11 Other Build Alternative Comments

- C3.11-1** Commenter stated that the three additional bridges included in the Project would reconnect communities rather than just the trees/landscaping.
- R3.11-1** The roadway connections over the tunnel cap are an important part of addressing the need for east-west connection across the transportation corridor to improve community cohesion. Figure 3.2-1 shows the new crossings at Riley Street, Winslow Avenue and Sidney Street/Butler Avenue, and the associated narrative is in Section 3.2.2. Section 4.2.3 of this FDR/EA discusses the benefits to community cohesion that would result from the Project, including benefits associated with the new crossings.
- C3.11-2** Commenter expressed concern regarding the use of substandard materials and unqualified workers during construction (due to corruption/shortcuts) resulting in an unsafe tunnel structure.
- R3.11-2** NYSDOT recognizes the importance of quality materials, construction procedures, and trained workers to create safe operating conditions for the public. Measures to ensure quality include specifications in the design-build contract that detail the critical conditions the design must meet, independent review of design-builder proposed changes during final design, and construction inspection programs. The tunnel would also be subject to pre-service safety review and testing procedures. NYSDOT's Quality Assurance Program meets the requirements of 23 CFR 637 Subpart B to assure the quality of materials and construction in Federal-aid highway projects on the National Highway System.
- C3.11-3** Commenters objected to the removal of parking along Humboldt Parkway, especially where parking for residents would be completely eliminated.
- R3.11-3** As discussed in Section 3.4.1.10 of this FDR/EA, the Build Alternative would require the elimination of up to 51 on-street parking spaces out of approximately 173 spots available in residential areas along Humboldt Parkway. Of these 51 total on-street parking spots, it is expected that 25 spots would be removed due to new curb bump outs which are incorporated into the Project to improve intersection sight distances and to shorten pedestrian street crossings. The remaining 26 on-street parking spots to

be removed are on Humboldt Parkway southbound between Northland Avenue and East Ferry Street and need to be eliminated in order to provide a continuous bicycle lane, and to provide consistent street tree plantings in tree lawns (or snow storage areas) between the sidewalk and curb. A parking demand study, included in Appendix A9, was completed for this section of Humboldt Parkway, which identified that parking along these two blocks has very low usage. Additionally, residences on Humboldt Parkway in this area have access to off-street driveways. No commercial business parking would be impacted. Therefore, the proposed parking removal would not adversely affect residents or access to businesses. Details of the locations where the Build Alternative would impact parking spaces is provided in Appendix A9.

- C3.11-4** Commenter requested that the parking have level 1 electric vehicle chargers.
- R3.11-4** As noted in FDR/EA Section 3.4.1.10, locations for new public EV chargers on Humboldt Parkway will be considered in final design in coordination with the City of Buffalo, the entity that would own and maintain this infrastructure (this would be dependent on the availability of sufficient space, right-of-way, and utilities).
- C3.11-5** Commenter asked about the lifespan of the Build Alternative, noting it will eventually deteriorate. A similar commenter expressed concern about the tunnel disrupting the community during construction and again each time it needs restoration and/or repair.
- R3.11-5** The tunnel structure has been designed for a 100 year design life (see Appendix A12 Tunnel Structure Type Technical Memorandum of this FDR/EA). Construction-related effects and mitigation are addressed in Section 4.20 of this FDR/EA.
- C3.11-6** Commenter asked if water would build up in the tunnel.
- R3.11-6** The tunnel includes a drainage system to prevent buildup of water in the tunnel (see FDR/EA Section 3.4.3.4).
- C3.11-7** Commenter asked whether there are any plans to make changes to the road on the other side of the Buffalo Museum of Science near MLK, Jr. Park across from North Parade Avenue.
- R3.11-7** The Build Alternative does not include changes to the roadway adjacent to the Buffalo Museum of Science across from North Parade Avenue (see FDR/EA Figure 3.2-1A).
- C3.11-8** Commenter expressed concern about where snow would be stored.
- R3.11-8** The typical section for Humboldt Parkway includes a 10-foot-wide “snow storage” area between the outside curb and the sidewalk (see FDR/EA Figure 3.2-2). On the Kensington Expressway outside the tunnel, snow would be plowed to the roadway shoulders (the same as under existing conditions).
- C3.11-9** Commenter noted labelling errors in the typical section for Sidney Street/Butler Avenue.
- R3.11-9** The design plans in FDR/EA Appendix A1 have been corrected.

- C3.11-10** Commenter noted a safety concern due to skew at the intersection of Sidney Street and Humboldt Parkway southbound.
- R3.11-10** Sidney Street would be a one-way street in the westbound direction, and its approach to the intersection would have a stop sign. The intersection was designed per the NYSDOT Highway Design Manual, including skew and sight distance considerations. Specifically, regarding the skew angle, the deviation from 90 degrees is less than 30 degrees, which does not substantially decrease visibility and is a safe and adequate design. ⁶
- C3.11-11** Commenter stated that the NYSDOT is selectively implementing specific aspects of the definition of Complete Streets, undermining the purpose of Complete Streets and smart growth design philosophies. Commenter points out that the NYSDOT’s response to public transit-related comments in Section 7.3 of the Project Scoping Report Appendix E indicates that consideration of public transportation is beyond the scope of the project, despite one of the project objectives including “Improve vehicular, pedestrian, and bicycle mobility and access in the surrounding community by implementing Complete Street roadway design features.”
- R3.11-11** NYSDOT’s response to comments in Appendix E of the Project Scoping Report was in the context of transit alternatives such as construction of light rail lines, which is beyond the scope of the Project. The Niagara Frontier Transportation Authority (NFTA), the only organization with the authority to implement mass transit projects in the area, is not currently proposing rail service in the transportation corridor. The NYSDOT understands that Complete Streets include consideration of all users of the transportation system, including transit users. The Build Alternative includes the construction of concrete bases for future bus shelters planned by NFTA, which would contribute to enhancement of the transit user experience. The Build Alternative would improve east-west pedestrian connectivity and enhance pedestrian/bicycle infrastructure across the Kensington Expressway and in the surrounding neighborhoods (see Section 3.4.2 of this FDR/EA), which would improve access to bus stops and benefit households without access to an automobile.

4 Other Potential Alternatives

- C4-1** Commenters stated that alternatives were not seriously considered and that only a single path forward has been presented.
- R4-1** Numerous concepts were considered, as documented in the Project Scoping Report. The Project Scoping Report also documents the reasons for dismissal of concepts that did not meet the stated purpose and objectives of the Project.

4.1 No Build Alternative

- C4.1-1** Commenter suggested that the description of the No Build Alternative in the DDR/EA as including maintenance of the existing infrastructure does not provide an appropriate baseline for comparison with

⁶ https://www.dot.ny.gov/divisions/engineering/design/dqab/hdm/hdm-repository/chapt_05.pdf

the environmental impacts and costs of the Build Alternative. Commenter views the DDR/EA No Build Alternative as “build later alternative” because the Kensington Expressway would remain in place and indicated preference for a “No Build” that removes NYS Route 33 and restores Humboldt Parkway without a tunnel.

- R4.1-1** No build or “no action” means that the proposed activity would not take place. As stated in FHWA Technical Advisory T 6640.8A, the “no-action” alternative normally includes short-term minor restoration types of activities (safety and maintenance improvements, etc.) that maintain continuing operation of the existing roadway. Given that the Kensington Expressway currently exists, the description of the No Build Alternative as including routine maintenance of the existing infrastructure is an appropriate baseline in terms of the requirements of NEPA and SEQRA. A major change from the existing condition of the facility, such as NYS Route 33 removal, would not be an appropriate baseline.

4.2 Removal of NYS Route 33

- C4.2-1** Many commenters requested that NYS Route 33 not be capped, but instead be filled in or removed and Humboldt Parkway restored between MLK Jr. Park and Delaware Park. Some commenters advocated for removal of additional or all segments of NYS Route 33 between downtown and Buffalo International Airport. Some commenters recommended a parkway or boulevard in NYS Route 33 corridor with two lanes in each direction and a 40 mph speed limit. Commenters were concerned that building a tunnel will “cement” the mistake of the Kensington Expressway construction for generations. A commenter stated Concept 10 must be properly studied in full before ruling it out in advance of significant public input. Another requested more consideration of Concept 9.

Commenters provided several rationales for their support of NYS Route 33 Removal as summarized below.

- **Supports traffic and economic development on underutilized radials.** Commenters stated that Buffalo’s network of well-designed radials (e.g., Sycamore, Broadway, Genesee) and major cross streets have sufficient capacity to handling the redistribution of expressway traffic. Commenters cited the economic decline experienced on Genesee, Jefferson, Fillmore, and other commercial streets in the area following construction of the Kensington Expressway and suggested that closure of the Kensington Expressway and restoration of the Humboldt Parkway would result in an economic resurgence in those corridors. Commenters also noted the adaptability of drivers in finding efficient alternate routes.
- **Equity and Health-** Commenters expressed an interest in reducing through traffic in the NYS Route 33 Corridor as matter of equity: they see the needs of suburban commuters being prioritized over the Black community by the continued existence of NYS Route 33. A commenter stated fully restoring the parkway would actually achieve restorative justice for the population that has suffered the greatest disparities as a result of the highway. Other commenters objected on an equity basis to subjecting local residents to the construction impacts resulting from construction of the tunnel.
- **Lower construction cost, less time to construct.** Commenters expressed that the filling in/removal of NYS Route 33 would be substantially less costly than the Build Alternative. Some commenters estimated the construction cost of filling in the expressway would be in the range of \$100-\$120 million. Another commenter estimated the total cost of NYS Route 33 removal from downtown to NYS Route 198 plus completion of Region Central as \$675 million (based on the Inner Loop North

estimates per mile of roadway). Commenter stated that these funds could also cover the costs of expanding I-90 to handle increased vehicle traffic diverted from NYS Route 33. Another commenter stated removal would be faster to implement compared to the Build Alternative.

- **Lower long-term maintenance cost.** Another commenter noted the maintenance cost savings with NYS Route 33 removal—bridges, retaining walls and pavement maintenance costs reduced, in addition to the avoidance of the \$5 million/year tunnel maintenance costs. Commenter stated the High Street and Jefferson Avenue bridges may be in need of replacement in the near future. The maintenance required for the new greenspace and parkway would be comparatively low.
- **Minimal travel time impact to commuters.** Commenter stated that a parkway in the NYS Route 33 corridor would increase the travel time for the 2.4 mile segment between NYS Route 198 and downtown from 2.5 minutes to just 5 minutes. Another stated that a trip from downtown the airport using Genessee Street would only take an extra five minutes on a typical day and perhaps an extra 10 to 15 minutes on a bad day.
- **Supported by majority of community/local residents.** Commenter stated that the majority of the community supports Concept 10 but is not being given a choice because only the Build Alternative is on the table.
- **Increases property values** along expressway where they were negatively impacted by original construction (notes differential between property values along the expressway as compared to Chapin and Bidwell Parkways). This would build generational wealth for the homeowners on Humboldt Parkway according to one commenter.
- **Restore Olmsted’s vision.** Commenters noted NYS Route 33 removal would allow deep soil in the median which would support large trees consistent with Olmsted's vision for Humboldt Parkway.
- **More greenspace.** One commenter estimated removal of NYS Route 33 would provide approximately 42 acres of parkland and associated benefits such as CO2-removal.

R4.2-1 During the project scoping process, the NYSDOT evaluated a concept (Concept 10) that involved removal of NYS Route 33 and diversion of traffic to other roadways. The assumed limits of removal were NYS Route 198 to downtown. The evaluation included an analysis of changes in traffic volumes and volume to capacity ratios as a result of Concept 10 using the GBNRTC regional travel demand model. It is important for an analysis of a facility removal, such as Concept 10, to take into account trip redistribution and the Metropolitan Planning Organization’s land use forecast and other travel demand data, rather than using arbitrary assumptions. The GBNRTC regional travel demand model was appropriate analysis tool for analyzing a scenario where travel routes would shift regionally. The Project Scoping Report documents the evaluation and ultimate dismissal of this concept. As stated, the expressway cannot be removed or filled in due to the issues related to diverting the 75,000 daily trucks and cars that currently use the expressway to local streets and other key roadways (many of which are in disadvantaged communities). These issues include the following:

- Safety (diverting traffic onto radial streets would result in higher crash rates on local streets with intersections compared to retaining the expressway);

- Increased crash rates with pedestrians and bicyclists due to their exposure to increased traffic on local streets;
- Conflict with potential Complete Streets/road diet improvements to radial streets undertaken by the City of Buffalo to increase nonmotorized accessibility and safety;
- Increased emergency vehicle response times and decreased access to hospitals;
- Increased emissions of air pollutants near homes and community facilities, because “stop and go” traffic on local streets produces more pollutants than continuously moving traffic;
- Travel time reliability for those commuting through the area; and
- Exceeding the capacity of key roadways, such as I-190, I-90, and City of Buffalo arterial streets, resulting in traffic congestion and safety issues in other parts of the city or requiring widening/expansion that could have social/environmental effects.

NYS DOT subsequently undertook a supplemental traffic analysis for Concept 10 in order to provide the public information on additional performance measures for key roadways/intersections affected by redistributed traffic (FDR/EA Appendix B8). The additional performance measures include level of service and speed. The results further illustrate how poorly traffic would operate with removal of the expressway.

Specifically regarding travel time from downtown to the airport, under existing conditions in the PM peak hour, using Genesee Street to reach the airport takes over nine minutes longer than using the Kensington Expressway or a 76% percent increase (see the table below). The travel time increase would be even higher with redistributed traffic under Concept 10.

Concept 9 (four-lane boulevard) was found to have unacceptable traffic performance in the PSR. A boulevard with single travel lane in each direction would perform worse and result in a regional redistribution of NYS Route 33 traffic similar to the results found in the Concept 10 supplemental traffic analysis.

Route (Downtown to Airport)	Date	Start Time (Hr:Min:Sec)	End Time (Hr:Min:Sec)	Total Travel Time (Min:Sec)	Average travel time (Min:Sec)	Travel time increase for Genesee St (Min:sec)	Travel time Percent increase
NY Route 33	1-11-2024	4:30:00	4:41:34	11:34			
	1-23-2024	4:30:00	4:43:10	13:10			
					12:22.0	N/A	
Genesee St.	1-11-2024	4:30:00	4:51:15	21:15			
	1-23-2024	4:30:00	4:52:22	22:22			
					21:48.5	9:26.5	76.35%

C4.2-2 Commenter provided an outline for a NYS Route 33 removal and Humboldt Parkway restoration and described a transportation network scenario that would include use of the north-south avenues and radials to connect to downtown (optimized with Miovision Platforms), traffic calming measures on Humboldt Parkway, the creation of Smartly Enhanced Multi-modal Arterials (SEMAs) along the radials and the major north-south commercial corridors (including modern trolleys), and a metro rail extension to the airport. Another similar comment noted Miovision is being deployed in Amherst and Tonawanda and provided information about the SEMA initiative and Smart Signals Next Generation Technology.

A different commenter suggested NYS Route 33 removal in combination with study and widening of I-90, I-190, & I-290 (all roads leading to Buffalo).

R4.2-2 Miovision is a company providing traffic signal optimization and data collection technology. The supplemental traffic analysis of Concept 10 presented in FDR/EA Appendix B8 is for the peak hours and assumes optimized signal timing (this is an option with the Synchro traffic software program to assume the most efficient signal timing given the approach volumes).

Implementation of rail transit to the airport or trolleys on the radials is outside the scope of this Project, refer to response to comment C4.3-1.

The traffic analysis of concept 10 addresses effects on freeway segments, including I-90 and I-190. Widening these roadways to accommodate the traffic diverted from NYS Route 33 would result in other substantial impacts and costs, including right-of-way acquisition and impacts to other environmental resources. For the 2047 PM peak hour analysis, the overcapacity segments of I-90 westbound include dense suburban residential areas.

C4.2-3 Commenter provided traffic data information reputed to illustrate that the radials could handle the traffic redistribution if the Kensington Expressway was removed. The commenter also noted that Concept 10 was not analyzed in the traffic study VISSIM modeling and that conclusions about the performance of Concept 10 lacked data to back them up. Commenter suggested using origin-destination data and applying it to a tool like VISSIM to determine the actual impact on local street traffic, idling and emissions.

R4.2-3 See the response to comment C4.2-1 regarding the rationale for the dismissal of Concept 10. NYSDOT subsequently undertook a supplemental traffic analysis for Concept 10 in order to provide the public information on additional performance measures for key roadways/intersections affected by redistributed traffic (FDR/EA Appendix B8). The additional performance measures include level of service and speed. VISSIM modeling was performed for freeway segments as part of the supplemental traffic analysis. The results further illustrate how poorly traffic would operate with removal of the expressway.

C4.2-4 Commenter requested that NYSDOT studies prove that removing the highway will result in more fatal crashes on the local streets as was stated in the Project Scoping Report. The commenter questioned whether this has been the case in other cities where highways have been removed. Commenter pointed out there is substantial evidence that vehicle crashes are more deadly at higher speeds, including at the higher speeds prevalent on highways like the Kensington Expressway. Commenter stated another safety issue with expressways is the fact that fatal multi-vehicle collisions happen on such highways but never on city streets.

R4.2-4 The conclusion that Concept 10 would increase crashes, injuries and fatalities is supported by data that shows the safety benefit of expressways in eliminating conflicting traffic movements at intersections. Based on 2017-2021 statewide data, the fatality rate on urban expressways is 0.07 per hundred million vehicle miles traveled, compared to 0.17 on principal arterials and 0.12 on local streets. The serious injury rate on urban expressways is 0.5 per hundred million vehicle miles traveled, compared to 1.81 on principal arterials and 1.73 on local streets.⁷ Speed and speeding is an important factor in safety, but on a per VMT

⁷ <https://highways.dot.gov/sites/fhwa.dot.gov/files/2023-08/NY-HSIP-2022.pdf>

basis, expressways are safer than arterials and local streets. A portion of the Concept 10 traffic redistribution would be to local streets with higher crash rates, and this would contribute to higher crashes and fatalities.

C4.2-5 A Commenter stated their belief that emergency vehicles would revise their travel routes if NYS Route 33 were removed and travel other routes instead as they do in other parts of Buffalo and the surrounding communities. The commenter questioned the validity of anticipating increased emergency vehicle response times (as was done in the Project Scoping Report discussion of Concept 10), noting most areas of New York do not have the expressway density of Erie County. A commenter stated that limited access highways can also increase emergency response times because a crash on such a highway can impede access by emergency vehicles whereas traffic can simply divert to other routes via side streets when there is a crash on a local road.

R4.2-5 Emergency service providers would revise their travel routes if NYS Route 33 was removed, the emergency response consideration regarding Concept 10 in the PSR was that these revised routes would be less efficient on roadways with more conflicts/ delays, increasing emergency response times compared to the route options available using the Kensington Expressway to access the downtown medical campuses and ECMC. This issue would be particularly acute for emergency services responding in areas that are projected to experience breakdown in traffic flow (LOS F) conditions in the 2047 PM peak hour, including Humboldt Parkway southbound (see FDR/EA Appendix B8).

Traffic on expressways can also divert to other routes via interchanges when there is a crash incident. The overall effect on expressways on emergency response times is beneficial.

C4.2-6 Commenters disagreed with the Project Scoping Report discussion of air quality considerations with Concept 10 traffic diversions. One commenter noted that traffic patterns would change with the removal of NYS Route 33 and stated that air pollution generated by stop-and-go traffic would then be dispersed throughout Buffalo. The increase in the use of electric vehicles under the CLCPA would result in a reduction in air pollution.

R4.2-6 FDR/EA Appendix B8 includes an estimate of regional emissions from the GBNRTC travel demand model estimating a 0.4% increase in particulate matter emissions from Concept 10. The regional model takes into account the different driving patterns on different types of roadways but is not able to capture localized details of congestion at specific intersection approaches. The detailed traffic analysis of Concept 10 identifies numerous intersections and roadway links where congestion and idling substantially increase and these locations would be expected to experience a decrease in air quality compared to No Build Alternative. The increased emissions would not be evenly distributed across the region, the roadways with the greatest congestion would experience the highest impact. On Humboldt Parkway, the reduced emissions from the elimination of the Kensington Expressway would be at least partially offset by increased emissions from the increased traffic and long queue lengths/delay from traffic attempting to use Humboldt Parkway as part of their route.

Depending on the speed of transition, electric vehicles could substantially reduce future mobile source exhaust emissions in the region, although in terms of particulate matter tire wear and brakewear emissions would remain an important local air quality consideration.

C4.2-7 Commenters stated their opposition to removal of NYS Route 33 because of the impact this would have on street congestion, pollution, energy use, safety, and quality of life.

R4.2-7 Congestion, safety, and air quality were among the considerations documented in the PSR as the basis for the dismissal of Concept 10.

C4.2-8 Commenter noted that a no- or low-cost approach to understanding where traffic would go and how people would commute in the absence of NYS Route 33 would be to just close the Kensington Expressway for a few weeks or months and evaluate what happens. Commenter suggested that such a closure should be accompanied by a heavy media campaign alerting people well in advance and providing alternate routes along with estimated travel time increase times in advance of the 'dry run' closure. Commenter described the option to couple such an approach with some heavy-duty data collection about traffic flow on radials and other alternate routes before, during, and after the closure. Commenter suggested that following these two we would all have a pretty good idea of how people would be getting downtown without the Expressway and confirmation whether the 'Carmaggedon' expectation is a myth.

A different commenter suggested the 'gradual implementation' of a project to upgrade NYS Route 33 to a parkway-like street where commercial vehicles should be allowed that could begin slowly, allowing people to explore alternative routes or modes of transport. Commenter stated that this could happen by removing one lane in each direction at a time, or removing one whole side at a time as is a common practice in expressway maintenance.

R4.2-8 Supplemental traffic analysis of Concept 10 has been completed as documented in FDR/EA Appendix B8. As with the analysis of Concept 10 in the PSR, the supplemental analysis is based on the GBNRTC regional travel demand model, which is the best available tool for this type of analysis. An experimental closure is not necessary to estimate the impact of NYS Route 33 removal on other roadways, and such a closure would be a very costly and complex undertaking that would adversely impact the travelling public. Such a cost and impact is not necessary when other options are available to obtain reasonable estimates of the traffic effects of the Concept 10 scenario. Additional existing conditions traffic counts were obtained as part of the study, including along radial and alternate routes (See FDR/EA Appendix B8).

Gradual implementation would be a consideration if NYSDOT and FHWA decided to pursue Concept 10. However, Concept 10 was dismissed based on not meeting the purpose and need and having other unacceptable impacts (see response to comment C4.2-1).

C4.2-9 Commenters referenced what other cities are doing in terms of removing expressways that divide neighborhoods and questioned why these same approaches are not being considered for this project. Specific projects and/or locations mentioned by comments included:

- Inner Loop East and North- Rochester. Commenter noted lower cost of Inner Loop East and benefits of that project, including improving livability and health with improved sidewalks and bike facilities, reconnecting neighborhoods, promoting development, and saving on highway maintenance costs.
- I-81- Syracuse. A commenter questioned why the Kensington Expressway cannot be filled in if I-81 with a similar AADT can be brought done and replaced with an at-grade boulevard.
- Alaskan Way Viaduct- Seattle
- BRT – Albany
- Region Central- Buffalo. Another Commenter characterized the treatment of the project area as inequitable when compared to what is being done for Region Central.

- Niagara Falls
- Milwaukee, Wisconsin

R4.2-9 As documented in the PSR, NYS Route 33 removal (Concept 10), was considered in the PSR and supplemental information is provided in FDR/EA Appendix B8. Each project has to be responsive to the specifics of the local conditions and context, a successful approach in one context is not necessarily transferable to all other locations. For example, the Inner Loop East involved removal of a depressed roadway with 1/10th of the traffic volume of NYS Route 33—the impact of removal in this situation of very low volumes is not comparable to the Kensington Expressway Project. The I-81 project in Syracuse involved both an at-grade roadway, redesignation of I-481 to be the primary interstate around the city and regional interstate improvements to accommodate changes in traffic routing. The Alaskan Way Viaduct is an example of a viaduct being replaced with a tunnel (the SR 99 tunnel), not a highway removal as contemplated under Concept 10. The Niagara River Scenic Parkway removals involve a very underutilized facility not comparable to the Kensington Expressway. NYS Route 198 traffic volumes are lower than NYS Route 33, especially west of Main Street. In addition, Region Central is a planning study and the recommended concept has not yet undergone a detailed traffic analysis.

4.3 Transit Alternatives

C4.3-1 Commenters suggested that funds be used to prioritize transit alternatives. Commenters suggested specific transit concepts such as light rail, underground rail lines, rail service connecting the city to the airport, and trolley cars, among others. Commenters expressed the need for east-west reconnection with transit improvements.

R4.3-1 The Niagara Frontier Transportation Authority (NFTA), the only organization with the authority to implement mass transit projects in the area, is not currently proposing rail or other transit service in the transportation corridor. The Project has been and will continue to be designed to not preclude potential future light rail projects, but these would be separate, independent projects. As documented in Section 4.1.1 of this FDR/EA, the NFTA is a Participating Agency on the Project. The NYSDOT will continue to coordinate with NFTA as the Project progresses regarding potential bus infrastructure improvements on Humboldt Parkway and other local roads within the transportation corridor. As discussed in Section 3.4.2.3 of this FDR/EA, the Build Alternative would include the construction of concrete pads for future bus shelters to be installed by NFTA.

C4.3-2 Commenter questioned the NYSDOT statement that light rail could only be developed by NFTA and stated that NYSDOT should be coordinating with all modes. Another commenter stated that NYSDOT did not explore potential public transit improvements but instead pushed this responsibility to NFTA.

R4.3-2 NFTA is a New York State public-benefit corporation responsible for the oversight of public transportation in Erie and Niagara counties.⁸ The NFTA is the only organization with the authority to implement mass transit projects in the area and is not currently proposing rail service in the transportation corridor. As documented in Section 3.4.2.3, effects to transit have been and will continue to be considered during development of the Project and the Build Alternative includes the installation of concrete pads for future bus stops in coordination with the NFTA. As described in Section 4.1.1 of this FDR/EA, the NFTA is a

⁸ <https://www.nfta.com/media/5aphimmc/roadmap-2023-2033-final.pdf>

Participating Agency for this Project. The NYSDOT will continue to coordinate with the NFTA as the Project progresses.

- C4.3-3** Commenter requested that the project be replanned to either create dedicated space for future transit or at least not preclude future rail transit in the tunnel. The commenter noted the specific advantages of the NYS Route 33 corridor for transit service from downtown to the airport compared to other potential routes, including serving populated low-income neighborhoods along its entire route through the city and connecting to major destinations such as Erie County Medical Center and Buffalo Niagara Medical Campus. A similar comment suggested using the Kensington Expressway right-of-way for light-rail to the by reducing the traffic lanes to two lanes in each direction.
- R4.3-3** NFTA is not currently proposing light rail in the transportation corridor, see response to comment C4.3-1. However, the Build Alternative would not preclude a potential future independent project to provide transit service.
- C4.3-4** Commenter stated that NYSDOT did not consult with GBNRTC, project stakeholders and transit advocacy organizations regarding the decision to not include space for future transit service in the corridor.
- R4.3-4** GBNRTC and NFTA were included as participating agencies during the development of the Project, see FDR/EA Chapter 5. No comments from these agencies were received on the PSR or the DDR/EA. As noted in response to comment C4.3-1, no transit service is currently proposed in the NYS Route 33 corridor.
- C4.3-5** Commenter noted that the draft Environmental Assessment (EA) for this project recognizes the need for enhanced public transit options in the project area and that the neighborhoods surrounding the project are among those with the highest transportation equity needs. Commenter stated that the NYS Climate Leadership and Community Protection Act (CLCPA) calls for enhanced “availability, accessibility, reliability, and affordability of public transportation services with an emphasis on unserved and underserved communities.” Commenter stated that the project would not improve public transportation opportunities, affecting the 39% of area households with no access to a private vehicle.
- R4.3-5** The Niagara Frontier Transportation Authority (NFTA) is the only organization with the authority to implement mass transit projects in the area. As documented in Section 3.4.2.3, the Build Alternative includes the installation of concrete pads for future bus stops in coordination with the NFTA.

The Build Alternative would improve east-west pedestrian connectivity and enhance pedestrian/bicycle infrastructure across the Kensington Expressway and in the surrounding neighborhoods (see Section 3.4.2 of this FDR/EA), which would improve access to bus stops and benefit households without access to an automobile. As documented in Section 4.10.5 of this FDR/EA, the Project would be consistent with the CLCPA.

4.4 Other Alternatives

- C4.4-1** Commenter noted that alternatives to the Project (that do not cap NYS Route 33) have already been dismissed.
- R4.4-1** In accordance with both the National Environmental Policy Act (NEPA) and the State Environmental Quality Review Act (SEQRA), a Project Scoping Report was prepared and released in December 2022. The term “scoping” is defined in the CEQ NEPA regulations in 40 CFR §1501.9 as “an early and open process to

determine the scope of issues for analysis in an environmental impact statement, including identifying significant issues and eliminating from further study non-significant issues.” Although not required for an Environmental Assessment, early and well-defined scoping can assist in focusing environmental reviews on appropriate issues that would be meaningful to a NEPA/SEQRA decision.

Throughout the scoping process for this Project, a total of 10 Concepts were developed and analyzed against a set of objectives and screening criteria. Two concepts, Concepts 5 and 6, met all of the Project’s objectives. These concepts were combined into the Build Alternative for the purpose of analysis in the DDR/EA and this FDR/EA.

- C4.4-2** Commenters requested that the project funds be used for other transportation projects or maintenance of existing transportation infrastructure. Specific transportation improvements suggested by commenters included new transit services, pedestrian and bicycle improvements, repair other roadways leading to downtown, the on-ramp to I-90 at William Street in Cheektowaga, demolition of the Skyway, renovation of the Scajaquada, or installation of a new roundabout at Parkside and Route 198. A similar comment requested the funding be used for road and sewer repairs as well as replacement or repair of streetlights on NYS Routes 33 and 198.
- R4.4-2** The Project funds are allocated to respond to the needs as described in Section 1.3.2 of this FDR/EA. Improvements to transportation infrastructure outside the scope of this Project would require funding for a separate project.
- C4.4-3** Commenter suggested construction of six pedestrian bridges instead of a tunnel and that the bridges could be covered to allow for all year use. Commenter stated that a couple bridges across the 33 to reconnect streets would be an improvement and suggested installing two or three covered pedestrian bridges. A similar commenter stated that NYSDOT needs to rebuild the Kensington Expressway and should proceed with a more practical version (Alternative 4), which would enhance the area with wider bridges and include parklike amenities, trees, sidewalks, bike paths, etc. Another commenter suggested that NYSDOT proceed with a smaller scale project that retains the 75,000-vehicle capacity but provides wider bridges with landscaping amenities such as Alternative 4.
- R4.4-3** As documented in the Project Scoping Report, multiple concepts were evaluated during the scoping process, including a concept to partially cover the expressway. To be advanced for detailed study in the EA, a concept must have met the Project purpose and objectives, which are documented in Section 1.3.1 of this FDR/EA. As described in Section 5.2.4 of the Project Scoping Report, Concept 4: Kensington Reconstruction with Improved Community Connections through Partial Decking was dismissed from further consideration because it did not meet the purpose and objectives from the Project. Providing additional or wider bridges instead of a tunnel would be similar to Concept 4 and would not address the project objective related to providing continuous greenspace.
- C4.4-4** Commenter stated that this project is an expensive solution to a problem that could be solved by reducing speed limits, installing sound suppressing panels along the roadway, and overall providing of infrastructure that reduces requirements for cars.
- R4.4-4** The purpose, need and objectives for the Project are explained in Section 1.3 of this FDR/EA. The development and screening of alternatives to meet the identified needs is documented in the PSR. Reduced speed limits and providing noise reduction panels along the expressway would not address the project needs related to reconnecting the community and providing continuous greenspace.

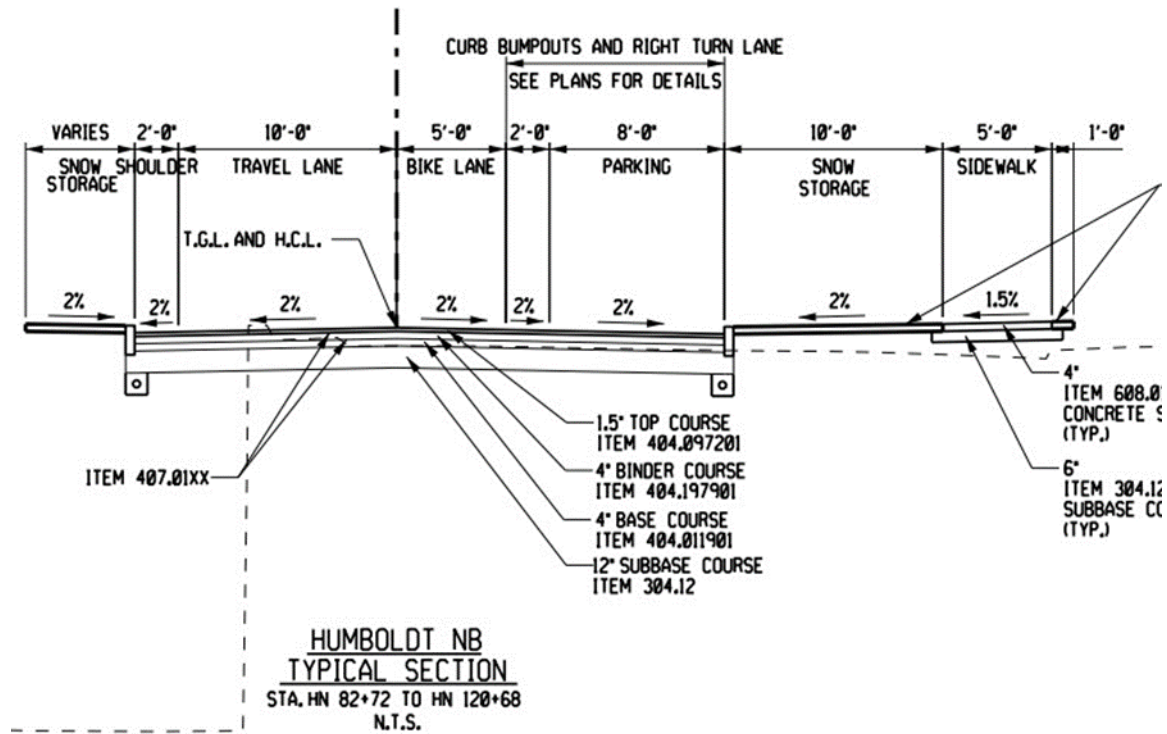
5.0 Non-Transportation Use of Project Funding

- C5-1** Commenters requested the funds be used for other non-transportation community improvements, such as sewer systems, water lines, streetlights, grocery or supply stores, housing, job development, healthcare, education, economic development, municipal services, community centers, emergency shelters, community gardens, parks, etc.
- R5-1** The Project would be funded by Federal and State transportation funds. Transportation funds are specifically designated for transportation projects. The funds cannot be used towards non-transportation-related purposes, such as improvements to City infrastructure (e.g., water and sewer systems), housing, food access, health facilities, etc. The implementation of the Build Alternative would not preclude independent actions by others to provide additional direct investment in the community and help address other community concerns.

6.0 Transportation Considerations

6.1 Traffic

- C6.1-1** Commenter noted that design drawings do not represent any traffic calming along Humboldt Parkway and that a travel lane with an adjacent buffer and bike lane (without permanent separation) functionally results in a 19' travel lane.
- R6.1-1** As described in Section 3.2.2 of this FDR/EA, the reconstructed segment of Humboldt Parkway would include a 10 ft travel lane, 5 ft bike lane, 2 ft separation, and 8 ft parking lane. The narrow travel lanes (10 ft), frequency of driveways and cross streets, curb bump outs and wide pavement markings, including bicycle lane markings will all contribute to traffic calming. Additional detailed drawings are provided in FDR/EA Appendix A1. The Humboldt Parkway bicycle lane design included in the Build Alternative is consistent with the existing Humboldt Parkway bicycle lanes and the City of Buffalo Bicycle Master Plan.



- C6.1-2** Commenter expressed concern about the proposed shoulder width on NYS Route 33, noting that most emergency access vehicles are over 8' wide, while the proposed outside shoulder is only 8'.
- R6.1-2** Inside the tunnel, the right shoulder width meets NYSDOT's design standard, and the left shoulder exceeds design standards. Outside the tunnel, the Build Alternative matches or increases shoulder widths compared to the existing conditions, therefore there will not be a decrease in the space available for emergency vehicles.
- C6.1-3** Commenter expressed concern with safety and quality of life on Girard Place as a result of increased traffic volumes on Humboldt Parkway, especially for pedestrians. The commenter also stated the local street reconfigurations that would connect Best Street to Humboldt Parkway (at Northampton Street) would encourage expressway traffic into a residential neighborhood due to the removal of the off-ramp from NYS Route 33 westbound to East Utica Street.
- R6.1-3** The Build Alternative is not expected to change traffic volumes on Girard Place itself because this local street is not one of the streets connected across the tunnel cap. Although the traffic volumes on Humboldt parkway in the vicinity of Girard Place will increase, they are still relatively low volume. It is important to note that Humboldt Parkway would also be reconstructed to be located farther from the residences (residences along Humboldt Parkway would gain additional front yard area). The increased noise from traffic on Humboldt Parkway would be more than offset by removal of the much greater noise from the expressway as a result of the cap. The traffic noise analysis results show noise levels would decrease perceptibly along Girard Place (5 dBA decrease, see FDR/EA Appendix D9, Figure 3E).

Pedestrian safety would be improved as a result of traffic calming design measures on Humboldt Parkway (including 10 ft travel lanes which reduce speeding), replacement of crosswalks/pedestrian crossing signals, reconstruction of sidewalks and the provision of ADA-accessible curb ramps. Aesthetics would also be improved by new tree plantings along Humboldt Parkway and this would be likely to contribute to improved quality of life.

C6.1-4 Commenter expressed concern with safety due to speeding and stated the project would not address speeding on the Kensington Expressway.

R6.1-4 The Build Alternative would not change the posted speed limit or design speed of NYS Route 33. Control of speeding is outside the scope of this Project and the responsibility of local law enforcement.

C6.1-5 Commenter questioned the safety of the Kensington Expressway. Commenter stated that there are accidents at least once a week on this roadway.

R6.1-5 Section 2.4.1.8 of this FDR/EA describes the safety analysis that was conducted for the Project. An initial safety analysis was conducted to evaluate crashes that occurred during a 3-year period from August 1, 2013 to July 31, 2016. An updated safety analysis was performed to evaluate crashes that occurred between September 1, 2018 and February 29, 2020 to assess the most current period prior to COVID-19) and to validate the initial safety analysis. The NYS Route 33 crash rate was calculated to be 0.44 accidents per million vehicle miles (acc/mvm), which is less than the statewide average rate of 1.02 acc/mvm for similar facilities. One fatality occurred during the initial study period.

Elements of the Build Alternative that would improve safety for all users within the transportation corridor include the Best Street roundabouts, optimized signal timings and equipment, provision of a new surface course, new pavement markings, defined travel lanes, improved signage, and improvements to pedestrian and bicycle facilities.

C6.1-6 Commenter stated the Build Alternative would exclude easy access to the Kensington Expressway for residents in the project area due to the elimination of on/off ramps at Humboldt Parkway and Utica Streets (a disadvantaged community). A similar comment of a resident in the 600 block of East Utica Street has less access to the 33, and increased travel time to reach their destination with the removal of the off-ramp. This commenter also stated the Build Alternative would require the resident to make a left turn to navigate the intersections of Best @ W. Parade Street and that this would introduce a Left Turn that statistically relates to an increase in accident rates. Commenter stated that the project objective of improving vehicular mobility access in the surrounding community does not appear to be met in this context.

R6.1-6 Under the Build Alternative, drivers would have multiple convenient ways of accessing NYS Route 33, including the full interchange at Best Street (ramp intersections with Best Street improved with roundabouts and off-ramps widened to two lanes). The new two-directional roadway between Northampton Street and West Parade Avenue would facilitate efficient local access to the Best Street area with minimal change in travel times. The Best Street off-ramp from NYS Route 33 eastbound is about ½ mile from the eastbound off-ramp that would be removed. Similarly, the NYS Route 33 westbound on-ramp at Best Street is about ½ mile from the westbound on-ramp that would be removed. The westbound off-ramp near Butler Avenue would also remain available. Partial interchanges, such as the ramps being removed, are undesirable from a safety and operational perspective because they do not provide for all traffic movements and increase the risk of wrong way movements on the ramps.

Regarding the comment about the safety of left turns at Best Street and West Parade, this signalized intersection would be replaced with a roundabout under the Build Alternative. Roundabouts eliminate left turn conflicts and calm traffic.

- C6.1-7** Commenter stated concern with the extension of Winslow Avenue across the tunnel deck because it would increase traffic at an elementary school on the Jefferson side of Winslow. Commenter pointed out that from September to June, the school is attended by 400 to 500 young people, that they enter the school from the buses, and that there is presently only one lane available when the buses are there for loading and unloading. Commenter described their belief that with additional traffic on Winslow Avenue (to the foot of Winslow) that a traffic 'nightmare' will result because of the crossover and the street not being wide enough.
- R6.1-7** The traffic along Winslow Avenue would increase as a result of the street being reconnected across the tunnel cap, but volumes would remain consistent with a low volume residential street. Winslow Avenue would continue to be used primarily by local destination traffic. Numerous alternative east-west streets exist to accommodate local traffic when school buses are using Winslow Avenue. Sidewalks and crosswalks would make the new east-west pedestrian route along Winslow Avenue safer compared the existing conditions where pedestrians need to cross over NYS Route 33 at East Utica Street or East Ferry Street. Pedestrian safety and mobility would also be improved along Winslow Avenue as part of the local street rehabilitation work which includes sidewalk and curb ramp placement as needed (see Section 3.4.3.12).
- C6.1-8** Commenter stated concern with diagonal crossover roadway between Northampton Street and Humboldt Parkway northbound which would join Humboldt Parkway near residences and driveways. The Commenter suggested locating this roadway between Girard and Riley instead where there are several empty lots.
- R6.1-8** As shown on FDR/EA Figure 3.2-1A, the merge point for the diagonal slip ramp to Humboldt Parkway northbound is located north of the northernmost driveway onto Humboldt Parkway on the block between Northampton Street and Girard Place. In addition, the slip ramp would have a stop sign and the slip ramp traffic would need to yield to the traffic on Humboldt Parkway.
- C6.1-9** Commenters expressed a general concern with traffic and noted that locating the highway underground would not reduce traffic volumes.
- R6.1-9** A traffic analysis was performed as discussed in Section 2.4.1 (No Build) and Section 3.4.1 (Build) of this FDR/EA. The purpose and need of the project does not include reducing traffic volumes, see Section 1.3.
- C6.1-10** Commenters stated the Build Alternative will cause more accidents.
- R6.1-10** Elements of the Build Alternative that would improve safety for all users within the transportation corridor include the Best Street roundabouts, traffic calming measures on Humboldt Parkway (curb bump outs), optimized signal timings and equipment, provision of a new surface course, new pavement markings, defined travel lanes, improved signage, and improvements to pedestrian and bicycle facilities.
- C6.1-11** Commenter identified additional changes in how we travel that should be considered instead of maintaining today's vehicle capacity including increases in remote work/hybrid work schedules. Comment

cited the changes since the COVID events including the increase in people working from home and stated that must be taken into account in considering whether we should even still have the expressway. Commenter also noted that the downtown office market continues to reel from the shift to working at home, and with no sign of recovering any time soon. Similar comments requested an evaluation of whether commuting into and out of Buffalo has decreased post-pandemic.

- R6.1-11** Information on the traffic study methods and results is provided in PSR Appendix C and FDR/EA Sections 2.4.1 and 3.4.1. Additional discussion of the travel demand factors in the NYS Route 33 corridor (including remote work trends) is provided in PSR Appendix F.
- C6.1-12** Commenter requested traffic calming measures, specifically more speed humps and 15 mph speed limit on both sides of the bridge and expressway.
- R6.1-12** No speed limit changes are proposed as part of this Project, however traffic calming measures have been incorporated in the design, including curb bump outs, 10-ft lanes on Humboldt Parkway, and a raised table intersection at Humboldt Parkway southbound and Butler Avenue, among others.

6.2 Bicycle and Pedestrian

- C6.2-1** Commenters stated the proposed bike lanes are a conflict-prone or substandard design because they are located within the door zone of parked cars and create potential conflicts between vehicles and bicyclists. Commenter described potential conflicts including people pulling in and out of parking spaces with people on bikes next to them and people opening their vehicle doors into the bike lane while people are riding next to them.
- R6.2-1** Regarding the door zone of parked cars, the proposed bicycle lanes on Humboldt Parkway would address this concern by having a 2-foot striped buffer area between the parked cars and the bike lanes (the same as existing conditions). Conflicts with vehicles would be further reduced by the Build Alternative by eliminating gaps in the Humboldt Parkway bike lane network, including on Humboldt Parkway southbound between Butler Street and East Ferry Street (see FDR/EA Section 3.4.2). Separated bike lanes were considered but are not recommended as addressed in the response to comment C6.2-2.
- C6.2-2** Commenters requested protected (or separated) bike lanes, with several making a specific recommendation to have the bicycle lane between the outside curb and the parking lane. Commenters noted that such an alternative would create separation between people on bikes and vehicles, reducing chances of conflict.

Another commenter suggested protected bike lanes on the “parkway side” of the roadway rather than the parking side (e.g. adjacent to the center median, on the left side of the road).

- R6.2-2** Bike lanes separated from traffic by on-street parking were considered, but were not incorporated in the design of the Build Alternative based on the following considerations:
- Effectiveness limited by frequency of driveways on Humboldt Parkway (approximately every 50 feet)- this large number of conflict points is not conducive to a continuous separated bikeway.

- Maintenance- snow removal would be complicated given the involvement of bollards and parked vehicles. The proposed bike lane configuration has been reviewed and concurred with by the City of Buffalo, the entity that would be responsible for long-term maintenance.
- Consistency with the City of Buffalo Bicycle Master Plan
- Safety- sight distance concerns with parked cars reducing visibility of cyclists to turning vehicles or visibility of vehicles entering Humboldt Parkway from driveways.

According to the 2012 AASHTO Bicycle Design Guide, bicycle lanes should not be placed between the parking lane and the curb because it reduces visibility at driveways, and intersections, increases conflicts with opening car doors, complicates maintenance and prevents bike lane users from making convenient left turns.

Left-side bike lanes were also considered and not incorporated in the Build Alternative based on the following considerations:

- Not consistent with the City of Buffalo Master Bicycle Plan and rarely used in the U.S.
- No plans for City to extend this condition beyond this area (transition issues to match right side bike lanes north of project)
- Snow removal would require removal of bollards
- Bicycle right turns require crossing out of the bike lane into vehicle traffic – bike boxes would be needed at key intersections
- Vehicle left turns conflict with bicyclists, which is undesirable (left turns require more decision-making effort by drivers than right turns and drivers often accelerate more for left turns)

C6.2-3 Commenter stated that other parkways (e.g., Bidwell, Chapin, and Lincoln) have 6-foot sidewalks, which improve the walking experience greatly for ADA or walking two abreast compared to the proposed 5-foot sidewalks.

R6.2-3 The proposed 5-foot-wide sidewalks meet NYSDOT standards and are ADA compliant. Wider sidewalks increase the amount of impermeable surface, which increases stormwater runoff and reduces groundwater recharge. Wider sidewalks would reduce the space available for greenspace and tree plantings.

C6.2-4 Commenter stated there are no bicycle facilities proposed for Best Street roundabout and requested a protected bike lane to traverse east to west on Best Street.

R6.2-4 Under the Build Alternative, a 10-foot-wide multi-use path to accommodate pedestrians and bicyclists will be constructed across the Best Street bridge and around the roundabouts. Refer to Section 3.4.2.2 and Figure 3.2.5 of the FDR/EA.

C6.2-5 Commenter requested a multi-use lane (path) in front of residences along Humboldt Parkway instead of extending frontage. A similar comment asked for a safe pathway for kids to ride their bikes.

R6.2-5 Multi-use paths on either side of Humboldt Parkway was an option considered during the design process. This option would involve a 10-ft wide multi-use path in lieu of sidewalks and bicycle lanes. The multi-use path option was not selected based on the following considerations:

- No consistent with the City of Buffalo Bicycle Master Plan.

- Not ideal for intermediate and experienced bicyclists. Bicyclist speed would be hindered by pedestrians, sight distance, driveway, and side street conflicts.
- Increased conflicts between pedestrians and bicyclists.

Note that a multiuse path is incorporated in the Build Alternative on the Best Street bridge and bicycle lanes would be provided the full length of Humboldt Parkway.

- C6.2-6** A commenter said they were unimpressed with the bicycle considerations incorporating the project and the standards that were used in the design. Another commenter requested that the Humboldt Parkway bike lanes be well designed to avoid creating safety concerns. Finally, a different commenter requested the driving lanes and bike lanes be made wider.
- R6.2-6** The Humboldt Parkway travel lanes and bike lanes meet the NYSDOT Highway Design Manual (HDM) requirements (FDR/EA Table 3.3-1 A). The bike lanes are consistent with the City of Buffalo and Regional Bicycle Plan recommendations for Humboldt Parkway. Finally, the Humboldt Parkway bicycle lane design was coordinated with the City of Buffalo Department of Public Works.
- C6.2-7** Commenter expressed general support for addressing all forms of transportation, including safe cycling and walking. Another commenter stated that NYSDOT was prioritizing cars and trucks over neighborhoods and pedestrians. A commenter stated the project does not meet Complete Streets requirements.
- R6.2-7** The Build Alternative includes elements addressing pedestrian, bicycle, and pedestrian mobility needs, see FDR/EA Section 3.4.2 and reconnecting neighborhoods using Complete Streets principles is an element of the project objectives (Section 1.3). A Complete Streets checklist is provided in FDR/EA Appendix A16.
- C6.2-8** Commenter stated that bicyclists would have no access to the greenspace in the median due to the location of the bike lanes on Humboldt Parkway.
- R6.2-8** As described in Section 3.4.2 of the FDR/EA, the bicycle lanes along Humboldt Parkway are not adjacent to the greenspace, but bicyclists would be able to dismount and cross over to the greenspace at any of the proposed cross streets, where sidewalks and crosswalks would be provided.
- C6.2-9** Commenter suggested an alternative in which a shared use path would be placed along the center or sides of the parkway with crossings facilitated by mini roundabouts and with fully protected bikeways.
- R6.2-9** A shared-use path in the center median and meeting design standards for shared-use paths would require a path width of 12 feet. This option was dismissed based on the following considerations:
- No real connectivity at either portal (lack of logical transition to on-road bike lanes north of the project).
 - Reduces greenspace width by 12'.
 - Could impact tree layout and make it more difficult to achieve a tree layout consistent with the historic Olmsted design of Humboldt Parkway.
 - Would likely be a seasonal facility or require special snow removal considerations.
 - Safety considerations at mid-block crossings.
 - Not consistent with City of Buffalo Bicycle Master Plan and not supported by City of Buffalo Department of Public Works.

- C6.2-10** Commenter stated that the connection to Delaware Park needs more than a nod to the future and should include an actual bicycle network to reach the corridor that would result from the proposed removal of the 198.
- R6.2-10** The current Project does not preclude any further improvements to the bicycle network as part of future projects. This Project helps implement City and Regional bicycle improvement plans in the study area by eliminating connectivity gaps in the Humboldt Parkway bike lanes and designating neighborhood bikeways on cross streets per the City of Buffalo Bicycle Plan (see FDR/EA Section 3.4.2).
- C6.2-11** Commenter stated their belief that conditions for pedestrians are unsafe under existing conditions.
- R6.2-11** Pedestrian infrastructure deficiencies under existing conditions are described in Section 2.4.2 of the FDR/EA and correction of these deficiencies is addressed in the design of the Build Alternative as detailed in Section 3.4.2.

6.3 Transit

- C6.3-1** C6.3-1. Commenter stated their position that there must be coordination with bus stops.
- R6.3-1** R6.3-1. The location of bus stops will be coordinated with NFTA. Refer to Section 3.4.2.3 for discussion of transit considerations under the Build Alternative and coordination with the NFTA.

7.0 Social, Economic, and Environmental Considerations

7.1 Neighborhood Character and Community Cohesion

- C7.1-1** Commenter asked if an adequate feasibility/accessibility study has taken place and stated that the project may create an undesirable impact on people living in the neighborhood.
- R7.1-1** Accessibility for pedestrians, bicyclists, transit users, and drivers was considered as part of the Project, as discussed in Chapter 3 and Sections 4.2 and 4.3 of this FDR/EA.

As documented in Sections 4.2, 4.3 and 4.4 of this FDR/EA, the effects to neighborhood character, social groups, and environmental justice populations were assessed. The Build Alternative is anticipated to result in beneficial long-term effects. Mitigation measures are included in the Project to avoid and minimize short-term effects during construction.

- C7.1-2** Commenters stated that recreating a greenspace and access across east-west segments of streets disrupted by the expressway would help remediate the physical and psychological barrier to social and economic vitality for residents, businesses, and anchor institutions around Humboldt Parkway. Commenters noted that people, businesses, pets, and tourists would all benefit.
- R7.1-2** Comment noted.
- C7.1-3** Commenter expressed that the Project is inconsistent with local development plans that focus on the restoration and development of the Olmsted Parks and Parkways System.

- R7.1-3** FDR/EA Appendix D1 documents the consistency of the Build Alternative with the applicable goals of the Buffalo Olmsted Parks Conservancy's The Buffalo Olmsted Park System: Plan for the 21st Century, as well as other applicable local and regional plans.
- C7.1-4** Commenter expressed that the Project does not comply with the Smart Growth Public Infrastructure Policy Act because the smart growth form in Appendix A7 of DDR/EA was unsigned and undated.
- R7.1-4** The Smart Growth Impact Statement was signed for the FDR/EA (see Appendix A7).
- C7.1-5** Commenter stated that quality of life for east side residents would be improved by investments in more holistic transportation systems. Commenter noted that being partitioned from the rest of the city limited neighborhood sustainability.
- R7.1-5** As described in Section 4.2 and Section 4.21 of this FDR/EA, the Build Alternative is likely to improve aspects of quality of life such as neighborhood cohesion, aesthetics, greenspace and pedestrian connections. As documented in Section 3.4.2 of this FDR/EA, the Build Alternative includes multimodal improvements, such as new sidewalks, ADA accessible curb ramps, new pedestrian crossing signals, and bicycle lanes.
- C7.1-6** Commenter stated that additional bridges and improved connections between two distressed neighborhoods disconnected by the Kensington Expressway would not necessarily lead to neighborhood improvements.
- R7.1-6** The purpose, objectives and needs of the Project are documented in Section 1.3 of this FDR/EA. The effects of the Build Alternative on neighborhood character and economic conditions are documented in Sections 4.2.3 and 4.5.3, respectively.
- C7.1-7** Commenter stated that the Project and creation of a tunnel would negatively impact residences on Humboldt Parkway.
- R7.1-7** As documented in Chapter 4 of this FDR/EA, the social, economic, and environmental effects of the Project were assessed. Both long-term and temporary/construction effects have been considered. As documented, the Build Alternative has numerous benefits, including reduced noise levels along the tunnel cap, reduction in impervious surface/stormwater runoff, reduction in urban heat island effect, support for increased physical activity and connectivity with the new greenspace and pedestrian/bicycle infrastructure improvements, improved aesthetics, and construction employment/economic benefits.
- C7.1-8** Commenter stated that the Build Alternative is not consistent with the New York State Smart Growth Public Infrastructure Policy Act and the relevant smart growth criteria set forth in ECL § 6-0107. Specific concerns related to consistency with smart growth criteria included increased CO and PM2.5 concentrations in the tunnel portal areas near schools, churches, and residents, radon gas, runoff to Scajaquada Creek, blasting impacts to historic resources that cannot withstand vibration for 4 to 6 years of construction, lack of public transportation improvements in the Project, failure to participate in community based planning and collaboration (including the selection of stakeholders that don't represent the affected community), and failure to reduce greenhouse gas emissions.

R7.1-8 As documented in Section 3.4.5.1 and Appendix A7 of this FDR/EA, the Project is compliant with the New York State Smart Growth Public Infrastructure Policy Act. The evaluation was completed consistent with NYSDOT's screening tool and policy.

Regarding air quality in the tunnel portal areas, see the response to comment C7.8-1. The predicted highest concentrations would be well below (better than) health-based standards and mitigation measures to improve portal area air quality are included in the Project (see FDR/EA Section 4.9).

Regarding radon, see response to comment C7.15-3. No health risks related to radon are anticipated.

Regarding Scajaquada Creek, a portion of NYS Route 33 currently drains to the Scajaquada Creek. The Build Alternative would reduce the size of this area by 34%. The drainage that currently drains to the Scajaquada Creek that is able to be redirected would be redirected to the combined sewer at East Ferry Street or to the Scajaquada Interceptor. In addition, the Build Alternative would decrease overall impervious surface cover and stormwater runoff in the study area.

Regarding vibration during construction, the controlled blasting would not cause damage to buildings, including historic structures (see response to comment C7.14-1). Effects on historic resources are documented in Section 4.6 of this FDR/EA.

Regarding transit, the Niagara Transportation Authority (NFTA), the only organization with the authority to implement mass transit projects in the area, is not currently proposing rail service in the transportation corridor. The Project has been and will continue to be designed to not preclude potential future light rail projects, but these would be separate, independent projects. As documented in FDR/EA Section 3.4.2, the Build Alternative does include improvements for pedestrians, bicyclists, and transit users. This includes providing new east-west crossings over Humboldt Parkway, completing the gaps in the bike lane network on Humboldt Parkway, reconstructing sidewalks to meet current standards and constructing concrete pads for future bus shelters in coordination with NFTA.

As documented in Section 4.4.4 and Chapter 5 of the FDR/EA, the NYSDOT has been and will continue to be committed to an open and meaningful public involvement program for the Project. To date, this program has included a Project Scoping Meeting, Public Information Meeting, public hearing, NYSDOT attendance at more than 60 community events and meetings, 14 monthly stakeholder meetings, multiple public comment opportunities, mailings, project website, and a Project community outreach office staffed by community outreach liaisons. As stated in Chapter 5, the stakeholder group established for the Project consists of Restore Our Community Coalition; Hamlin Park Community & Taxpayers Association, Inc.; The Black Chamber of Commerce of Western New York, Inc.; Buffalo Olmsted Parks Conservancy; True Community Development Corporation; Buffalo Museum of Science; Citizen's Alliance, Inc.; Delavan Grider Community Center; The African American Cultural Center; Resource Council of WNY; Masten Block Club Coalition, Inc.; Winslow Block Club; MLK Block Club; the Eastside Parkways Coalition; City of Buffalo; and elected officials.

Regarding greenhouse gas emissions, as documented in Section 4.10 of this FDR/EA, the Build Alternative would result in a net benefit with respect to emissions of greenhouse gases on an annual basis. Although not quantified in the analysis, the 12-acre increase in greenspace and new tree plantings as a result of the Build Alternative would also contribute to sequestration of CO₂ emissions.

C7.1-9 Commenter disagreed with NYSDOT’s response to Question 2 on the Smart Growth Screening Tool (Will the project enable reduced automobile dependency?), stating there was no analysis or evidence to suggest automobile dependency would be reduced and that no bicycle lanes would be constructed in Census Tract 31 in the Fruit Belt (the only tract with respondents reporting bicycle as their commute method to work).

R7.1-9 As documented in FDR/EA Section 3.4.2, the Build Alternative includes pedestrian, bicycle, and transit-related improvements. The improved east-west crossing options and sidewalks would directly encourage pedestrian movement compared to the existing/No Build condition where the expressway, limited crossings, traffic noise, lack of crosswalks and limited sidewalk widths discourage walking. The Project improvements would support non-motorized travel; thus, the Project would enable reduced automobile dependency.

Note that bicycle use as a transportation mode is not limited to journey to work trips; bicycles are used for many different trip purposes. The City and Regional bicycle plans recommend bicycle improvements in the study area and the Project helps implement these measures by eliminating connectivity gaps into the Humboldt Parkway bike lanes and incorporating neighborhood bikeway traffic calming on cross streets. The Fruit Belt neighborhood is outside the defined transportation corridor; however, the Project would not preclude independent efforts to implement multi-modal improvements in this neighborhood.

C7.1-10 In the context of the Smart Growth Screening Checklist, commenter questioned why the WNY Regional Economic Development Council (REDC) was not listed as a cooperating or participating agency despite its involvement in \$65 million in revitalization investments in the East Side. Commenter recommends that the NYSDOT incorporate the REDC strategic plan projects for East Side revitalization of Michigan, Jefferson, Fillmore and Bailey Avenues with the transportation funding available as part of the Kensington Expressway project by upgrading these streets instead of building a tunnel. Commenter made recommendations with respect to implementation of transit oriented development in Buffalo.

R7.1-10 Since the Project is not a regional economic development project for job creation/retention, REDC was not identified as a relevant participating agency for the Project. The East Side Avenue investments, such as commercial building stabilization, and community based real estate development training are independent of the Project.

The local streets improvements included in the Build Alternative include improvements to a portion of Fillmore Avenue (FDR/EA Section 3.4.3.12). Improving all of the East Side streets instead of the Build Alternative is not consistent with and purpose, objectives, and needs of the Project (FDR/EA Section 1.3). These streets are also outside of the established project limits.

The implementation of transit oriented development is outside the scope of this Project and authority of the NYSDOT).

7.2 Social Groups Benefited or Harmed

No comments on this topic.

7.3 Environmental Justice

C7.3-1 Commenters expressed concern that the Project does not benefit environmental justice communities and/or fails to address the inequities associated with construction of the Kensington Expressway.

Commenter stated that the residents of the project area have suffered an immense burden caused by the Kensington Expressway for decades, including, but not limited to, acute and chronic exposure to toxic air pollutants, noise pollution well above acceptable levels, redlining resulting in grossly undervalued homes, high insurance rates, and little to no access to healthy food and other necessary items. Commenter noted that the Build Alternative does not alleviate these problems and instead cements them in place for decades to come with no ability for improvement.

Commenter stated that the Build Alternative would result in toxic tunnel fumes and blasting in close proximity to residents' homes, which would result in health effect concerns and disenfranchise residents of Humboldt Pkwy and the East Side again.

R7.3-1 The NYSDOT acknowledges the detrimental effect that the construction of the Kensington Expressway had on the local communities and identified a number of those effects to be addressed through the Project objectives. Section 2.1 of this FDR/EA describes the Project history and how the construction of the expressway led to the existing condition. Section 1.3 of this FDR/EA describes the Project purpose, objectives, and needs, and Chapter 4 of this FDR/EA documents the Project's effects on air quality, noise, aesthetics, property values, and many other topics. Regarding air quality concerns, see also response to comment C7.8-1. Regarding vibration and blasting concerns, see response to comment C7.14-1. Regarding health considerations, see response to comment C2-16.

As documented in Chapter 4, the Build Alternative has numerous benefits, including reduced noise levels along the tunnel cap, reduction in impervious surface/stormwater runoff, support for increased physical activity and connectivity with the new greenspace and pedestrian/bicycle infrastructure improvements, improved aesthetics, and construction employment/economic benefits as compared to the existing conditions.

C7.3-2 Commenters stated that the expressway preferentially benefits suburban communities and commuters (largely more affluent and white), while the negative effects are experienced by the black city residents along the expressway corridor. Commenters expressed that the Project would perpetuate and further these inequities, which could be addressed by removing the expressway. Another commenter stated NYSDOT's spending on this project is a racist attempt to make the injuries (pollution related illnesses and social and economic calamity) resulting from the original Kensington Expressway construction permanent.

R7.3-2 The NYSDOT acknowledges the detrimental effect that the construction of the Kensington Expressway had on the local communities. This context informed the Project purpose, objectives and needs as documented in Section 1.3 of this FDR/EA. As documented in FDR/EA Section 4.4, the Project would not result in disproportionately high and adverse effects on environmental justice populations. As stated in the second paragraph of the response to comment C7.3-1, the Build Alternative has numerous benefits for the residents of the study area. In addition, the NYSDOT has provided and will continue to provide meaningful opportunities for public participation and engagement in the Project. As documented in Section 4.4.4.6, the NYSDOT has made multiple design changes based on public input received. The removal of NYS Route 33 was considered and dismissed during the project scoping process, as discussed in the response to comment C4.2-1.

C7.3-3 Commenters noted that the Project would create employment and training opportunities for the local community. Commenters characterized the Project as therefore being restorative as well as providing social justice. Commenters emphasized the importance of residents taking advantage of the employment and training opportunities.

- R7.3-3** Comment noted. Section 4.5.3.1 of this FDR/EA discusses the local hire program included in the Build Alternative.
- C7.3-4** Commenters characterized the Project as being restorative and as righting a historic injustice.
- R7.3-4** Comment noted.
- C7.3-5** Commenter stated that the community is currently impacted by social injustice by having limited access to a variety of affordable, healthy foods and questioned whether the Project would connect the community to sustainable food sources and multiple grocery stores.
- R7.3-5** Access to food stores was considered as part of the assessment of effects to environmental justice populations (documented in Section 4.4 of this FDR/EA). The Build Alternative would reduce the distances that pedestrians need to travel to cross the Kensington Expressway. In addition, both southbound and northbound segments of Humboldt Parkway would be reconstructed to improve connectivity for pedestrians and bicyclists. The proposed improvements would reconnect the neighborhoods surrounding the Kensington Expressway and would reduce the physical barriers now separating them. These improvements would improve access to food stores and community facilities for environmental justice populations.
- C7.3-6** Commenter expressed environmental justice related concerns with existing traffic-related air pollution, and health conditions such as asthma and other respiratory diseases such as COPD, cardiovascular disease, cancers such as leukemia and lung cancer, premature and low weight births, and other reproductive disorders, compromised immune systems, developmental and neurological disorders, and premature death. Commenter noted that the construction of the tunnel would be in an environmental justice area and would have impacts related to blasting, toxic gases and radon, asbestos, air toxics and particulates during construction. Commenter further stated that negative effects will continue similar to existing conditions once the tunnel is constructed.
- R7.3-6** As documented in Section 4.4 of the FDR/EA, the Build Alternative would not result in disproportionately high and adverse effects (including air quality and noise effects) to environmental justice populations. This assessment included the evaluation of construction effects and identification of mitigation measures to avoid and minimize these effects (see Sections 4.4.3 and 4.20 of this FDR/EA). Regarding operational air quality concerns, see also response to comment C7.8-1. Regarding construction air quality, see response to comment C7.15-2. Regarding radon, see response to comment C7.15-3. Regarding vibration and blasting concerns, see response to comment C7.14-1.
- C7.3-7** Commenter stated that as a recipient of federal transportation funds, the NYSDOT must promulgate Title VI of the Civil Rights Act of 1964, as amended, in all of its business operations and practices. Commenter stated that NYSDOT's Build Alternative and its approach to this transportation project violates Title VI of the Civil Rights Act of 1964, as amended.

R7.3-7 Title VI of the Civil Rights Act of 1964 prohibits discrimination based on race, color, and national origin in programs and activities receiving Federal financial assistance. More specifically, Title VI provides that "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." Under the Title VI statute, protected classes include race, color, and national origin; limited English proficiency is included within the class of national origin. FHWA's Title VI program (in contrast to the Title VI statute) expands the covered classes to include sex, age, disability and low-income. Together, Title VI, EJ, and other nondiscrimination authorities protect diverse segments of the population which may be at risk of being unduly impacted by, or which have been historically underrepresented, within the transportation decision-making process.

Section 4.3 of this FDR/EA documents consideration of effects on the elderly, persons with disabilities, transit dependent and non-driver populations. Section 4.4 documents consideration of effects on low-income or minority (environmental justice) populations, including outreach efforts made to include these groups in the project development process. Chapter 5 documents efforts to solicit input from all groups and individuals. The Build Alternative would not result in disproportionately high and adverse effects to environmental justice populations (Section 4.4) or adverse impacts to other protected classes (Section 4.3).

7.4 Regional and Local Economies

C7.4-1 Commenter questioned how the state could expend \$1.1 billion or more on three quarters of a mile of roadway to continue to bypass the Jefferson-Fillmore business districts and not rebuild the business district lost on Genesee Street. Commenter stated that the Project is inconsistent with the state's investment of \$225 million on the East Side for workforce training, infrastructure, small business development and historic property redevelopment.

R7.4-1 The purpose, objectives and needs of the Project and the project limits are documented in Chapter 1 of this FDR/EA. The Jefferson, Fillmore, and Genesee Street corridors are outside the defined transportation corridor (NYS Route 33 and Humboldt Parkway between Best Street and Sidney Street) that is the focus for improvements with this Project. The Project does not conflict with the implementation of the East Side Avenues initiatives referenced in the comment. Redistributing traffic through removal of the expressway (which would increase traffic on the roadways mentioned in the comment) was considered and dismissed during the project scoping process, as discussed in response to comment C4.2-1.

C7.4-2 Commenter asked if employment opportunities will be made available to the general community, if contracts are obtained through a bidding process, and if there is a mandatory percentage for minority contractors.

R7.4-2 Employment and workforce training opportunities will be available as part of the Project. Participation goals for minority-, women-, or veteran-owned contractors will be established, and the Project includes a local hire program commitment to encourage the training and hiring of local residents for construction and construction-related employment opportunities. Refer to Section 4.5.3.1 of this FDR/EA for information related to the local hire program. The Project procurement process would allow for multiple proposals and/or bids to be considered.

- C7.4-3** Commenter stated that the Project is inevitable and is going to primarily benefit contractors. Commenter recommended that the community get construction training and skills.
- R7.4-3** The Build Alternative includes a local hire program, aimed to direct the benefits of construction to the local community. Refer to Section 4.5.3.1 of this FDR/EA for information related to the local hire program.
- C7.4-4** Commenter expressed that the commitment to local hiring would not be implemented followed through on based on experience with the billion-dollar capital school investment project. Commenter stated that no local companies would be hired in the absence of a community benefits agreement.
- R7.4-4** As documented in Section 4.5.3 of this FDR/EA, the NYSDOT has committed to the following:
- NYSDOT will partner with local community organizations, unions and political leaders to develop a program for local hiring. Measures for contracting women and minority-owned businesses would also be included.
 - In coordination with FHWA, NYSDOT will include a local hiring preference in the contract documents for the Kensington Expressway Project to encourage local hires for the contracts.
 - NYSDOT will advertise training programs and construction employment opportunities in local media outlets, public meetings, and the project’s outreach center.
 - NYSDOT will monitor the local hiring metrics throughout the project and conduct regular meetings with partnering agencies to discuss progress and any steps to modify the initiatives.
 - NYSDOT is currently surveying community training partners to gauge their abilities in providing training classes. Supportive service programs designed to keep trainees on the path to completion will be included.
 - NYSDOT is working with the City of Buffalo to coordinate efforts and assess local needs.
 - NYSDOT is also working with the Department of Labor to identify local workforce goals.
- C7.4-5** Commenter questioned whether local residents would be working on the Project. Commenter asked whether hiring would be coordinated with The Northland Workforce. Commenter inquired about the listing of jobs and how community members might apply.
- R7.4-5** A local hire program will be established for the Project and the program would include coordination with the Northland Workforce Training Center. Details of the local hire program implementation will be shared with the community as they are developed so it is clear where and how to apply for opportunities. Refer to Section 4.5.3.1 of this FDR/EA for information related to the local hire program.
- C7.4-6** Commenter questioned how small businesses would be impacted by the Project. Commenter questioned whether funds would be available to local businesses due to the anticipated changes in local traffic related to the project.
- R7.4-6** Section 4.5.3 of this FDR/EA documents the assessment of effects of the Build Alternative on local and regional economies. As documented, no adverse effects on local businesses due to traffic changes are anticipated.
- C7.4-7** Commenter cited the general need for training programs to support local hiring initiatives.

- R7.4-7** As documented in Section 4.5.3.1 of this FDR/EA, the Build Alternative includes a local hire program commitment to encourage the training and hiring of local residents for construction and construction-related employment opportunities.
- C7.4-8** Commenters noted the positive economic effects of the Project. Commenter stated that the Project would help to eliminate barriers to economic vitality for residents, businesses, and anchor institutions around Humboldt Parkway. Commenter stated that the potential long-term employment opportunities and increase in business revenue created by a Project of this scale would be of great benefit to the community. Commenters stated that the Project would catalyze improvement of property values and assist in the revitalization of business districts along Fillmore and Jefferson Avenues. Commenter stated that both businesses and tourists would benefit from the Project.
- R7.4-8** Sections 4.5 and 4.21 of this FDR/EA discuss the potential direct and indirect effects of the Project, such as construction employment, improvements in property values and long-term economic benefits.
- C7.4-9** Commenter stated that the economic benefits of the Build Alternative were being oversold and would be limited to property value increases for homes along the cap and not a larger reinvestment throughout the surrounding neighborhoods.
- R7.4-9** As documented in Sections 4.5 and 4.21 of this FDR/EA, the effects of the Build Alternative on local and regional economies and property values were assessed. This assessment was based on applicable guidance and literature review.

7.5 Historic and Cultural Resources

- C7.5-1** Commenters noted opposition to the Project and stated the Project is a threat to historic districts and properties.
- R7.5-1** Potential effects on historic districts and properties are documented in Section 4.6 and Appendix D10 of this FDR/EA.
- C7.5-2** Commenters stated that the Area of Potential Effect is too small and does not take into account the indirect impacts that the Project will have on the surrounding historic areas, including the Martin Luther King Jr. Park Historic District, and the Hamlin Park Historic District.
- R7.5-2** In response to Consulting Party comments the FHWA, in consultation with NYSDOT and SHPO, extended the APE to include areas covered by the local street rehabilitation program (FDR/EA Section 4.6.1.1).
- C7.5-3** Commenters stated that the Project may cause direct physical damage to historic resources due to vibration, excavation, demolition, or alteration. Commenters stated the Project may also cause indirect visual, auditory, or atmospheric impacts that may diminish the integrity of historic resources. Commenters also expressed concern with impacts to air quality during construction and after the tunnel is built and that these impacts may harm historic resources and people who live in, work in, or visit these areas.
- R7.5-3** The Build Alternative would not cause physical damage to historic resources. Potential direct and indirect effects on historic districts and properties are documented in Section 4.6 and Appendix D10 of this FDR/EA. Vibration damage during construction will be avoided through the design of the blasting program. Temporary construction effects will be mitigated through the implementation of a construction noise

mitigation plan. Visual effects were considered. Measures to protect air quality during construction are detailed in Section 4.20.3 of this FDR/EA. During the operation of the Build Alternative, pollutant concentrations would be below health-based standards (see Section 4.9 of this FDR/EA), and measures to minimize air quality effects in the portal areas would be implemented (see Section 4.9.4.6).

- C7.5-4** Commenters requested the project sponsors rethink the project and consult with the State Historic Preservation Office (SHPO), the Advisory Council on Historic Preservation (ACHP), and the local preservation groups and community members. Commenters noted opposition to the destruction or degradation of historic resources by the Project and noted the importance of preserving the city's history and culture for future generations.
- R7.5-4** FHWA and NYSDOT have coordinated with SHPO, local preservation groups, community members as part of the Section 106 consultation process documented in Appendix D10 of this FDR/EA. The ACHP was also provided the opportunity to participate in the process. There will be No Adverse Effects to historic properties resulting from this Project, as documented in Section 4.6 and Appendix D10 of this FDR/EA.
- C7.5-5** Commenter stated they supported comments posted on the website of the Cultural Landscape Foundation.
- R7.5-5** The Cultural Landscape Foundation requested and was granted Section 106 Consulting Party status by FHWA and participated in the November 28, 2023 Consulting Parties meeting. Comments raised by the Consulting Parties, including the Cultural Landscape Foundation, have been considered and responded to as documented in FDR/EA Appendix D10 (Finding Documentation).
- C7.5-6** Commenter stated the Build Alternative would not restore Humboldt Parkway or the historic integrity of the Frederick Law Olmsted-designed Park system, in conflict with the restoration goals of BOPC. The commenter cited that three feet of soil on the tunnel deck would not support 60 ft. to 80 ft. canopy trees, as Olmsted designed, and that the Build Alternative would not reconnect Delaware and MLK Jr. Parks due to the presence of Scajaquada Creek. Commenter stated that concept #10 would allow for the complete restoration of an essential and primary component of the Olmsted Parks and Parkways National Historic Landmark consistent with the objectives of BOPC, fitting perfectly with the recommended scenario for Region Central.
- R7.5-6** The NYSDOT, in consultation with FHWA, considered the original Humboldt Parkway as part of the environmental review process. As documented in Chapter 1 of the FDR/EA, the purpose of the Project is to reconnect the community surrounding the defined transportation corridor and improve the compatibility of the corridor with the adjacent land uses, while addressing the geometric, infrastructure, and multi-modal needs within the corridor in its current location. Although restoration of the original Humboldt Parkway is not the purpose of the Project, the NYSDOT and FHWA recognize the importance of its history to the project area. Transportation decision-making for this Project has incorporated design features of the original Humboldt Parkway to the greatest extent practicable, including but not limited to: A planted 90-foot-wide center median that aligns with the entrance area of the Buffalo Museum of Science and the location of the original southern entrance to Humboldt Parkway.

Trees would be planted in diagonal rows ('alternating pairs of trees') based on the Olmsted plan for tree arrangement and would include 24 feet between rows and 60 feet between trees (as scaled from the Olmsted plan beginning just north of the Buffalo Museum of Science).

Street trees would be planted on the residential sides of Humboldt Parkway to create a parkway feeling. The planting list for the original Humboldt Parkway was considered during the development of the landscape planting plan. Tree species recommendations were developed in coordination with the Buffalo Olmsted Parks Conservancy and the City of Buffalo. Tree species selection also considered tree root systems, mature size, and ability to survive in urban conditions (see FDR/EA Section 3.4.4 and Appendix A1).

FDR/EA Appendix D1 provides a consistency assessment comparing the Build Alternative improvements with the applicable goals of the Buffalo Olmsted Parks Conservancy's *The Buffalo Olmsted Park System: Plan for the 21st Century*.

Regarding Scajaquada Creek and connection to Delaware Park, refer to the response to C1-3.

Regarding the rationale for three feet of soil on the tunnel deck, refer to the response to C3.1-3.

Regarding Concept 10/ NYS Route 33 Removal, refer to the response to C4.2-1.

C7.5-7 Commenter noted that Olmsted's design is the first-ever fully connected City-wide Park and Parkway System in the history of the United States and stated that a Cultural Landscape Report (CLR) needs to be completed due to the historic significance of the Olmsted Park and Parkway System. Commenter stated that NYSDOT appears to have made no purposeful evaluation of the original Humboldt Parkway and that only a CLR with its related "Period Plan evaluation" could provide the proper evaluation of this international landscape design treasure.

Commenter stated that this project is, in fundamental part, a heritage landscape restoration project and that such a project must be informed by a properly prepared (CLR) and by consultation with experts in heritage landscapes and those with relevant specific knowledge like the local Olmsted Parks Conservancy. Commenter requested that a CLR be completed as part of the process for adherence to historic cross-sections of the parkway including tree heights with the restored parkway.

Commenter stated that reviewing agencies and decision makers lack sufficient context and understanding for determining the appropriateness of capping the Kensington Expressway. Commenter expressed fear that, as currently proposed, a once-in-a-lifetime opportunity to return the former Humboldt Parkway to something better reflecting the original design intent of Olmstead and Vaux, and therefore, more appropriate and in accordance with the Secretary of the Interior's Standards, would be squandered.

R7.5-7 FHWA, in coordination with NYSDOT, had coordinated with the State Historic Preservation Officer (SHPO) on the need for a Cultural Landscape Report, in the context of Section 106 of the National Historic Preservation Act (NHPA), as amended, and its implementing regulations under 36 CFR Part 800. A Cultural Landscape Report was considered as information was gathered and research was performed in the identification of historic properties. An Architectural Reconnaissance Survey, which considered the historical context and information directly related to the historical and architectural development of Humboldt Parkway, was prepared for the Project by the New York State Museum. In the context of Section 106 of the NHPA, designed landscapes eligible for the National Register of Historic Places (NRHP) are categorized as a site. The National Park Service (NPS), a Bureau of the United States Department of the Interior (USDOl), provides guidance on how to apply the National Register Criteria for Evaluation, which considers categories of historic properties, how to evaluate a property within its historic context, and how to identify the type of significance of a property. Specifically, this guidance states that a designed landscape

that has had major changes to its historic design, vegetation, original boundary, topography/grading, architectural features, and circulation system is not eligible for the NRHP. The construction of the Kensington Expressway in the 1950s and 1960s removed the original Humboldt Parkway, including original features that were part of its designed landscape. For this reason, the original Humboldt Parkway is not eligible for the NRHP; therefore, a Cultural Landscape Report is not warranted as part of the Section 106 process for this proposed undertaking.

As noted in the response to C7.5-6, a historical restoration of Humboldt Parkway is not the purpose of the Project. Nevertheless, the Build Alternative has incorporated design features of the original Humboldt Parkway to the greatest extent practicable.

- C7.5-8** Commenter stated that the project team has never consulted with experts in heritage landscapes and those with relevant specific knowledge like the local Olmsted Parks Conservancy.
- R7.5-8** The NYSDOT and FHWA coordinated with the Buffalo Olmsted Parks Conservancy (BOPC) during the development of the Project, including inclusion of the group in the monthly stakeholder coordination meetings, as well as direct meetings to discuss landscaping and tree species details. The BOPC Design Review Committee recommendations on tree species have been incorporated in the landscape plans for the Build Alternative in FDR/EA Appendix A1. BOPC is also a Section 106 Consulting Party member, along with other organizations with specific local and heritage landscape-related expertise, as documented in FDR/EA Section 4.6.
- C7.5-9** The Commenter noted that the Cultural Landscape Foundation's President, Charles A. Birnbaum, has stated that the Buffalo Park and parkway system designed by Fredrick Law Olmsted and Calvert Vaux is a potential National Historic Landmark candidate.
- R7.5-9** As detailed in the response to C7.5-7, the original Humboldt Parkway is not eligible for NRHP.
- C7.5-10** Commenters expressed their disagreement with the Section 106 draft findings that this project will have No Adverse Effect on historic properties.
- R7.5-10** The rationale for the No Adverse Effect determination is documented in Section 4.6 and Appendix D10 of this FDR/EA. The Project would not alter, directly or indirectly, any of the characteristics of a historic property that qualify it for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association to identified historic properties. The determination took into consideration the comments received from Section 106 consulting parties, and measures to minimize and avoid impacts to historic properties.
- C7.5-11** Commenters requested that NYSOPR&HP and NYSDOT work with local preservation organizations to initiate the National Register nominations of the NR eligible districts and properties identified in the cultural resources screening and that State funding be provided for this effort.
- R7.5-11** The NYSDOT conducted an Architectural Resources Survey as part of the Section 106 process for the Project. Based on the results of the survey and though Section 106 consultation, several individual properties and historic districts have been determined eligible for the National Register of Historic Places, thus identifying historic properties subject to Section 106 review. Initiating and funding National Register nominations for the identified historic properties is not required by Section 106 or its implementing

regulations and is beyond the scope of this Project. The Project would not preclude others from initiating or funding the National Register nomination for these identified historic properties.

- C7.5-12** Commenters noted that the obviously historic St. Frances de Sales Church complex at 407 Northland, at the corner of the Humboldt Parkway, was apparently not reviewed in the Cultural Resources Screening or included as a potentially eligible property.
- R7.5-12** The St. Frances de Sales Church (USN 02940.026366) at 575 Humboldt Parkway (407 Northland Avenue) is listed on the National Register of Historic Places as a contributing resource of the Hamlin Park Historic District. The Hamlin Park Historic District is discussed in Section 4.6 and Appendix D10 of this FDR/EA.
- C7.5-13** Commenter stated that the co-lead agencies failed to perform a competent Section 106 review in accordance with the National Historic Preservation Act (NHPA) and more generally have not taken a hard look at short and long-term environmental impacts.
- R7.5-13** The Section 106 process was completed in consultation with the State Historic Preservation Officer (SHPO) and all of the procedures have been followed. (see Section 4.6 and Appendix D10 of this FDR/EA). The FDR/EA documents the lead agencies' consideration of short-term (construction effects) and long-term environmental effects (see Chapter 4 of this FDR/EA).

7.6 Parks and Recreational Resources

- C7.6-1** Commenter expressed concern about the current trend of deforestation on the East Side and asked to ensure that the greenspace will remain a forested space in the future.
- R7.6-1** The Project includes the planting of over 480 trees and, in combination with other city-led initiatives, will help increase greenspace⁹ and tree canopy cover. The tree species are being selected by landscape architects in coordination with the City and Buffalo Olmsted Parks Conservancy to maximize the chances of success. For more information on the landscaping plan, refer to Section 3.4.4 of the FDR/EA and the landscaping plans provided in FDR/EA Appendix A1. Regarding long-term maintenance of the greenspace, see FDR /EA Section 3.4.1.12 Ownership and Maintenance Jurisdiction).

7.7 Visual Resources

No comments on this topic.

7.8 Air Quality

- C7.8-1** Commenters expressed general concern about increased air pollution near tunnel portals. One commenter stated that the concentration of emissions at the tunnel portals could have catastrophic health implications for residents of these areas. Commenters noted concern for particular vulnerable populations

⁹ The City of Buffalo was awarded \$8 million from the U.S. Forest Service, Urban and Community Forestry program. <https://www.fs.usda.gov/managing-land/urban-forests/ucf/2023-grant-funding>
B.E.S.T. (Buffalo Equity in Street Trees) Program:
The City of Buffalo Equity in Street Trees Program (B.E.S.T.) seeks to achieve an equitable urban tree canopy for all residents to benefit from the social, health and environmental impacts of trees. The program will increase tree planting and maintenance efforts, and focused education and community outreach exclusively within disadvantaged communities.

such as those with pre-existing conditions and those who are elderly and disabled. Commenter stated that the tunnel exhaust would affect schools, parks, daycares, community centers and the science museum and that there already issues with adverse health outcomes in the study area (one commenters cited cancer and that the area is in the 99th percentile for asthma rates). Commenter stated that the Build Alternative will cement in place another 50 years of health issues. Commenters expressed their desire for improved air quality.

R7.8-1 FDR/EA Section 4.4.2 documents the existing conditions in the study area related to public health based on USEPA's EJSCREEN tool. As documented in FDR/EA Section 4.9, the Project will not result in exceedances of the National Ambient Air Quality Standards (NAAQS), which are criteria established by the USEPA to protect public health, including the health of sensitive populations such as asthmatics, children, and the elderly (also see response to comment C2-16).

The air quality analysis that was conducted for the Project (documented in Section 4.9 of this FDR/EA) shows the following:

- There would be a slight decrease in pollutant concentrations at locations along the proposed tunnel cap.
- In the absence of mitigation, there would be a slight increase in pollutant concentrations near the tunnel exit portals.
- The highest predicted total concentrations near the tunnel portals (including a background concentration) are well below the applicable health-based ambient air quality standards.

The Project includes air quality mitigation measures to minimize air quality effects. These measures were not credited in the quantitative analysis.

As documented in the FDR/EA, based on the air quality analysis results and the measures that would be implemented to minimize air quality effects, the Build Alternative would not have an adverse effect on air quality.

C7.8-2 Commenters requested that air coming out of the tunnel be filtered or scrubbed to mitigate the air quality effects of the Project. Commenter suggested an advanced mechanism to capture emissions within the tunnel and directing them to an air quality plant for scrubbing and noted that such innovations are becoming increasingly feasible and would ensure that the expressway's impact is mitigated.

R7.8-2 As documented in Section 3.2.2.2 of this FDR/EA, the need for air treatment was evaluated during the preparation of the DDR/EA. Based on the air quality analysis results and the project design, air treatment is not necessary or warranted. Pollutant concentrations under the Build Alternative in the areas near the tunnel portals would remain well below the health-based National Ambient Air Quality Standards and these concentrations would further decline over time as older higher emitting vehicles are retired. While a filtration system capturing the tunnel air is not part of the Build Alternative, air quality mitigation measures to improve air quality are included in the Build Alternative as documented in FDR/EA Section 4.9.4.6.

C7.8-3 Comment stated that the EA air quality analysis showed negligible or even worsening of local air quality and relies heavily on an assumptions of vehicle electrification. Commenter said electrification would eliminate air quality concerns with the tunnel proposal. Commenter referenced legislation to go to zero emission vehicles by 2025 and, stated that possibly by the time that the tunnel is built, electric vehicles would have drastically reduced (or eliminated) Kensington air quality pollution.

R7.8-3 As documented in Section 4.9 of this FDR/EA, the microscale air quality analysis results for the Build Alternative show slightly decreased concentrations along the tunnel cap and slightly increased concentrations near the tunnel portals. The concentrations under the Build Alternative would remain well below the National Ambient Air Quality Standards (NAAQS).

As documented in Appendix D7 of this FDR/EA, fuel/engine types for future air quality analysis were based on 2019 vehicle registration data. Using the 2019 vehicle registration data to define fuel/engine types for the future analysis years (2027 and 2047) is conservative because of the substantial increase in electric vehicles anticipated over the next several decades. Accounting for increased electric vehicle sales would result in lower estimates of pollutant concentrations than shown in this FDR/EA.

C7.8-4 Commenter expressed concern about health issues and asked if there will be testing of local residents to determine if their current health (lupus, asthma, cancer) is due to current air quality conditions. Commenter stated that a thorough and impartial epidemiological Adverse Health Effects Study is required to survey people who have lived along the highway to document what kind of pollution-related ailments residents have suffered from (asthma, heart issues, high blood pressure, COPD, pre-term birth, various cancers, and low life expectancy).

A commenter stated that the current highway has an enormous negative effect on the health of neighboring residents, as there is low life expectancy, and the high incidence of asthma, cancer, heart disease and stroke rank amongst the worst in the United States. Commenter noted that specific and accumulated effects of noise, vibration, and microplastic pollution on health and behavior have not been fully considered, that long term studies have not been conducted, nor has the geographic project area had objective selection criteria applied.

R7.8-4 The FDR/EA documents the effects (as defined by 40 CFR 1508.1(g)) of the proposed action on the human environment, which includes consideration of potential effects on public health and safety. FDR/EA Section 4.4.2 documents the existing conditions in the study area related to public health based on USEPA's EJSCREEN tools. As documented in Section 4.9 of this FDR/EA, the Project will not result in exceedances of the National Ambient Air Quality Standards (NAAQS), which are criteria established by the USEPA to protect public health, including the health of sensitive populations such as asthmatics, children, and the elderly.

The pollutants for analysis in the air quality analysis were determined through an interagency consultation process that included NYSDOT, FHWA, USEPA and NYSDEC. The analysis used regulatory models and followed USEPA and FHWA guidance and procedures for particulate matter hot-spot analysis (see Appendix D7 of this FDR/EA). As documented in Section 4.9, the Build Alternative would have no adverse air quality effects. Other health-related topics such as noise and hazardous materials management are also addressed in the FDR/EA. Health testing of local residents, or determination of the relative historical contribution of the Kensington Expressway on health outcomes is outside the scope of this Project.

C7.8-5 Commenters stated that they support the covering of the Kensington Expressway and ventilation provided that the levels are below the National Ambient Air Quality Standards (NAAQS) and do not cause health issues in the community.

R7.8-5 As documented in Section 4.9 of this FDR/EA, the Project will not result in exceedances of the NAAQS. The predicted highest concentrations are below the NAAQS, and the NAAQS are established to be protective of public health.

- C7.8-6** Commenter stated that providing filtration of the air coming out of the tunnel before it is blown into the neighborhoods would add \$100 million to the cost of the project.
- R7.8-6** As documented in Section 3.2.2.2 of this FDR/EA, the need for air treatment was evaluated during the preparation of the DDR/EA. Based on the air quality analysis results and the project design, air treatment is not necessary or warranted. Pollutant concentrations under the Build Alternative in the areas near the tunnel portals would remain well below the health-based National Ambient Air Quality Standards and these concentrations would further decline over time as older higher emitting vehicles are retired. Therefore, no additional cost will be added to the Project related to air filtration.
- C7.8-7** Commenters raised various concerns with the use of National Ambient Air Quality Standards (NAAQS) in the air quality analysis. Commenters stated that the regulations are weak or out of date. Commenter stated that the standards have not been updated since 1990. Commenter stated that while the Environmental Assessment indicates that the air quality levels are below the NAAQS, this benchmark may not be an adequate measurement to impede diseases that have been prevalent in this neighborhood due to the highway running through it.
- R7.8-7** The NAAQS are developed by USEPA in accordance with requirements of the Clean Air Act. The Clean Air Act requires USEPA to develop air quality standards to protect public health with an adequate margin of safety. The use of the NAAQS in the air quality analysis is consistent with federal and state guidance.
- C7.8-8** Commenter stated that the Build Alternative fails to reduce vehicular emissions along the Kensington Expressway corridor, subjecting these neighborhoods to continued elevated levels of pollution. Commenter noted that the Project maintains most of NYS the Route 33 and stated that it would still pollute the communities it passes through.
- R7.8-8** The purpose, objectives and needs of Project, including the need to maintain the vehicular capacity of the expressway, are documented in Section 1.3 of this FDR/EA. See response to comment 7.8-1 regarding the results of the air quality analysis for the Project.
- C7.8-9** Commenter stated that nitrogen dioxide (NO₂) has not been examined and requested that modeling of NO₂/NO_x concentrations be performed.
- R7.8-9** The rationale for not performing a microscale analysis of NO₂ is detailed in Appendix D7, Section 2 of this FDR/EA. As documented in Section 4.9 of this FDR/EA, nitrogen Oxides (NO_x) were quantified in the regional (mesoscale) emissions burden analysis.
- C7.8-10** Commenter stated that VOCs are not mentioned in the DDR/EA. Commenter expressed concern with the health effects of hazardous VOCs and stated that the five VOCs emitted at the highest levels by gasoline and diesel vehicles are hexanal, acetone, toluene, p-xylene, and iso-pentane.
- R7.8-10** The air quality analyses for the Project were conducted in accordance with relevant federal and state procedures. As documented in Section 4.9 of this FDR/EA, total VOC emissions were quantified in the regional (mesoscale) emissions burden analysis as a precursor pollutant to the formation of ozone at a regional scale. Some VOCs that are classified as hazardous air pollutants (for example (benzene, 1,3-butadiene) were also considered in the assessment of Mobile Source Air Toxics (Section 4.9.4.5 and Appendix D7).

- C7.8-11** Commenter requested that different models developed specifically for the dispersion of tunnel exhausts should be used instead of USEPA's AERMOD dispersion model for all contaminants.
- R7.8-11** AERMOD is the regulatory dispersion model required by USEPA for particulate matter hotspot (microscale) analysis. The use of AERMOD for this Project (including the application to tunnel portal emissions) was confirmed through an interagency consultation process that included NYSDOT, FHWA, EPA and NYSDEC. The details of how AERMOD was used to characterize the emissions from the tunnel portals is documented in Appendix D7 of this FDR/EA.
- C7.8-12** Commenter questioned why NYSDEC regional air quality monitors were used to establish existing/baseline conditions instead of conducting air quality monitoring in the project area.
- R7.8-12** The air quality analyses for the Project were conducted in accordance with relevant federal and state procedures. The NYSDOT selected the background concentration monitor location (documented in Appendix D7 of this FDR/EA) in consultation with FHWA, USEPA and NYSDEC. The monitor selection process and considerations followed USEPA's guidance. The data from the NYSDEC monitors are collected on a continuous basis at stationary sites using regulatory instruments. It is important to note that the NYSDEC air monitor data are used to represent background concentrations/the other sources of emissions that are not part of the emissions modeling analysis of the roadways in the study area. In other words, the specific details of the roadways in the study area are analyzed in the modeling and the effect of background is added to determine the total concentration for comparison to air quality standards.
- C7.8-13** Commenter stated that a true "No Build" air quality analysis would have included background concentrations based on measurements of one of the other city Olmsted Parkways. Commenter also questions why those responsible would not compare air quality to that on Lincoln/Bidwell/Chapin. Commenter suggests that such comparisons were not completed because those responsible did not want residents and the public to know how much better our air could be if you just filled the Kensington Expressway in. Commenter suggested that the air quality was compared instead to that in a South Buffalo neighborhood near I-190, so that those affected would think their air could not improve.
- R7.8-13** Regarding the background concentration monitor selection process, see response to comment C7.8-12. The available NYSDEC long-term monitoring sites are not located on Lincoln, Bidwell or Chapin Parkways. The air quality analysis was completed following EPA and FHWA guidance and coordinated with an interagency air quality group (see Appendix D7). The air quality analysis of the No Build Alternative accounted for both background concentrations (based on NYSDEC monitoring data) and the existing roadway sources in the study area (based on modeling).

The analysis of the No Build Alternative included the Kensington Expressway because the "no-action" alternative normally includes short-term minor restoration types of activities (safety and maintenance improvements, etc.) that maintain continuing operation of the existing roadway.¹⁰ Given that the Kensington Expressway currently exists, the description of the No Build Alternative as including routine maintenance of the existing infrastructure is an appropriate baseline in terms of the requirements of NEPA and SEQRA. A major change from the existing condition of the facility, such as assuming a parkway in place of the Kensington Expressway, would not be an appropriate baseline.

¹⁰ https://www.environment.fhwa.dot.gov/legislation/nepa/guidance_preparing_env_documents.aspx

C7.8-14 Commenter stated the NYSDEC air quality monitor used for background concentrations is not an apples-to-apples comparison given that the project area based on EJscreens health data showing greater incidence of health issues in the project area compared to the monitor location. Commenter continued that the EPA EJScreening and Mapping Tool gives credence to the voices of the community that the neighborhoods surrounding the Humboldt section of the Kensington Expressway have a high incidence of health problems.

R7.8-14 Please see the response to comment C7.8-12 regarding the rationale for the monitoring location used for background concentrations. The monitoring location used for this Project is the closest monitoring location to the Study Area. Since it is located in an area with a greater concentration of manufacturing, warehousing, and logistics land uses compared to the Kensington Project Study Area (which is primarily residential), the use of data from this monitor provides a conservative measure of background concentrations. Please note that the EJscreens data cited in the comment was considered, as documented in Section 4.4 of this FDR/EA.

C7.8-15 Commenter stated that the Dodge Street exit portal plume is upwind of the Charles Drew Science Magnet School, The Buffalo Science Museum, and MLK, Jr. Park. It is up wind of a total of 5 schools, and a number of neighborhood youth clubs and churches. Commenter said exhaust would go in the direction of 8 to 10 schools and will increase the risk of asthma and throat cancer in those schools. Commenter stated that given the disadvantaged and environmental justice populations in the area, special measures must be taken to evaluate the true impact of air pollutants on the health and well-being of the children and staff at several elementary schools, residents, including those who are elderly and health compromised, staff and visitors at the Buffalo Science Museum, churches, etc. directly affected by the Kensington Expressway emissions. A related comment noted that extending the tunnel cap further south to Best Street extends the protected zone past the park and pushes the exhaust plume to a less populated area with greater protection from pollutants.

R7.8-15 The air quality analysis included a detailed network of receptors, including receptors at schools and other sensitive locations. The AERMOD dispersion model takes into account hourly meteorological data, including wind speed/direction. In other words, the predicted concentrations take into account the spatial relationship between source and receptor and whether the receptor is upwind or downwind of each roadway/source included in the analysis. The concentrations at schools would be lower than the worst-case locations presented in this FDR/EA and well below the NAAQS. In addition, the air quality mitigation measures incorporated in the Build Alternative would further reduce concentrations (these measures are not accounted for quantitatively in the air quality analysis).

Regarding the suggestion to modify the tunnel cap limits, see the response to comment C1-1.

C7.8-16 Commenter asked why NYSDOT did not provide a visual representation of carbon monoxide concentrations at the tunnel portals as was done for PM2.5 concentrations. The tunnel concentrates the currently more dispersed exhaust into a 300-foot plume upwind of an elementary school.

R7.8-16 A visual representation of the CO concentration contours was not provided in the DDR/EA because the pattern of the concentrations would be similar to the pattern shown with the PM2.5 concentration contours (as noted in the DDR/EA text). In addition, total CO concentrations have declined so substantially

that CO is no longer a major transportation air quality issue (8-hr CO concentrations nationally have decreased 81% since 1990).¹¹

Regarding the concentrations at schools, refer to the response to comment C7.8-15.

- C7.8-17** Commenter stated that it is alarming that the change in CO concentration for the “Build Model” at a 1-hr average level is 137.5% higher than the “No Build” model and that the change in CO concentration for the “Build Model” at an 8-hr average level is 116.67% higher than the “No Build” model.
- R7.8-17** The percentage increases in CO concentrations cited in the comment are incorrect. The tables shown in the comment (FDR/EA Tables 4.9-12 and 4.9-14) show the highest CO concentrations at the worst-case locations for the No Build and Build Alternatives for purposes of comparison to the NAAQS. However, comparing the No Build and Build concentrations in these tables to each other is not appropriate because they represent receptors at different locations. To determine the difference between the No Build and Build concentrations, the No Build concentration for a given location/receptor is compared with the Build concentration at that same location/receptor. Table 4.9-16 of this FDR/EA provides this receptor level comparison for CO. For 2027, it shows a total Build concentration (with background) of 3.1 ppm, which is a 1.4 ppm increase from the No Build condition (a 45% increase). However, even with this increase, the total CO concentration under the worst-case emission conditions in the winter would be low - less than 10% of the applicable NAAQS. Concentrations would be even lower in other times of the year with higher temperatures.
- C7.8-18** In reference to the mitigation commitment “Splitting the Thrust of Air coming out of the exit portal,” commenter stated that only a portion of the truck and car exhaust would be split, and the exhaust would still occur near the end of the portal; while this could disperse the pollutants, it wouldn’t reduce the exhaust pollutants.
- R7.8-18** As documented in Section 4.9 of this FDR/EA, this mitigation measure is focused on diverting a portion of the air coming out of the portal to reduce the concentration of pollutants in the portal jet, causing better distributed emissions.
- C7.8-19** In reference to the mitigation commitment for SmogStop wall treatment, the commenter stated that this relies on photocatalytic treatment to breakdown NOx and that this reaction cannot occur in the tunnel without sunlight.
- R7.8-19** The SmogStop wall treatment commitment as worded in the DDR/EA was intended to refer to retaining walls outside the tunnel portals where NYS Route 33 would be in a depressed section. Based on further evaluation and consultation with the interagency air quality group for the Project, the commitment has been revised in the FDR/EA to require the investigation of portal area wall treatments to remove pollutants, with the exact type of treatment to be determined during final design (see Section 4.9 of the FDR/EA).
- C7.8-20** Commenter stated being told at the September 27, 2023 Public Hearing that dust removal within the tunnel would occur “once per year.” Commenter asked who would be responsible for cleaning the walls.

¹¹ https://gispub.epa.gov/air/trendsreport/2023/#air_trends

- R7.8-20** As documented in Section 4.9 of this FDR/EA, tunnel washing frequency would be two times per year at a minimum, and more often if warranted by visible dust build-up on the tunnel walls. Dust removal and other tunnel interior/systems maintenance tasks would be NYSDOT's responsibility.
- C7.8-21** Regarding the air quality benefits of trees, a commenter inquired about the benefits during the leaf-off period during the fall in early October through early May.
- R7.8-21** The benefit of deciduous trees on air quality would be seasonal; however, this seasonal benefit would occur every year and contribute positively to the long-term exposure of the neighborhood to particulate matter. In addition, greenspace and trees have other health-related benefits in the winter, providing opportunities for physical activity and mental health benefits.
- C7.8-22** Commenter cited scientific studies related to health outcomes in proximity to highways.
- R7.8-22** Health effects were considered throughout the environmental review process through the evaluation of topics such as air quality, noise, visual effects, addition of greenspace/trees, and access to pedestrian/bicycle facilities that encourage physical activity.
- C7.8-23** Commenter disagreed with statements made in the NYSDOT October 26 press release that air quality will improve overall and that impacts will be mitigated. Commenter stated that the mitigation measures will have very limited effect on air quality or none at all. Commenter questioned that the ventilation fans and wall treatments would deal effectively with air pollution.
- R7.8-23** Section 4.9 documents the results of the air quality analyses conducted for the Project, including the identification of measures to minimize air quality effects in the tunnel portal areas. As documented, the Build Alternative would not have an adverse impact on air quality.
- C7.8-24** Commenter disagreed with the use of MOVES3 emissions factors in the air quality analysis, stating that normally emission factors are used only when actual data are not available and should not be used to evaluate a project of this magnitude in a Climate Leadership Community Protection Act (CLCPA) disadvantaged community (DAC) and environmental justice (EJ) area. Instead of the MOVES emission factors, the commenter suggested the air quality analysis should have considered data collected for NYSDEC by Aclima. Commenter requested evaluation of the Project using actual data collected along the Kensington Expressway, including criteria pollutants, ultra-fine particulates (nano-sized particles from mobile sources), mobile source air toxics (MSATs), such as benzene, ethylbenzene, 1,3-butadiene, formaldehyde, acetaldehyde, acrolein, naphthalene, polyaromatic hydrocarbons, etc. Commenter stated it was unacceptable that there was not a microscale analysis of NO, NO₂, CO, CO₂ black carbon, and VOCs. Commenter also requested a community air quality monitoring study and noted the existence of other community air quality studies, including the Tonawanda Community Air Quality Study, the Peace Bridge Air Study, and the ongoing air study near PVS Chemical Solutions.
- R7.8-24** The air quality analysis methodology/assumptions and results were developed in coordination with and reviewed by an interagency air quality group established for the Project. The group consisted of USEPA, NYSDEC, FHWA and NYSDOT and met at least every other month throughout the EA. The analysis used regulatory models and followed USEPA and FHWA guidance and procedures (see Appendix D7). For example, the USEPA PM hotspot guidance requires the use of the approach and models that were used for this Project (MOVES and AERMOD). These are the best available tools and were used in conjunction with project area specific traffic data (volumes and vehicle classification breakdown by time of day).

Using measurement data of actual concentrations as the basis of the air quality analysis is inconsistent with USEPA guidance. The objective of the microscale air quality analysis is to predict the highest concentrations that could occur in the future with and without the project and to assess the incremental effect of the Project (future Build compared to future No Build). NYSDEC long-term monitoring data were incorporated in the analysis in the form of the background concentrations used to represent other sources of emissions in the study area.

Regarding the analysis of NO₂, black carbon, VOCs, and air toxics:

- **NO_x/NO₂:** The rationale for not performing a microscale analysis of NO₂ is detailed in Appendix D7, Section 2. There are no appropriate procedures or tools available for microscale analysis of 1-hour NO₂ concentrations from mobile sources. Nitrogen Oxides (NO_x) were quantified in the regional (mesoscale) emissions burden analysis.
- **VOC:** Total VOC emissions were quantified in the regional (mesoscale) emissions burden analysis (Table 4.9-17) as a precursor pollutant to the formation of ozone at a regional scale. Some VOCs that are classified as hazardous air pollutants (for example, benzene and 1,3-butadiene) were also considered in the assessment of Mobile Source Air Toxics (see FDR/EA Section 4.9.4.5). Mobile Source Air Toxics were evaluated in accordance with FHWA's *Updated Interim Guidance on Mobile Source Air Toxic Analysis in NEPA Documents* (January 2023).
- **Black carbon** is a component of fine particulate matter (PM_{2.5}), which was analyzed in detail using required USEPA models and procedures. There are no standards or guidelines for analyzing black carbon as a distinct pollutant from total PM_{2.5} in the environmental review process of a transportation project.
- **CO₂:** CO₂ was addressed in the quantification of greenhouse gas emissions for the Project (see FDR/EA Section 4.10).

A community air monitoring study is a long-term scientific undertaking that is outside the scope of the environmental review of this Project; however, the Project would not preclude other entities from conducting such a study. Note that the Project does include a multi-year construction air quality monitoring commitment.

C7.8-25 Commenter stated that the NYSDOT conducted air quality analyses to meet their needs in support of their preferred "Build a Tunnel" alternative. Commenter suggested that the impact was further minimized by comparing their preferred Build alternative to a "No Build" alternative that only postpones a Build alternative that will maintain the vehicular capacity of the existing transportation corridor and the air pollutants emitted.

R7.8-25 The air quality analysis methodology/assumptions and results were developed in coordination with and reviewed by an interagency air quality group established for the Project. The group consisted of USEPA, NYSDEC, FHWA and NYSDOT and met at least every other month throughout the EA. The analysis used regulatory models and followed USEPA and FHWA guidance and procedures (see Appendix D7). These are the best available tools and were used in conjunction with project area specific traffic data (volumes and vehicle classification breakdown by time of day).

The Project would not induce traffic demand or increase capacity. Nevertheless, an air quality analysis was conducted for the Project to inform the decision-making process and in consideration of the environmental justice and disadvantaged communities within the study area.

Regarding the rationale for the definition of the No Build Alternative, refer to response to comment C4.1-1. Regarding the rationale for the project objective related to maintaining the existing vehicular capacity of the transportation corridor, refer to Section 1.3 of this FDR/EA.

- C7.8-26** Commenter stated that the NYSDOT intentionally excluded input data, output data, assumptions made, and other important information that was used in the air quality analysis to prevent our community from fully assessing their results. Commenter stated that the NYSDOT engineered the results to suit their need to minimize the ambient impact of pollutants on the community, which is both a disadvantaged community under NYS CLCPA and an Environmental Justice Area.
- R7.8-26** The air quality analysis methodology, including data and assumptions, is documented in Appendix D7 of the DDR/EA and this FDR/EA. The air quality technical report in Appendix D7 states that the air quality modeling files are available upon request. During the DDR/EA comment period, one individual requested these files, and NYSDOT promptly provided them.
- C7.8-27** Commenter expressed concern with exhaust from structures on tunnel cap.
- R7.8-27** No exhaust stacks or structures are proposed on the tunnel cap. Refer to Section 3.2.2.2 of this FDR/EA regarding the decision to not include air treatment in the design of the Build Alternative.
- C7.8-28** Regarding wall treatments, a commenter asked what proportion of the auto exhaust and tire particulates would actually be caught, and how much would be released in quantity at the ends of the tunnel.
- R7.8-28** The air quality mitigation measure related to wall treatments would not remove particulate matter, these types of treatments would remove NO_x through a chemical reaction. The quantity of NO_x removed would be dependent on the details of the wall treatments to be determined during final design. Note that no credit was taken for wall treatments in the air quality analysis and no adverse air quality effects are anticipated even without this mitigation measure.
- C7.8-29** Commenter stated that pre- and post-testing along the NYS Route 198 Corridor is needed. Commenter questioned whether that had been done and reiterated the need for testing to determine what the air quality is today so that we are able to know what the impact is tomorrow after the Project is constructed has gone in.
- R7.8-29** Pre- and post-air quality testing in the project area is not required or warranted as part of the air quality analysis. The air quality analysis methodology was developed following relevant USEPA and FHWA guidance, including EPA's *Transportation Conformity Guidance for Quantitative Hot-spot Analyses in PM_{2.5} and PM₁₀ Nonattainment and Maintenance Areas*, and input from an interagency air quality group that met throughout the development of the Project. Data on existing air quality from NYSDEC long-term monitors is presented in Section 4.9 of this FDR/EA. In addition, air quality monitoring is proposed during construction as described in Section 4.20.3.
- C7.8-30** Commenters requested a Health Impact Assessment and some noted concerns with potential health effects of the Project.
- R7.8-30** The FDR/EA documents the effects (as defined by 40 CFR 1508.1(g)) of the proposed action on the human environment, which includes consideration of potential effects on public health and safety. As documented in Section 4.9 of this FDR/EA, the Project will not result in exceedances of the National Ambient Air Quality

Standards, which are criteria established by the USEPA to protect public health, including the health of sensitive populations such as asthmatics, children, and the elderly. As documented in this FDR/EA, the Build Alternative will provide public health benefits, such as access to new greenspace, increased opportunities for physical activity related to the proposed bicycle and pedestrian improvements, reduced noise levels, and improved aesthetics.

C7.8-31 Commenter stated that NYSDOT determined air treatment/filtration/scrubbing is not necessary because people will be driving electric cars.

R7.8-31 The rationale for not including air treatment as part of the Build Alternative is documented in Section 3.2.2.2 of this FDR/EA. The decision is primarily based on the air quality analysis presented in Section 4.9 (which does not account for future reductions in emissions due to electric vehicles). Increased use of electric vehicles in the future was mentioned as an additional supporting factor to the decision, along with the opposition of stakeholders to above ground mechanical buildings or exhaust stacks.

C7.8-32 Commenter asked how the exhaust from the cars would exit the tunnel. Commenter questioned whether the car emissions would be exhausted into the new greenspace and expressed this would ruin the effect of a park.

R7.8-32 The function of the ventilation system is described in Section 3.4.3.5 of this FDR/EA (subheading for Tunnel Ventilation). The movement of vehicles through the tunnel would push the exhaust out of the tunnel (the “piston effect”). The tunnel also includes jet fans to bring in fresh air in the event of breakdown in traffic flow. Air quality sensors would be included in the tunnel to identify situations requiring the jet fans to operate.

The air quality analysis described in Section 4.9 of this FDR/EA included receptors on the tunnel cap/new greenspace and the analysis results showed that concentrations for these locations would be well below the National Ambient Air Quality Standards.

C7.8-33 Commenter stated that removing the direct impact of pollution from the Kensington Expressway traffic would be a significant health benefit.

R7.8-33 Air quality effects, including beneficial air quality effects along the tunnel cap, are documented in Section 4.9 of this FDR/EA. Section 1.3 of this FDR/EA documents the project purpose, objectives, and needs, including the need to maintain the vehicular capacity of the expressway.

C7.8-34 Commenter described an air quality concern with crashes, including possible toxic spills and explosions from the frequent accidents that currently occur on a regular basis on NYS Route 33.

R7.8-34 Regarding driver safety and accidents in the tunnel, refer to the response to comment C3.4-4. As documented in Chapter 3 of this FDR/EA, the tunnel design incorporates systems to address accidents and emergencies, including incident detection systems, ventilation system (jet fans), a Fixed Fire Fighting System to spray high pressure water mist in the event of a fire, emergency egress provisions and an emergency response plan. These measures would also serve to mitigate air quality-related concerns during an emergency. For example, the Fixed Fire Fighting System would help limit smoke. Regarding spills of hazardous liquids, the tunnel drainage system is designed to capture these materials and collect them in a retention tank to provide for appropriate disposal of hazardous materials (FDR/EA Section 3.4.3.4).

- C7.8-35** Commenter recommended studying additional intermittent ventilation dispersed above residences (3+ stories) and its impact on pollution concentration at the ends of the tunnel. Commenter stated that avoiding or mitigating these plumes should be the top priority of the Project moving forward.
- R7.8-35** The air quality analysis results demonstrate that exhaust stacks are not necessary to meet air quality standards. The movement of vehicles through the tunnel provides sufficient force to disperse the tunnel emissions and the jet fans within the tunnel serve to ensure appropriate dispersion can occur even during a breakdown in traffic flow. Exhaust stacks were considered as an element of the ventilation system design early in the project development process (prior to the completion of the air quality analysis). However, stakeholder coordination indicated a strong opposition to the appearance of exhaust stacks within the new greenspace/center median. Stakeholders also emphasized the importance of minimizing property acquisitions that would be needed to construct an exhaust stack outside the median area. Air quality mitigation measures are included in the Build Alternative as documented in FDR/EA Section 4.9.4.6.
- C7.8-36** Commenter expressed concern with existing air quality, noting the need to frequently sweep soot from the porch.
- R7.8-36** Information on existing air quality (based on NYSDEC long-term monitoring data) was considered and incorporated in the air quality analyses presented in Section 4.9 of this FDR/EA.

7.9 Energy, GHG, and Climate Change

- C7.9-1** Commenter stated that the Project is an act of climate denialism and climate arson because it does not reduce single use automobile trips to reduce carbon emission.
- R7.9-1** Section 1.3 of this FDR/EA documents the purpose, objectives and needs of the Project, including the need to maintain the vehicular capacity of the expressway. The Build Alternative includes improvements for pedestrians, bicyclists, and transit users (FDR/EA Section 3.4.2), which provides opportunities to reduce automobile trips. The evaluation of the Project's effects on energy consumption and greenhouse gas (GHG) as contributors to climate change are described in Section 4.10 of this FDR/EA. As described in Section 4.10.3 of this FDR/EA and illustrated in Table 4.10-1, the Build Alternative would reduce daily Vehicle Miles Travelled (VMTs) and Vehicle Hours of Travel (VHDs) within the Study Area by -0.04 percent and -0.06 percent respectively when compared to the No Build Alternative. Table 4.10-5 of this FDR/EA shows the Build Alternative would result in a small net reduction in carbon dioxide equivalent emissions taking into account both traffic-related emissions and the electricity consumed by tunnel systems.
- C7.9-2** Commenters stated that the Project does not comply with Climate Leadership and Protection Act (CLCPA) mandates because it perpetuates reliance on the automobile rather than public transportation. Commenters expressed opposition to a tunnel that would not comply with the CLCPA and their preference for a project that would comply with all CLCPA mandates.

Commenters cited the CLCPA greenhouse gas reduction targets (40% reduction by 2030 and 85% reduction by 2050) as applicable benchmarks to the reduction that should be achieved by this Project, noting the 0.04% reduction in the DDR/EA is orders of magnitude below this level of reduction.

- R7.9-2** As documented in Section 4.4 and Section 4.10.5 of this FDR/EA, the Project is consistent with the Climate Leadership and Community Protection Act (CLCPA). The Project would result in a net reduction in greenhouse gas emissions. The CLCPA emission reduction targets are to guide economy-wide emissions

reduction planning at the state level (compared to a 1990 baseline) and are not intended to be a mandate applicable at the project level. Measures to support transit, pedestrian and bicycle modes are incorporated in the Build Alternative as described in Section 3.4.2 of this FDR/EA. The greenspace and tree plantings incorporated in the Project would also contribute beneficially to carbon sequestration.

- C7.9-3** Commenters stated that the Project increases air pollution in a disadvantaged community, which is inconsistent with the CLCPA. In context of CLCPA compliance, commenter stated that the Build Alternative fails to address the injustice of air quality and health (respiratory illness) impacts to a disadvantaged community caused by the original construction of NYS Route 33. Commenter stated that pollution levels staying the same or getting worse with the Build Alternative is a violation of CLCPA requirements to prioritize the safety and health of disadvantaged communities and maximize reduction in greenhouse gas emissions and co-pollutants in disadvantaged communities. Commenter notes particular concern with increases in the ambient concentration of CO and PM 2.5 at the tunnel portals ranging from 25% to 138%, directly affecting the health and welfare of school children, employees at the Buffalo Science Museum, residents, and others.
- R7.9-3** As documented in Section 4.4 and Section 4.10.5 of this FDR/EA, the NYSDOT assessed the Project's effects to disadvantaged communities and the Project's consistency with the Climate Leadership and Community Protection Act (CLCPA). The Project would be consistent with the CLCPA and would not result in adverse effects to disadvantaged communities. Regarding the air quality effects of the Project, see response to comment C7.8-1.
- C7.9-4** Commenter made recommendations regarding land use planning, transit oriented development, smart growth, and transit investment to meet Climate Leadership and Community Protection Act (CLCPA) greenhouse gas emission reduction goals.
- R7.9-4** As documented in Section 4.10.5 of this FDR/EA, the Project is consistent with the CLCPA. As documented in Section 3.4.5 and Appendix A7 of this FDR/EA, the Project is compliant with the New York State Smart Growth Public Infrastructure Policy Act. Measures to support transit, pedestrian and bicycle modes are incorporated in the Build Alternative as described in Section 3.4.2 of this FDR/EA. Land use planning and the implementation of transit-oriented development are outside the scope of the Project and authority of the NYSDOT.
- C7.9-5** Commenter stated that the Project is not consistent with Climate Leadership and Community Protection Act (CLCPA) because the Build Alternative requires increased power demand for tunnel operations and will include the construction of two underground electrical substations. Commenter stated that the tunnel will greatly increase energy use, which contradicts NYS CLCPA requirements and goals.
- R7.9-5** As documented in Section 4.10.5 of this FDR/EA, the Project is consistent with the CLCPA. As documented in FDR/EA Section 4.10, the electrical use of the proposed tunnel systems was quantified in the greenhouse gas emissions analysis and converted to CO₂ equivalent based on the eGRID. As stated, the Build Alternative would result in a net benefit with respect to the emissions of greenhouse gases on an annual basis.
- C7.9-6** Commenter stated that the Project is not consistent with the Climate Leadership and Community Protection Act (CLCPA) because tree plantings in three feet of soil would be stunted and not provide the climate resilience required for intense storms brought by climate change. Commenter stated that removal of the Kensington Expressway and restoration of the Olmsted Parkway from Delaware Park to MLK, Jr. Park and down to Goodell and Oak Streets would provide approximately 42 acres of parkland with trees planted

in actual overburden containing a steady supply of groundwater allowing them to survive and grow to maturity. Commenter stated that the climate change-related blizzard of 2022 predominantly affected residents in disadvantaged communities, causing numerous unnecessary deaths and hardship. Commenter stated that action is required now to prevent similar climate events by planting trees that will act as a carbon sink for greenhouse gases and sequestering carbon in the soil, grass, trees, and other vegetation.

R7.9-6 Regarding removal of the Kensington Expressway, see response to comment C4.2-1.

The Build Alternative includes over 480 trees that would contribute to carbon sequestration. The proposed trees would be able to survive to maturity. The three-foot minimum soil depth was determined by a registered landscape architect based on experience and a literature review of the soil needs of trees up to 50 feet in height at maturity (see Section 3.4.4.1 of this FDR/EA). The recommended tree species, shown on the landscaping plans in Appendix A1 of this FDR/EA involve the use of trees that have lateral (spreading) or oblique root systems. Lateral or oblique root systems grow horizontally, and 80 percent of the tree's roots are in the top 18 to 24 inches of soil. The recommended tree species were developed with input from the Olmsted Park Conservancy and City of Buffalo Parks Department.

C7.9-7 Commenter stated that the Project is not consistent with Climate Leadership and Community Protection Act (CLCPA) because the Build Alternative does not create jobs or economic opportunities, noting concerns related to the loss of community access to and from NYS Route 33 in the project area, impacts of construction on economic growth due to changes in access, and homes being devalued as a result of the tunnel being closer to homes than the existing trench. Commenter raised a number of construction related concerns, including vibration, noise from heavy equipment and radon.

R7.9-7 As documented in Section 4.5 of this FDR/EA, the economic effects of the Build Alternative were assessed. The Build Alternative would not restrict access for business or devalue homes.

The Build Alternative would provide new and enhanced east-west connections across the Kensington Expressway for all modes. The community would not be excluded from access to the expressway (see response to comment C6.1-6).

The Build Alternative would not result in the highway being closer to homes than the existing or No Build condition. For homes located south of Dodge Street or north of Sidney Street/Butler Ave, the location of the expressway would be the same as existing/No Build conditions. Along the proposed tunnel cap, homes would be approximately 16 feet farther from traffic on Humboldt Parkway as a result of the realignment of Humboldt Parkway (increasing front yard greenspace).

As documented in Section 4.20 of the FDR/EA, the construction effects of the Project were assessed and measures to avoid and minimize effects were identified.

Regarding radon, see response to comment C7.15-3.

Also see response to comment C7.9-3 and C7.8-1.

7.10 Noise

- C7.10-1** Commenter noted general concern with traffic noise and asked how the project will improve the health of those with medical difficulties. Commenter asked generally what noise reduction will be applied (interpreted to be referring to the level of noise reduction that would occur along the highway cap). Commenter noted that they cannot have a conversation on the front porch of their home because of the noise coming from the highway. Commenter stated that noise pollution would be at the same or even more elevated levels. Another comment relayed personal experience from a visit to a highway cap over an interstate in Seattle and noted that it was noisier than expected, especially near the portals.
- R7.10-1** A traffic noise analysis was performed for the Project, as documented in FDR/EA Section 4.11. The Build Alternative would decrease traffic noise levels at the majority of receiver locations; decreases range between 1 and 13 dB(A). The reductions are greatest along the highway cap. No receivers would experience a perceptible (greater than 3 dB(A)) increase in noise levels. ¹²
- C7.10-2** Commenter stated concern with noise and vibration from traffic being transmitted up through the new cap in the tunnel.
- R7.10-2** The approximately 7-foot thick highway cap (3.5 feet of which would be reinforced concrete) would not transmit traffic noise. Regarding vibration, rubber-tired vehicles operating on surface streets do not normally generate objectionable levels of ground vibration in the absence of discontinuities in the roadway surface (potholes, bumps, expansion joints etc.). ¹³ The roadway surface within the tunnel would be smooth; therefore, no appreciable traffic-induced vibration is expected on the tunnel cap.
- C7.10-3** Commenter stated that the Project would not reduce noise or traffic at the pedestrian bridge over NYS Route 33 near Northland Avenue.
- R7.10-3** The pedestrian bridge is outside the defined transportation corridor for the Project (see Section 1.4 of this FDR/EA). Based on the noise analysis conducted for the Project, there will be no change in noise levels expected in the vicinity of the pedestrian bridge (see Figure 3B in Appendix D9).

7.11 Natural Resources

- C7.11-1** Commenter stated that the proposed Project is not consistent with best practices for, Combined Sewer Overflow, regional watershed restoration, or other climate resilient efforts.
- R7.11-1** The Project would have beneficial effects on stormwater because of the incorporation of appropriate stormwater management design and reduction in impervious surfaces. The stormwater management design was developed in coordination with the Buffalo Sewer Authority and the New York State Department of Environmental Conservation. For detailed information on stormwater considerations, refer to Section 4.15 and Appendix D3 of this FDR/EA.

¹² United States Environmental Protection Agency, Information on Levels of Environmental Noise Requisite to Protect Public Health and Welfare with an Adequate Margin of Safety, March 1974, p. D-5.

¹³https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/research-innovation/118131/transit-noise-and-vibration-impact-assessment-manual-fta-report-no-0123_0.pdf

7.12 Hazardous Materials

C7.12-1 Commenters expressed concerns and requested more details about asbestos containment measures during construction. Specific concerns included the removal of approximately 250,000 square feet of existing concrete retaining walls containing asbestos. Commenter stated that even if the asbestos was originally nonfriable, it likely became friable based on the age and deterioration of the retaining walls. Commenters stated that the removal methods would release asbestos fibers in the air and create another burden on the community. A commenter urged the proper treatment and disposal of any hazardous materials such as asbestos during construction, that the construction levels of dust be minimized, and that residents' well-being remain at the forefront of this project.

R7.12-1 Asbestos containing materials are routinely addressed in transportation projects. As documented in Section 4.18.2 of this FDR/EA, the NYSDOT confirmed the presence of non-friable asbestos containing materials associated with the five bridge structures within the transportation corridor and in certain caulking materials on the retaining wall expansion joints and at the base of metal guide rails on the top of the retaining walls. Testing completed in December 2023 confirmed that no asbestos is present in the waterproofing material on the back of the retaining walls (see FDR/EA Section 4.18.2). Asbestos containing materials would be removed and disposed of consistent with a Project-specific health and safety plan in compliance with all federal and state regulatory requirements to protect workers and the public.

The construction air quality mitigation commitments include a Dust Control Plan, among other measures (FDR/EA Section 4.20.3.2).

C7.12-2 Commenter stated NYSDOT did not seriously consider the potential for encountering radioactive material during construction and noted that the DDR/EA does not include a mitigation plan even though records show that a slag subbase material was utilized during construction of Route 33 and was listed as an "optional type" on the record drawings. Commenter also noted that it was common practice to use radioactive slag in roadways during that time of construction as evidenced by the ongoing problem in Niagara Falls, NY. Commenter states that potential exposure of residents in the project area to radioactive material in slag in the Route 33 roadway must be evaluated.

R7.12-2 Section 4.19.3 of the DDR/EA described the potential for encountering radioactive material during construction. In response to public comments received on this topic, additional testing of the subbase material was performed by a NYSDEC-approved radiological testing contractor and the results demonstrate that there are no radioactive slag concerns in the areas of ground disturbance for this Project (see FDR/EA Section 4.19.3 and Appendix D11 of this FDR/EA).

C7.12-3 Commenter suggested that asbestos be encapsulated in place (by building a wall inside).

R7.12-3 As noted in response to comment C7.12-1, testing results found no asbestos containing materials in the retaining wall waterproofing material. It is not possible to encapsulate the asbestos containing caulk in the retaining wall expansion joints and guiderails; this material needs to be removed to construct the Build Alternative. Asbestos containing materials would be removed and disposed of consistent with a Project-specific health and safety plan in compliance with all federal and state regulatory requirements to protect workers and the public.

C7.12-4 Commenters stated that concentrations of lead in the soil of the highway corridor should be investigated prior to construction.

R7.12-4 Work activities will be performed in accordance with the contract documents. Special procedures, precautions, and requirements for handling contaminated materials would be identified following NYS DOT specifications and guidelines before construction for the protection of soil and groundwater resources and worker safety. During construction, excavated soils would be temporarily stockpiled and sampled for laboratory analysis. Based on the test results, the stockpiled soils would be characterized for off-site disposal or on-site reuse (if appropriate) in accordance with federal, state, and local regulations. A health and safety plan, including dust monitoring, would be implemented during construction for the protection of workers and the surrounding community.

7.13 Construction Effects – Noise

C7.13-1 Commenter expressed general concern about construction noise, such as disruption to sleep. Commenter stated concern with enduring three to four years' worth of consistent noise.

R7.13-1 Construction noise effects and mitigation measures are discussed in Section 4.20.1 of this FDR/EA. Mitigation measures include the development and implementation of a construction noise mitigation plan, which would include a construction noise monitoring program (including action levels triggering changes in construction methods), restricting the hours during which construction work can occur, and implementing temporary construction noise barriers, shrouds or enclosures to reduce noise from equipment, among other commitments.

7.14 Construction Effects – Vibration

C7.14-1 Commenters expressed concern with blasting and the effects of construction vibration on homes in the area given the age of the buildings and questioned if damage to homes would be compensated. Commenter stated that ground vibrations, measured as Peak Particle Velocity (PPV), are commonly viewed as the major concern for off-site damage resulting from blasting. Commenter further noted that an acceptable distance to the point of concern is 500 meters (1640 feet) and that Build Alternative blasting would occur 40 to 100 feet from homes, likely resulting in structural damage to fragile 120-year-old homes, including cracked foundations, walls, ceilings, roofs, and chimneys, damaged sewer, water, and gas lines.

R7.14-1 As described in Section 3.4.3.6 of this FDR/EA, non-blasting methods of rock removal would be used where rock removal is near delicate structures or utilities or where the required rock removal depth is minimal, and blasting is not feasible. Where used, blasting would be conducted in a safe and efficient manner with the application of controlled blasting techniques. See Sections 3.4.3.6 and 3.5 of this FDR/EA for additional information on rock removal methods.

Section 4.20 of this FDR/EA documents the temporary effects that could occur during construction of the Build Alternative, as well as measures that would be implemented to avoid and minimize these effects. As described in FDR/EA Section 4.20.2, no threshold damage to buildings (i.e., cracking of plaster or drywall) is expected at any properties, regardless of distance from the proposed controlled blasting for rock removal. The potential for building damage would be avoided through the design of the blasting program, which would take into account the distance and condition of the closest structure (among other factors) in determining the appropriate charge weight per delay.

Although no threshold damage is expected, any unanticipated damage to buildings or utilities found by the NYS DOT to be attributable to the construction would be repaired by the contractor. Pre- and post-

construction surveys of building conditions would be conducted within a survey area to be determined during final design.

- C7.14-2** Commenter expressed concern that pre-construction building surveys would nitpick existing building issues in order to deny assistance later if the Project results in damage to a home.
- R7.14-2** Pre-construction building surveys would be implemented using a consistent and standardized “checklist” of items and areas that should be inspected and documented. The pre- and post-construction surveys will serve to protect the interests of all parties involved (homeowner, contractor and NYSDOT).

7.15 Construction Effects – Air Quality

- C7.15-1** Commenter expressed concern over air quality during construction and questioned if it would be safe to be outside of their home during construction. Commenter suggested that demolition would cause different chemicals to arise, including dust and others, and that these would affect the lung health or cause cancer, asthma, and death and increase the risk to populations with pre-existing health conditions such as COPD. Commenter asked if they would have to wear a mask due to air quality during construction. Commenter stated that the DDR/EA review should include Air Quality monitoring and analysis as well as modeling and assurances of air quality and safety during construction.
- R7.15-1** Section 4.20.3 of this FDR/EA documents the temporary air quality effects that could occur during construction of the Build Alternative, as well as the measures that would be implemented to avoid and minimize these effects. The construction air quality mitigation measures include requiring the use of newer/ lower emitting equipment, a dust control plan, idling restrictions, and a construction air quality monitoring program (including action levels that would trigger investigation and changes in construction methods).
- C7.15-2** Commenter stated that the NYSDOT failed to evaluate emissions (NO_x, CO, PM, PM-10, PM-2.5, VOCs, black carbon [from diesel], mobile source air toxics, and etc.) generated during the 4 to 5 years of proposed construction. Commenter stated that the NYSDOT's air quality analysis would only start in 2027 after the construction period ends. Commenter noted that MOVES3 can simulate the emissions from non-road (construction equipment) emission sources and that The NYSDOT must evaluate the total ambient impact from combined on-road (vehicles) and from non-road sources for each pollutant during the construction period prior to 2027. Commenter stated that the only emissions the NYSDOT evaluated to some degree, were greenhouse gases (GHGs) listed in Table 4.10-6 on Page 275 of the DDR/EA and that the truthful total ambient impacts must be presented to the community.
- R7.15-2** The air quality analysis methodology (including the assessment of construction effects) was developed in coordination with and reviewed by an interagency air quality group established for the Project. The group consisted of USEPA, NYSDEC, FHWA and NYSDOT. Construction air quality effects were evaluated qualitatively (see FDR/EA Section 4.20.3), and a comprehensive set of mitigation commitments have been incorporated in the Project to avoid and minimize effects. These commitments include requiring the use of lower emitting equipment (newer Tier 4 equipment or diesel particulate filters on older equipment over 50 horsepower), dust control plans, idling limitations, and implementation of an outdoor ambient air quality monitoring program during construction. The monitoring program would include action levels that would trigger the need to identify and correct operational and/or mechanical deficiencies.

- C7.15-3** Commenter stated that the NYSDOT has not evaluated the effect of blasting bedrock for the formation of the tunnel regarding the release of radon and other toxic gases. Commenter noted that blasting can cause fissures in the remaining bedrock creating a pathway for radon gas.
- R7.15-3** Controlled blasting does not have the potential to alter radon propagation into homes because the area of rock fracture around the bore hole is very small (3.3 feet or less); controlled blasting does not create fractures over large distances. A discussion of NOx and CO emissions from blasting has been added to Section 4.20.3 of this FDR/EA.
- C7.15-4** Commenter requested power washing of homes to remove dust accumulation. Commenter requested financial assistance to screen their porch in to keep dust out.
- R7.15-4** The construction air quality mitigation measures include a dust control plan that would minimize construction-related dust (FDR/EA Section 4.20.3).

7.16 Construction Effects – Traffic and Transportation

- C7.16-1** Commenter expressed general concerns related to construction traffic impacts. Commenter stated that the construction would change the traffic patterns for seven to ten years, parenthetically noting their belief that North to South traffic corridors would become "parking lots" that would affect the whole of the city. The commenter questioned the wisdom of putting 'all the traffic on Fillmore that they just made into a one way.' Another commenter expressed concern about the effect of construction on emergency response times.
- R7.16-1** Refer to Section 1.5 of this FDR/EA for updated information on the Project schedule. Construction traffic effects and mitigation measures are described in Section 4.20.4. Mitigation commitments to minimize traffic impacts to other routes include the requirement to maintain two lanes of traffic in each direction on the Kensington Expressway through all construction phases, as well as maintaining through traffic on Humboldt Parkway. Work Zone Traffic Control Plans as discussed in Section 3.5.2 and Appendix A8 would continue to be developed during final design and be a required element of the contract.

Coordination between the contractor and emergency service providers would be a contract requirement to ensure that services are maintained satisfactorily, both on the expressway and on local roads.
- C7.16-2** Commenter expressed concern regarding construction effects on parking and access to homes, particularly for the elderly and those with disabilities.
- R7.16-2** Access to properties will be maintained at all times. Temporary construction effects on parking are addressed in Section 4.20.4 of this FDR/EA. The homes along Humboldt Parkway generally have off-street parking available. Temporary effects to on-street parking in front of a given home would be up to two weeks, during which time driveways or on-street parking on side streets would need to be used. The contractor would be required to provide off-street parking for construction workers. NYSDOT will maintain a public information presence throughout the period of construction, including a community outreach office where the public may ask questions and express concerns.

7.17 Construction Effects – Other/General

- C7.17-1** Commenters expressed concern over the potential for rodents displaced by construction to affect local homes.
- R7.17-1** Rodent control during construction would be an element of the Construction Health and Safety Plan to be prepared by contractor during final design (FDR/EA Section 4.20.5). Rodent control post construction would be under the jurisdiction of the city sanitation department.
- C7.17-2** Commenters expressed general concern or opposition to blasting.
- R7.17-2** Controlled blasting is an efficient method for rock removal and can be accomplished in a safe manner following NYSDOT requirements as discussed in Section 3.4.3.6 of this FDR/EA. Refer to Section 4.20.2 for construction-related vibration mitigation efforts.
- C7.17-3** Commenters expressed concern with utility impacts. Commenter questioned whether water be safe to drink, bathe, cook and do laundry utilities if a water main were to break during construction. Commenter also questioned what the construction would do to the pipes, sewer, and drains in general.
- R7.17-3** Underground utilities are less sensitive to vibration than aboveground structures and no damage is expected as discussed in Section 4.20.2.
- C7.17-4** Commenters requested the option to be relocated temporarily during construction to avoid construction-related disruptions to their life and sleep (such as a hotel). One commenter noted that some people work at night and need to sleep during the day when the construction would be most active.
- R7.17-4** Numerous mitigation commitments are incorporated in the project to minimize disruption to residents. At this time voluntary temporary relocation of residents near construction activity is not among the construction mitigation measures for the Build Alternative (FDR/EA Section 4.20).
- C7.17-5** Commenters indicated general concerns about construction (not specific).
- R7.17-5** Section 4.20 of this FDR/EA provides information related to construction effects and mitigation.

7.18 Indirect Effects

- C7.18-1** Commenters expressed concerns over the Project’s potential for increasing property values/property taxes and contributing to gentrification of the area, potentially displacing the residents that the project is trying to reconnect. Another commenter stated that gentrification is happening every day.
- R7.18-1** As discussed in Section 4.21 of this FDR/EA, the Build Alternative has the potential to indirectly affect the value of properties by directly affecting related factors, such as improved connectivity between the affected neighborhoods, the creation of new public greenspace above the proposed tunnel, improved aesthetics within the transportation corridor, and a reduction in traffic noise near the tunnel. However, property values are also affected by other factors, including external characteristics (such as “curb appeal,” home condition, lot size); internal characteristics (such as size and number of rooms, construction quality, energy efficiency); supply and demand; and location characteristics (such as desirability of a particular school district). Ultimately, the administration of property assessment and taxation is under the authority

of the City of Buffalo. Furthermore, potential increases in property values could be offset by Project benefits, such as an increased tax base and local spending. Thus, the exact magnitude of potential indirect effects to property values cannot be reasonably predicted. However, as documented in Section 4.21 of this FDR/EA, it is not expected that the Project would indirectly result in gentrification of the community in the foreseeable future.

- C7.18-2** Commenter asked what safeguards and funding allocations are incorporated in the Project to prevent the current residents being displaced due to rising property costs. Commenter requested that housing protection programs be developed, and systems implemented for the protection of the current resident property owner population to ensure socioeconomic growth and stability for all.
- R7.18-2** As documented in Section 4.21 of this FDR/EA, it is not expected that the Project would indirectly result in gentrification of the community in the foreseeable future. Potential effects on property values are discussed in Section 4.21 of this FDR/EA, including existing programs that assist low-income homeowners and renters. The Project does not and would not preclude independent actions by other agencies or community groups to provide additional direct investment in the community.
- C7.18-3** Commenter stated that the Project does not address the destruction of the urban fabric caused by car dependency (interpreted to be a reference to destruction of the urban fabric surrounding the Humboldt Parkway as a result of original Kensington Expressway construction).
- R7.18-3** As stated in FDR/EA Section 1.3.1, the purpose of the Project is to reconnect the community surrounding the defined transportation corridor and improve the compatibility of the corridor with the adjacent land uses, while addressing the geometric, infrastructure, and multi-modal needs within the corridor in its current location. The Build Alternative meets this project purpose. The Build Alternative includes reconnection of streets separated by the Kensington Expressway (e.g., Riley Street and Winslow Avenue) and creation of a 90-foot-wide tree-lined parkway setting along the proposed tunnel cap. The Build Alternative also includes improvements to bicycle and pedestrian facilities (see FDR/EA Section 3.4.2). See also response to comment C2-6.
- C7.18-4** Commenter stated that any wealth created for residences along the capped section will not be realized until the house is sold and that through the years that wealth will be whittled away in annual increased property taxes.
- R7.18-4** Potential effects on property values and property taxes are documented in Section 4.21 of this FDR/EA. As stated, the exact magnitude of any potential increase in property values cannot reasonably be predicted given the complex interacting factors influencing property values. In addition, the administration of property assessment and taxation is under the authority of the City of Buffalo.

As documented in Section 4.21, the potential increases in property values could be offset by the Project benefits.

8.0 Public Involvement

- C8-1** Commenter stated that the Project should be voted on by the community. Commenter asked how many people in the community have been actively involved in the decision making and stated that less than a majority does not constitute community approval.

- R8-1** As documented in Chapter 5 of this FDR/EA, the NYSDOT has provided, and will continue to provide, meaningful opportunities for public and agency engagement in the Project. The NYSDOT has considered the comments and feedback received in the transportation decision-making process for the Project. The Build Alternative has been developed based on a balanced consideration of the need for safe and efficient transportation; the social, economic, and environmental effects of the Build Alternative; and national, state, and local environmental protection goals. A public referendum or vote would be inconsistent with the NEPA and SEQRA processes.
- C8-2** Commenter inquired about how they can get involved in the Project.
- R8-2** Chapter 5 of this FDR/EA describes the range of public involvement opportunities provided during the development of the Project, including public information meetings, a community outreach office, stakeholder group meetings, and attendance at community events, among others. Section 5.8 of the FDR/EA describes the public engagement opportunities that will be available during final design and construction. Members of public interested in receiving general project updates can join the project email list via a form on the project website (<https://kensingtonexpressway.dot.ny.gov/>). In terms of construction employment opportunities, more information will be added to the website in 2024 when the construction local hire program is initiated.
- C8-3** Commenters expressed concern that the Project was not representative of what the community wants or has suggested for the Project area.
- R8-3** As documented in FDR/EA Section 2.1, the history of this Project goes back to 2009. The NYSDOT has considered the public input received and studies conducted to-date to develop and design the Project. The Build Alternative has been developed based on a balanced consideration of the need for safe and efficient transportation; the social, economic, and environmental effects of the Build Alternative; and national, state, and local environmental protection goals. As documented in FDR/EA Chapter 5, the NYSDOT has provided, and will continue to provide, meaningful opportunities for public and agency engagement in the Project.
- C8-4** Commenter suggested better publication of when public meetings are scheduled and that public meetings be held during off-work hours. Commenter stated that announcements of public hearings were purposely made very close to the meeting dates and that the times of meetings were scheduled during the business day and work hours. Commenter suggested that these two approaches were specifically utilized to limit the working public from participating and to limit any large contingent of citizens from attending meetings.
- R8-4** As documented in Chapter 5 of this FDR/EA, public meetings (including the September 2023 Public Hearing) were publicized through multiple methods, including newspaper advertisements, email blasts, door hanger flyers, hard copy mailings, and social media advertising. Information about the June 2023 Public Information Meeting and September 2023 Public Hearing was also available at the Public Outreach Office. Public meetings were appropriately noticed in advance in accordance with state and federal requirements.

The public meetings for this Project all included time periods outside the 9am to 5pm typical workday to maximize attendance opportunities for the public. Specifically, a 5pm to 8pm evening session was included as part of the June 2022 Public Scoping Meeting, June 2023 Public Information Meeting and September 2023 Public Hearing.

C8-5 Commenters questioned whether the Restore our Community Coalition (ROCC) group is representative of the interests of residents in the Project area. Commenters also stated that Humboldt Parkway homeowners should have been consulted during the public involvement component of the Project. Commenter stated that the monthly stakeholder meetings with ROCC were not public, and that the membership of the stakeholder meetings represented the Jefferson side of the expressway more than the Fillmore side. Commenter asked if the stakeholders were from the Buffalo area and questioned whether any of those sitting on the panel were affected homeowners from Humboldt Parkway. A similar comment stated NYSDOT limited much of the public engagement to a small number of “stakeholders” some of whom represented increasingly small portions of the affected communities.

R8-5 The Restore our Community Coalition was included in the NYSDOT’s outreach efforts for the Project based on the mission and history of the group in advocating for the restoration of Humboldt Parkway since 2007. The NYSDOT’s public outreach efforts were not limited or exclusive to this group. All members of the public were invited to project outreach events, including the June 2022 Public Scoping Meeting, June 2023 Public Information Meeting, and the September 2023 Public Hearing. Methods used to notify homeowners in the Project area include flyers, mailings, advertising, email blasts, the project website, and attendance at community events, among others (see Chapter 5 of this FDR/EA). The NYSDOT also attended dozens of local community events to discuss the Project.

FDR/EA Section 5.2.2 discusses the stakeholder group that has been established for the Project. The stakeholder group established for the Project consists of Restore Our Community Coalition; Hamlin Park Community & Taxpayers Association, Inc.; The Black Chamber of Commerce of Western New York, Inc.; Buffalo Olmsted Parks Conservancy; True Community Development Corporation; Buffalo Museum of Science; Citizen’s Alliance, Inc.; Delavan Grider Community Center; The African American Cultural Center; Resource Council of WNY; Masten Block Club Coalition, Inc.; Winslow Block Club; MLK Block Club; the Eastside Parkways Coalition; City of Buffalo; and elected officials. The NYSDOT has considered all of the input received in the transportation decision-making process for the Project.

C8-6 Commenter expressed concern regarding the format of the public hearing, specifically the testimony portion where the public provided comments and the agency representatives did not respond to comments or answer questions.

R8-6 Public hearings are formal proceedings that provide the opportunity for interested parties to formally submit oral testimony on a proposed issue or action. The testimony received during the Kensington Expressway Project public hearing was recorded by a stenographer, made part of the formal project record, and considered by NYSDOT as part of the transportation decision-making process for the Project. In addition, the NYSDOT provided opportunities for informal interaction and discussion during the open house portions of the Public Hearing, where various NYSDOT engineering and environmental technical staff were available to answer questions. As documented in FDR/EA Chapter 5, the NYSDOT also held a public scoping meeting and public information meeting and attended dozens of community events to discuss the Project with interested parties.

C8-7 Commenter requested more grassroots efforts and use of all media outlets (including social media) to let residents know that there would be a fund for property damage due to blasting and construction.

R8-7 Although no damage from excavation and blasting is expected, any unanticipated damage to buildings or utilities would be repaired by the construction contractor. This commitment to repairs would be formalized

in the contract between NYSDOT and the construction contractor. Information on this commitment was communicated through the “Frequently Asked Questions” on the project website, in the DDR/EA and through the stakeholder group meetings. Additional public outreach related to construction vibration mitigation will occur during final design when construction monitoring and mitigation plans will be prepared (see Section 5.8 of this FDR/EA).

C8-8 Commenter stated a NYSDOT representative attended a public meeting organized by the East Side Parkways Coalition and distributed pre-filled comment letters in support of the Project without identifying her affiliation. Another commenter indicated their belief that it was “wrong that the community outreach office (individual identified by name) has been pushing pre-filled-out NYSDOT forms and pre-written letters to Commissioner Dominguez in support of this project on area residents and at community-organized events.”

R8-8 The NYSDOT has been and will continue to be committed to an open and meaningful public involvement program for the Project. To date, this program has included public meetings, a public hearing, NYSDOT attendance at dozens of community events, monthly stakeholder meetings, multiple public comment opportunities, and a community outreach office staffed by community outreach liaisons. Public engagement opportunities will continue into the final design and construction phases of the Project.

The NYSDOT did not conduct nor authorize the preparation or distribution of pre-written comments and does not support or approve this type of one-sided approach to public involvement. In order to make an informed decision on the Project, the NYSDOT needs to hear any and all perspectives, regardless of whether the commenter does or does not support the Project.

Any NYSDOT employee who may have attended the East Side Parkways Coalition meeting on 11/8/2023 was there based on personal interest and did not represent the agency.

C8-9 Commenters stated that NYSDOT’s public outreach efforts served to present NYSDOT’s predetermined project, rather than to solicit public ideas, preferences, or provide meaningful participation. Citing the goals of the FHWA Reconnecting Communities Program, one commenter states the Project is not a “transformative community-led solution” and is being forced on the community.

Regarding the format of public meetings, commenters stated the format of the public meetings did not allow the public to question NYSDOT officials or consultants in an open forum where all could have been better informed. A similar comment objected to the rigidly controlled public meeting format which both discouraged public participation by interested residents and community parties and shielded NYSDOT from unified input by those who are discontented. A commenter stated the public meetings were designed to limit public comment or even gathering at meetings. A commenter stated the public was strategically denied any interactive public engagement with officials that would have allowed their expressed opinions to be shared with and discussed by all in attendance. Any contact with NYSDOT representatives was intentionally restricted to individuals in private discussion or in writing.

A similar comment requested more proactive outreach and community interaction to allow the community to understand the Project, what was truly intended and the reason for it, rather than canned presentations and multi-page documents requiring extensive expertise to evaluate. This commenter cited the October 26, 2023 NYSDOT press release statement “... those opposed to the project have filled the void by largely spreading misinformation and exhibiting a misunderstanding”, and their belief that the existence of such void proves that outreach to the community was poor.

R8-9 The origins of the Project are in a community-led solution advocated for by various community organizations (see FDR/EA Section 2.1 Project History). NYSDOT has worked with the community in the further development of the design details for “covering the Kensington”, but the Project was not predetermined by NYSDOT. In fact, the drawing of the early version of the concept shown in the 2012 Concept Study was created by the Buffalo Olmsted Parks Conservancy in 2009.

NYSDOT’s efforts to provide opportunities for meaningful input are documented in Chapter 5 of this FDR/EA. Multiple types of public meetings occurred and each of these meetings provided multiple ways of submitting input and learning about the Project from NYSDOT and consultant staff. The DDR/EA public hearing included a formal public testimony period with a stenographer. Regarding the format of the public hearing, see response to comment R8-6. Two-way communication occurred through other means, including the one-on-one discussions at each meeting, NYSDOT’s attendance at over 60 community events and through the stakeholder group meetings that were held during the development of the Project.

C8-10 Commenter stated that the Community Outreach Office is passive outreach and that many in the community do not know much about the Project, as evidenced at the Jes Breathe Block Club public discussion on October 19th at the Buffalo Museum of Science.

R8-10 The Community Outreach Office was one of many methods used to provide the community with information about the Project and to gather input, as documented in Chapter 5 of this FDR/EA.

C8-11 Commenters expressed concern about funding for the Project being taken away from the community based on community opposition. One commenter stated that NYSDOT representatives and Assemblywoman Crystal People Stokes have lately threatened to take funding away from this project if residents do not accept NYSDOT’s preferred Build Alternative. Commenter objected to perception of a ‘You’ll take this and like it, or get nothing’ bullying attitude, showing a disregard of legitimate concerns. Another commenter called on elected officials to pledge to not remove the funding for the Project simply because the community wants to get the best possible project.

R8-11 Comment noted. Federal and state transportation funds remain available for the Project.

C8-12 Commenter criticized NYSDOT’s ‘faulty online submission form.’

R8-12 NYSDOT is not aware of any defects with the website comment submission form. Hundreds of comments have been successfully received through this method. Multiple methods were available for the public to submit comments including a project email address and U.S. mail address.

C8-13 Commenter stated NYSDOT’s stakeholder group meetings were not publicly announced and no publication of minutes or those in attendance were ever made available to the public. Another commenter noted that the stakeholders represent a small portion of the affected communities.

R8-13 The stakeholder group meetings were not public meetings and were not required to be publicly announced. The purpose of the stakeholder group meetings was to provide for an ongoing two-way dialogue by NYSDOT and stakeholder group leaders about the Project status, design, and environmental review processes (see FDR/EA Section 5.2.2). The organizations included in the stakeholder group (which expanded over time as additional parties expressed interest) are provided in Section 5.2.2 of this FDR/EA, and a listing of the date and topics of each meeting is provided in FDR/EA Table 5.2-2.

- C8-14** Commenter stated that Robert Lewis (Community Outreach Office staff member) was very informative and that he had provided the answers that the commenter was looking for. The commenter expressed hope that through him, the residents on the commenter's block could be put at ease about some of the issues around this project.
- R8-14** Comment noted.
- C8-15** Commenter expressed concern that communication was lacking regarding Project information.
- R8-15** Chapter 5 of this FDR/EA documents NYSDOT's extensive efforts to communicate with the community and these measures included public meetings, the project website, email blasts, door slingers, attendance at community events, and a community outreach office.
- C8-16** Commenter suggested a community advisory council be involved with the Project during design and construction.
- R8-16** NYSDOT formed a stakeholder group of community leaders and organizations that functioned similarly to a community advisory-type group, see Section 5.2 of this FDR/EA. Stakeholder group meetings will continue through final design and construction.
- C8-17** A commenter noted that they have family living on Humboldt Parkway and that they were not notified about the meeting (public hearing) by mail. The commenter suggested that for future meetings, people should be notified by mail and some food should be provided.
- R8-17** The September 2023 Public Hearing was not advertised by U.S. Mail. Instead, physical notices (approximately 2,800 door hanger flyers) were placed on homes and other buildings located between East Delavan Avenue and Genesee Street and between Fillmore Avenue and Jefferson Avenue.
- C8-18** Commenters shared multiple community outreach related requests and suggestions, including looking for engagement examples from Europe, involving community stakeholders in the design process, designing walkable and healthy environments, and listening to the community and supporting the design option chosen by the community through a comprehensive and transparent engagement process.
- R8-18** Comment noted. Public engagement efforts are documented in Chapter 5 of the FDR/EA.
- C8-19** Commenter requested NYSDOT conduct surveys on this project. The commenter was concerned about the potential for activists to "stuff the comment box" through the comment portal and that this was not representing the views of thousands of people using the Kensington Expressway daily.
- R8-19** See response to comment C8-1. All substantive comments have been considered and responded to in this appendix. The environmental review process is not decided by a vote or by the number of comments submitted reflecting a particular viewpoint. Therefore, additional surveys of opinion of different populations for or against the project would not contribute to informed decision making.
- C8-20** Commenter requested that officials "slow down" or "pause" the Project. Commenters stated their concern that the Project appears to have been fast-tracked with limited public meetings and insufficient time for the community to understand its implications fully. Commenters described their belief that, given the

Project's scale and potential long-term effects on the community, particularly concerning environmental health and heritage conservation, it is crucial that more time be allocated for public consultation and consideration of alternative solutions.

- R8-20** Per 40 CFR Part 1501.10, Environmental Assessments shall be completed within a one-year timeframe. The public scoping meeting for the Project was held in June 2022, the Project Scoping Report was published in December 2022, and the EA process started in December 2022. Extensive community input was received throughout the development of the Project, and numerous opportunities were provided for the public to ask questions and submit comments, including an extension of the comment period on the DDR/EA (see Chapter 5 of this FDR/EA).
- C8-21** Commenter stated that Buffalo's community organizations must be heard and respected, including East Side Parkways Coalition, Buffalo Olmsted Parks Conservancy, Citizens for Regional Transit, Preservation Buffalo Niagara, Clean Air Coalition, and GObike Buffalo.
- R8-21** Comments from community organizations have been considered throughout the project development process, including the stakeholder group meetings, Section 106 consulting parties meetings, comments on the Project Scoping Report, comments at other public meetings and the comments on the DDR/EA documented in this appendix. Responses to organizations' comments on the DDR/EA are included in Section 10 of this appendix.
- C8-22** Commenter provided information about the history of ROCC and development of the highway cap concept, explaining the catalyst behind ROCC, their original ideas that influenced the NYSDOT's concept, and the community support for this project that has been building for the last 10-15 years.
- R8-22** Comment noted.
- C8-23** Commenter indicated a number of concerns related to the Community Outreach Office, including its schedule and location.
- R8-23** Comment noted. The office location was selected based on its location within the project limits. Office hours were developed to provide the community a variety of times, including 10 AM to 2 PM on Saturdays. The Community Outreach Office is relocating to a new address at 630 Humboldt Parkway with more space in February 2024. The office move will be communicated through the Project website and to the Project mailing list.
- C8-24** Commenter stated that the proposed project leaders rejected coordination with Greater Buffalo Niagara Regional Transportation Council (GBNRTC) on regional transportation initiatives and with the Niagara River Greenway Commission on Section 106. Commenter also stated that there is no record of the City of Buffalo's involvement in historic resource matters.
- R8-24** GBNRTC was a participating agency during the environmental review process, see Section 4.1.1 of this FDR/EA. A representative of the Niagara River Greenway Commission submitted an application to become a Section 106 Consulting Party member for the Project; during follow up communications the representative was asked to demonstrate their interest in historic properties based on the criteria for Consulting Party status listed in 36 CFR Part 800.2(c)(5). The representative provided a response indicating that historic property preservation is not their area of expertise. Based on that response, the organization was declined Consulting Party status. On November 10, 2022, the City of Buffalo was sent a letter to inform

them about the Project and to invite them to apply for Section 106 Consulting Party status. The City of Buffalo did not submit an application to become a Section 106 Consulting Party for the Project.

- C8-25** Commenter states that the fencing to restrict public access to the greenspace immediately adjacent to the tunnel portals for safety reasons was not shown on the Build Alternative figures presented to the public, therefore they do not believe the public is aware of this restriction.
- R8-25** The public hearing plan view of the Build Alternative did not explicitly label the greenspace immediately adjacent to the portal areas as being fenced for safety reasons, but the tunnel roof openings were shown and a dense pattern of shrub plantings were illustrated that differentiated these areas from the more open lawn areas illustrated for other portions of the tunnel cap. However, information on the fencing was provided in Section 3.4.3.5 of the DDR/EA and presented at stakeholder group meetings. The fenced areas are a small portion of the total greenspace, and the fencing is necessary to prevent unsafe conditions.
- C8-26** Commenter states no NYSDOT personnel have attended community meetings despite invitations.
- R8-26** It is unclear which specific community meetings are being referenced, but NYSDOT has attended over 60 meetings and events to provide information about the Project and to obtain public input, as documented in Chapter 5 of this FDR/EA.
- C8-27** Commenter requested NYSDOT consider the people's comments regarding design and wholistic neighborhood development.
- R8-27** Public comments regarding all aspects of the Project have been considered as documented in this appendix and Chapter 5 of this FDR/EA.
- C8-28** Citing ROCC's 10/20/2023 comment letter on the DDR/EA, the commenter states NYSDOT has misled ROCC and public officials about the project, specifically by leading ROCC to believe the project was the initial phase of a larger program that would connect MLK Jr Park to Delaware Park. Commenter also stated NYSDOT's assertion that the Project has widespread community support is highly suspect. A similar comment stated NYSDOT has misrepresented the public support to the stakeholders.
- R8-28** ROCC's desire for the Project to contribute to an eventual connection of MLK Jr Park and Delaware Park is noted. The Project Scoping Report, public meeting materials, the project website, press releases, stakeholder group meetings and the DDR/EA made it clear that the current Project has independent utility, is not part of any larger NYSDOT plan, and that any future phase or extension is not currently programmed for funded.
- C8-29** Commenter demanded an investigation on NYSDOT's handling of the public comment period, and a full review of the process for this project in consideration of best practices.
- R8-29** The opportunities for public comment met and exceeded those required by law, see Chapter 5 of this FDR/EA.

9.0 Other/Miscellaneous

- C9-1** Commenter expressed disappointment at the absence of elected officials at the Public Hearing for the Project. Commenter expressed disappointment at leadership on all levels of City government being absent from the process in terms of meeting attendance and submitting comments.
- R9-1** Elected official representatives, including from the Governor’s Office, attended the public hearing. Representatives of elected officials have also been part of the monthly stakeholder group meetings documented in Chapter 5 of this FDR/EA. Elected officials have submitted comments on the DDR/EA, including New York State Senator Timothy Kennedy and New York Assemblymember Crystal Peoples-Stokes.
- The NYSDOT has held regular coordination meetings with the City of Buffalo and obtained City Department of Parks and Recreation, Public Works and Buffalo Sewer Authority input on issues such as landscaping details, utilities, and pedestrian and bicycle improvements. The City of Buffalo has also been a participating agency on the Project and participated in the project stakeholder group.
- C9-2** Commenters stated that the NYSDOT should not lead this project. Some commenters requested that the Project be administered by the Greater Buffalo Niagara Regional Transportation Council (GBNRTC) instead of NYSDOT. Other commenters requested the involvement of other neutral entities outside NYSDOT in the study process that addresses environmental and health impacts and in collaborating on a solution that would consider more than traffic flow.
- R9-2** The FHWA is the federal lead agency and NYSDOT is the joint lead agency for this Project because the Kensington Expressway is a state highway operated and maintained by the NYSDOT and the Project would be funded by state and federal sources. GBNRTC is a planning organization that can conduct studies but does not design or build projects. Note that GBNRTC has been involved in the development of the Project as a participating agency (see Chapter 5 of this FDR/EA). The need for the project includes more than traffic flow (FDR/EA Section 1.3) and a broad range of environmental considerations were evaluated along with consideration of public input during the environmental review process.
- C9-3** Commenters noted general support for the Project. Commenters provided specific rationales for their support, such as the benefits of greenspace on quality of life and health, improved aesthetics, reduced noise, increased property values, local and regional economic benefits, reconnecting communities along Humboldt Parkway, construction jobs, and improved traffic flow. One Commenter noted support and stated that the expressway is a vital road for connecting area residents with the airport, Interstate 90, downtown, and other areas.
- R9-3** Comment noted.
- C9-4** Commenter noted that the considerations with this project include contaminants; maintenance of green space; and the cost to taxpayers.
- R9-4** Hazardous and contaminated materials are addressed in Sections 4.18 and 4.19 of this FDR/EA. Maintenance considerations are discussed in Section 3.4.1.12 of this FDR/EA Ownership and Maintenance Jurisdiction. Maintenance and construction costs are addressed in Section 3.6 of this FDR/EA. An important consideration for the Project is the maximization of the potential community benefit with the available funding.

C9-5 Commenter described impacts associated with the construction of a highway, including destruction of greenspace, parks, and historic landmarks, further diminishing neighborhood character. Commenter stated that highways can cause adverse effects on property values, increased traffic and noise, reduced air quality, among other effects.

R9-5 The Kensington Expressway is an existing highway, not a proposed highway and the Project does not involve a highway expansion. The Build Alternative involves reconstructing the existing highway in a tunnel with approximately 11 acres of greenspace above it. The social, economic, and environmental effects of the Build Alternative were assessed, as documented in this FDR/EA.

C9-6 Commenters requested an Environmental Impact Statement (EIS) be prepared for the project. A variety of concerns were raised as the rationale for an EIS, including air quality at the tunnel portals, health concerns, displacement of residents, consistency with the Climate Leadership and Community Protection Act (CLCPA), and asbestos containment during construction. Some commenters noted that an EIS should be prepared given the scale of the Project within a Disadvantaged Community under the CLCPA.

Commenters also requested that the EIS consider alternatives to “Build” and “No Build,” including expressway removal and other ways of moving people (light rail) and making use of radials.

Commenter stated that a more detailed analysis of air pollution and health effects and other social and environmental impacts should be undertaken as part of an EIS for the Project, including removal of the Kensington Expressway and the restoration and extension of Humboldt Parkway (Concept 10 from the Project Scoping Report). Commenter stated that Concept 10 would have beneficial results in terms of reduced air quality impacts in the project area as a result of redistributing traffic over a much larger area. Commenter noted that an extension of the Buffalo Metro-Rail system to the airport would reduce contaminant levels and totals by reducing the number of vehicles overall. Commenter noted that the Build Alternative does not correct the adverse impacts of the original expressway construction. Commenter requested a ‘holistic traffic study as part of a comprehensive EIS’ that would analyze traffic redistribution patterns, Metro-Rail extension, Smartly Enhanced Multi-Modal Arterials (SEMA) upgrades for the major commercial corridors of Michigan, Jefferson, Fillmore and Bailey and the radials and other enhancements as part of Concept 10e.

R9-6 The National Environmental Policy Act of 1969 (NEPA), as amended, requires federal agencies to assess the environmental effects of their proposed actions and disclose those effects prior to making decisions. NEPA established the Council of Environmental Quality (CEQ) within the Executive office of the President to administer Federal agency implementation of NEPA. CEQ regulations (40 CFR 1500-1508) address the basic decision-making framework and action forcing provisions established by NEPA. In accordance with 40 CFR 1501.3, Federal agencies are responsible for determining the appropriate level of NEPA review. There are three (3) “Classes of Action” that determine how compliance with NEPA is carried out and documented, which include Class I (Environmental Impact Statement), Class II (Categorical Exclusion), and Class III (Environmental Assessment) actions. NEPA requires Federal agencies to prepare an Environmental Impact Statement for major Federal actions that significantly affect the quality of the human environment, an Environmental Assessment for actions not likely to have significant effects or where the significance of the effects is unknown, and a Categorical Exclusion for actions that normally do not have significant effects.

The Federal Highway Administration concurred with the New York State Department of Transportation’s recommendation that the proposed undertaking should be evaluated as a Class III action, requiring the

preparation of an Environmental Assessment (EA), on December 16, 2022, given that the significance of effects of the proposed undertaking were unknown and preparation of an Environmental Assessment would assist in determining the need for an Environmental Impact Statement. For a proposed action that is not likely to have significant effects or when the significance of the effect is unknown (40 CFR § 1501.5), the EA aids in determining the significance of the adverse effects. In accordance with 40 CFR 1501.6, if the adverse effects are not significant or can be mitigated below significant levels, the Federal agency may issue a Finding of No Significant Impact (FONSI). If there are significant effects that cannot be mitigated, then the Federal agency must develop an EIS leading to a Record of Decision.

In accordance with the CEQ regulations (40 CFR 1500-1508), in considering whether the effects of a proposed action are significant, agencies shall analyze the potentially affected environment and degree of the effects of the action (40 CFR 1501.3(b)). In considering the potentially affected environment, agencies should consider, as appropriate to the specific action, the affected area (national, regional, or local) and its resources, such as listed species and designated critical habitat under the Endangered Species Act. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend only upon the effects in the local area (40 CFR 1501.3(b)(1)). In considering the degree of the effects, agencies should consider the following, as appropriate to the specific action: both short- and long-term effects; both beneficial and adverse effects; effects on public health and safety; and effects that would violate Federal, State, Tribal, or local law protecting the environment (40 CFR 1501.3(b)(2)). Effects, or impacts, means changes to the human environment from the proposed action or alternatives that are reasonably foreseeable (40 CFR 1508.1(g)). Effects include direct, indirect, and cumulative effects. Effects can be positive (beneficial) or negative (burdensome or adverse). Furthermore, a proposed undertaking can cause effects on the human environment that are not considered significant.

The EA for the Project was prepared to comply with both NEPA and SEQRA. In determining whether the Project would result in significant effects on the human environment, the NYSDOT considered the criteria contained in Part 15.11 of 17 NYCRR Part 15 (i.e., NYSDOT's SEQRA regulations) and 40 CFR 1500-1508 (i.e., CEQ regulations).

The EA determination did not dictate the level of analyses or public engagement that have been conducted for the Project. For example, the assessment of effects to environmental justice populations and air quality analysis for the Project would not be any different if an EIS were prepared.

The Project would also not cause traffic demand or increase capacity. However, an air quality analysis was conducted for the Project to inform the decision-making process. The air quality analysis consisted of localized concentrations or microscale analysis; mesoscale or regional emissions burden analysis; mobile source air toxics analysis; and construction effects assessment.

The air quality analysis methodology/assumptions and results were developed in coordination with and reviewed by an interagency air quality group established for the Project. The group consisted of USEPA, NYSDEC, FHWA, and NYSDOT and met at least every other month during the development of the EA. In addition, the air quality analysis methodology was developed based on conservative assumptions that over predict rather than under predict pollutant concentrations. As documented in Section 4.9 of this FDR/EA, based on the air quality analysis results and the measures that would be implemented to minimize air quality effects, the Build Alternative would not have an adverse effect on air quality.

Regarding asbestos-containing materials, the NYSDOT has confirmed the presence of non-friable asbestos containing materials in certain caulking materials on the retaining wall expansion joints and at the base of metal guard rails on the top of the retaining walls. Testing completed in December 2023 confirmed that no asbestos is present in the waterproofing material on the back of the retaining walls (see Section 4.18.2 of this FDR/EA). Asbestos containing materials would be removed consistent with a project-specific health and safety plan in compliance with all federal and state regulatory requirements to protect workers and the public. Asbestos containing materials are routinely addressed in transportation projects and their presence does not automatically constitute an adverse effect. Also, asbestos does not pose an “in-place” risk. Effects are associated with removal; however, contract abatement measures/requirements would mitigate any potential adverse effects.

The Project is consistent with the CLCPA as documented in Section 4.10 of this FDR/EA. Effects on environmental justice populations (which include CLCPA disadvantaged communities) were assessed, as documented in Section 4.4 of this FDR/EA; the Build Alternative would not result in adverse effects.

Regarding the request for further study of health impacts, the FDR/EA documents the effects (as defined by 40 CFR 1508.1(g)) of the proposed action on the human environment, which includes consideration of potential effects on public health and safety. As documented in Section 4.9 of this FDR/EA, the Project will not result in exceedances of the National Ambient Air Quality Standards, which are criteria established by the United States Environmental Protection Agency (USEPA) to protect public health, including the health of sensitive populations such as asthmatics, children and the elderly. As documented in this FDR/EA, the Build Alternative will provide public health benefits, such as access to new greenspace, increased opportunities for physical activity related to the proposed bicycle and pedestrian improvements, reduced noise levels, and improved aesthetics.

The traffic analyses are documented in Sections 2.4.1 and 3.4.1 of this FDR/EA.

The Build Alternative would not result in the displacements of any residences.

Regarding Concept 10, refer to response to comment C4.2-1. Regarding transit alternatives, refer to response to comment C4.3-1.

C9-7 Commenters requested an extension of the DDR/EA comment period.

R9-7 The original 45-day public comment period for the DDR/EA exceeded the required 30-day public comment period required under FHWA’s NEPA implementing regulations (23 CFR 771.119 (d)). Based on the level of public interest and to afford the public more time to submit comments, the NYSDOT subsequently extended the comment period an additional 14 days, for a total public comment period of 59 days. Comments are summarized and substantive comments responded to in this appendix. This appendix also includes comments received up to January 10, 2024. Opportunities for public involvement will continue through final design and construction (FDR/EA Section 5.8).

C9-8 Commenters expressed general opposition to the project. One commenter stated the project would entrench a bad decision made 50 years ago for another 50 years and the community deserves something better. Another stated they reviewed all the comments and noted there is overwhelming public opposition to this project. Rationales for general opposition included cost, air quality, noise, health issues, damage to homes, more reliance on cars, and risk of increased crime.

- R9-8** Comment noted. The applicable environmental issues raised in the comment were considered and documented in Chapter 4 this FDR/EA.
- C9-9** Commenters stated NYS Route 33 is needed for commuting.
- R9-9** Comment noted. The role of NYS Route 33 in the transportation system is documented in the purpose and need statement (FDR/EA Section 1.3).
- C9-10** Commenter stated the project is going to upgrade the City of Buffalo significantly, but they wished NYSDOT would have considered concrete paving as an option.
- R9-10** Comment noted. Concrete paving was considered for the Project and will be used inside the tunnel.
- C9-11** Commenters expressed general unease or apprehension regarding travel through tunnels (claustrophobia or other psychological concerns). Commenter asked how the tunnel will shape the community around it and stated that the tunnel will add to seasonal depression. Commenters stated that they will not use the tunnel and will instead travel on local streets, increasing traffic in neighborhoods.
- R9-11** Comment noted.
- Regarding how the tunnel would shape the local community, the Build Alternative would improve community connections, greenspace access and aesthetics (see FDR/EA Section 4.2). As stated in FDR/EA Section 4.21, the Build Alternative would not affect regional land use patterns because it does not provide a new regional transportation route, provide a new interchange, or increase existing facility capacity.
- C9-12** Commenter made general comments pertaining to the NYS Route 198 Scajaquada Corridor Project and GBNRTC Region Central Project and noted NYSDOT has not responded to the Region Central concept that has widespread support.
- R9-12** FDR/EA Section 1.4.2 discusses the status of the independent NYS Route 198 Scajaquada Expressway Corridor Project and the independent Region Central Initiative. The Kensington Expressway Project would not preclude the consideration of potential future projects in the NYS Route 198 corridor.
- C9-13** A Commenter requested an EIS using the social, environmental, and economic conditions that existed for the Kensington corridor prior to the construction of the Kensington Expressway as a baseline. Another commenter shared a detailed rationale for why they also believed an analysis of the environmental, social, and economic impacts would necessarily begin with an analysis of conditions that prevailed prior to construction of NY Route 33.
- R9-13** NEPA requires the "No action" or "No Build" Alternative be included in the reasonable range of alternatives that are studied as part of the environmental review (NEPA) process. The No Build Alternative serves as a baseline against which the other alternatives can be compared. In analyzing alternatives, NEPA requires an assessment of the "Affected Environment", including reasonably foreseeable environmental trends and planned actions in the area. Use of historical conditions in a NEPA analysis is only appropriate as part of an assessment of cumulative effects. An assessment of cumulative effects is discussed in Section 4.22 of the FDR/EA. The existing conditions baseline used in this FDR/EA is consistent with NEPA and SEQRA. This FDR/EA acknowledges the effects of the original expressway construction in Section 2.1. Refer to the response to comment C9-6 regarding the request for an EIS.

C9-14 Commenter cited SEQRA regulations for effects indicative of a significant effect on the environment including:

“The impairment of the character or quality of important historical, archaeological, architectural, or aesthetic resources or of existing community or neighborhood character.”

Commenter noted that historic structures in the project area include St Frances de Salles Church, Faith Missionary Church, historic homes, and the Museum of Science and its historic artifacts. Commenter stated that these and other historical and architectural resources in the project area are located less than 100 feet from planned blasting activities and indicated their belief that blasting can reasonably be expected to cause structural and other damage that would impair the character or quality of these important historical, archaeological, architectural, or aesthetic resources or of the existing community or neighborhood character.

“A major change in the use of either the quantity or type of energy.”

The Commenter stated that the Build Alternative requires the installation of two underground substations to provide power for tunnel operations and indicated their belief that this would result in a major change in the quantity of energy used compared to the present Route 33 requirements.

“The creation of a hazard to human health.”

The Commenter stated that the Build Alternative requires removal of asbestos-containing material some of which may be released to the ambient air creating a hazard to human health.

Commenter also stated that blasting can cause fissures in the remaining bedrock creating a pathway for radon gas. Based on the permeability of the overburden, radon gas can travel into residential homes and buildings through cracks and holes in the foundations. This naturally occurring radioactive gas cannot be detected without monitoring equipment and will increase the risk of radon-induced lung cancer over time creating a hazard to human health.

Commenter additionally indicated their belief that various high decibel sounds emitted from construction activities over a period of 4-5 years had the potential to affect the hearing of residents living close to these activities, creating a hazard to human health.

R9-14 The FDR/EA for the Project was prepared to comply with both NEPA and SEQRA. In determining whether the Project would result in significant effects on the human environment, the NYSDOT considered the criteria contained in Part 15.11 of 17 NYCRR Part 15 (NYSDOT’s SEQR regulations) and 40 CFR 1500-1508 (i.e., CEQ regulations).

Controlled blasting would not cause damage to buildings, including historic structures (see response to comment C7.14-1). Effects on historic resources are documented in Section 4.6 of the FDR/EA.

Regarding the energy use by the proposed tunnel systems, see response to comment R7.9-5.

Regarding asbestos, see response to comment R7.12-1.

Regarding radon, see the response to comment R7.15-3.

Section 4.20.1 documents the assessment of construction noise for the Project. Construction noise would vary in intensity and location and the highest levels predicted would not be continuous throughout the construction duration. As documented in Section 4.20.1, a Construction Noise Mitigation Plan would be developed during final design to minimize noise effects. The plan would include the implementation of a construction noise monitoring program.

- C9-15** Commenter stated the Build Alternative is inconsistent with the NYSDOT mission statement and five priority results. Commenter noted that the NYSDOT mission includes a statement that NYSDOT has a responsibility to all users of the roadways and methods of transportation, not just motor vehicles. Commenter cited a NYSDOT priority result concerning contributions to the physical safety of people and goods while in transit and indicated their belief that the Build Alternative was inconsistent with this priority result because it would discharge additional pollutants into a neighborhood already having pollutants and sickness related to these pollutants higher than the national averages. Commenter also stated that blasting required in the Build Alternative would release asbestos into the air further contaminating the neighborhood and endangering the physical safety of those affected.
- R9-15** Pedestrian, bicycle, and transit-related improvements are incorporated in the design of the Build Alternative, see FDR/EA Section 3.4.2. Air quality is discussed in Section 4.9 of this FDR/EA, no adverse effects are expected and additional measures to improve air quality are included in the project. Testing has shown that non-friable asbestos containing material was found in the caulking in every third joint of the retaining walls and at the base of the guiderail on top, no asbestos was found in the waterproofing material behind the retaining walls. The non friable Asbestos containing caulking material would be controlled in accordance with federal and state requirements to avoid risks to workers and public (Section 4.18). Blasting is used to remove rock and would not be used to remove asbestos-containing materials.
- C9-16** Commenter expressed concern regarding plans to cover the Kensington Expressway and ‘make it the way it used to be.’ Commenter stated their position that it would not be possible to make it the way it used to be because the original [Humboldt Parkway] is now gone and there is no way to bring it back.
- R9-16** Although the Build Alternative is not intended to be a recreation of Humboldt Parkway as it existed prior to the Kensington Expressway, it does incorporate many design elements (such as the median width and tree layouts) based on the original design. For more information, see response to comment C7.5-6.
- C9-17** Commenter stated that NYSDOT has failed to consider the social and environmental impacts of the proposed project as required by SEQRA. Commenter also stated that NYSDOT has admitted that the net environmental impacts of capping part of NYS Route 33 will be worse compared to the status quo.
- R9-17** Beneficial and adverse effects of the Build Alternative were considered as documented in this FDR/EA. As documented in Chapter 4, the Build Alternative would have numerous environmental benefits, including reduced noise levels along the tunnel cap, reduction in impervious surface/stormwater runoff, support for increased physical activity and connectivity with the new greenspace and pedestrian/bicycle infrastructure improvements, and improved aesthetics.
- C9-18** Commenter stated that communities directly affected by the construction and environmental effects of the proposed Project are entitled to equal protection of the law in all regards to the process involved and its consequences.

- R9-18** The environmental review process has been conducted in accordance with federal and state requirements, including those related to environmental justice. As documented in FDR/EA Chapter 5, the NYSDOT has provided, and will continue to provide, meaningful opportunities for public and agency engagement in the Project. The Build Alternative has been developed based on a balanced consideration of the need for safe and efficient transportation; the social, economic, and environmental effects of the Build Alternative; and national, state, and local environmental protection goals.
- C9-19** Commenter stated that the comment they had submitted did not appear within the compilation of DDR/EA Public Comments published on the project website in December 2023.
- R9-19** The comment has been added to this comment-response appendix.

10.0 Elected Officials, Agencies and Organizations Comments and Responses

Elected Officials

US Representative Brian Higgins

- C1461.01** In the context of the ongoing environmental review for the Kensington Expressway Project, the New York State Department of Transportation has solicited comments from stakeholders and the public broadly. I write today to convey my own input in that process.
- The current design is largely based on a concept that grew out of the organizing of dedicated members of the local community, the Restore Our Community Coalition. For at least a decade, they have made clear to me and to other governmental leaders what their vision is for their own community. I am pleased to support their vision for their community, and pleased to support the project generally as articulated in the September 12 Draft Design Report.
- R1461.01** Comment noted.
- C1461.02** I respect the views of many others, of course, who would prefer the elimination of this section of expressway altogether and the more complete restoration of the Olmsted design. Were it achievable, this would likely be the consensus option. But I have learned at length and with great difficulty the hard truth that NEPA and SEQRA and their related body of public policy are, in significant ways, deeply flawed. Because of these deficiencies, the complete elimination of this section of the Kensington Expressway would not survive an environmental review under any circumstances.
- R1461.02** Comment noted.
- C1461.03** As the model of the Rose Kennedy Greenway in Boston shows us, new urban greenspace on top of a capped highway can be of very high quality and can serve to reverse the blighting effects of highways and to increase property values and the life quality of a community. It is important, however, that NYSDOT pay close attention to the details of how this greenspace is built out and not cut corners with regard to the landscaping and streetscape finishes of the final product.

R1461.03 Comment noted. The design-build contract documents will include provisions to provide high quality landscaping and streetscaping, as well as outlining opportunities for community input through final design.

NYS Senator Timothy M. Kennedy

C791.01 As Chairman of the Senate Transportation Committee and the New York State Senator representing the communities that would be most impacted by the proposed reimagining of a 4,150 foot section of the Kensington Expressway from Dodge Street to Sidney Street, I write in strong support of this proposal and the positive impact it will have on the community.

As you know, the location of this section of the Kensington is a depressed high-speed expressway which was formerly home to Humboldt Parkway, a scenic tree-lined Olmsted parkway that connected Delaware Park to now-MLK Jr. Park in the heart of Buffalo's East Side. Regretfully, during the era of expressway building and so-called urban renewal, the decision was made to use that right-of-way for an expressway. The community was left physically divided by an expressway, where they were previously connected by greenery. Housing values and conditions fell, negative health outcomes increased, and a community was damaged.

R791.01 Comment noted.

C791.02 This project promises to begin the process of rectifying those wrongs and reconnecting the community with a newly-treed green space that helps to recreate a portion of what was lost. The proposal in question was developed through extensive work with the neighborhood stakeholders, led by the Restore Our Community Coalition, a grassroots organization that has led the fight for decades to reconnect this community with Olmsted's original vision in mind. I applaud ROCC for their tireless efforts, and I know that with their ongoing participation and input, this project will deliver the results the community wants and deserves.

R791.02 Comment noted.

C791.03 The loss of Humboldt Parkway was tragic, but any decisions made now must be made in the context of our lived reality, which includes acknowledging the 70,000+ vehicles that use this route every day. If the expressway were to be removed tomorrow and fully filled in, those individuals would still need to find a way to their destinations, which would deposit them instead onto Buffalo's street grid, clogging the city with traffic and increasing pollution in countless neighborhoods from the addition of tens of thousands of cars and trucks idling at stop signs and red lights. Simply put, that is not environmental and social justice and does not meet the aims of this project.

R791.03 The impacts associated with removal of the Kensington Expressway were considered in the Project Scoping Report (Concept 10) and the supplemental traffic analysis provided in Appendix B8 of this FDR/EA. Congestion, safety and air quality were also among the considerations documented in the PSR as the basis for the dismissal of Concept 10.

C791.04 The goal of the Kensington Expressway Project is to build a tunnel from Dodge Street to Sidney Street to recreate the heart of Humboldt Parkway. This will reduce noise and air pollution that impacts

surrounding neighborhoods, and does not resort to flooding the streets of Buffalo with cars that the current street grid and traffic system simply cannot absorb.

The addition of 11 acres of green parkland to a disadvantaged community is a once-in-a-generation opportunity for the City of Buffalo. It will increase home values, helping longtime residents to build generational wealth, and it will provide new options for healthy recreation for children and families. The view out the front window of many of the beautiful and architecturally notable homes along the expressway will be transformed from an open-cut highway into a scenic greenway. This is a laudable, achievable, and transformative vision for the future of this community. It's an opportunity that we must seize while we can.

R791.04 Comment noted.

C791.05 For these reasons, I strongly support this proposal and will continue to work with the Department of Transportation and other stakeholders to bring this project to fruition. Thank you for your hard work. Should you have any questions, I welcome your call.

R791.05 Comment noted.

NYS Assemblymember Crystal Peoples-Stokes

C1450.01 On behalf of the residents of the 141st Assembly District, I am writing to express my full support for the ROCC (Restore Our Community Coalition)/Covering the Rt. 33 Kensington Expressway Project. This reclamation initiative has been a community-led advocacy effort for 15 plus years by residents from the immediately surrounding neighborhoods.

I support Phase One of the ROCC project which is designed to reconnect neighborhoods and streets that were divided due to the original construction of the Rt. 33 Kensington Expressway in the 1950's. By covering a portion of the Rt. 33 Kensington Expressway from Sidney Street to Dodge Street, it is our collective vision to restore Frederick Law Olmsted's design for Humboldt Parkway for recreational greenspace, to stabilize and increase area property values, allowing opportunities for families to create generational wealth, and improve community health by reducing vehicular emissions.

R1450.01 Comment noted.

C1450.02 The loss of Humboldt Parkway was tragic, but any decisions made now must be made in the context of our lived reality, which includes acknowledging the 70,000+ vehicles that use this route every day. If the expressway were to be removed tomorrow and fully filled in, those individuals would still need to find a way to their destinations, which would deposit them instead onto Buffalo's street grid. While originally designed to accommodate 500,000+ inhabitants, not cars, clogging the city with traffic and increasing pollution in countless neighborhoods from the addition of tens of thousands of cars, buses and trucks idling at stop signs and red lights is a nonstarter. This is not environmental and social justice and does not meet the aims of this project. The goal of the Kensington Expressway Project is to build a tunnel from Dodge Street to Sidney Street on Humboldt Parkway. This will reduce noise and air pollution that impacts surrounding neighborhoods and does not resort to flooding the streets of Buffalo with cars that the current street grid and traffic system simply cannot absorb.

- R1450.02** The impacts associated with removal of the Kensington Expressway were considered in the Project Scoping Report (Concept 10) and the supplemental traffic analysis provided in Appendix B8 of this FDR/EA. Congestion, safety and air quality were also among the considerations documented in the PSR as the basis for the dismissal of Concept 10.
- C1450.03** This \$1 billion construction project can create thousands of family-sustaining wages and jobs, with apprenticeship training opportunities for many years here in a low-income community of color that has experienced decades of disinvestment, discrimination, redlining, and most recently, a heinous and violent act of racism. This is a once-in-a-generation opportunity to right a historical wrong and must not be squandered.
- R1450.03** Comment noted. As documented in Section 4.5.3.1 of this FDR/EA, the Build Alternative includes a local hire program commitment to encourage the training and hiring of local residents for construction and construction-related employment opportunities.
- C1450.04** This reclamation infrastructure project is at its core, restorative and social justice. The expressway's retaining walls have reached the end of their lifespan. Redesigning and reconstructing this area will enhance public safety through implementing traffic calming measures and improving neighborhood aesthetics.
- R1450.04** Comment noted.
- C1450.05** In closing, I support the ROCC/Covering the Rt. 33 Kensington Expressway project and desire to see it create jobs for area residents, improve public health, beautify and reconnect surrounding neighborhoods, improve transit safety and efficiency, and increase area property values. I thank you for the efforts that the NYS Department of Transportation have undertaken to help us reach this point and I look forward to continuing working with your agency, the community, and my colleagues in government to see this project through to fruition.
- R1450.05** Comment noted.

Agencies

Town of Aurora Superintendent of Highways

Please see Consolidated Response B at the end of this Section.

U.S. Environmental Protection Agency

- C10-1** EPA acknowledges the inclusion of an Executive Summary, including a table summary of effects and mitigation of those adverse effects. This is a NEPA best practice that helps the public understand potential impacts and identifies commitments by the Lead Agency and Project Sponsors in addressing adverse impacts adequately.
- R10-1** Comment noted.

- C10-2** EPA concurs that the proposed action follows the required transportation conformity requirements for an area that is in attainment for all National Ambient Air Quality Standards (NAAQS) and the micro and mesoscale emissions analyses follow the standard guidance, though they are not required per transportation conformity.
- R10-2** Comment noted.
- C10-3** The EA cites Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629; February 16, 1994) as its basis for the EJ analysis regarding the proposed action. While appreciated, Executive Order 14096: Revitalizing Our Nation's Commitment to Environmental Justice for All (April 21, 2023) was signed to provide updated language regarding EJ and to further value the role of EJ in NEPA documents, including EAs.
- Recommendation: While EPA understands the footnote regarding the clarification provided by the Office of the President, EPA continues to recommend that EO 14096 be incorporated into the EJ analysis for the Final EA. While EO 12898 is a longstanding agency practice, much of what EPA has developed in recent years would require that the Lead Agency heed to the direction given by EO 14096 for federal agencies to consider "...best available science and information on any disparate health effects (including risks) arising from exposure to pollution and other environmental hazards..." Therefore, EPA continues to emphasize the importance of clarifying details particularly as it relates to the population within the study area as clearly as possible.
- R10-3** The NYSDOT conducted the environmental justice assessment for the Project per direction from the FHWA, and ultimately the Council on Environmental Quality memo that was provided to federal agencies in April 2023, which states "The new EO complements EO 12898 and does not disrupt ongoing NEPA reviews. Agencies should continue to perform environmental justice analyses under existing NEPA implementing procedures and longstanding agency practice and, in addition to referring to the text of EO 14096 and EO 12898, may continue to look to the 1997 *Environmental Justice Guidance under the National Environmental Policy Act* and the 2016 report *Promising Practices for EJ Methodologies in NEPA Reviews* to inform analysis related to environmental justice." The environmental justice assessment presented in Section 4.4 of this FDR/EA does reference EO 14096.
- C10-4** EPA appreciates the visual aids associated with identifying impacts to Environmental Justice block groups that will see potential effects from the construction and built environment of the proposed action.
- EPA acknowledges the inclusion of analyzing individual block groups within the project area in addition to an area wide assessment. This can help identify individual areas within the overall project area that may warrant further consideration, analysis, outreach, and/or mitigation strategies. These best practices should be continued as a NEPA best practice.
- R10-4** Comment noted.
- C10-5** It is noted that potential increases in property taxes could be a concern for low-income homeowners and renters but such increases could be offset by project benefits. These benefits include construction spending that would increase employment and earnings in the construction industry.

Recommendation: EPA recommends the Lead Agency and Project Sponsors consider implementing a Community Benefits Agreement (CBA). A CBA can be designed to assist small businesses and job

seekers in finding or obtaining construction contracts, jobs, and training opportunities for residents who live in economically disadvantaged areas. Additionally, NYSDOT can require via the CBA, that contractor(s) must hire 25-50% of workers from the community affected by the project. This will result in actual benefits to the communities near the construction site. Similar commitments were made by the Federal Agency and Project Sponsors in the I-81 Viaduct Project during the Design and Environmental Review process.

R10-5 As documented in Section 4.5.3.1 of this FDR/EA, the NYSDOT has committed to the following:

- NYSDOT will partner with local community organizations, unions and political leaders to develop a program for local hiring.
- In coordination with FHWA, NYSDOT will include a local hiring preference in the contract documents for the Kensington Expressway Project to encourage local hires for the contracts.
- NYSDOT will advertise training programs and construction employment opportunities in local media outlets, public meetings and the project’s outreach center.
- NYSDOT will monitor the local hiring metrics throughout the project and conduct regular meetings with partnering agencies to discuss progress and any steps to modify the initiatives.
- NYSDOT is currently surveying community training partners to gauge their abilities in providing training classes. Supportive service programs designed to keep trainees on the path to completion will be included.
- NYSDOT is working with the City of Buffalo to coordinate efforts and assess local needs.
- NYSDOT is also working with the Department of Labor to identify local workforce goals.

C10-6 EPA acknowledges the inclusion of foreseeable future and potential cumulative impacts that may be experienced within the study area due to other proposed or ongoing projects in the City of Buffalo and surrounding areas.

R10-6 Comment noted.

C10-7 EPA commends the Lead Agency and Project Sponsors on its extensive efforts regarding public participation throughout the development of the Draft EA. EPA has participated in the monthly stakeholder meetings both virtually and in-person and found the sessions to be quite valuable towards effective meaningful engagement, particularly regarding transportation projects, but also in NEPA overall.

▪ Recommendation: EPA recommends FHWA include this project as a Best Management Practice (BMP) for future NEPA scoping and public engagement. In addition, EPA is currently working on Transportation Technical Guidance and would like to also cite this project as a BMP for future transportation work as well as Environmental Justice guidance through a recommendation to future updates on the guidance document: Promising Practices in NEPA Reviews.

R10-7 Comment noted.

C10-8 There does not appear to be a mention of the community engagement work being led by the New York State Department of Environmental Conservation (NYS DEC) – Region 9 in the study area, nor EPA’s efforts with respect to disaster recovery and resiliency alongside New York State Department of State and their Brownfields program and the East Buffalo Collaborative. We regret that these connections are not yet disclosed for public awareness and understanding of other avenues for engagement beyond the Kensington Expressway Project.

Recommendation: EPA recommends that these ongoing initiatives be mentioned, especially considering that many internal meetings were held throughout scoping to support interconnectivity between the proposed action on Kensington Expressway and how the reconnection of the neighborhood will lead to necessary improvements on other elements of local infrastructure. Especially as it relates to the environment and public health of the community most impacted by the proposed action. EPA encourages the Project Sponsors and Lead Agency to consider continuing its participation with these other initiatives throughout the completion of The Project.

R10-8 This FDR/EA does not reference the ongoing community engagement being conducted by the NYSDEC and USEPA, since these are separate, independent efforts. The assessment of cumulative effects considered reasonably foreseeable future actions within the Study Area, including the Commercial Building Stabilization Fund Projects (utilizing the East Side Collaborative Fund).

C10-9 EPA recommends NYSDOT continue to host regular community engagement meetings throughout construction in addition to maintaining the community liaison office for ongoing updates through completion. These meetings should be open to stakeholders and local community members at-large. These meetings can be hosted in conjunction with the East Buffalo Collaborative and/or the NYS DEC monthly community engagement sessions.’

R10-9 NYSDOT will continue to keep the project outreach office open and conduct community engagement throughout construction of the Project.

C10-10 The EA states that the community outreach office is open to the public Tuesday through Friday from 9:30am to 6:30pm and from 10am to 2pm on Saturday, with occasional modifications for staff to conduct direct community outreach.

Recommendation: EPA recommends that NYSDOT considers having later evening hours on some days or varying hours to accommodate different work schedules, particularly those who work during the day, through completion of the project.

R10-10 The Saturday office hours are offered to accommodate those with different work schedules. In addition, the project team has attended and will continue to attend community events, many of which are on the weekends and/or during evening hours. Also, the NYSDOT has met with individual groups upon request, at the time and place of their choosing.

Organizations

American Council of Engineering Companies of New York

C1615 As the leaders in the design and consulting engineering industry, we submit this testimony in support for the NYS Route 33 Kensington Expressway Project. The purpose of the Project is to reconnect communities while simultaneously addressing the inherent transportation issues throughout the transportation corridor. Through proper planning and engineering, the Project overcomes a number of significant issues such as maintaining traffic flow, pedestrian and bicycle mobility while modernizing the corridor, connecting communities cut off from each other, and addressing various geometric and infrastructure issues. The Project addresses various land use issues, and creates continuous greenspace, thus enhancing the visual and aesthetic environment. These changes add great transportation and environmental improvements in the NYS Route 33, Kensington Expressway between Best Street and East Ferry Street, including Humboldt Parkway within these project limits.

The additional funding identified by both state and federal sources will modernize, enhance, improve, and reunite neighborhoods, through thoughtful and carefully engineered plans. ACEC New York supports this project and looks forward to seeing it move towards the implementation stages, construction, and completion.

R1615 Comment noted.

American Concrete Pavement Association – New York State Chapter

C1109 The American Concrete Pavement Association supports the Kensington Expressway project, as this important and long-discussed project will provide economic and community benefits to the Buffalo area.

We also suggest that serious consideration be given to upgrading the surface roads surrounding the Kensington Expressway, including the Humboldt Parkway, with Portland Cement Concrete Pavement (PCC Pavement). PCC Pavement will provide numerous benefits to the Department of Transportation, the traveling public, and most important, the residents along the Humboldt Parkway. PCC Pavement falls in line with the NYSDOT Comprehensive Pavement Design Manual, Chapter 3, where its use is encouraged on new pavements in Urban Corridors.

Concrete pavement's light color provides higher visibility for pedestrian safety and requires less use of electric lighting. It also minimizes Urban Heat Island effects on the surrounding community and does not emit noxious fumes during its construction or cure time. Best of all, a properly designed and constructed PCC pavement will provide a climate resilient road that will withstand the test of time with minimal maintenance, providing benefit to the community for generations to come.

Thank you for the opportunity to provide input on this critical project that has the ability to dramatically improve the quality of life for the local community and the Buffalo region.

R1109 Comment noted. The Project is being procured through a design-build process and the design-build team will have the opportunity to propose innovations for all aspects of the design, including pavement materials.

American Rated Cable and Communications, Inc.

Please see Consolidated Response A at the end of this Section.

Black Chamber of Commerce

C1179.01 The Black Chamber of Commerce of Western New York (BCCWNY) supports the Kensington Expressway Project, the design and environmental assessment as necessary steps towards the restoration of Humboldt Parkway.

R1179.01 Comment noted.

C1179.02 This project is a vital part of attaining the goal to reconnect a community that has been marginalized for decades and disenfranchised from the current economic resurgence of Buffalo. The construction of Route 33 brought tremendous economic and environmental harm and devastation to the residents and businesses along Humboldt Parkway, Hamlin Park, Trinidad Park and MLK Park neighborhoods and business corridors in the City of Buffalo, especially Fillmore and Jefferson Avenues. Recreating a green space and access across East-West segments of streets disrupted by the expressway will help remediate the physical and psychological barrier to social and economic vitality for residents, businesses, and anchor institutions around Humboldt Parkway.

R1179.02 Comment noted. As documented in Section 1.3 of this FDR/EA, the Project would address the need to reconnect the community by creating continuous greenspace and providing east-west connections.

C1179.03 Removing the direct impact of pollution from the Kensington Expressway traffic will be a significant health benefit from said project while maintaining an important transportation link for the regional traffic. We request assurance that the ventilation system that is being proposed does not cause severe health ramifications as the construction of Route 33 did originally. While the environmental assessment indicates the air quality levels are below the national ambient air quality standard, this benchmark may not be an adequate measurement to impede diseases that have been prevalent in this neighborhood due to the highway running through it.

R1179.03 The National Ambient Air Quality Standards (NAAQS) are standards set by the United States Environmental Protection Agency (USEPA) that protect public health, including the health of sensitive populations, including asthmatics, children and the elderly. The air quality analysis methodology was developed in coordination with and reviewed by an interagency air quality group that included USEPA, NYS Department of Environmental Conservation and Federal Highway Administration (FHWA). The analysis used regulatory models and followed USEPA and FHWA guidance and procedures (see Appendix D7 of this FDR/EA). The highest concentrations predicted are well below (better than) the NAAQS. In addition, the Project includes air quality mitigation measures to minimize air quality effects (Section 4.9.4.6 of this FDR/EA). These measures were not credited in the quantitative analysis.

- C1179.04** The Best Street roundabout configuration appears to be an effective way to maintain the flow of traffic, however in light of the unique and extremely complex design, we urge further investigation regarding the safety of pedestrian crossing and movement. This is a greater concern during summer months when annual events take place in MLK Park which draw huge crowds of people and many out of town visitors.
- R1179.04** The Best Street bridge roundabout design includes a 10-foot-wide multiuse path for pedestrian movements along the roundabout and crosswalks with clearly marked pedestrian priority signage and appropriate lighting at night (see Section 3.4.2.1 of this FDR/EA). In general, roundabouts improve safety for pedestrians by reducing vehicle speeds and reducing crossing distances. The splitter islands provide a refuge such that pedestrians only need to cross one direction of traffic at a time. Design details for the pedestrian crossings of the roundabout and potential measures to increase driver awareness of the need to yield to pedestrians will continue to be developed during final design.
- C1179.05** We do not support the removal of parking along Humboldt Parkway, especially where it is completely eliminated for residents.
- R1179.05** As discussed in Section 3.4.1.10 of this FDR/EA, the Build Alternative would require the elimination of up to 51 on-street parking spaces out of approximately 173 spots available in residential areas along Humboldt Parkway. Of these 51 total on-street parking spots, it is expected that 25 spots would be removed due to new curb bump outs which are incorporated into the Project to improve intersection sight distances and to shorten pedestrian street crossings. The remaining 26 on-street parking spots to be removed are on Humboldt Parkway southbound between Northland Avenue and East Ferry Street and need to be eliminated in order to provide a continuous bicycle lane, and to provide consistent street tree plantings in tree lawns (or snow storage areas) between the sidewalk and curb. A parking demand study, included in Appendix A9, was completed for this section of Humboldt Parkway, which identified that parking along these two blocks has very low usage. Additionally, residences on Humboldt Parkway in this area have access to off-street driveways. No commercial business parking would be impacted. Therefore, the proposed parking removal would not adversely affect residents or access to businesses. Details of the locations where the Build Alternative would impact parking spaces is provided in Appendix A9.
- C1179.06** The chamber supports the full involvement of community stakeholders in the design process, and that the designers heed the community goal to insure that the infrastructure designed will lead to a revitalized, walkable, and healthy urban environment. The BCCWNY urges the inclusion of residents and businesses from the area, especially those in the Jefferson and Fillmore corridors, be included in the construction of the project.
- R1179.06** Measures that have been and will continue to be undertaken to involve the public in the Project are documented in Chapter 5 of this FDR/EA. As documented in Section 4.5.3.1 of this FDR/EA, the Build Alternative includes a local hire program commitment to encourage the training and hiring of local residents for construction and construction-related employment opportunities.
- C1179.07** The potential long-term employment opportunities and the increase in business revenue to be created by a project of this scale will be of great benefit to this community that struggles to be included in the region's current economic advancement.
- R1179.07** Comment noted.

- C1179.08** The current concept still needs some clarification and context including a thorough analysis of environmental impact and related public health concerns.
- R1179.08** The FDR/EA documents the effects (as defined by 40 CFR 1508.1(g)) of the proposed action on the human environment, which includes consideration of potential effects on public health and safety. Environmental impacts (including air quality, noise, hazardous materials and others) were thoroughly evaluated as documented in this FDR/EA.
- C1179.09** We are confident that our neighborhood transformation will thrive with reconnecting our community and restoring the greenspace designed by Frederick Law Olmsted as a capstone parkway within the park system. Converting this decaying bathtub portion of the expressway to a beautiful connector, improving the visual quality and natural environment of Humboldt Parkway will catalyze improvement of property values and assist in the revitalization of business districts along Fillmore and Jefferson Avenues. A restored Humboldt is essential for a complete renaissance of Buffalo where everyone can participate in the progress, and those neighborhoods once scarred can be restored.
- R1179.09** Comment noted.

Black Rock Riverside Alliance

- C732.01** Given what we know from our experiences with community outreach and input, the comment period and the methods of outreach by the NYSDOT have been inadequate to truly get a consensus from the community on what their needs and concerns are regarding the redesign of the 33. A longer comment period should be allowed and more active engagement with the community needs to happen and while the original comment period has been extended by 14 days, a longer comment period is needed, with additional meetings convened to explain the complex findings in the environmental assessment document to stakeholders.
- R732.01** As detailed in Chapter 5 of this FDR/EA, FHWA and NYSDOT have provided, and will continue to provide, meaningful opportunities for public and agency engagement in the Project. Section 5.8 of the FDR/EA describes the public engagement opportunities that will be available during final design and construction.

The original 45-day public comment period for the DDR/EA exceeded the 30-day public comment period required under FHWA's NEPA implementing regulations (23 CFR 771.119 (d)). Based on the level of public interest and to afford the public more time to submit comments, the NYSDOT subsequently extended the comment period an additional 14 days, for a total of 59 days.
- C732.02** The environmental health of this community given its central location in the city, will impact the health of the city as a whole and should not be put in jeopardy without thorough investigation. The environmental impact of covering a section, albeit a small section, of the 33 could have serious negative impacts on a community that already is a DAC with high incidents of heart disease, respiratory illnesses, low birthweight babies and premature deaths. A full environmental impact study should be mandated before any design moves forward in order to ensure that the air born pollutants that currently come from the high traffic volume on the 33 are not simply concentrated on the ends of the proposed cap,

causing even more risk for serious and life-threatening illnesses for the people in those areas. This more thorough study should also look at the impacts of disturbing potential dangerous particulate matter into the air during construction process.

R732.02 The air quality analysis that was conducted for the Project (documented in Section 4.9 of this FDR/EA) shows the following:

- There would be a slight decrease in pollutant concentrations at locations along the proposed tunnel cap.
- In the absence of mitigation, there would be a slight increase in pollutant concentrations near the tunnel exit portals.
- The highest predicted total concentrations near the tunnel portals (including a background concentration) are well below the applicable health-based ambient air quality standards.

The Project includes air quality mitigation measures to minimize air quality effects. These measures were not credited in the quantitative analysis.

As documented in the FDR/EA, based on the air quality analysis results and the measures that would be implemented to minimize air quality effects, the Build Alternative would not have an adverse effect on air quality.

Section 4.20.3 of this FDR/EA documents the temporary air quality effects that could occur during construction of the Build Alternative, as well as the measures that would be implemented to avoid and minimize these effects. The construction air quality mitigation measures include requiring the use of newer/lower emitting equipment, a dust control plan, idling restrictions, and a construction air quality monitoring program (including action levels that would trigger investigation and changes in construction methods).

C732.03 We urge the NYSDOT to slow down this process and allow this once in a lifetime opportunity to create a healthier more community centric environment and safer, more connected complete street neighborhoods and city.

R732.03 The NYSDOT has developed this Environmental Assessment in accordance with the one-year time frame requirement specified in 40 CFR Part 1501.10.

Bromeo Forum

C1178.01 We are in support of the direction that the Kensington project is going with this initial phase of a covering to continue the connection of MLK Park and Delaware Park.

R1178.01 Comment noted. The Project does not include additional phases, but would not preclude additional independent projects to further the goal of connecting MLK Jr. and Delaware Parks.

C1178.02 We do not support the removal of parking along Humboldt Parkway, especially where it is completely eliminated for residents.

- R1178.02** As discussed in Section 3.4.1.10 of this FDR/EA, the Build Alternative would require the elimination of up to 51 on-street parking spaces out of approximately 173 spots available in residential areas along Humboldt Parkway. Of these 51 total on-street parking spots, it is expected that 25 spots would be removed due to new curb bump outs which are incorporated into the Project to improve intersection sight distances and to shorten pedestrian street crossings. The remaining 26 on-street parking spots to be removed are on Humboldt Parkway southbound between Northland Avenue and East Ferry Street and need to be eliminated in order to provide a continuous bicycle lane, and to provide consistent street tree plantings in tree lawns (or snow storage areas) between the sidewalk and curb. A parking demand study, included in Appendix A9, was completed for this section of Humboldt Parkway, which identified that parking along these two blocks has very low usage. Additionally, residences on Humboldt Parkway in this area have access to off-street driveways. No commercial business parking would be impacted. Therefore, the proposed parking removal would not adversely affect residents or access to businesses. Details of the locations where the Build Alternative would impact parking spaces is provided in Appendix A9.
- C1178.03** We want assurance that the ventilation system that is being proposed does not cause severe health ramifications as the construction of Route 33 did originally. While the environmental assessment indicates the air quality levels are below the national ambient air quality standard, this benchmark may not be an adequate measurement to impede diseases that have been prevalent in neighborhoods with highways running through them or in close proximity.
- R1178.03** The National Ambient Air Quality Standards (NAAQS) are health-based standards set by the United States Environmental Protection Agency (USEPA) that include consideration of sensitive populations. The air quality analysis (including the use of the NAAQS) was developed in coordination with and reviewed by an interagency air quality group. The analysis used regulatory models and followed USEPA and Federal Highway Administration (FHWA) guidance and procedures (see Appendix D7 of this FDR/EA). The highest concentrations predicted are well below the NAAQS. In addition, the Project includes air quality mitigation measures to minimize air quality effects (see Section 4.9.4.6 of this FDR/EA). These measures were not credited in the quantitative analysis.
- C1178.04** The Best Street roundabout configuration appears to be effective means in maintaining the follow of traffic, however in light of the unique and extremely complex design, we urge further investigation regarding the safety of pedestrian crossing and movement. This is a greater concern during summer months and when annual events take place in MLK Park which draw huge crowds of people and out of towners.
- R1178.04** The Best Street bridge roundabout design includes a 10-foot-wide multiuse path for pedestrian movements along the roundabout and crosswalks with clearly marked pedestrian priority signage and appropriate lighting at night (see Section 3.4.2.1 of this FDR/EA). In general, roundabouts improve safety for pedestrians by reducing vehicle speeds and reducing crossing distances. The splitter islands provide a refuge such that pedestrians only need to cross one direction of traffic at a time. Design details for the pedestrian crossings of the roundabout and potential measures to increase driver awareness of the need to yield to pedestrians will continue to be developed during final design.
- C1178.05** We support the full involvement of community stakeholders in the design process, and that the designers heed the community goal to insure that the infrastructure designed will lead to a revitalized, walkable, and healthy urban environment. BROMEIO urges the inclusion of residents and businesses

from the area, especially those in the Jefferson and Fillmore corridors, be included in the construction of the project.

- R1178.05** Measures to involve the public during the development of the Project are detailed in Chapter 5 of this FDR/EA. As documented in Section 4.5.3.1 of this FDR/EA, the Build Alternative includes a local hire program commitment to encourage the training and hiring of local residents for construction and construction-related employment opportunities.
- C1178.06** The current concept still needs some clarification and context including a thorough analysis of environmental impact and related public health concerns.
- R1178.06** The FDR/EA documents the effects (as defined by 40 CFR 1508.1(g)) of the proposed action on the human environment, which includes consideration of potential effects on public health and safety. Environmental impacts (including air quality, noise, hazardous materials and others) were thoroughly evaluated as documented in this FDR/EA.
- C1178.07** We are confident that our neighborhood transformation will thrive with reconnecting our community and restoring the greenspace designed by Frederick Law Olmsted as a capstone parkway within the park system. Converting this decaying bathtub portion of the expressway to a beautiful connector, improving the visual quality and natural environment of Humboldt Parkway will catalyze improvement of property values and assist in the revitalization of business districts along Fillmore and Jefferson Avenues. A restored Humboldt is essential for a complete renaissance of Buffalo where everyone can participate in the progress, and those neighborhoods once scarred can be restored.
- R1178.07** Comment noted.

Buffalo Museum of Science

Note: NEPA-related responses only are provided below. For additional responses pertaining to the Section 106 process, refer to the December 22, 2023 FHWA memorandum to the Section 106 Consulting Parties provided in Appendix D10: Finding Documentation.

- C1** As a visitor serving organization, the negative impact on Museum guests and the disruption and potential loss of visitors during the construction period is of grave concern.
- Negative impact on the day-to-day operation of the "Joint Facility" (Buffalo Public School 59 and Buffalo Museum of Science) during the construction period.
- Increased pressure on limited parking and the disruption to traffic flow, including vehicular and pedestrian traffic during construction.
- R1** Access to the Buffalo Museum of Science and PS 59 would be maintained at all times. Details would be addressed in the Work Zone Traffic Control Plans that will continue to be developed during final design (see Section 3.5.2 of this FDR/EA). Mitigation commitments that would serve to minimize temporary construction traffic-related effects on museum visitors include the requirement to maintain two lanes of traffic in each direction on the Kensington Expressway through all construction phases, maintaining through traffic on Humboldt Parkway, and maintaining traffic on Northampton Street using a temporary bridge (see Section 4.20.4 of this FDR/EA). In addition, through traffic on the internal

driveways/roadways connecting Northampton Street to Best Street and West Parade Ave would be maintained.

The Build Alternative does not impact or reduce the number of parking spaces available at the Buffalo Museum of Science during construction. Construction workers would not be permitted to park at the Buffalo Museum of Science or in public on-street parking, the contractor would be required to provide off-street parking at another location (see Section 4.20.4 of this FDR/EA).

Other environmental impacts of construction operations have been considered and mitigation measures included in the project as detailed in Section 4.20 of this FDR/EA, including construction air quality, noise and vibration monitoring.

Buffalo Olmsted Parks Conservancy, Inc. 1 of 2 (November 10, 2023 Letter)

C1613.01 You will read that the process by which this project was developed and designed is concerning to us. Due to our concerns identified below we believe that the project should not receive a Finding of No Significant Impact (FONSI) and request that a full Environmental Impact Statement be conducted.

It is the Conservancy's mission to steward Buffalo's historic Olmsted Park and parkway system to benefit and to welcome all. Advocacy and collaboration with the community are cornerstones of our work. When construction began on the Kensington Expressway in 1961, there was no Conservancy to act on behalf of the community to protect Olmsted's Humboldt Parkway. Today, it is clear to us that this process, to date, has not created clarity or consensus within the neighboring community. Therefore, we again request information that was requested over a year ago - a cultural landscape report and an environmental impact statement - to ensure project clarity and provide better, clearer information for neighboring residents.

R1613.01 Preparing an Environmental Assessment (EA) for this Project was appropriate, as discussed in the response to comment C9-6. As documented in Chapter 5 of this FDR/EA, the NYSDOT has provided, and will continue to provide, meaningful opportunities for public engagement in the Project. Regarding the request for a Cultural Landscape Report, see response to comment C1613.10.

C1613.02 We believe that assigning this important project to FHWA/NYSDOT, which will greatly impact the lives of residents on the East Side of Buffalo, as well as the legacy of the Buffalo Olmsted Park and parkway system forever, is inappropriate. We understand that the objectives of the FHWA and NYSDOT are related to highways and traffic. This project should be viewed not only as a highway project but should provide the comprehensive review necessary to determine how to BEST provide social and racial justice remedies, mitigation of health concerns, holistic transportation, and community restoration.

R1613.02 The Kensington Expressway is a state highway operated and maintained by NYSDOT, and thus, NYSDOT is the project sponsor and Joint Lead Agency for this transportation project (FHWA is the Federal Lead Agency). The objectives for this Project are not limited to traffic and transportation related considerations and include reconnecting the community with continuous greenspace (see Section 1.3 of this FDR/EA). Environmental justice considerations are addressed in Section 4.4 of this FDR/EA. As documented in Section 4.5.3.1 of this FDR/EA, the Build Alternative includes a local hire program

commitment to encourage the training and hiring of local residents for construction and construction related employment opportunities.

C1613.03 We believe the process for securing feedback on the design and scope of this project from the neighboring residents has been insufficient. The two (2) public hearings held on September 27, 2023, did not clarify the concerns of the attendees as the NYSDOT officials were onstage and did not respond to any questions or comments from the audience.

R1613.03 As documented in Chapter 5 of this FDR/EA, the NYSDOT has provided, and will continue to provide, meaningful opportunities for public engagement in the Project. These opportunities have included a Project Scoping Meeting, Public Information Meeting, NYSDOT attendance at community events, and a staffed public outreach office located within the community. The Public Hearing included a formal testimony session, but also included an open house where attendees could ask questions of and provide input to NYSDOT.

C1613.04 Air quality at each end of the tunnel appears to be made worse by focused portal exhaust plumes. A solution must be determined within the design phase and not wait until construction has commenced. The health of the residents in the immediate area has already been negatively impacted by the current emissions. NYSDOT has acknowledged that with this project as designed the emissions at the ends of the tunnel will rise slightly but still within "acceptable levels." Therefore, this project, as designed, does not improve health outcomes for the neighboring residents.

Additionally, more details need to be provided on the extensive asbestos containment required during construction. Again, this should be determined within the design phase and not wait until construction has commenced.

We strongly request the preparation of an Environmental Impact Statement (EIS) to evaluate the true health impacts of this proposed project properly and more fully.

R1613.04 Based on the air quality analysis that was conducted for the Project and the measures that would be implemented to minimize air quality effects, the Build Alternative would not result in an adverse effect to air quality, including in the portal areas (see Section 4.9 of this FDR/EA). The Build Alternative would not result in exceedances of the National Ambient Air Quality Standards, which are criteria established by the USEPA to protect public health, including the health of sensitive populations such as asthmatics, children and the elderly. As documented in the FDR/EA, the Build Alternative would provide public health benefits, such as access to new greenspace, increased opportunities for physical activity related to the proposed bicycle and pedestrian improvements, reduced noise levels, and improved aesthetics.

Regarding asbestos-containing materials, the NYSDOT has confirmed the presence of non-friable asbestos containing materials in certain caulking materials on the retaining wall expansion joints and at the base of metal guard rails on the top of the retaining walls. Testing completed in December 2023 confirmed that no asbestos is present in the waterproofing material on the back of the retaining walls (see Section 4.18.2 of this FDR/EA). Asbestos containing materials would be removed consistent with a project-specific health and safety plan in compliance with all federal and state regulatory requirements to protect workers and the public. Asbestos containing materials are routinely addressed in transportation projects.

Preparing an EA for this Project was appropriate, as discussed in the response to comment C9-6.

C1613.05 Given the proposed deconstruction of the Kensington Expressway for 1.2 miles and the lack of a real long term maintenance or sustainability plan, we observe that we cannot determine whether this proposal will meet the mandates of New York State's new Climate Leadership and Community Protection Act (CLCPA).

The NYSDOT has publicly stated that BOPC will maintain and care for this newly designed space without ever consulting with our organization, creating false expectations for the public. Maintenance is a critical piece. This is a major concern of community members as well as BOPC as to additional cost and capacity within our organization to take on the maintenance of the proposed area.

BOPC's request for a maintenance sustainability study has been responded to by saying that the evaluation of the maintenance requirements and costs will be conducted during preparation of Construction Documents. A true preservation evaluation of this project must include ongoing maintenance and should be completed during the design phase.

R1613.05 Information on the tunnel infrastructure maintenance cost is provided in Section 3.6.3 of this FDR/EA. The City of Buffalo has agreed to maintain the greenspace on the tunnel deck with the exception of the fenced off areas at the portals, which will be maintained by the NYSDOT (see FDR/EA Section 3.4.1.12). Appendix C1 of this FDR/EA provides a letter to NYSDOT from the City of Buffalo indicating that the City will develop a Memorandum of Agreement with NYSDOT during final design to formalize maintenance responsibilities (see Section 3.4.1.12 of this FDR/EA).

The Build Alternative is consistent with the CLCPA, as documented in Section 4.10.5 of this FDR/EA.

C1613.06 We disagree with the Section 106 draft findings that this project will have No Adverse Effect on historic properties.

R1613.06 The Section 106 finding of no adverse effect is documented in the Section 106 Finding Documentation (see Appendix D10 of this FDR/EA). Responses to specific comments pertaining to the Section 106 process and effects of the Build Alternative are addressed in the responses that follow.

C1613.07 We appreciate the historic research and the Cultural Resources Screening that was conducted for this project resulting in the identification of three (3) new National Register Eligible historic districts and five (5) new National Register Eligible individual properties. We request that NYSOPR&HP and NYSDOT work with local preservation organizations to initiate the National Register nominations of each of these districts and properties and that State funding be provided for this.

R1613.07 The NYSDOT conducted an Architectural Resources Survey as part of the Section 106 process for the Project. Based on the results of the survey and through Section 106 consultation, several individual properties and historic districts have been determined eligible for the National Register of Historic Places, thus identifying historic properties subject to Section 106 review. Initiating and funding National Register nominations for the identified historic properties is not required by Section 106 or its implementing regulations and is beyond the scope of this Project. The Project would not preclude others from initiating or funding the National Register nomination for these identified historic properties.

C1613.08 We request consideration of expanding the APE beyond the small sliver of properties identified. We appreciate that it was expanded north to Northland Avenue, but we believe it should be expanded in all directions, including evaluation of the historic Fruit Belt by expanding the Southern end of the APE from Best St. to the Lemon St. connection - this would reconnect the Fruit Belt community that lost the most housing/properties as part of the Kensington Expressway intrusion.

R1613.08 The Section 106 implementing regulations define the APE as the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The APE is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking. Furthermore, effects are defined as alterations to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register of Historic Places.

The NYSDOT, in coordination with the FHWA, and in consultation with the SHPO, must determine and document the APE, in accordance with 36 CFR 800.4(a). The APE has been extended to include the proposed in-kind work on local streets (see Section 4.6.1.1 of this FDR/EA). Further expansion of the APE to Lemon Street is not warranted, as the undertaking would have no Section 106 effects on this area.

C1613.09 We also note that the obviously historic St. Frances de Sales Church complex at 407 Northland, at the corner of the Humboldt Parkway, was apparently not reviewed in the Cultural Resources Screening or included as a potentially eligible property.

R1613.09 The St. Frances de Sales Church (USN 02940.026366) at 575 Humboldt Parkway (407 Northland) is listed on the National Register of Historic Places as a contributing resource of the Hamlin Park Historic District. The Hamlin Park Historic District is discussed in the Cultural Resources Screening and the Finding Documentation (see Section 4.6 and Appendix D10 of this FDR/EA).

C1613.10 We request that a CULTURAL LANDSCAPE REPORT (CLR) of the historic Humboldt Parkway/Kensington Expressway be conducted before we can reasonably review and agree with the Section 106 draft findings of "No Adverse Effects" and the suggested FONSI for this EA. A landscape of this historical significance requires the preparation of a CLR. This has been requested multiple times by BOPC and various other organizations and citizens. Its request has not been acknowledged in any document for over a year.

Despite BOPC and various other consulting parties, such as the Buffalo Museum of Science and Alan Oberst, requesting the preparation of a CLR, NYSDOT has never officially responded to this request. A historic landscape of this significance should be treated with the same respect, following the same National Park Service guidelines. There do appear to be remnants of the original Parkway still evident, and without documenting them, this will be lost forever. This is the last and only time that this can be done. We fear that the impact on the Olmsted-designed MLK Jr. Park has not been effectively evaluated.

A CLR is required to identify remains of the historic parkway, evaluate the existing 33 against the historic parkway and evaluate the proposed designs against the historic parkway. It would also provide the process to evaluate historic cross-sections of the parkway including appropriate tree heights and sustainability against the "reconstructed" parkway. Without the completion of a CLR, no capacity exists

to evaluate what remains of the Parkway, what the actual design and landscaping materials of the Parkway were, and therefore how best to design a replacement OR a restoration.

While some comments by NYSDOT were made about reviewing the Olmsted Parks Plan, and attempting to follow the "historic plan," there appears to have been no purposeful evaluation or comparison that only a CLR with its related "Period Plan evaluation" can provide.

R1613.10 In the context of Section 106, a historic property is any precontact or historic district, site, building, or structure, or object included in, or eligible for inclusion in, the National Register of Historic Places (NRHP). FHWA, in coordination with NYSDOT, has consulted with SHPO on the need for a Cultural Landscape Report, in the context of Section 106 of the National Historic Preservation Act (NHPA), as amended, and its implementing regulations under 36 CFR Part 800. A Cultural Landscape Report was considered as information was gathered and research was performed in the identification of historic properties. An Architectural Reconnaissance Survey, which considered the historical context and information directly related to the historical and architectural development of Humboldt Parkway, was prepared for the Project by the New York State Museum. In the context of Section 106 of the NHPA, designed landscapes that are eligible for the NRHP are categorized as a site. The National Park Service (NPS), a Bureau of the United States Department of the Interior (USDOI), provides guidance on how to apply the National Register Criteria for Evaluation, which considers categories of historic properties, how to evaluate a property within its historic context, and how to identify the type of significance of a property. Specifically, this guidance states that a designed landscape that has had major changes to its historic design, vegetation, original boundary, topography/grading, architectural features, and circulation system is not eligible for the NRHP. The construction of the Kensington Expressway in the 1950s and 1960s removed the original Humboldt Parkway, including original features that were part of its designed landscape. For this reason, the original Humboldt Parkway is not eligible for the NRHP; therefore, a Cultural Landscape Report is not warranted as part of the Section 106 process for this proposed undertaking. FHWA responded to the Section 106 Consulting Parties regarding their comments, including the request for a Cultural Landscape Report, on December 22, 2023.

Although restoration of the original Humboldt Parkway is not the purpose of the proposed undertaking, the NYSDOT and FHWA recognize the importance/significance of its history to the project area. Transportation decision-making for this Project has incorporated design features of the original Humboldt Parkway to the greatest extent practicable.

C1613.11 From all the documents provided, with evaluation and design apparently prepared by LaBella, it is unclear whether there has been any involvement in the project of Olmsted scholars or an experienced landscape historian, historic landscape architect and preservation architect with Olmsted expertise. We do not believe that the proposed "reconstructed" Humboldt Parkway resembles the historic Olmsted-designed Humboldt Parkway which connected MLK Jr Park with Delaware Park in any manner other than it has some grass and trees.

R1613.11 The NYSDOT, in consultation with FHWA, has considered the original Humboldt Parkway as part of the environmental review process. As documented in Chapter 1 of the FDR/EA, the purpose of this transportation project is to reconnect the community surrounding the defined transportation corridor and improve the compatibility of the corridor with the adjacent land uses, while addressing the geometric infrastructure, and multi-modal needs within the corridor in its current location. Although restoration of the original Humboldt Parkway is not the purpose of the Project, the NYSDOT and FHWA recognize the importance of its history to the project area. Transportation decision-making for this

Project has incorporated design features of the original Humboldt Parkway to the greatest extent practicable, including but not limited to:

- A planted 90-foot-wide center median that aligns with the entrance area of the Buffalo Museum of Science and the location of the historic southern entrance to the Humboldt Parkway.
- Trees would be planted in diagonal rows ('alternating pairs of trees') based on the Olmsted plan for tree arrangement and would include 24 feet between rows and 60 feet between trees (as scaled from the Olmsted plan beginning just north of the Buffalo Museum of Science).
- Street trees would be planted on the residential sides of Humboldt Parkway to create a parkway feeling (trees on either side of drivers and pedestrians).
- The planting list for the original Humboldt Parkway was considered during the development of the landscape planting plan. Tree species recommendations were developed in coordination with the Buffalo Olmsted Parks Conservancy and the City of Buffalo. Tree species selection also considered tree root systems, mature size, and ability to survive in urban conditions (see Section 3.4.4 and Appendix A1 of this FDR/EA).

Appendix D1 of this FDR/EA provides a consistency assessment of the Build Alternative with the applicable goals of the Buffalo Olmsted Parks Conservancy's The Buffalo Olmsted Park System: Plan for the 21st Century.

C1613.12 We are seriously concerned about the Project Objectives; especially "to maintain the vehicular capacity of the existing transportation corridor (approximately 76,000 vehicles)." All of our comments about this objective have been acknowledged and responded to with: "this is a given ." Why is this a given? This basic question about the evaluation of public transit in WNY is one of the basic underlying questions about this entire process. The refusal to look outside the Kensington Expressway and consider a more comprehensive evaluation of public transit in WNY is imprudent. Another question is when has the latest traffic study been completed? Traffic volume has likely changed significantly since the pandemic with more people working from home.

R1613.12 The Project objectives, including the objective to maintain vehicular capacity of the Kensington Expressway, were developed based on the identified needs within the transportation corridor, as documented in Section 1.3.2 of this FDR/EA.

The Niagara Frontier Transportation Authority (NFTA), the only organization with the authority to implement mass transit projects in the area, is not currently proposing rail service in the transportation corridor. The Project has been and will continue to be designed to not preclude potential future light rail projects, but these would be separate, independent projects. As documented in Section 4.1.1 of this FDR/EA, the NFTA is a Participating Agency on the Project. The NYSDOT will continue to coordinate with NFTA as the Project progresses regarding potential bus infrastructure improvements on Humboldt Parkway and other local roads within the transportation corridor. As discussed in Section 3.4.2.3 of this FDR/EA, the Build Alternative would include the construction of concrete pads for future bus shelters to be installed by NFTA.

The traffic study was conducted using 2021 traffic counts for the base year condition and normalized to pre-COVID 2019 conditions (see PSR Appendix C). The traffic analyses were based on the best available information and tools at the time the analyses were conducted. Socioeconomic and

technological trends affecting future travel demand were considered, as documented in Appendix F of the Project Scoping Report.

C1613.13 It was referenced at recent meetings that there is potential for future phases of this project that could reconnect MLK Jr Park and Delaware Park. The Conservancy requests information about these potential phases and how the tunnel as it is currently designed impacts future expansion of green space.

R1613.13 The Project has been and will continue to be designed to not preclude a future extension of the tunnel as part of a separate, independent project. Any proposal for extension of the tunnel would have to consider the Scajaquada Creek. Although this is a major constraint, there are feasible engineering solutions. The engineering solutions and construction costs associated with any potential future project(s) would need to be studied independent of the current NYS Route 33 Kensington Expressway Project.

C1613.14 In alignment with the mission of the BOPC, the preferred solution for the 33- Kensington Highway is to fully restore Olmsted's original design for Humboldt Parkway, concept 10, as previously stated in past comments. There appears to be growing community support for a "ONE ROAD NOW" concept that restores and reconnects MLK Jr. Park with Delaware Park, in true Olmsted design. We request that NYS DOT, FHWA and NYSOPR&HP initiate truly meaningful design discussions and engage a preservation architect with Olmsted expertise.

R1613.14 During the project scoping process, the NYS DOT evaluated a concept (Concept 10) that involved removal of NYS Route 33 and diversion of traffic to other roadways. The assumed limits of removal were NYS Route 198 to downtown. The evaluation included an analysis of changes in traffic volumes and volume to capacity ratios as a result of Concept 10 using the GBNRTC regional travel demand model. It is important for an analysis of a facility removal, such as Concept 10, to take into account trip redistribution and the Metropolitan Planning Organization's land use forecast and other travel demand data, rather than using arbitrary assumptions. The GBNRTC regional travel demand model was appropriate analysis tool for analyzing a scenario where travel routes would shift regionally. The Project Scoping Report documents the evaluation and ultimate dismissal of this concept. As stated, the expressway cannot be removed or filled in due to the issues related to diverting the 75,000 daily trucks and cars that currently use the expressway to local streets and other key roadways (many of which are in disadvantaged communities). These issues include the following:

- Safety (diverting traffic onto radial streets would result in higher crash rates on local streets with intersections compared to retaining the expressway);
- Increased crash rates with pedestrians and bicyclists due to their exposure to increased traffic on local streets;
- Conflict with potential Complete Streets/road diet improvements to radial streets undertaken by the City of Buffalo to increase nonmotorized accessibility and safety;
- Increased emergency vehicle response times and decreased access to hospitals;
- Increased emissions of air pollutants near homes and community facilities, because "stop and go" traffic on local streets produces more pollutants than continuously moving traffic;
- Travel time reliability for those commuting through the area; and
- Exceeding the capacity of key roadways, such as I-190, I-90, and City of Buffalo arterial streets, resulting in traffic congestion and safety issues in other parts of the city or requiring widening/expansion that could have social/environmental effects.

NYSDOT subsequently undertook a supplemental traffic analysis for Concept 10 in order to provide the public information on additional performance measures for key roadways/intersections affected by redistributed traffic (FDR/EA Appendix B8). The additional performance measures include level of service and speed. The results further illustrate how poorly traffic would operate with removal of the expressway.

Regarding the request to engage a preservation architect with Olmsted expertise, this is not necessary given that historic restoration is not the purpose of the project and Humboldt Parkway within the transportation corridor is not a historic resource eligible for the National Register of Historic Places. Nevertheless, transportation decision-making for this Project has incorporated design features of the original Humboldt Parkway to the greatest extent practicable (see response to comment C1613.11).

C1613.15 While the FHWA/NYSDOT documents and proposed design do provide roadway connections across the tunnel deck that would improve limited local roadway connectivity to reconnect the East Side neighborhoods separated by the Kensington Highway, neither the design option/s nor the supporting materials reply to or acknowledge the previous comments of BOPC, the majority of the consulting parties, concerned organizations and the public comments in a meaningful way. We believe it is imperative that the FHWA and NYSDOT respond and give serious consideration to the restored Humboldt Parkway or "One Road Now" concept. We request this again.

R1613.15 As documented in Chapter 5 of this FDR/EA, the NYSDOT has provided, and will continue to provide, meaningful opportunities for public engagement in the Project. The NYSDOT has considered the comments and feedback received throughout the transportation decision-making process for the Project. Responses to public comments can be found in the Project Scoping Report (Appendix E), the DDR/EA (Appendix E2) and in this FDR/EA. Additionally, Section 106 consulting parties' input was considered and responded to, as documented in FDR/EA Appendix D10 (Finding Documentation).

NYS Route 33 removal (Concept 10) was considered and dismissed during the project scoping process. Although restoration of the original Humboldt Parkway is not the purpose of the Project, the NYSDOT and FHWA recognize the importance of its history to the project area. Transportation decision-making for this Project has incorporated design features of the original Humboldt Parkway to the greatest extent practicable (see response to comment 1613.11).

C1613.16 We remind you of the master plan that BOPC prepared for the Olmsted Parks in 2011 and goals for the restoration of the Humboldt Parkway that included:

- a. Restore the historic integrity of the parkway element from the period of significance.
- b. Transition towards historic planting types and restore historic tree plantings.
- c. Improve safety, access, and circulation for vehicles, bicycles, and pedestrians.
- d. Install historically appropriate light standards.
- e. Install appropriate wayfinding and branding signage.

R1613.16 The NYSDOT, in consultation with the FHWA, has considered the original Humboldt Parkway as part of the environmental review process. As documented in Chapter 1 of this FDR/EA, the purpose of this transportation project is to reconnect the community surrounding the defined transportation corridor and improve the compatibility of the corridor with the adjacent land uses, while addressing the geometric, infrastructure, and multi-modal needs within the corridor in its current location. Although restoration of the original Humboldt Parkway is not the purpose of the Project, the NYSDOT and FHWA

recognize the importance of its history to the project area. Transportation decision-making for this Project has incorporated design features of the original Humboldt Parkway to the greatest extent practicable (see response to comment C1613.11).

Appendix D1 of this FDR/EA provides a consistency assessment of the Build Alternative with the specific recommendations for Humboldt Parkway provided in BOPC's *Buffalo Olmsted Park System: Plan for the 21st Century*.

C1613.17 This tunnel with a cap is new construction, it is NOT a reconstruction or restoration according to National Park Service Secretary of the Interiors Standards for the Treatment of Historic Properties.

R1613.17 The Humboldt Parkway was evaluated using the criteria for National Register eligibility at the time the nomination for the Olmsted Parks and Parkways Thematic Resources was prepared and it was determined that the Humboldt Parkway is not eligible for listing on the National Register of Historic Places. Thus, the Humboldt Parkway is not a historic property subject to the Secretary of Interior Standards for the Treatment of Historic Properties.

C1613.18 The "peanut-shaped traffic circle" on Best Street has no relationship to MLK Jr. Park, the historic Parade or Humboldt Parkway and should be eliminated.

R1613.18 The Best Street bridge roundabout is not intended as a historic restoration feature and will function to replace the two existing signalized intersections at Best Street and the NYS Route 33 exit and entrance ramps. The roundabout design was selected based on traffic calming and safety benefits (see Section 3.4.1.8 of this FDR/EA). The design contributes to east-west pedestrian connectivity to MLK Jr. Park by providing a 10-foot-wide multi-use path around the roundabouts and tying into the existing sidewalk network.

C1613.19 Given that a multi-modal transit design approach including Light Rail Rapid Transit could provide more capacity than this remade Kensington Expressway and would potentially come with additional and separate funding streams, we believe that this \$1.2 Billion effort would have a negative impact on the citizens of Buffalo, their health and the historic resources related to the Humboldt Parkway, East side of Buffalo and New York State with few advantages.

R1613.19 Regarding the inclusion of light rail, see the response to comment C1613.12.

The social, economic and environmental effects resulting from the Build Alternative were assessed, as documented in this FDR/EA. The Build Alternative was developed based on a balanced consideration of the need for safe and efficient transportation; the social, economic, and environmental effects; and national, state, and local environmental protection goals. The Build Alternative would result in many beneficial effects, such as providing 11 acres of continuous greenspace, new east-west connections across the Kensington Expressway, improved aesthetics, and reduced noise, among others.

Buffalo Olmsted Parks Conservancy, Inc. 2 of 2 (October 12, 2023 Letter)

Note: NEPA-related responses only are provided below. For additional responses pertaining to the Section 106 process, refer to the December 22, 2023 FHWA memorandum to the Section 106 Consulting Parties provided in Appendix D10: Finding Documentation.

- C1** We believe that assigning this important project to FHWA/NYS DOT, which will impact the lives of the Buffalo and East Buffalo communities and the legacy of the Olmsted Parks and Parkway forever, is inappropriate. Viewing this project as a highway project only is short-sighted and does not provide the comprehensive review necessary to determine how to BEST provide holistic transportation, community restoration and social justice remedies throughout Western New York. A billion dollars for this ill-informed project could minimally be better spent on actually restoring the full historic Humboldt Parkway and improving the radial roads to accommodate perceived and actual traffic.
- R1** The Kensington Expressway is a state highway operated and maintained by NYSDOT, and thus, NYSDOT is the project sponsor and Joint Lead Agency for this transportation project (FHWA is the Federal Lead Agency). The objectives for this Project are not limited to traffic and transportation related considerations and include reconnecting the community with continuous greenspace (see Section 1.3 of this FDR/EA).
- C2** The design option and the supporting materials do not acknowledge the previous comments of BOPC, the majority of the consulting parties and the public comments in a meaningful way. We believe it is imperative that the FHWA and NYSDOT respond and give serious consideration to the restored Humboldt Parkway or "One Road Now" concept.
- R2** As documented in Chapter 5 of this FDR/EA, the NYSDOT has provided, and will continue to provide, meaningful opportunities for public and agency engagement in the Project. The NYSDOT has considered the comments and feedback received throughout the transportation decision-making process for the Project. Responses to public comments can be found in the Project Scoping Report (Appendix E), the DDR/EA (Appendix E2) and in this FDR/EA. Additionally, Section 106 consulting parties' input was considered and responded to as documented in Appendix D10 (Finding Documentation) of this FDR/EA.
- NYS Route 33 removal (Concept 10) was considered and dismissed during the project scoping process (see response to comment C4.2-1). Although restoration of the original Humboldt Parkway is not the purpose of the Project, the NYSDOT and FHWA recognize the importance of its history to the project area. Transportation decision-making for this Project has incorporated design features of the original Humboldt Parkway to the greatest extent practicable (see response to comment C7.5-6).
- C3** We are seriously concerned about the Project Objectives especially "to maintain the vehicular capacity of the existing transportation corridor (approximately 76,000 vehicles)." All of our comments about this objective have been acknowledged and responded to with: "this is a given." Why is this a given? This basic question about the evaluation of public transit in WNY is one of the basic underlying questions about this entire process. The refusal to look outside the Kensington Expressway and consider a more comprehensive evaluation of public transit in WNY is disingenuous and imprudent. Assuming that there can be no discussion regarding the 76,000 vehicles negates the ability to consider Option 10, the full restoration of the Humboldt Parkway.
- R3** The Project objectives, including the objective to maintain vehicular capacity of the Kensington Expressway, were developed based on the identified needs within the transportation corridor, as documented in Section 1.3.2 of this FDR/EA.

The Niagara Frontier Transportation Authority (NFTA), the only organization with the authority to propose mass transit projects in the area, is not currently proposing rail service in the transportation

corridor. The Project has been and will continue to be designed to not preclude potential future light rail projects, but these would be separate, independent projects. As documented in Section 4.1.1 of this FDR/EA, the NFTA is a Participating Agency on the Project. The NYSDOT will continue to coordinate with NFTA as the Project progresses regarding potential bus infrastructure improvements on Humboldt Parkway and other local roads within the transportation corridor. As discussed in Section 3.4.2.3 of this FDR/EA, the Build Alternative would include the construction of concrete pads for future bus shelters to be installed by NFTA.

The traffic study was conducted using 2021 traffic counts for the base year condition and normalized to pre-COVID 2019 conditions (see PSR Appendix C). The traffic analyses were based on the best available information and tools at the time the analyses were conducted. Socioeconomic and technological trends affecting future travel demand were considered in PSR Appendix F.

- C4** We observe that there has been very little interaction or participation in design review and preparation of options, which gave us little time to review and no time for discussion.
- R4** BOPC had numerous opportunities to review materials and discuss recommendations with the project team, including inclusion of the group in the monthly stakeholder coordination meetings, as well as direct meetings to discuss landscaping and tree species details. The Buffalo Olmsted Parks Conservancy Design Review Committee recommendations on tree species have been incorporated in the landscape plans for the Build Alternative in FDR/E Appendix A1 of this FDR/EA. Buffalo Olmsted Parks Conservancy is also a Section 106 Consulting Party member, along with other community-based historic preservation organizations and historic property owners with specific local knowledge and expertise, as documented in FDR/EA Section 4.6 and Appendix D10 (Finding Documentation) of this FDR/EA.
- C5** From all the documents provided, with evaluation and design apparently prepared by LaBella, it is unclear whether there has been any involvement in the project of Olmsted scholars or an experienced landscape historian, historical landscape architect and preservation architect with Olmsted expertise. We do not believe that the proposed "reconstructed" Humboldt Parkway resembles the historic Olmsted-designed Humboldt Parkway which connected MLK Jr Park with Delaware Park in any manner other than it has some grass and trees.
- R5** The NYSDOT, in consultation with FHWA, has considered the original Humboldt Parkway as part of the environmental review process. As documented in Chapter 1 of the FDR/EA, the purpose of this transportation project is to reconnect the community surrounding the defined transportation corridor and improve the compatibility of the corridor with the adjacent land uses, while addressing the geometric infrastructure, and multi-modal needs within the corridor in its current location. Although restoration of the original Humboldt Parkway is not the purpose of the Project, the NYSDOT and FHWA recognize the importance of its history to the project area. Transportation decision-making for this Project has incorporated design features of the original Humboldt Parkway to the greatest extent practicable, including but not limited to:
- A planted 90-foot-wide center median that aligns with the entrance area of the Buffalo Museum of Science and the location of the historic southern entrance to the Humboldt Parkway.
 - Trees would be planted in diagonal rows ('alternating pairs of trees') based on the Olmsted plan for tree arrangement and would include 24 feet between rows and 60 feet between trees (as scaled from the Olmsted plan beginning just north of the Buffalo Museum of Science).

- Street trees would be planted on the residential sides of Humboldt Parkway to create a parkway feeling (trees on either side of drivers and pedestrians).
- The planting list for the original Humboldt Parkway was considered during the development of the landscape planting plan. Tree species recommendations were developed in coordination with the Buffalo Olmsted Parks Conservancy and the City of Buffalo. Tree species selection also considered tree root systems, mature size and ability to survive in urban conditions (see Section 3.4.4 and Appendix A1 of this FDR/EA).

Appendix D1 of this FDR/EA provides a consistency assessment comparing the Build Alternative improvements with the applicable goals of the Buffalo Olmsted Parks Conservancy's The Buffalo Olmsted Park System: Plan for the 21st Century.

- C6** The BOPC request for a maintenance sustainability study has been responded to by saying that his evaluation of the maintenance requirements and costs will be conducted during preparation of Construction Documents. A true preservation evaluation of this project must include ongoing maintenance. This maintenance evaluation should be completed as part of these design documents which would indicate that the proposed \$1 Billion will be much, much more when reviewed in perpetuity.
- R6** Information on tunnel infrastructure maintenance cost is provided in Section 3.6.3 of this FDR/EA. Appendix C1 of this FDR/EA provides a letter to NYSDOT from the City of Buffalo indicating that the City will develop a Memorandum of Agreement with NYSDOT during final design to formalize maintenance responsibilities (see FDR/EA Section 3.4.1.12 of this FDR/EA).
- C7** We remind you of the master plan that the BOPC prepared for the Olmsted Parks in 2011 and Goals for the restoration of the Humboldt Parkway what included: Restore the historic integrity of the parkway element from the period of significance, Transition towards historic planting types and restore historic tree plantings, improve safety, access, and circulation for vehicles, bicycles, and pedestrians, Install historically appropriate light standards. Install appropriate wayfinding and branding signage.
- R7** The NYSDOT, in consultation with FHWA, has considered the original Humboldt Parkway as part of the environmental review process. As documented in Chapter 1 of the FDR/EA, the purpose of this transportation project is to reconnect the community surrounding the defined transportation corridor and improve the compatibility of the corridor with the adjacent land uses, while addressing the geometric infrastructure, and multi-modal needs within the corridor in its current location. Although restoration of the original Humboldt Parkway is not the purpose of the Project, the NYSDOT and FHWA recognize the importance of its history to the project area. Transportation decision-making for this Project has incorporated design features of the original Humboldt Parkway to the greatest extent practicable (see response to comment C7.5-6). Appendix D1 of this FDR/EA provides a consistency assessment comparing the Build Alternative improvements with the applicable goals of the Buffalo Olmsted Parks Conservancy's The Buffalo Olmsted Park System: Plan for the 21st Century.
- C8** We continue to declare that the restoration of the historic Humboldt Parkway (previous Option10) is our preferred approach. We now realize that we have overwhelming Consulting Party and community support in a "ONE ROAD NOW" concept that restores and reconnects the MLK Jr. Park with Delaware Park. We request that NYSDOT, FHWA and NYSOPR&HP initiate truly meaningful design discussions with the Consulting Parties and community about this preferred approach. Given that none of us were given actual opportunities to work with NYSDOT on the goals of this project or the design/s, we use

this opportunity to demand it. We would appreciate working directly with DOT or another agency as deemed more appropriate to design a true restoration which can work for everyone in the community and improve all of WNY's transit capacity.

- R8** NYS Route 33 removal (Concept 10) was considered and dismissed during the project scoping process (see response to comment C4.2-1). Although restoration of the original Humboldt Parkway is not the purpose of the Project, the NYSDOT and FHWA recognize the importance of its history to the project area. Transportation decision-making for this Project has incorporated design features of the original Humboldt Parkway to the greatest extent practicable (see response to comment C7.5-6). Appendix D1 of this FDR/EA provides a consistency assessment comparing the Build Alternative improvements with the applicable goals of the Buffalo Olmsted Parks Conservancy's The Buffalo Olmsted Park System: Plan for the 21st Century.
- C9** Given the proposed deconstruction of the Kensington Expressway for 1.2 miles and the lack of a real long-term maintenance or sustainability plan, we observe that we cannot determine whether this proposal will meet the mandates of New York State's new Climate Leadership and Community Protection Act (CLCPA).
- R9** The Build Alternative is consistent with the CLCPA, see Section 4.10.5 of this FDR/EA. It is not clear how the details of the maintenance agreement between the City and NYSDOT would affect CLCPA consistency.
- C10** The "peanut traffic circle" on Best Street seems overwrought and not needed and has no relationship to MLK Jr. Park, the historic Parade or Humboldt Parkway.
- R10** The Best Street bridge roundabout is not intended as a historic restoration feature and will function to replace the two existing signalized intersections at Best Street and the NYS Route 33 exit and entrance ramps. The roundabout design was selected based on traffic calming and safety benefits (see Section 3.4.1.8 of this FDR/EA). The design contributes to east-west pedestrian connectivity to MLK Jr. Park by providing a 10-ft multi-use path around the roundabouts and tying into the existing sidewalk network.
- C11** Given that a multi-modal transit design approach including Light Rail Rapid Transit could provide more capacity than this remade Kensington Expressway and would potentially come with additional and separate funding streams, we believe that this \$1.2 Billion effort would be a negative impact on the citizens of Buffalo and the historic resources related to the Humboldt Parkway, East Buffalo and New York State with few advantages.
- R11** The effects of the Build Alternative have been documented in this FDR/EA, including mitigation measures where appropriate. The Build Alternative meets the identified objectives for the Project by providing 11 acres of continuous greenspace, new east-west connections across the Kensington Expressway, improved aesthetics, and reduced noise, among other benefits.

The Niagara Frontier Transportation Authority (NFTA), the only organization with the authority to propose mass transit projects in the area, is not currently proposing rail service in the transportation corridor. The Project has been and will continue to be designed to not preclude potential future light rail projects, but these would be separate, independent projects. As documented in Section 4.1.1 of this FDR/EA, the NFTA is a Participating Agency on the Project. The NYSDOT will continue to coordinate with NFTA as the Project progresses regarding potential bus infrastructure improvements on Humboldt

Parkway and other local roads within the transportation corridor. As discussed in Section 3.4.2.3 of this FDR/EA, the Build Alternative would include the construction of concrete pads for future bus shelters to be installed by NFTA.

B.U.I.L.D. of Buffalo, Inc.

Please see Consolidated Response A at the end of this Section.

Central Terminal Neighborhood Association

C1519.01 The Central Terminal Neighborhood Association (CTNA) registers its opposition to the Kensington Expressway “partial cover” project as currently conceived, and calls for an Environmental Impact Study (EIS) that will evaluate all options for ameliorating the effects of the Kensington Expressway, including the full restoration of Humboldt Parkway from Delaware Park to Martin Luther King, Jr., Park.

If the Kensington Expressway “partial cover” project proceeds as planned, never in history will the State of New York have spent so much to produce so little benefit. For the once-in-a-generation expenditure, anything less than the full restoration of Humboldt Parkway and the redistribution of commuter traffic onto the East Side Radials would be unacceptable.

Broadway Fillmore is a neighborhood profoundly affected by the Kensington Expressway’s robbery of commuter traffic that sustained hundreds of businesses along the East Side Radials at one time. More than a half century ago, traffic engineers assured this community that it was here to solve congestion, and they have succeeded. Genesee Street, Sycamore Street, Broadway, and William Street have never had so little congestion—congestion of people, money, and commerce. We welcome the day when traffic engineers would recognize the benefit that this traffic would bring to the East Side if Humboldt Parkway were ever fully restored.

The CTNA calls for an Environmental Impact Study (EIS) that includes evaluating the full restoration of Humboldt Parkway and returning some of the Kensington Expressway’s traffic and commerce to East Side neighborhoods.

R1519.01 During the project scoping process, the NYSDOT evaluated a concept (Concept 10) that involved removal of NYS Route 33 and diversion of traffic to other roadways. The assumed limits of removal were NYS Route 198 to downtown. The evaluation included an analysis of changes in traffic volumes and volume to capacity ratios as a result of Concept 10 using the GBNRTC regional travel demand model. It is important for an analysis of a facility removal, such as Concept 10, to take into account trip redistribution and the Metropolitan Planning Organization’s land use forecast and other travel demand data, rather than using arbitrary assumptions. The GBNRTC regional travel demand model was appropriate analysis tool for analyzing a scenario where travel routes would shift regionally. The Project Scoping Report documents the evaluation and ultimate dismissal of this concept. As stated, the expressway cannot be removed or filled in due to the issues related to diverting the 75,000 daily trucks and cars that currently use the expressway to local streets and other key roadways (many of which are in disadvantaged communities). These issues include the following:

- Safety (diverting traffic onto radial streets would result in higher crash rates on local streets with intersections compared to retaining the expressway);

- Increased crash rates with pedestrians and bicyclists due to their exposure to increased traffic on local streets;
- Conflict with potential Complete Streets/road diet improvements to radial streets undertaken by the City of Buffalo to increase nonmotorized accessibility and safety;
- Increased emergency vehicle response times and decreased access to hospitals;
- Increased emissions of air pollutants near homes and community facilities, because “stop and go” traffic on local streets produces more pollutants than continuously moving traffic;
- Travel time reliability for those commuting through the area; and
- Exceeding the capacity of key roadways, such as I-190, I-90, and City of Buffalo arterial streets, resulting in traffic congestion and safety issues in other parts of the city or requiring widening/expansion that could have social/environmental effects.

NYSDOT subsequently undertook a supplemental traffic analysis for Concept 10 in order to provide the public information on additional performance measures for key roadways/intersections affected by redistributed traffic (FDR/EA Appendix B8). The additional performance measures include level of service and speed. The results further illustrate how poorly traffic would operate with removal of the expressway.

The class of action (Environmental Assessment) for this project is the appropriate classification under NEPA. The NEPA/SEQRA class of action (Environmental Assessment) has not determined the level of public outreach or analysis conducted for this project. For more detailed information on the rationale for preparation of an Environmental Assessment for this project, refer to response to comment C9-6.

Central Terminal Restoration Corp.

C1405.01 As the stewards of a catalytic, historic rehabilitation project in East Buffalo, the Central Terminal Restoration Corp. understands the importance of a thorough and meaningful community engagement process. We spent 12 months talking with the community to build a shared vision for the future of the Buffalo Central Terminal in our Master Plan.

The community has not found consensus on a path forward for the Kensington Expressway. Given the scale, impact, and cost of the Kensington Expressway Project, there needs to be a significant level of analysis and investment of time with the community.

We ask that the NYSDOT reconsider the fast-tracking of the covering alternative and revisit their approach to public engagement to provide meaningful ways for the community to participate.

R1405.01 The origins of the Project are in a community-led solution advocated for by various community organizations (see Section 2.1 of this FDR/EA), and NYSDOT has worked with the community in the further development of the design details for “covering the Kensington”. As documented in Chapter 5 of this FDR/EA, the NYSDOT has been and will continue to be committed to an open and meaningful public involvement program for the Project. To date, this program has included a Project Scoping Meeting, Public Information Meeting, Public Hearing, NYSDOT attendance at over 60 community events and meetings, 15 monthly stakeholder meetings, multiple public comment opportunities,

mailings, a project website, and a Project community outreach office staffed by community outreach liaisons.

C1405.02 We also ask that the Kensington Expressway Project complete a full Environmental Impact Statement that thoroughly analyses the socioeconomic, environmental, and traffic-related consequences of ALL alternatives.

R1405.02 For more detailed information on the rationale for preparation of an Environmental Assessment for this project, refer to the response to comment C9-6.

A comprehensive evaluation of concepts was completed in the Project Scoping Report, which is available on the project website. As a result of this process, two concepts (Concept 5 and Concept 6) were identified as meeting the purpose and need and were further developed into the current Build Alternative. The FDR/EA thoroughly analyzes socioeconomic, environmental, and traffic-related effects of the Build Alternative as compared to the No Build Alternative.

Citizens Alliance, Inc.

C471.01 Citizens Alliance, Inc. (CAI) supports the Kensington Expressway Project to cover a portion of Route 33, with a preference that the project meet limits of the Region Central project at Delavan to complete the "One Road" concept reconnecting MLK Jr. and Delaware Parks.

R471.01 Section 1.4 of this FDR/EA documents the rationale for the Project limits. The Build Alternative would not preclude additional independent projects between the northern limit of the tunnel at Sidney Street and East Delavan Avenue.

C471.02 This project and its initial phase is a vital part of attaining the goal to reconnect a community that has been marginalized for decades and disenfranchised from the current economic resurgence of Buffalo. Recreating a green space and access across East-West segments of streets disrupted by the expressway will help remediate the physical and psychological barrier to social and economic vitality for residents, businesses, and anchor institutions around Humboldt Parkway.

R471.02 Comment noted. Reconnecting the community and creation of continuous greenspace are key components of the Project needs articulated in Section 1.3.2 of this FDR/EA. Environmental justice, reconnecting the community, and creation of continuous greenspace are key components of the Project needs as articulated in Sections 1.3.2 and 4.4 of this FDR/EA.

C471.03 To prevent the original mistake of constructing the Expressway against the interests of the immediate community, CAI further supports the full involvement of community stakeholders in the design process, and that the designers heed the community goal to insure that the infrastructure designed will lead to a revitalized, walkable, and healthy urban environment. We further request:

- Historic Land Report be completed as part of the process for adherence to historic cross-sections of the parkway including tree heights with the restored parkway
- Health Impacts Assessment
- Parking Spaces not be completely eliminated for residents along the parkway

- In-depth examination of the impacts of the pedestrian crossings and movement at the roundabouts

R471.03 As detailed in Chapter 5 of this FDR/EA, the FHWA and NYSDOT have provided, and will continue to provide, meaningful opportunities for public and agency engagement in the Project. Refer to Chapter 5 of the FDR/EA for more information. Section 5.9 of the FDR/EA details public engagement opportunities that will be available during final design and construction.

The comment requesting a Historic Land Report is interpreted to be referring to a Cultural Landscape Report. FHWA, in coordination with NYSDOT, had coordinated with the State Historic Preservation Office (SHPO) on the need for a Cultural Landscape Report, in the context of Section 106 of the National Historic Preservation Act (NHPA), as amended, and its implementing regulations under 36 CFR Part 800. A Cultural Landscape Report was considered as information was gathered and research was performed in the identification of historic properties. An Architectural Reconnaissance Survey, which considered the historical context and information directly related to the historical and architectural development of Humboldt Parkway, was prepared for the Project by the New York State Museum. In the context of Section 106 of the NHPA, designed landscapes eligible for the National Register of Historic Places (NRHP) are categorized as a site. The National Park Service (NPS), a Bureau of the United States Department of the Interior (USDOl), provides guidance on how to apply the National Register Criteria for Evaluation, which considers categories of historic properties, how to evaluate a property within its historic context, and how to identify the type of significance of a property. Specifically, this guidance states that a designed landscape that has had major changes to its historic design, vegetation, original boundary, topography/grading, architectural features, and circulation system is not eligible for the NRHP. The construction of the Kensington Expressway in the 1950s and 1960s removed the original Humboldt Parkway, including original features that were part of its designed landscape. For this reason, the original Humboldt Parkway is not eligible for the NRHP; therefore, a Cultural Landscape Report is not warranted as part of the Section 106 process for this proposed undertaking. Nevertheless, the Build Alternative has incorporated design features of the original Humboldt Parkway to the greatest extent practicable (see response to comment C7.5-6 in this appendix).

Regarding the request for a health impacts assessment, the FDR/EA documents the effects (as defined by 40 CFR 1508.1(g)) of the proposed action on the human environment, which includes consideration of potential effects on public health and safety. As documented in Section 4.9 of this FDR/EA, the Project will not result in exceedances of the National Ambient Air Quality Standards, which are criteria established by the United States Environmental Protection Agency (USEPA) to protect public health, including the health of sensitive populations such as asthmatics, children and the elderly. As documented in this FDR/EA, the Build Alternative will provide public health benefits, such as access to new greenspace, increased opportunities for physical activity related to the proposed bicycle and pedestrian improvements, reduced noise levels, and improved aesthetics.

As discussed in Section 3.4.1.10 of this FDR/EA, the Build Alternative would require the elimination of up to 51 on-street parking spaces out of approximately 173 spots available in residential areas along Humboldt Parkway. Of these 51 total on-street parking spots, it is expected that 25 spots would be removed due to new curb bump outs which are incorporated into the Project to improve intersection sight distances and to shorten pedestrian street crossings. The remaining 26 on-street parking spots to be removed are on Humboldt Parkway southbound between Northland Avenue and East Ferry Street and need to be eliminated in order to provide a continuous bicycle lane, and to provide consistent street tree plantings in tree lawns (or snow storage areas) between the sidewalk and curb. A parking

demand study, included in Appendix A9, was completed for this section of Humboldt Parkway, which identified that parking along these two blocks has very low usage. Additionally, residences on Humboldt Parkway in this area have access to off-street driveways. No commercial business parking would be impacted. Therefore, the proposed parking removal would not adversely affect residents or access to businesses. Details of the locations where the Build Alternative would impact parking spaces is provided in Appendix A9.

The Best Street bridge roundabout design includes a 10-foot-wide multiuse path for pedestrian movements along the roundabout and crosswalks with clearly marked pedestrian priority signage and appropriate lighting at night (see Section 3.4.2.1 of this FDR/EA). In general, roundabouts improve safety for pedestrians by reducing vehicle speeds and reducing crossing distances. The splitter islands provide a refuge such that pedestrians only need to cross one direction of traffic at a time. Design details for the pedestrian crossings of the roundabout and potential measures to increase driver awareness of the need to yield to pedestrians will continue to be developed during final design.

Citizens for Regional Transit 1 of 2 (11/10/2023 Letter)

- C1431.01** The Kensington Project needs to incorporate the larger transportation planning context. The scoping area needs to include more than just 1 mile of expressway. It must consider the Region Central Project and plans for extending Buffalo Metro.
- R1431.01** Section 1.4 of this FDR/EA documents the rationale for the Project limits. Potential future Metro Rail extensions outside the study area of the NYS Route 33 Kensington Expressway Project are outside the scope of issues required to be addressed in the environmental review process. GBNRTC was included in the environmental review process as a participating agency. The Build Alternative does not preclude the implementation of other independent projects, including recommendations resulting from the Region Central planning study.
- C1431.02** The project must comply with the latest NYS environmental laws, especially the Climate Leadership and Community Protection Act (CLCPA) and NYS' "Green Amendment" to the NYS Constitution.
- R1431.02** As documented in Section 4.10.5 of this FDR/EA, the Project is consistent with the Climate Leadership and Community Protection Act (CLCPA) and would result in a net reduction in greenhouse gas emissions. Regarding the "Green Amendment", see response to comment C1431.21.
- C1431.03** Citizens for Regional Transit (CRT) opposes the NYSDOT Kensington Expressway highway improvement project's build alternative after reviewing the NYSDOT design, and the draft Environmental Assessment. The Community requires a comprehensive approach to aging infrastructure. The piecemeal approach taken by NYSDOT is inadequate and does not meet the needs of our region. The Build Alternative does nothing to support the State's goal of reducing emissions via the Climate Leadership and Community Protection Act (Climate Act), and only cements in place truck and car exhaust for a generation or more.
- R1431.03** As documented in Section 4.10.5 of this FDR/EA, the Project is consistent with the Climate Leadership and Community Protection Act (CLCPA) and would result in a net reduction in greenhouse gas emissions.

C1431.04 The collapse of the neighborhood business districts is recognized and is now being remediated by NY State’s East Side Avenues Initiative to the tune of \$200M. It is counterproductive for NYSDOT to rebuild the Kensington expressway which induces traffic away from the business districts NYS is working to restore. Business districts need the traffic the expressway captures.

R1431.04 The purpose, objectives and needs of the Project and the project limits are documented in Chapter 1 of this FDR/EA. The East Side Avenue corridors are outside the defined transportation corridor (NYS Route 33 and Humboldt Parkway between Best Street and Sidney Street) that is the focus for improvements with this Project. The Project does not conflict with the implementation of the East Side Avenues initiatives such as rehabilitation of commercial buildings and workforce training.

Redistributing traffic through removal of the expressway (which would increase traffic on the roadways referred to in the comment) was considered as “Concept 10” and dismissed during the project scoping process, as documented in the Project Scoping Report. NYSDOT subsequently undertook a supplemental traffic analysis for Concept 10 in order to provide the public information on additional performance measures for key roadways/intersections affected by redistributed traffic (FDR/EA Appendix B8). The additional performance measures include level of service and speed. The results further illustrate how poorly traffic would operate with removal of the expressway.

C1431.05 The safety record of the Kensington Expressway is appalling. Disabled vehicles put into precarious positions, crashes, injuries, and deaths plague this highway. During the period of October 2022 through January 2023 there were four fatalities on the highway adjacent to the project area.

R1431.05 Section 2.4.1.8 of this FDR/EA describes the safety analysis that was conducted for the Project. An initial safety analysis was conducted to evaluate crashes that occurred during a 3-year period from August 1, 2013 to July 31, 2016. An updated safety analysis was performed to evaluate crashes that occurred between September 1, 2018 and February 29, 2020 to assess the most current period prior to COVID-19 and to validate the initial safety analysis. The NYS Route 33 crash rate was calculated to be 0.44 accidents per million vehicle miles (acc/mvm), which is less than the statewide average rate of 1.02 acc/mvm for similar facilities. One fatality occurred during the initial study period.

Elements of the Build Alternative that would improve safety for all users within the transportation corridor include the Best Street roundabouts, optimized signal timings and equipment, provision of a new surface course, new pavement markings, defined travel lanes, improved signage, and improvements to pedestrian and bicycle facilities.

C1431.06 Deterioration of the expressway walls and bridges leads to today’s NYSDOT proposal to rebuild the 6-lane expressway thus repeating the 1960s mistake of destroying a renown Olmsted parkway for the sake of prioritizing travel by car. If the build alternative were to be implemented, Buffalo will have missed an opportunity to reconnect and restore historic infrastructure while applying 21st century priorities and wisdom.

R1431.06 The original expressway construction and removal of the historic Humboldt Parkway are discussed in Section 2.1 of this FDR/EA. The project needs are not limited to traffic-related considerations and include reconnecting the community with continuous greenspace (see Section 1.3.2 of this FDR/EA). Numerous alternatives were considered as documented in the Project Scoping Report.

- C1431.07** NYSDOT’s project objectives in the DDR/EA include “maintaining the vehicular capacity of the existing transportation corridor”. This project objective overwhelms all the other objectives and constrains the nature of the project. Many of the comments in previous comment periods were dismissed out of hand because they did not meet the criteria of “maintaining the flow of vehicular traffic.” Regardless, there are fundamental problems with the objective as currently stated.
- R1431.07** The objective to maintain the vehicular capacity of the existing transportation corridor is supported by the identified needs documented in Section 1.3.2 of this FDR/EA.
- C1431.08** The limits of the defined corridor are too narrowly defined. There is an unacceptable gap between Sidney St. and East Delavan Ave. The Fruit Belt neighborhood is excluded. These constraints doom the project. The communities that ought to be reconnected extend beyond Best and Sidney Streets as defined in the project scope. To reconnect the community, the project must reconnect MLK Park with Delaware Park and include the Fruit Belt. The defined corridor fails to reconnect the community.
- R1431.08** As described in Section 1.4.1 of this FDR/EA, the NYSDOT and FHWA established the transportation corridor and proposed tunnel limits for this Project in consideration of the following factors: the presence of the depressed highway section with retaining walls, opportunities for connectivity with existing parkland and community resources, and physical and environmental constraints. Prior to the June 30, 2022 public scoping meeting, the NYSDOT and FHWA had defined the limits of the transportation corridor as Best Street to East Ferry Street. In consideration of public comments received during the scoping comment period, the limits were subsequently extended approximately 600 feet north to Sidney Street. As documented in Section 1.4.1 of this FDR/EA, Best Street and Sidney Street represent logical termini/rational endpoints for this Project.
- As documented in Section 1.4.2 of this FDR/EA, the Kensington Expressway Project has independent utility and would not preclude the consideration of potential future projects in other portions of NYS Route 33 or in the NYS Route 198 corridor.
- C1431.09** The scope fails in that it is limited to highways and cars and to perpetuating today’s car-centric transportation system. The project scope must include multimodal transportation components, especially public transit. And it must include current and future multimodal transportation components. We need to invest in the future. The Kensington build alternative is investing in the past.
- R1431.09** Pedestrian, bicycle and transit-related components are included in the Build Alternative as documented in Section 3.4.2 of this FDR/EA.
- C1431.10** State law demands that the Kensington Expressway project reduce vehicle miles traveled and consider public transportation. The CLCPA requirements are not met by the NYSDOT project objectives. The project objectives must include CLCPA requirements.
- R1431.10** As documented in Section 4.10.5 of this FDR/EA, the Project is consistent with the Climate Leadership and Community Protection Act (CLCPA) and would result in a net reduction in vehicle miles traveled by incorporating pedestrian/bicycle and public transportation enhancement measures.
- C1431.11** MacroTrends1 from the United Nations shows the Buffalo Area Metro Area Population as follows:
1950 899,000
2023 884,000

The current population represents a 1.17% decline, which is negligible. There are more cars today than in 1950 and there is more sprawl.

According to UN projections, we should be planning now for population growth. This is the perfect time to add light rail rapid transit capacity to the region.

R1431.11 The Niagara Frontier Transportation Authority (NFTA), the only organization with the authority to implement mass transit projects in the area, is not currently proposing rail service in the transportation corridor. The Project has been and will continue to be designed to not preclude potential future light rail projects, but these would be separate, independent projects. As documented in Section 4.1.1 of this FDR/EA, the NFTA is a Participating Agency on the Project. The NYSDOT will continue to coordinate with NFTA as the Project progresses regarding potential bus infrastructure improvements on Humboldt Parkway and other local roads within the transportation corridor. As discussed in Section 3.4.2.3 of this FDR/EA, the Build Alternative would include the construction of concrete pads for future bus shelters to be installed by NFTA.

C1431.12 Kensington Expressway's traffic peaks at 6,000 cars per hour in both directions.

A full 4-car Metro Rail train comfortably carries 560 passengers. Trains having 10-minute headways peak at 6,720 passengers per hour for both directions. There is even room for additional train capacity by increasing train departure frequency and by boarding up to 700 passengers per train. Rail capacity is about the same as the peak number of people the Kensington expressway currently carries.

R1431.12 See response to comment R1431.11.

C1431.13 NYSDOT and the Governor need to admit it is impossible to reconnect the parks without completely restoring Humboldt Parkway between the Science Museum and Agassiz Circle. Doing so would be the best option for the community, the City, and the region. This involves filling in the Kensington Expressway in more than the currently defined project area.

NYSDOT simply throwing their hands up and doing nothing between Sidney St and East Delavan Ave. proves that the goal of maintaining the continuous flow of traffic is incompatible with reconnecting the parks and neighborhoods. Reconnecting the parks requires new thinking and abandoning the idea of capping the expressway.

R1431.13 The objective to maintain the vehicular capacity of the existing transportation corridor and the objective to reconnect the surrounding community by creating continuous greenspace to enhance the visual and aesthetic environment of the transportation corridor are both supported by the identified needs documented in Section 1.3.2 of this FDR/EA. As described in Section 5.3 of the Project Scoping Report (PSR), the Build Alternative meets both objectives.

During the project scoping process, the NYSDOT evaluated a concept (Concept 10) that involved removal of NYS Route 33 and diversion of traffic to other roadways. The assumed limits of removal were NYS Route 198 to downtown. The evaluation included an analysis of changes in traffic volumes and volume to capacity ratios as a result of Concept 10 using the GBNRTC regional travel demand model. It is important for an analysis of a facility removal, such as Concept 10, to take into account trip redistribution and the Metropolitan Planning Organization's land use forecast and other travel demand

data, rather than using arbitrary assumptions. The GBNRTC regional travel demand model was appropriate analysis tool for analyzing a scenario where travel routes would shift regionally. The Project Scoping Report documents the evaluation and ultimate dismissal of this concept. As stated, the expressway cannot be removed or filled in due to the issues related to diverting the 75,000 daily trucks and cars that currently use the expressway to local streets and other key roadways (many of which are in disadvantaged communities). These issues include the following:

- Safety (diverting traffic onto radial streets would result in higher crash rates on local streets with intersections compared to retaining the expressway).
- Increased crash rates with pedestrians and bicyclists due to their exposure to increased traffic on local streets.
- Conflict with potential Complete Streets/road diet improvements to radial streets undertaken by the City of Buffalo to increase nonmotorized accessibility and safety.
- Increased emergency vehicle response times and decreased access to hospitals.
- Increased emissions of air pollutants near homes and community facilities, because “stop and go” traffic on local streets produces more pollutants than continuously moving traffic.
- Travel time reliability for those commuting through the area.
- Exceeding the capacity of key roadways, such as I-190, I-90, and City of Buffalo arterial streets, resulting in traffic congestion and safety issues in other parts of the city or requiring widening/expansion that could have social/environmental effects.

NYSDOT subsequently undertook a supplemental traffic analysis for Concept 10 in order to provide the public information on additional performance measures for key roadways/intersections affected by redistributed traffic (FDR/EA Appendix B8). The additional performance measures include level of service and speed. The results further illustrate how poorly traffic would operate with removal of the expressway.

C1431.14 RT Recommends Taking a Comprehensive, Regional Approach

There are large interdependent infrastructure projects planned and underway that should be considered from a regional perspective:

- The Buffalo Bills Stadium
- Extending Metro Rail to and refurbishing DL&W Terminal
- Extending Metro Rail to Amherst
- Region Central
- East Side Avenues
- Central Terminal Restoration
- Bus Rapid Transit on Bailey Ave
- NFTA Metro Rail East Side/Airport and Southtowns exploratory studies

R1431.14 Relevant reasonably foreseeable future actions are discussed in Section 4.22.1 of the FDR/EA and were considered in the assessment of cumulative effects, as appropriate. Many of the projects mentioned in this comment are geographically distant (Buffalo Bills Stadium) or in early feasibility planning stages (Metrorail extension to airport).

C1431.15 NY-198, Scajaquada Expressway/Region Central

Great progress has been made by the Metropolitan Planning Organization (MPO), the Greater Buffalo Niagara Regional Transportation Council (GBNRTC), on the NY-198 project under the name of Region Central. The MPO plan for NY-198 between I-190 and East Delavan Ave. should be integrated with the Kensington Project. Construction of Region Central should be accomplished by NYSDOT while Kensington plans are finalized.

R1431.15 As documented in Section 1.4 of this FDR/EA, in accordance with 23 CFR § 771.111(f), the Kensington Expressway Project connects logical termini, has independent utility, and does not restrict consideration of alternatives for other reasonably foreseeable transportation improvements. As described in Section 1.4.2 of this FDR/EA, the Region Central Initiative is a planning-level study for the NYS Route 198/Scajaquada Expressway Corridor. The plan proposed by GBNRTC for the Scajaquada Expressway is a conceptual plan that will have to be vetted through engineering analysis to examine its feasibility.

C1431.16 The MPO should be tasked with expanding the NY-198 plan to be continuous and contiguous with plans for NY-33 from East Delavan Ave to the Elm/Oak arterial. The planning process should begin immediately.

We think construction of the NY-198 portion should be started right now. The Region Central cross-section proposal for Humboldt Parkway between Agassiz Circle and East Delavan Avenue should be promoted as the candidate preferred alternative. We think it is worth challenging the MPO to complete the plan within 8 months.

R1431.16 The FHWA is the federal lead agency and NYSDOT is the joint lead agency for this Project because the Kensington Expressway is a state highway operated and maintained by the NYSDOT and the Project would be funded by state and federal sources. GBNRTC is a planning organization that can conduct studies but does not design or build projects. Note that GBNRTC has been involved in the development of the Project as a participating agency (see Section 4.1.1 of this FDR/EA).

C1431.17 The overall WNY population today is about the same as it was in 1950, but there's a lot more cars. The expressway today is carrying 75,000 cars daily. Buffalo arterials, which are now underutilized, can handle added traffic from expressway closure.

R1431.17 See response to comment C1431.14.

C1431.18 CRT has long advocated for expanding Metro Rail from downtown to the airport and Transit Road using existing publicly owned rights-of-way in accordance with longstanding NFTA plans. City streets can handle today's Kensington traffic without gridlock, but anticipated population growth in the near future will require a new high capacity, high speed LRRT alternative. We think the LRRT expansion should be fast-tracked along with the removal of the Scajaquada and Kensington expressways because these projects all affect the same motorists and populations.

This is the environmentally friendly answer to moving large numbers of people now jammed and congested on the Kensington and other area expressways. As we stated, LRRT from Downtown to the Airport and beyond would provide ample capacity for today and future population growth. LRRT meets the NY CLCPA objectives of reducing Vehicle Miles Traveled.

LRRT reduces demand for fossil fuel, while eliminating greenhouse gas emissions. LRRT would also eliminate microplastic and fish-killing 6PPD-quinone pollution from tires. LRRT provides opportunities for equitable transit-oriented development (eTOD). The proposed Kensington Expressway highway project offers no development opportunities for the City of Buffalo or the Town of Cheektowaga.

CRT anticipates not all motorists will switch to LRRT. CRT expects that a good percentage will transition to LRRT while others will use cars on City streets and arterials providing additional, much-needed traffic to traffic-starved commercial streets without causing overwhelming congestion and safety concerns. We think LRRT would bring more people to and from downtown faster than the Kensington Expressway.

The NFTA is currently working on expanding Buffalo Metro into the DL&W terminal and to Amherst. The DL&W extension sets the foundation for subsequent extensions to the East Side and airport. The NFTA expects to have funding in FY2025 (during 2024) to study other extensions, building on the many prior Metro Rail extension studies done over the years.

CRT proposes that design and building the Amherst and DL&W extensions be completed while East Side / airport and other Metro Rail extensions are studied.

The East Side Metro Rail extension should be fast-tracked so that the system is up and running as soon as possible to relieve traffic on Buffalo's arterials and remaining expressways (e.g., the I-190) and to expedite meeting environmental mandates of the CLCPA law. We recognize this is a very ambitious timeline but are confident that NYSDOT and the NFTA are up to the task.

R1431.18 See response to comment C1431.14.

C1431.19 Skyway Bridge

In order to avoid a similar time-crunch for Skyway Bridge removal, we think now is also the best time to embark on the southtowns extension for Metro Rail in conjunction with the new Bills stadium. Having LRRT in place before removal of the Skyway bridge makes the awkward shunt for Route 5 Fuhrmann Blvd traffic to I-190 unnecessary.

The same capacity, equity, eTOD and pollution reduction advantages available for the East Side/airport extension are also provided by the southtowns Metro Rail extension.

CRT has confidence that NYSDOT and NFTA are capable of handling the two large construction projects of the East Side and southtowns Metro Rail extensions simultaneously.

R1431.19 The Skyway Bridge and southtowns extension of Metro Rail are outside the study area for the Kensington Expressway Project and do not need to be addressed in the current environmental review process.

C1431.20 Beyond the many reasons the build alternative should not be undertaken as proposed, summarized in Part 1 above, it should be immediately rejected and disqualified based on environmental considerations and NYS legal mandates. The original sin of the Kensington Expressway is that it pollutes and poisons the disadvantaged communities that it goes through. As originally stated on Reconnect Our Community's (ROCC) website:

"Pollution from Route 33 traffic has caused inordinate respiratory illnesses for families in the community. Give our children a clean, safe environment by decreasing pollution and health hazards caused by heavy traffic volume. Capping the Humboldt section of the Kensington

doesn't do anything to help with health outcomes. As a matter of fact, it concentrates car and truck exhaust."

The DDR/EA build alternative as currently defined fails to meet the most important injustice suffered by the impacted community, Buffalo's East Side.

R1431.20 The air quality analysis that was conducted for the Project (documented in Section 4.9 of this FDR/EA) shows the following:

- There would be a slight decrease in pollutant concentrations at locations along the proposed tunnel cap.
- In the absence of mitigation, there would be a slight increase in pollutant concentrations near the tunnel exit portals.
- The highest predicted total concentrations near the tunnel portals (including a background concentration) are well below the applicable health-based ambient air quality standards.
- The Project includes air quality mitigation measures to minimize air quality effects. These measures were not credited in the quantitative analysis.

As documented in the FDR/EA, based on the air quality analysis results and the measures that would be implemented to minimize air quality effects, the Build Alternative would not have an adverse effect on air quality.

Section 4.20.3 of this FDR/EA documents the temporary air quality effects that could occur during construction of the Build Alternative, as well as the measures that would be implemented to avoid and minimize these effects. The construction air quality mitigation measures include requiring the use of newer/ lower emitting equipment, a dust control plan, idling restrictions, and a construction air quality monitoring program (including action levels that would trigger investigation and changes in construction methods).

C1431.21 Based on a legal expert's opinion, CRT believes the DDR/EA build alternative selected by the NYSDOT fails to comply with the NYS Constitution's "Green Amendment" and recent environmental laws put in place to combat the existential threat of climate change that we all face.

These laws are too important to the wellbeing of our planet and NYS's economy and health to ignore. The NYSDOT's build alternative fails to comply with:

- The NYS Constitution's "Green Amendment."
- The mandates of the NYS CLCPA law.

The NYS Constitution's "green Amendment" simply states:

"... each person shall have the right to clean air and water and a healthful environment."

This Constitutional Amendment was approved November 2nd, 2021, directly by NYS voters in by a 2 to 1 margin! It is a direct reflection of the will of NYS citizens and must be respected by all State agencies.

NYS CLCPA Law provides specifics. It mandates that NYS projects be developed in ways that participate in achieving 40% reductions in greenhouse gases economywide by 2030 (and 85% by 2050). It's not even close. The NYSDOT build alternative has completely failed to address and meet these legal requirements.

R1431.21 With respect to the Green Amendment, NYSDOT and FHWA have conducted the environmental review process in accordance with the requirements of NEPA and SEQRA, and environmental protection agencies such as USEPA and NYSDEC have been involved as Cooperating Agencies throughout the environmental review process. Specific substantive environmental concerns are responded to in other responses to comments throughout this appendix.

As documented in Section 4.4 and Section 4.10.5 of this FDR/EA, the Project is consistent with the Climate Leadership and Community Protection Act (CLCPA). The Project would result in a net reduction in greenhouse gas emissions. The CLCPA emission reduction targets are to guide economy-wide emissions reduction planning at the state level (compared to a 1990 baseline) and are not intended to be a mandate applicable at the project level. Measures to support transit, pedestrian and bicycle modes are incorporated in the Build Alternative as described in Section 3.4.2 of this FDR/EA. The greenspace and tree plantings incorporated in the Project would also contribute beneficially to carbon sequestration.

C1431.22 The DDR/EA cites the CLCPA law 17 times. On Page 148 it says,
“... the Project has been designed and assessed in consideration of the requirements of New York’s CLCPA law.”

But on Page 275 the DDR/EA says that:

“... the Build Alternative will reduce CO2 by 0.04% by 2047 and therefore the Project would be consistent with CLCPA.”

This is not a meaningful decrease and is many orders of magnitude below the CLCPA mandates.

R1431.22 The statewide emission reduction targets are not intended to be applied at a project level. The Build Alternative results in a net reduction in greenhouse gas emissions and therefore does not interfere with attainment of CLCPA emission reduction targets. See Response to comment C1431.21.

C1431.23 And on Page 201 the DDR/EA says that particulate matter increases.
“... particulate` matter equal to or less than 2.5 micrometers (PM2.5) would ... increase slightly (6% or less) near the tunnel exit portals.”

We don’t agree that 6% is a “slight” increase when levels of pollution are already causing serious health problems for East Side residents as ROCC pointed out so many years ago and is reiterated in this letter with updated specificity.

R1431.23 The Build Alternative would not have adverse air quality effects on disadvantaged communities, see response to comment C1431.20. Of the 2,833 receptors in the model, the highest increase in annual average PM2.5 at a single receptor in year 2027 is 6%. In addition, see FDR/EA Figure 4.4-7 which shows that out of 2,833 receptors, only 14 would experience a No Build to Build increase of greater than 5% in annual average PM2.5 concentrations in year 2027 and these receptors are not located at residences, schools, or community facilities. 1,773 of the 2,833 receptors would experience a No Build to Build decrease in annual average PM2.5 concentrations.

C1431.24 The project DDR/EA says nothing about concentrations and distribution of micro-plastics, 6PPD-quinone from car tires, or asbestos known to be generated from brakes, pollutants known to cause serious environmental and health damage. Also, the NYSDOT DDR/EA fails to address how the asbestos in Kensington Expressway walls will be contained during construction. If NYSDOT insists on moving

ahead with this build alternative, at a minimum, we call for a full Environmental Impact Statement (EIS) analysis that sorts out these issues and fully involves the local communities.

R1431.24 The pollutants for analysis in the DDR/EA air quality analysis were determined through an interagency consultation process that included NYSDOT, FHWA, USEPA and NYSDEC. The analysis used regulatory models and followed USEPA and FHWA guidance and procedures for particulate matter hot-spot analysis (see Appendix D7 of this FDR/EA). Brake wear particulate emissions were included in the PM2.5 and PM10 analyses based on emission rates determined with USEPA's Motor Vehicle Emission Simulator (MOVES) model. Mobile source air toxics were considered in accordance with FHWA guidance.¹⁴

Asbestos containing materials are routinely addressed in transportation projects. As documented in Section 4.18.2 of this FDR/EA, the NYSDOT confirmed the presence of non-friable asbestos containing materials associated with the five bridge structures within the transportation corridor and in certain caulking materials on the retaining wall expansion joints and at the base of metal guide rails on the top of the retaining walls. Testing completed in December 2023 confirmed that no asbestos is present in the waterproofing material on the back of the retaining walls (see Section 4.18.2 of this FDR/EA). Asbestos containing materials would be removed and disposed of consistent with a Project-specific health and safety plan in compliance with all federal and state regulatory requirements to protect workers and the public.

Local communities were involved during the development of the Project as detailed in the summary of public engagement activities provided in Chapter 5 of this FDR/EA.

The class of action (Environmental Assessment) for this project is appropriate classification under NEPA. The NEPA/SEQRA class of action has not determined the level of public outreach or analysis conducted for this project. For more detailed information on the rationale for preparation of an Environmental Assessment for this project, refer to response to comment C9-6.

C1431.25 The CLCPA requires DOT to prioritize alternatives that reduce vehicle miles travelled (VMT). Therefore, NYSDOT's DDR/EA section S.2.1 Purpose and Objectives must be rewritten. The following DDR/EA objective itself violates the CLCPA and must be removed:

“Maintain the vehicular capacity of the existing transportation corridor.”

The project objectives need to be changed to comply with the CLCPA. In fact, the DDR/EA objectives should include meeting the CLCPA mandates.

R1431.25 The Build Alternative does not increase VMT and is consistent with the CLCPA (see Section 4.10.5 of this FDR/EA). The project objectives were reasonably defined as described in Section 1.3 and are not limited to traffic-related consideration (they also include reconnecting communities with continuous greenspace, providing Complete Streets features to support pedestrian/bicycle modes etc.).

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https://www.fhwa.dot.gov/environMent/air_quality/air_toxics/policy_and_guidance/msat//fhwa_nepa_msat_me morandum_2023.pdf

- C1431.26** Since the project only extends from Dodge to Sidney Streets the noise and environmental pollution will not change at all in the Fruit Belt or between Sidney and Delavan Streets. Sadly, the build alternative will ensure that the expressway and all its pollution will be in place for decades to come. This is the Kensington’s core injustice, which is not being addressed.
- R1431.26** See response to comment C1431.08.
- C1431.27** The CLCPA Draft Scoping Plan identifies and recommends implementation approaches. It calls for coordination with and improvements in other less polluting modes. The CLCPA specifically calls for transportation plans to be made in ways that encourage use of other less polluting modes. It calls for investments to enhance the availability and viability of other modes, especially public transit. It recommends extending high-capacity transit systems, like Buffalo’s light rail rapid transit (LRRT) system.
- R1431.27** Regarding transit alternatives, see Response R1431.12. Measures to improve pedestrian, bicycle and bus transit conditions in the study area are detailed in Section 3.4.2 of this FDR/EA.
- C1431.28** The DDR/EA NYSDOT website says that the Niagara Frontier Transportation Authority (NFTA) “... is not currently proposing rail service in the transportation corridor...” but that the project will “not preclude potential future light rail projects.”

This is misleading and untrue. NYSDOT defines the Build Alternative scope in a way that intentionally disregards the possibility of LRRT. The NFTA has plans for extending Buffalo Metro Rail. These Buffalo Metro plans for East Side, South Towns and North Towns extensions were laid out in the 1970s and have been updated many times, most recently in 2010.^{2,3,4,5,6}

In addition to the NFTA transit expansion plans, the GBNRTC conducted a comprehensive community driven plan defining regional priorities including desired transit services, under the One Region Forward Program. Here is a reference and link to the One Region Final Report in 2015.⁷

One Region Forward was led by the GBNRTC, the UB Regional Institute, and the Buffalo-Niagara Partnership. It held workshops in both urban and rural areas across the 2-county WNY region. There was a strong consensus that we need more investments in improving public transit rather than highways. Here’s a chart from one of the surveys followed by a sampling of what the people said should guide us moving forward.

We call on NYSDOT to follow the guidance of the One Region Forward Project and apply a community-focused process in the program.

2 Niagara Frontier Transportation Authority Strategic Transit Assessment Working Paper, August 27, 2001.

3 Niagara Frontier Mass Transit Study, Federal Project No. NY-T0-4, NY State Project No. 5820.00, November 1971

4 Erie County Transit Service Restructuring and Fare Study – Strategic Assessment, Final Report, August 2010.)

5 Comprehensive Transit Oriented Development Final Report. GBNRTC / WSP. August 2018. (https://www.nftametrorailexpansion.com/pdfs/buffalo_tod_book_export_20180919.pdf)

6 NFTA-METRO Transit Development Plan, April 2019.

(http://www.nfta.com/pdfs/2019/public_info/2019-transit_development_plan.pdf)

7 One Region Forward Final Plan. GBNRTC. 2015. http://bap-home.net/solarize/wp-content/uploads/28/2017/05/1RF_A-New-Way-To-Plan-For-Buffalo-Niagara_FinalPlan_Reduced.pdf.

R1431.28 See Response R1431.12. NYSDOT is aware CRT is an advocate for extension of Metro Rail to the airport along existing rail lines. General public support for transit in regional surveys does not imply that transit service in the NYS Route 33 corridor is appropriate. Note that NFTA was a participating agency during the development of this Project and provided input on transit issues.

C1431.29 The East Side/Airport LRRT extension CRT has proposed based on NFTA plans would directly affect the Kensington Expressway traffic study even though it is not in the very limited NYSDOT's defined project scope.

R1431.29 The traffic study conducted for the Project utilized the GBNRTC regional model which includes programmed projects. Metrorail extension to the airport is not a programmed project in the long-range plan and transportation improvement program (TIP) and therefore is not considered reasonably foreseeable. Therefore, it is not necessary for the effect of this possible future extension to be accounted for in the traffic analysis.

C1431.30 The NFTA intends to initiate a study to update Buffalo Metro extension plans in FY 2025 (commencing in 2024).

The extension of Buffalo's light rail is specifically called for in the Erie County Climate Action Plan, which brings the CLCPA mandates to Erie County. The off-handed dismissal of these plans is an insult to the hard work of the NFTA and Erie County Climate Action Task Force.

R1431.30 As noted in the response to C1431.12, the Build Alternative would not preclude the implementation of light rail as an independent project by others.

C1431.31 One major failure of the DDR/EA is that it does not consider long-term alternatives to driving and cements in place the six lane Kensington Expressway for decades. The plan spends \$1B for 1 mile of expressway assuming that this will be the way everyone travels. This is arbitrary and capricious and wastes \$1B of tax money. By assuming that maintaining today's vehicle capacity is the right solution long term ignores 21st Century changes in how we travel, like:

- Changes in travel habits due to the pandemic and the ability to work remotely. For example, many companies like M&T already have hybrid work schedules.
- NYS CLCPA Scoping Plan calls for improvements in public transportation.
- NFTA plans call for extending Buffalo Metro Rail over time.
- Plans for adjacent Region Central Project. These need to be part of the planning for the NYSDOT Kensington Expressway project.

To spend \$1B on this 1 mile of road in isolation without considering the larger transportation system is myopic and wrong. It misses the bigger picture and locks us into a future based on 1950's priorities and values.

R1431.31 Regarding consideration of transit alternatives, see response to comment C1431.12. The Build Alternative does not preclude the extension of Buffalo Metro Rail over time and these extensions are outside the study area and scope of this environmental review process.

Appropriate traffic studies were conducted as documented in the Project Scoping Report Appendix C, Sections 2.4.1 and 3.4.1 of this FDR/EA, and Appendices B1 through B8 of this FDR/EA. Travel demand factors (including commuting trends/remote work) were considered as documented in PSR Appendix F.

The Build Alternative is consistent with the CLCPA as documented in Section 4.10 of this FDR/EA.

The Build Alternative does not preclude the implementation of other independent projects, including recommendations resulting from the Region Central planning study (See response to comment C1431.15).

C1431.32 An important part of the CLCPA mandates is for economic justice. In fact, the CLCPA specifically states that investment benefits should be targeted to disadvantaged communities. For example, the CLCPA states:

“Actions undertaken by New York state to mitigate greenhouse gas emissions should prioritize the safety and health of disadvantaged communities...”

And should “... identify measures to maximize reductions of both greenhouse gas emissions and co-pollutants in disadvantaged communities ...”

The targeted community of this project qualifies as disadvantaged, as the NYSDOT DDR/EA correctly points out. However, the pollution levels stay the same or get worse. This is a violation of the CLCPA.

The DDR/EA states that 39% of the Humboldt community does not have access to cars. But they will have access to 100% of the pollution. Further, with so few people with cars in the targeted area, the question of who this road is for should be asked. Where are all these cars coming from and going? Answering this question will help make the right decision on this project. We believe a community-based decision considering these data, like was done on the Region Central Project is called for.

R1431.32 Regarding air quality and co-pollutants, refer to response to comment R1431.21. As documented in Section 4.4 of this FDR/EA, the Project would not result in disproportionately high and adverse effects on environmental justice populations. Measures to engage the community during project development are discussed in Chapter 5 of this FDR/EA.

C1431.33 We believe the NYSDOT Build Alternative violates both the spirit and letter of the CLCPA law and should be rejected immediately. A balanced, community-driven approach to the Kensington Project that meets CLCPA mandates is called for.

R1431.33 The responses to comments above address the comments related to CLCPA consistency, see also Section 4.10 of this FDR/EA.

Citizens for Regional Transit 2 of 2 (1/2/2024 Letter)

C1713.01 I am a member of the East Side Parkways Coalition and strongly support the Kensington Expressway Project. This critically important project must be based on sound decision making

and done the right way. This major investment decision that will establish WNY transportation policy for decades and must not be rushed. Haste makes waste and more pollution. The project must: (1) have full community support; and (2) meet 21st Century environmental requirements.

R1713.01 Per 40 CFR Part 1501.10, Environmental Assessments shall be completed within a one-year timeframe. The public scoping meeting for the Project was held in June 2022, the Project Scoping Report was published in December 2022, and the EA process started in December 2022. Extensive community input was received throughout the development of the Project, and numerous opportunities were provided for the public to ask questions and submit comments, including an extension of the comment period on the DDR/EA (see Chapter 5 of this FDR/EA). Regarding community support and meeting 21st century environmental requirements, see the responses to C1713.02 through C1713.12.

C1713.02 1. The Project must have Community Support and fully consider community inputs: Many community groups support the project but oppose tunnel plan. These groups include the Olmsted Parks Conservancy (OPC), GOBike Buffalo, East Side Parkways-{ESP} Coalition, and my own Citizens for Regional Transit (CRT). These groups support the project but favor restoring Olmsted's Humboldt Park and Parkway as a surface street. ESP has generated a petition laying out concerns and recommendations that has received over 15,000 signatures, so far.<https://actionnetwork.org/letters/humboldt-parkway-restoration-project>

The community support for the project that was highlighted by NYSDOT and our political leaders at the project plan's public announcement was from the Restore Our Community Coalition (ROCC). ROCC's support now includes updates and clarifications in response to the NYSDOT Draft Design Report/ Environmental Assessment (DDR/EA). Much of ROCC's support aligns with the position of OPC, GOBike, CRT, and ESP. I have attached ROCC's most recent letter (20 October 2023) that that was sent to NYSDOT after reviewing the NYSDOT DDR/EA. I hope you will consider the advice in ROCC's comments along with the e-letter from ESP moving forward. I hope we are finding some community consensus.

R1713.02 All substantive comments were considered and responded to, including the ROCC comment letter (see Consolidated Response A) and the comments of other organizations mentioned in the comment.

C1713.03 Here are some quotes from ROCC's most recent letter to NYSDOT in response to the DDR/EA that I hope will inform plans moving forward.
" ... (ROCC) supports the Kensington Expressway Project to cover a portion of Route 33, with a preference that the project meet the limits of the Region Central project at Delavan to complete the One Road concept connecting MLK Jr. and Delaware Parks."
(See Note #1.)

Note 1: ROCC agrees with OPC, GOBike, CRT, and ESP about the importance of #1 connecting MLK and Delaware Parks. Sadly, the Scajaquada Drain will prevent any subsequent phase (that is affordable) to connect these parks. NYSDOT should be honest about this and reconsider the tunneling plan.

R1713.03 As described in Section 1.4.1 of this FDR/EA, the NYSDOT and FHWA established the transportation corridor and proposed tunnel limits for this Project in consideration of the following factors: the presence of the depressed highway section with retaining walls, opportunities for connectivity with existing parkland and community resources, and physical and environmental constraints. As documented in Section 1.4.2 of this FDR/EA, the Kensington Expressway Project has independent utility, and would not preclude the consideration of potential future projects in other portions of NYS

Route 33 or in the NYS Route 198 corridor. Any proposal for extension of the tunnel would have to consider the Scajaquada Creek. Although this is a major constraint, there are feasible engineering solutions. The engineering solutions and construction costs associated with any potential future project(s) would need to be studied independent of the current NYS Route 33 Kensington Expressway Project.

- C1713.04** "Removing the direct impact of pollution from the Kensington Expressway traffic will be a significant health benefit from said project ... " (See Note #2.)
Note 2: The NYSDOT DDR/EA clearly shows that there will be not appreciable decrease in greenhouse gas pollution (see environmental section of this #2 letter below) and small particle pollution will increase by 6% at the portals. These small particles are among the worse pollution because they absorb other pollutants that are taken directly into the lungs. NYSDOT should conduct a full environmental and health analysis that compares the tunnel, plan with other alternatives as ROCC recommends.
- R1713.04** Air quality effects, including beneficial air quality effects along the tunnel cap, are documented in Section 4.9 of this FDR/EA. As documented in Section 4.9 of this FDR/EA, the Project will not result in exceedances of the National Ambient Air Quality Standards (NAAQS), which are criteria established by the USEPA to protect public health. Of the 2,833 receptors in the model, the highest increase in annual average PM2.5 at a single receptor in year 2027 is 6%. In addition, see FDR/EA Figure 4.4-7 which shows that out of 2,833 receptors, only 14 would experience a No Build to Build increase of greater than 5% in annual average PM2.5 concentrations in year 2027 and these receptors are not located at residences, schools, or community facilities. 1,773 of the 2,833 receptors would experience a No Build to Build decrease in annual average PM2.5 concentrations.
- C1713.05** "ROCC further supports the full involvement of community stakeholders in the design process and that designers heed the community goal to ensure that the infrastructure designed will lead to a revitalized, walkable, and healthy urban environment..." See Note #3.)
Note 3: ROCC agrees with ESP that full community involvement is desired. A GBNRTC led effort like the Region Central can achieve this.
- R1713.05** Stakeholders have been extensively involved in the development of the project as detailed in Chapter 5 of this FDR/EA (including 15 stakeholder group meetings through January 2024). Regarding transfer of the Project to GBNRTC, see response to comment C1713.13.
- C1713.06** ROCC further requests: (See Note #4.)
o "Historic Land Report be completed as part of the process for adherence to historic cross-sections of the parkway including tree heights with the restored parkway."
o "Health impacts Assessment.. ."
Note 4: ROCC agrees that an evaluation of health effects is needed. Further, ROCC calls for a Historic Land Report that considers adherence to historic cross sections of the parkway including tree height, a clear reference to Olmsted's original park and parkway.
- R1713.06** The comment requesting a Historic Land Report is interpreted to be referring to a Cultural Landscape Report. FHWA, in coordination with NYSDOT, had coordinated with the State Historic Preservation Office (SHPO) on the need for a Cultural Landscape Report, in the context of Section 106 of the National Historic Preservation Act (NHPA), as amended, and its implementing regulations under 36 CFR Part 800. A Cultural Landscape Report was considered as information was gathered and research was performed in the identification of historic properties. An Architectural Reconnaissance Survey, which

considered the historical context and information directly related to the historical and architectural development of Humboldt Parkway, was prepared for the Project by the New York State Museum. In the context of Section 106 of the NHPA, designed landscapes eligible for the National Register of Historic Places (NRHP) are categorized as a site. The National Park Service (NPS), a Bureau of the United States Department of the Interior (USDOI), provides guidance on how to apply the National Register Criteria for Evaluation, which considers categories of historic properties, how to evaluate a property within its historic context, and how to identify the type of significance of a property. Specifically, this guidance states that a designed landscape that has had major changes to its historic design, vegetation, original boundary, topography/grading, architectural features, and circulation system is not eligible for the NRHP. The construction of the Kensington Expressway in the 1950s and 1960s removed the original Humboldt Parkway, including original features that were part of its designed landscape. For this reason, the original Humboldt Parkway is not eligible for the NRHP; therefore, a Cultural Landscape Report is not warranted as part of the Section 106 process for this proposed undertaking. Nevertheless, the Build Alternative has incorporated design features of the original Humboldt Parkway to the greatest extent practicable (see response to comment C7.5-6).

Regarding the request for a health impacts assessment, the FDR/EA documents the effects (as defined by 40 CFR 1508.1(g)) of the proposed action on the human environment, which includes consideration of potential effects on public health and safety. As documented in Section 4.9 of this FDR/EA, the Project will not result in exceedances of the National Ambient Air Quality Standards, which are criteria established by the United States Environmental Protection Agency (USEPA) to protect public health, including the health of sensitive populations such as asthmatics, children, and the elderly. As documented in this FDR/EA, the Build Alternative will provide public health benefits, such as access to new greenspace, increased opportunities for physical activity related to the proposed bicycle and pedestrian improvements, reduced noise levels, and improved aesthetics.

- C1713.07** "The current concept still need some clarification and context including a thorough analysis of environmental impact and related public health concerns ... " (See Note #5)
Note 5: ROCC agrees with ESP that a full environmental analysis with predicted health effects is needed.
- R1713.07** The FDR/EA documents the effects (as defined by 40 CFR 1508.1(g)) of the proposed action on the human environment, which includes consideration of potential effects on public health and safety. Environmental impacts (including air quality, noise, hazardous materials and others) were thoroughly evaluated as documented in this FDR/EA.
- C1713.08** "A restored Humboldt is essential for a complete renaissance of Buffalo where everyone can participate in the process, and those neighborhoods once scarred can be restored." (See Note #6.)
Note 6: ROCC agrees with ESP that everyone should participate in the process moving forward and it is important to get it right.
- R1713.08** The Project has included, and will continue to include, meaningful opportunities for public engagement, as documented in Chapter 5 of this FDR/EA.
- C1713.09** Please listen to the guidance on the Kensington Expressway Project from OPC, GoBike, CRT, ESP, and ROCC as part of the decision process.

Particularly, please listen to the most recent requests from ROCC that were buried among all

the many DOR/EA responses. Slow down. Involve the community. Assess health impacts. Evaluate alternatives. Fully assess the historic land issues. Don't rush this.

R1713.09 See responses to comments C1713.02 through C1713.08.

C1713.10 At Federal, State and local levels, legislation and administrative commitments call for reduction of pollution and greenhouse gas (GHG) generation in an effort to keep global warming below 1.5 degrees Centigrade (2.7 degrees Fahrenheit).

At the County level, Erie County has issued the Erie County Climate Action Plan that provides specific goals and steps for meeting the State Climate Leadership and Community Protection Act (CLCPA) law. It calls for investing in public transit including extending Buffalo Metro and reducing vehicle miles traveled (VMT). The tunnel plan ignores this county plan and runs counter to its recommendations (<https://www3.erie.gov/climateaction/>)

R1713.10 The Erie County Climate Action Plan was released on December 27, 2023 and therefore was not available at the time the DDR/EA was prepared. Many of the strategies outlined in the plan are not applicable to this Project, but the Project would be supportive of several applicable strategies, including the following:

- Transportation - Strategy 1 Active Transport- Project includes Complete Streets elements for pedestrian, bicycle and transit accommodations, addresses barriers to active transportation by repairing sidewalks on approximately 10 miles local streets (including ADA- compliant curb ramps). These measures would be supportive of reducing vehicle travel.
- Nature-based solutions Strategy 5: Increase and Preserve Tree Canopy- Project includes approximately 480 trees, plus additional as-needed street trees in local street improvements area.

The Project would not preclude or interfere with other transportation-related strategies called for in the plan.

C1713.11 At the State level. The CLCPA law, sponsored by Senator Kennedy and Assembly Member Peoples-Stokes, requires significant CO 2 reductions, and calls for subsequent actions and investments to be focused on disadvantaged communities that have borne the brunt of prior high polluting projects like the Kensington. The NYSDOT Kensington DDR/EA cites the CLCPA 17 times. On Page 148 it says "the Project has been designed and assessed in consideration of the requirements of New York's CLCPA law." But on Page 275 it says the Build Alternative will reduce CO2 by 0.04% by 2047 and "therefore the Project would be consistent with CLCPA." But the CLCPA calls for CO2 reductions of 30% by 2030 and 85% by 2050. We believe the Build Alternative violates both the spirit and letter of the CLCPA law. Please follow the CLCPA law and reconsider the tunnel plan.

R1713.11 As documented in Section 4.10.5 of this FDR/EA, the Project is consistent with the Climate Leadership and Community Protection Act (CLCPA). The Project would result in a net reduction in greenhouse gas emissions. The CLCPA emission reduction targets cited in the comment are to guide economy-wide emissions reduction planning at the state level (compared to a 1990 baseline) and are not intended to be a mandate applicable at the project level. Measures to support transit, pedestrian and bicycle modes are incorporated in the Build Alternative as described in Section 3.4.2 of this FDR/EA. The

greenspace and tree plantings incorporated in the Project would also contribute beneficially to carbon sequestration.

C1713.12 At the Federal level the Biden Administration has recommitted to meeting the Paris Accord goals and just joined almost 200 other countries at the 2023 UN Climate Change Conference reduce GHG generation by reducing fossil fuel use. The Paris Accord calls for 26% to 28% by 2025 and calls for reductions in fossil fuel use. The Biden Administration has also issued the Justice 40 mandate calling for focusing climate mitigation investments in areas where disadvantaged communities have suffered. The Kensington Expressway communities and project are a poster child for this goal.

R1713.12 Effects on greenhouse gas emissions were considered as documented in Section 4.10 of this FDR/EA. Environmental justice considerations are addressed in Section 4.5 of this FDR/EA. By providing 11 acres of greenspace and tree plantings, the Project is supportive of mitigating the urban heat island effect and climate change-related increases in temperature.

C1713.13 3. Conclusion
Listen to ROCC. Listen to OPC, GOBike, CRT, ESP, and ROCC. Complete a full environmental and health impact analysis with broad community involvement. Consider all options including fully restoring Olmsted's Humboldt Park and Parkway. Let the community decide, like was done for Region Central. Assign the project to WNY's Metropolitan Planning Organization, the GBNRTC for community-based design. GBNRTC is a community-based organization with professional community planners without the car-focused bias.

Thank you for considering these recommendations. If done right, this project can restore Olmsted's vision and make Buffalo the envy of the country and world as a city in a park!

R1713.13 See the responses to C1713.02 through C1713.12.

Regarding the request to assign the Project to GBNRTC, the FHWA is the federal lead agency and NYSDOT is the joint lead agency for this Project because the Kensington Expressway is a state highway operated and maintained by the NYSDOT and the Project would be funded by state and federal sources. GBNRTC is a planning organization that can conduct studies but does not design or build projects. Note that GBNRTC has been involved in the development of the Project as a participating agency (see Section 4.1.1 of this FDR/EA).

Clean Air Coalition

C580.01 The comment period should be extended. The comment period of 45 days is not sufficient for the highly technical information to be processed, discussed, and disseminated to the community and for the residents to make informed comments. We have a lot of experience in engaging the community in public comments for toxic cleanups such as Tonawanda Coke. The standard comment periods are not sufficient time for meaningful input. Particularly since there was only 30 days since the public hearing on 9/27/23 when many residents found out about the We request the comment period be extended to 90 days.

R580.01 FHWA's NEPA implementing regulations (23 CFR 771.119 (d)) require that an EA be available for public inspection for 30 days. The original 45-day public comment period for the DDR/EA exceeded this requirement. Based on the level of public interest and to afford the public more time to submit comments, the NYSDOT subsequently extended the comment period an additional 14 days, for a total of 59 days (see Section 5.7 of this FDR/EA).

C580.02 The NYSDOT should conduct a Full Environmental Impact Statement. A project of this scale within a Disadvantaged Community under the NYS Climate and Community Protection Act needs to have an in-depth environmental review beyond the scope of the Environmental Assessment currently presented. This review should include Air Quality monitoring and analysis (see detail below) as well as modeling and assurances of air quality safety during construction. The presence of asbestos in the retaining walls is of concern and the public safety from this hazardous substance should be further evaluated and more details given to the public. Concentrations of lead in the soil of the highway corridor should be investigated prior to construction.

R580.02 As documented in Section 4.10.5 of this FDR/EA, the Build Alternative is consistent with the Climate Leadership and Community Protection Act (CLCPA). The Build Alternative would not have an adverse effect on disadvantaged communities, as documented in Section 4.4 of this FDR/EA.

Preparing an EA for this Project was appropriate, as discussed in the response to comment C9-6 of this appendix. The EA determination did not dictate the level of analysis or public engagement that have been conducted for the Project. For example, the assessment of effects to environmental justice populations (including disadvantaged communities) and air quality analysis for the Project would not be any different if an EIS were prepared.

Air quality related comments are addressed below in the response to comments C580.03 and C580.04. As documented in Section 4.20.3 of this FDR/EA, the Build Alternative includes measures to mitigate air quality effects during construction, including air quality monitoring.

Asbestos containing materials are routinely addressed in transportation projects. As documented in Section 4.18.2 of this FDR/EA, the NYSDOT confirmed the presence of non-friable asbestos containing materials associated with the five bridge structures within the transportation corridor and in certain caulking materials on the retaining wall expansion joints and at the base of metal guide rails on the top of the retaining walls. Testing completed in December 2023 confirmed that no asbestos is present in the waterproofing material on the back of the retaining walls (see Section 4.18.2 of this FDR/EA). Asbestos containing materials would be removed and disposed of consistent with a project-specific health and safety plan in compliance with all federal and state regulatory requirements to protect workers and the public.

During construction, excavated soils would be temporarily stockpiled and sampled for laboratory analysis. Based on the test results, the stockpiled soils would be characterized for off-site disposal or on-site reuse (if appropriate) in accordance with federal, state, and local regulations. A health and safety plan, including dust monitoring, would be implemented during construction for the protection of workers and the surrounding community.

C580.03 Air Quality at Tunnel Ends: Clean Air is extremely concerned about the possibility of increased concentrated vehicular emissions at the tunnel ends. We would like to see further air monitoring conducted to better understand the current air quality conditions. NYSDEC is currently conducting

mobile air monitoring in NY Disadvantaged Communities which covers that project boundaries. With a full environmental review this data could be used to assess current conditions as well for PM 2.5, Black Carbon, NO₂, NO, CO, VOC's and Ozone.

R580.03 Existing air quality conditions are discussed in Section 4.9 of this FDR/EA and are based on NYSDEC long-term monitoring data. These data were used as the “background concentration” in the microscale air quality analyses consistent with USEPA guidance and in coordination with an interagency air quality group consisting of USEPA, NYSDEC, FHWA and NYSDOT.

The air quality analysis that was conducted for the Project (documented in Section 4.9 of this FDR/EA) shows the following:

- There would be a slight decrease in pollutant concentrations at locations along the proposed tunnel cap.
- In the absence of mitigation, there would be a slight increase in pollutant concentrations near the tunnel exit portals.
- The highest predicted total concentrations near the tunnel portals (including a background concentration) are well below the applicable health-based ambient air quality standards.

The Project includes air quality mitigation measures to minimize air quality effects. These measures were not credited in the quantitative analysis.

As documented in this FDR/EA, based on the air quality analysis results and the measures that would be implemented to minimize air quality effects, the Build Alternative would not have an adverse effect on air quality.

C580.04 We acknowledge that the modeling conducted as part of the air quality study shows that the estimated levels of PM 2.5 for Annual and 24 hour average are predicted to be within the National Ambient Air Quality Standards (NAAQS). Erie County as a whole is in attainment of these standards. However when examining data on health disparities and pollution through USEPAs EJ Screen we find that residents within the project corridor are in the 90th percentile and above for Low Life Expectancy, Asthma, and Heart Disease nationally. Clearly attainment of the 2.5 PM NAAQS standard does not take into account the cumulative effect of many overlapping pollutants on residents' health. Many public health scientists such as the American Lung Association [*citation removed*]. According to a study by the Harvard School of Public Health [*citation removed*], Black and low income Americans would benefit the most from stronger policies on air pollution. This is an overburdened community when it comes to pollution and absolute care must be taken that this project does not increase these burdens. We must go above and beyond the minimum standard in this case based on systemic issues which have caused [*sic*]

R580.04 As documented in Section 4.4 of this FDR/EA, the potential for the Project to result in disproportionately high and adverse effects to environmental justice populations was assessed. This included the assessment of air quality effects to environmental justice populations. As documented in Section 4.4.2, the existing conditions in the study area related to public health were reviewed based on USEPA's EJSCREEN tool. The air quality analysis for the Project used regulatory models and followed USEPA and FHWA guidance and procedures (see Appendix D7 of this FDR/EA). The Build Alternative would result in no adverse air quality effects and includes air quality mitigation measures to minimize effects. As documented in this FDR/EA, the Build Alternative would provide public health benefits, such

as access to new greenspace, increased opportunities for physical activity related to the proposed bicycle and pedestrian improvements, reduced noise levels, and improved aesthetics.

Colored Girls Bike Too

C1648.01 At CGBT, our call for a Humboldt Parkway that prioritizes people over cars is coupled with a resolute commitment to a design that eliminates pollution. The Parkway is not merely a conduit for traffic; it's an opportunity to redefine our community's landscape in an environmentally conscious manner.

Our vision extends beyond accommodating residents' needs; it encompasses a design that eradicates pollution. We advocate for an infrastructure that integrates green spaces, pedestrian-friendly zones, and eco-friendly transit options, effectively eliminating the harmful emissions that contribute to pollution.

An eco-conscious Humboldt Parkway serves as a testament to our dedication to sustainability. By promoting a design that eliminates pollution, we address immediate infrastructure requirements while setting a precedent for responsible urban planning, ensuring cleaner air and a healthier environment for all.

Join us in championing a Humboldt Parkway that not only connects our neighborhoods but also leads the way in eliminating pollution, forging a path toward a greener, healthier future for generations to come, all while prioritizing people over cars. For a comprehensive understanding of our stance, please find our full statement on the Humboldt Parkway attached.

R1648.01 Regarding the purpose of the Project, see response to comment R1648.03. The Build Alternative includes improvements for pedestrian, bicycle and transit users as documented in Section 3.4.2 of this FDR/EA. The Build Alternative includes greenspaces and Complete Streets design measures, including traffic calming on Humboldt Parkway. Environmental justice and air quality considerations are documented in Sections 4.5 and 4.9, respectively, of this FDR/EA.

C1648.02 First and foremost, we wholeheartedly applaud the Restore Our Community Coalition for their unwavering commitment, tireless advocacy, and dedicated hard work towards restoring Humboldt Parkway. Their relentless efforts over nearly 20 years have paved the way for the opportunity to revitalize this vital community asset, serving as a powerful catalyst in drawing attention to the significance of rejuvenating this community treasure. The vision and dedication they bring have not only amplified calls for justice in the Black community but also stand as a model for other Black communities nationally harmed by expressways. Beyond Humboldt Parkway, their leadership resonates as an inspiring example of grassroots activism and community-driven change.

R1648.02 Comment noted.

C1648.03 As today marks the deadline to submit feedback on the Kensington Expressway Project, we want to be intentional about raising the community's consciousness on this issue, especially as a Black women-led and mobility justice-centered organization based on the East side.

After deep research into the Kensington Expressway project and its processes, we've concluded that the project perpetuates the legacy of systemic structural racism and white supremacy culture in how our communities are designed and developed.

This culture of white supremacy is evident in the overall project framework, prioritizing cars over people and community while neglecting to address the environmental tragedies that have plagued this community for decades and may persist if the project proceeds.

R1648.03 As stated in Section 1.3 of this FDR/EA, the purpose of the Project is to reconnect the community surrounding the defined transportation corridor and improve the compatibility of the corridor with the adjacent land uses, while addressing the geometric, infrastructure, and multi-modal needs within the corridor in its current location. The Project objectives include reconnecting the community by creating continuous greenspace, maintaining the vehicular capacity of the existing transportation corridor, improving vehicular, pedestrian and bicycle mobility and access by implementing Complete Streets design features, and addressing geometric and infrastructure deficiencies. See response to comment C2-2 in this appendix.

C1648.04 Furthermore, the urgency of the project's timeline disregards the concept of time inequity that impacts the Black community, depriving us of the necessary time to thoroughly explore all aspects of the project, including the 10 design concepts. The rushed timeline has led to an unjust outcome, limiting the community to two design options that may not best serve our interests but instead cater to those with power and privilege, mirroring the construction of the Kensington Expressway in 1946.

Therefore, we demand a reparative and racial justice approach to this project, considering how white supremacy continues to perpetuate itself in the planning and development of Black communities. With that said, we call on New York State Department of Transportation, Governor Kathy Hochul, Senator Tim Kennedy, Majority Leader Crystal People Stokes, and Congressman Bryan Higgins to:

R1648.04 Regarding the Project timeline, refer to response to comment C1648.06 in this appendix. Regarding the consideration of alternatives and the rationale for the alternatives advanced to the Design Report/Environmental Assessment, refer to the Project Scoping Report. The extensive public outreach efforts during the development of the Project (including the assessment of alternatives during scoping) are documented in Chapter 5 of this FDR/EA. Environmental justice considerations are documented in Section 4.4 of this FDR/EA.

C1648.05 1. Conduct an environmental impact statement assessing the over 50-year environmental impact of the Kensington Expressway on our community, including statements for the Build alternative, No build alternative, and other dismissed design concept options.

R1648.05 This FDR/EA acknowledges the effects of the original expressway construction in Section 2.1. The original expressway construction contributed to the existing conditions (or baseline) documented in this FDR/EA (including the barriers to east-west connectivity that are an element of the need for the project). The environmental review process under NEPA and SEQRA examines the reasonably foreseeable future effects of a proposed action in comparison to the existing condition. A study of the historical impact of the expressway over a 50-year period is outside the scope of the environmental review process. Cumulative effects were considered as documented in Section 4.22 of this FDR/EA.

Regarding the request for an environmental impact statement, the class of action (Environmental Assessment) for this project is appropriate classification under NEPA. The NEPA/SEQRA class of action has not determined the level of public outreach or analysis conducted for this project. For more detailed information on the rationale for preparation of an Environmental Assessment for this project, refer to response to comment C9-6 of this appendix.

Regarding the consideration of alternatives and the rationale for the alternatives advanced to the Design Report/Environmental Assessment, refer to the Project Scoping Report.

C1648.06 2. Redraft the project timeline in the name of racial justice, equity, and community, rather than urgency.

R1648.06 Environmental justice considerations are documented in Section 4.4 of this FDR/EA. Per 40 CFR Part 1501.10, Environmental Assessments shall be completed within a one-year timeframe. The public scoping meeting for the Project was held in June 2022, the Project Scoping Report was published in December 2022, and the Environmental Assessment process started in December 2022. Extensive community input was received throughout the development of the Project, and numerous opportunities were provided for the public to ask questions and submit comments, including an extension of the comment period on the DDR/EA (see Chapter 5 of this FDR/EA).

C1648.07 3. Have NYSDOT reassess the needs, objectives, and goals of the project rooted in calls for environmental and racial justice, incorporating language supporting a no-pollution approach to restoration.

R1648.07 The purpose, needs and objectives for the Project are documented in Section 1.3 of this FDR/EA. Development of the purpose, needs and objectives considered public input and balances community and transportation considerations. Environmental justice and air quality considerations are documented in Sections 4.4 and 4.9, respectively, of this FDR/EA.

C1648.08 4. Implement an extended timeline for a deeper analysis of the 10 design concepts, redesigned within a framework of equity, racial justice, and environmental justice.

R1648.08 Regarding the Project timeline, refer to response to comment C1648.06. Regarding the consideration of alternatives and the rationale for the alternatives advanced to the Design Report/Environmental Assessment, refer to the Project Scoping Report. Environmental justice considerations are documented in Section 4.4 of this FDR/EA.

C1648.09 5. Ensure the inclusion of a glossary of terms in the Final Design Report/Environment Assessment, presented in a way that is accessible to the community.

R1648.09 The DDR/EA and FDR/EA each include an Executive Summary (including a reader-friendly summary table of the effects of the Build Alternative) at the beginning of each document. Abbreviations and acronyms are defined the first time they are used throughout this FDR/ EA.

Construction Exchange of Buffalo & WNY

Please see Consolidated Response B at the end of this Section.

Fair Apportionment of Infrastructure Revenue

Please see Consolidated Response B at the end of this Section.

Fillmore Forward

Note: NEPA-related responses only are provided below. For additional responses pertaining to the Section 106 process, refer to the December 22, 2023 FHWA memorandum to the Section 106 Consulting Parties provided in Appendix D10: Finding Documentation.

- C1** The project tunnel cap does nothing to restore what has been lost in the community. The project does nothing to address the cultural landscape of the houses, history, and neighborhoods lost from Best Street to Oak. Again, based on DOT's objectives, this section of the community will still feel the effects of poor decision making.
- R1** As documented in Chapter 1 of the FDR/EA, the purpose of this transportation project is to reconnect the community surrounding the defined transportation corridor and improve the compatibility of the corridor with the adjacent land uses, while addressing the geometric infrastructure, and multi-modal needs within the corridor in its current location. Although restoration of the original Humboldt Parkway is not the purpose of the Project, the NYSDOT and FHWA recognize the importance of its history to the project area. Transportation decision-making for this Project has incorporated design features of the original Humboldt Parkway to the greatest extent practicable (see response to comment C7.5-6).
- C2** While option Alternative Build #10 – Restore the Parkway is what the community demands, the DOT's project objectives – not the community's objectives - ruled the day. And from those objectives other alternatives were quickly dismissed. None of ROCC's project objectives and reasons for this project will be realized by the DOT's Alternative Build selection.
- R2** As documented in Section 1.3.1 of this FDR/EA, the purpose of the Project is to reconnect the community surrounding the defined transportation corridor and improve the compatibility of the corridor with the adjacent land uses, while addressing the geometric, infrastructure, and multi-modal needs within the corridor in its current location. The project objectives identified in Section 1.3.1 further refine the Project purpose and were developed based on the identified needs within the transportation corridor, as documented in Section 1.3.2 of this FDR/EA.
- The Restore our Community Coalition (ROCC) was included in the NYSDOT's outreach efforts for the Project based on the mission and history of the group in advocating for the restoration of Humboldt Parkway since 2007. As documented in Section 4.4.4 and Chapter 5 of the FDR/EA, the NYSDOT has been and will continue to be committed to an open and meaningful public involvement program for the Project.
- C3** The project should also include the connectivity of the Scajaquada "Parkway" as defined by the GBNTRC's Region Central effort and connect the gap between both parkways to create a "One Parkway" solution.
- R3** As documented in Section 1.4 of this FDR/EA, in accordance with 23 CFR § 771.111(f), the Kensington Expressway Project connects logical termini, has independent utility, and does not restrict

consideration of alternatives for other reasonably foreseeable transportation improvements. As described in Section 1.4.2 of this FDR/EA, the Region Central Initiative is a planning-level study for the NYS Route 198/Scajaquada Expressway Corridor. The plan proposed by GBNRTC for the Scajaquada Expressway is a conceptual plan that will have to be vetted through engineering analysis to examine its feasibility.

C4 Residents directly living on Humboldt Parkway repeatedly voiced concerns in public meetings about the lack of communication concerning this project.

R4 As documented in Section 4.4.4 and Chapter 5 of the FDR/EA, the NYSDOT has been and will continue to be committed to an open and meaningful public involvement program for the Project. To date, this program has included a Project Scoping Meeting, Public Information Meeting, public hearing, NYSDOT attendance at more than 60 community events and meetings, 15 monthly stakeholder meetings, multiple public comment opportunities, mailings, project website, and a Project community outreach office staffed by community outreach liaisons.

All members of the public were invited to project outreach events to learn more about the project, including the June 2022 Public Scoping Meeting, June 2023 Public Information Meeting, and the September 2023 Public Hearing. Methods used to notify homeowners in the Project area include flyers, mailings, advertising, email blasts, the project website, and attendance at community events, among others (see Chapter 5 of this FDR/EA). Project documents were made available on the project website and at the Community Outreach Office.

GObike Buffalo

C1629.01 We continue to be very concerned about this project as it has been developed and designed. Due to our concerns and the issues previously shared and attached, we believe that the project should NOT receive a Finding of No Significant Impact (FONSI) and demand that a full Environmental Impact Statement be conducted. It is imperative for our city, the impacted communities, and the legacy of the Olmsted Park and Parkway System that a more comprehensive approach and evaluation of this project can be completed following the Region Central process with more consequential involvement of the community.

R1629.01 Preparing an Environmental Assessment (EA) for this Project was appropriate, as discussed in the response to comment C9-6 of this appendix. The EA determination did not dictate the level of analysis or public engagement that have been conducted for the Project. The Project has included, and will continue to include, meaningful opportunities for public engagement, as documented in Chapter 5 of this FDR/EA.

C1629.02 1. The dual objectives of reconnecting the community by creating continuous greenspace while also maintaining “the vehicular capacity of the existing transportation corridor” are so specific that they constrain alternatives.

R1629.02 The objective to maintain the vehicular capacity of the existing transportation corridor and the objective to reconnect the surrounding community by creating continuous greenspace to enhance the visual and aesthetic environment of the transportation corridor are both supported by the identified

needs documented in Section 1.3.2 of this FDR/EA. As described in Section 5.3 of the Project Scoping Report (PSR), the Build Alternative meets both objectives.

- C1629.03** 2. The objectives say nothing about reducing the health and environmental impacts experienced by those who live in the surrounding neighborhood.
- a. The project purpose indicates that the project should improve compatibility of the corridor with adjacent land uses, which should necessitate a study of the health and environmental impacts negatively impacting households on Humboldt Parkway.

R1629.03 As documented in Section 4.9 of this FDR/EA, the Build Alternative would not result in exceedances of the National Ambient Air Quality Standards (NAAQS), which are criteria established by the USEPA to protect public health, including the health of sensitive populations such as asthmatics, children, and the elderly. Health-related considerations were included in the project objectives, specifically pedestrian and bicycle mobility and safety improvements using Complete Streets principles and reconnecting the community with continuous greenspace (see Section 1.3 of this FDR/EA). The Build Alternative was developed based on a balanced consideration of the need for safe and efficient transportation; the social, economic, and environmental effects for the Build Alternative; and national, state, and local environmental protection goals.

As documented in Chapter 4 of this FDR/EA, the social, economic, and environmental effects resulting from the Project were assessed.

- C1629.04** 3. Assuming that vehicular capacity must be the same violates the CLCPA because it fails to consider the impact of maintaining traffic capacity on the state's climate goals. This project must comply with CLCPA section 7, and the NYSDOT must "consider whether such decisions are inconsistent with or will interfere with the attainment of the statewide greenhouse gas emissions" goals. Additionally, the project area is located within a "Disadvantaged Community" for CLCPA purposes. This means that NYSDOT should look for ways to reduce traffic, reduce speeds, and reduce overall vehicle miles traveled to reduce the overall pollution burden on this community as well as the overall GHG emissions of the roadway.

R1629.04 As documented in Section 4.4 and Section 4.10.5 of this FDR/EA, the NYSDOT assessed the Project's effects to disadvantaged communities and the Project's consistency with the Climate Leadership and Community Protection Act (CLCPA). The Project would be consistent with the CLCPA and would not result in adverse effects to disadvantaged communities. The need to maintain the vehicular capacity of the transportation corridor is documented in Section 1.3 of this FDR/EA.

- C1629.05** 4. A major takeaway of the Region Central process has been the determination of how many trips originating in "Region Central" are longer than they need to be because people have to go around the Expressway. This is an important piece of analysis that must be done for Kensington as well to understand the true cost-benefit basis for "maintaining the vehicular capacity" of this roadway. How many households must take longer trips to access basic needs because of the highway as a barrier? What is that cost in both emissions and negative health impacts?

R1629.05 The discussion of the need for community connections in Section 1.3.2.1 of this FDR/EA documents the issue of circuitous trips due to the barrier created by NYS Route 33 and recognizes the need to reestablish east-west connections for all modes of transportation across the defined transportation corridor to improve community cohesion. As documented in Sections 3.4 and 4.9 of this FDR/EA, traffic

and air quality effects resulting from the Build Alternative have been assessed. The need to maintain the vehicular capacity of the transportation corridor is documented in Section 1.3 of this FDR/EA.

C1629.06 5. The project objectives lack clarity on coordinating and collaborating with the Region Central study for the Scajaquada being conducted by the GBNRTC.

R1629.06 As documented in Section 1.4 of this FDR/EA, the Kensington Expressway Project connects logical termini, has independent utility, and does not restrict consideration of alternatives for other reasonably foreseeable transportation improvements. As described in Section 1.4.2 of this FDR/EA, the Region Central Initiative is a planning-level study for the NYS Route 198/Scajaquada Expressway Corridor. The plan proposed by GBNRTC for the Scajaquada Expressway is a conceptual plan that will have to be vetted through engineering analysis to examine its feasibility. Although the Kensington Expressway Project and Region Central Initiative are separate, the NYSDOT will continue coordination with GBNTRC regarding the Regional Central Initiative.

C1629.07 6. Because this project is limited in its scope to just a segment of the highway, it inherently fails to address the health, economic, environmental, and social impacts of the highway in the adjacent neighborhoods outside the project boundaries, but still affected by the existence of the highway.

R1629.07 Section 1.4 of this FDR/EA documents how the project limits serve as logical termini for the proposed action. As documented in Chapter 4 of this FDR/EA, appropriate study areas were used for each environmental resource area that was assessed.

C1629.08 7. The Kensington Expressway Cap project should be designed in such a way that it is not prohibitive for future parkway restoration or capping work outside of the existing scope of work, especially in relation to the Region Central/Scajaquada Expressway project.

Through Region Central, a robust community planning and technical exploration process, the community in Buffalo has demonstrated a long-term desire to see the full corridor of the 198 and 33 from I-190 to downtown transformed to create stronger community connections, improve public health, foster opportunities for non-automotive transportation options, and repair inequitable investment patterns from the last 70 years. Although the Kensington Expressway Capping project scope does not extend north to the 198, the infrastructure being changed or built in this project should not impede future redevelopment of the 198 according to the recommendations of the Region Central process.

R1629.08 Please see the response to comment 1629.06.

C1629.09 8. Streets in surrounding neighborhoods that are being improved through the project should be implemented with complete streets principles in mind, including crosswalks, bump outs, raised intersections, improved sidewalks, and protected bike infrastructure. Streets in this focus area that are listed on the City's Bicycle Master Plan should be improved, at the very least, in accordance with the recommendations outlined in that plan.

R1629.09 As documented in Section 3.4.2 of this FDR/EA, the Build Alternative includes Complete Streets upgrades of Humboldt Parkway, such as traffic calming curb bump outs, five-foot-wide sidewalks with accessible curb ramps, crosswalks, elimination of gaps in the Humboldt Parkway bicycle lane network,

a raised table intersection at Butler Avenue / Humboldt Parkway southbound, and a concrete base for future NFTA bus shelters.

The Build Alternative also includes local street improvements beyond Humboldt Parkway as shown in Figure 1.2-2 and documented in Sections 3.2.2 and 3.4.3.12 of this FDR/EA. These streets would receive pavement rehabilitation, sidewalk, curb ramp, lighting, and landscaping improvements, as needed. Neighborhood bikeway (traffic calming for shared use) measures would be incorporated on Northampton Street and East Utica Street as called for in the City of Buffalo Bicycle Master Plan. The Build Alternative would not preclude an independent project to construct bicycle lanes on other streets (such as Genesee Street).

The consistency of the Build Alternative with the City of Buffalo Bicycle Master Plan and the GBNRTC Regional Bicycle Master Plan is documented in Appendix D1 of this FDR/EA.

- C1629.10** 9. While the Best Street roundabout proposal is an improvement over signalized intersections, the lack of any type of bike infrastructure will be a barrier to families on bikes who are attempting to get to the park from points west of the expressway. Please explore providing separated bike facilities that offer better connectivity to the park by bike along this route. Because this section of roadway is an important connection between a residential neighborhood and the community's largest park, a school, and a youth-oriented cultural amenity (Buffalo Science Museum), street infrastructure should reflect that many of the users will be children and families. By not creating a safe, separated bike facility here, you significantly reduce the ease of access for this group of road users who will likely feel it is not safe enough to use. Riding on the sidewalk should not be a proposed solution because for bicyclists over the age of 14, it is illegal to ride on the sidewalk. Riding on the sidewalk can also create more conflicts between pedestrians and bicyclists, especially as e-bikes with higher speeds become more prevalent.
- R1629.10** The design of the Best Street bridge replacement and roundabouts includes a 10-foot-wide multi-use path (for pedestrians and bicyclists) that is separated from traffic and that would connect areas west of NYS Route 33 to MLK Jr. Park (see Section 3.4.2.2 and Figure 3.2-1A of this FDR/EA). The multi-use path would improve connectivity to MLK Jr. Park for children and families.
- C1629.11** 10. The jet fan proposal for ventilation is an improvement on the idea of tearing down homes to install ventilation shafts but still does not solve the problem of improving air quality in the neighborhood. It is our understanding that the proven ways to reduce vehicular pollution are to: (1) reduce the number of vehicles/vehicle miles traveled, (2) reduce vehicular pollution at the tailpipe through stricter pollution standards for cars, trucks, and buses, (3) reducing vehicular speeds, and (4) reducing traffic congestion. The proposed build alternative does not solve the problem of air pollution caused by the expressway but instead concentrates the air pollution in parts of the neighborhood that are already not benefiting from the cap. A solution that does not tear down homes, impose ventilation structures on the landscape, or concentrate pollutants into certain areas of the neighborhood should be a core component of this project. Please clarify how the ventilation options will lead to less vehicular pollution from the roadway if the road capacity, speed, and congestion are maintained. If the ventilation is meant to emit vehicular emissions higher into the air, there should be modeling to show the dispersion of the air emissions and the effects on both the adjacent community and those residents living further away from the roadways.

R1629.11 As documented in Section 3.4.3.5 of this FDR/EA, under normal operating conditions, the tunnel would be ventilated by the movement of vehicles through the tunnel.

As documented in Section 4.9 of this FDR/EA, an air quality analysis was conducted for the Project. The analysis shows the following:

- There would be a slight decrease in pollutant concentrations at locations along the proposed tunnel cap.
- In the absence of mitigation, there would be a slight increase in pollutant concentrations near the tunnel exit portals.
- The highest predicted total concentrations near the tunnel portals (including a background concentration) are well below the applicable health-based ambient air quality standards.

The Project includes air quality mitigation measures to minimize air quality effects. These measures were not credited in the quantitative analysis.

As documented in this FDR/EA, based on the air quality analysis results and the measures that would be implemented to minimize air quality effects, the Build Alternative would not result in an adverse effect on air quality.

C1629.12 11. The bike lanes along the capped portion of Humboldt Parkway are currently proposed as being placed between the vehicle travel lane and the parking lane. However, this solution creates conflicts between vehicles and bicyclists, including people pulling in and out of parking spaces with people on bikes next to them and people opening their doors into the bike lane while people are riding next to them. A safer alternative is to place a protected bike lane between the grass section of the parkway and the vehicle parking lane. This alternative creates separation between people on bikes and vehicles, reducing chances of conflict. An example of this layout can be seen along Niagara Street in Buffalo. Another option could be placing a path within the planted median. There is historical precedence for this in many of Olmsted's original designs, even here in Buffalo.

R1629.12 The NYSDOT considered bicycle lanes separated from traffic by on-street parking, but , but did not incorporate them in the design of the Build Alternative based on the following considerations:

- Effectiveness limited by frequency of driveways on Humboldt Parkway (approximately every 50 feet): this large number of conflict points is not conducive to a continuous separated bikeway.
- Maintenance: snow removal would be complicated given the involvement of bollards and parked vehicles. The proposed bike lane configuration has been reviewed and concurred with by the City of Buffalo.
- Consistency with the City of Buffalo Bicycle Master Plan.
- Safety: sight distance concerns with parked cars reducing visibility of cyclists to turning vehicles or visibility of vehicles entering Humboldt Parkway from driveways.

According to the 2012 AASHTO Bicycle Design Guide, bicycle lanes should not be placed between the parking lane and the curb because it reduces visibility at driveways and intersections, increases conflicts with opening car doors, complicates maintenance and prevents bike lane users from making convenient left turns.

A shared-use path in the center median and meeting design standards for shared-use paths would require a path width of 12 feet. This option was dismissed based on the following considerations:

- Lack of connectivity at either portal (lack of logical transition to on-road bike lanes north of the project).
- Reduces proposed greenspace width by 12 feet.
- Could impact tree layout and make it more difficult to achieve a tree layout consistent with the historic Olmsted design of Humboldt Parkway.
- Would likely be a seasonal facility or require special snow removal considerations.
- Would involve safety considerations at mid-block crossings.
- Not consistent with City of Buffalo Master Plan.
- Not supported by City of Buffalo Department of Public Works.

C1629.13 12. Improved transit access either through light rail expansion or dedicated bus lanes should be a key strategy to meet the project objectives and support the mobility needs of a community where a third of the households do not have access to a vehicle.

R1629.13 The Niagara Frontier Transportation Authority (NFTA), the only organization with the authority to implement mass transit projects in the area, is not currently proposing rail service or bus rapid transit service in the transportation corridor. The Project has been and will continue to be designed to not preclude potential future transit projects, but these would be separate, independent projects. As documented in Section 4.1.1 of this FDR/EA, the NFTA is a Participating Agency on the Project. The NYSDOT will continue to coordinate with NFTA as the Project progresses regarding potential bus infrastructure improvements on Humboldt Parkway and other local roads within the transportation corridor. As discussed in Section 3.4.2.3 of this FDR/EA, the Build Alternative would include the construction of concrete pads for future bus shelters to be installed by NFTA.

New York Civil Liberties Union

C1501.01 **I. The Original Construction of Major Infrastructure Projects Across NYS Were Rooted in Racially Discriminatory Policies and Produced Adverse Economic, Social, and Environmental Harms That Impact Black Residents Today.**

The Kensington Expressway, shares in that awful history, something Governor Hochul called an “enduring injustice.” The construction of the Kensington Expressway in the 1960s destroyed a neighborhood comprised of 94 percent Black residents. It’s construction in Buffalo separated their parks and neighborhoods by race and class, demolished thousands of homes and businesses, and displaced thousands of Black Buffalo residents from their neighborhood. The lasting impacts are felt today, property values in the neighborhood plummeted and remain among of the lowest in the city, and Black residents have some of the highest rates of asthma and respiratory disease.

R1501.01 The NYSDOT acknowledges the detrimental effect that the construction of the Kensington Expressway had on the local communities. Section 2.1 of the FDR/EA describes the Project history and how the construction of the expressway led to the existing condition. Section 1.3 of the FDR/EA describes the Project purpose, objectives, and needs, and Chapter 4 of the FDR/EA documents the Project’s effects

on air quality, noise, aesthetics, property values, and many other topics. Environmental justice considerations are addressed in Section 4.4 of this FDR/EA.

C1501.02 Considering the litany of harms endured by this Black neighborhood both past and present, any project redevelopment must seriously consider, in other words, take a “hard look” at the impacts of this redevelopment plan. As such, we are requesting the New York State Department of Transportation (NYSDOT) in compliance with the State Environmental Quality Review Act (SEQRA) (1) conduct an Environmental Impact Statement to fully assess the impacts of this proposed project (2) create a meaningful public participation process that targets and elevates the concerns of the majority Black residents that live adjacent to the proposed plan, and will again shoulder the impacts for generations to come, and finally (3) prioritize the reduction of environmental harms in this “disadvantaged community” in compliance with the Climate Leadership and Community Protection Act (“CLPA”).

R1501.02 Please see the responses to the comments below that relate to these three items.

C1501.03 **II. The NYSDOT Must Conduct an Environmental Impact Statement to Examine The Negative Impacts of This Project on The Majority Black Community That Have Been Historically Marginalized and Harmed by The Original Construction of Kensington Expressway.**

Where the lead agency determines that there is “significant effect” on the environment, both NEPA and SEQRA require that agencies prepare an EIS. The threshold for requiring an Environment Impact Statement (“EIS”) is low and the standard for compliance with SEQRA is strict. Adverse changes in existing air quality, impairment of existing community or neighborhood character, and material conflicts with a community’s current plans and goals are all indicators of significant adverse impacts on the environment. In the environmental assessment (“EA”) for this project the NYSDOT recognize that the build alternative would cause a 6 percent increase in PM2.5 (and decrease in air quality) in the area around the tunnel exit portals. The tunnel exits are intended to sit in areas zoned residential. The majority Black residents who live, work, or attend school near Kensington Expressway will have to shoulder this additional air pollution. Again, enshrining the negative impacts of a highway project on this Black community.

This community already has an increased incidents of asthma, cardiovascular disease, and premature death. The potential risk of worsened air quality alone should trigger an EIS. Additionally, the only build alternative presented would disturb asbestos containing materials associated with demolition and construction which requires an additional plan for asbestos mitigation for the surrounding community.

R1501.03 The National Environmental Policy Act of 1969 (NEPA), as amended, requires federal agencies to assess the environmental effects of their proposed actions and disclose those effects prior to making decisions. NEPA established the Council of Environmental Quality (CEQ) within the Executive office of the President to administer Federal agency implementation of NEPA. CEQ regulations (40 CFR 1500-1508) address the basic decision-making framework and action forcing provisions established by NEPA. In accordance with 40 CFR 1501.3, Federal agencies are responsible for determining the appropriate level of NEPA review. There are three (3) “Classes of Action” that determine how compliance with NEPA is carried out and documented, which include Class I (Environmental Impact Statement), Class II (Categorical Exclusion), and Class III (Environmental Assessment) actions. NEPA requires Federal agencies to prepare an Environmental Impact Statement for major Federal actions that significantly affect the quality of the human environment, an Environmental Assessment for actions not likely to

have significant effects or where the significance of the effects is unknown, and a Categorical Exclusion for actions that normally do not have significant effects.

The Federal Highway Administration (FHWA) concurred with the New York State Department of Transportation (NYSDOT) recommendation that the proposed undertaking should be evaluated as a Class III action, requiring the preparation of an Environmental Assessment (EA), on December 16, 2022, given that the significance of effects of the proposed undertaking were unknown and preparation of an Environmental Assessment would assist in determining the need for an Environmental Impact Statement. For a proposed action that is not likely to have significant effects or when the significance of the effect is unknown (40 CFR § 1501.5), the EA aids in determining the significance of the adverse effects. In accordance with 40 CFR 1501.6, if the adverse effects are not significant or can be mitigated below significant levels, the Federal agency may issue a Finding of No Significant Impact (FONSI). If there are significant effects that cannot be mitigated, then the Federal agency must develop an Environmental Impact Statement (EIS) leading to a Record of Decision.

In accordance with the CEQ regulations (40 CFR 1500-1508), in considering whether the effects of a proposed action are significant, agencies shall analyze the potentially affected environment and degree of the effects of the action (40 CFR 1501.3(b)). In considering the potentially affected environment, agencies should consider, as appropriate to the specific action, the affected area (national, regional, or local) and its resources, such as listed species and designated critical habitat under the Endangered Species Act. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend only upon the effects in the local area (40 CFR 1501.3(b)(1)). In considering the degree of the effects, agencies should consider the following, as appropriate to the specific action: Both short-and long-term effects; Both beneficial and adverse effects; Effects on public health and safety; and Effects that would violate Federal, State, Tribal, or local law protecting the environment (40 CFR 1501.3(b)(2)). Effects, or impacts, means changes to the human environment from the proposed action or alternatives that are reasonably foreseeable (40 CFR 1508.1(g)). Effects include direct, indirect, and cumulative effects. Effects can be positive (beneficial) or negative (burdensome or adverse). Furthermore, a proposed undertaking can induce effects on the human environment that are not considered significant.

The EA for the Project was prepared to comply with both NEPA and SEQRA. In determining whether the Project would result in significant effects on the human environment, the NYSDOT considered the criteria contained in Part 15.11 of 17 NYCRR Part 15 (i.e., NYSDOT's SEQRA regulations) and 40 CFR 1500-1508 (i.e., CEQ regulations).

The EA determination did not dictate the level of analyses or public engagement that have been conducted for the Project. For example, the assessment of effects to environmental justice populations and air quality analysis for the Project would not be any different if an EIS were prepared.

The Project would also not induce traffic demand or increase capacity. However, an air quality analysis was conducted for the Project to inform the decision-making process. The air quality analysis consisted of localized concentrations or microscale analysis; mesoscale or regional emissions burden analysis; mobile source air toxics analysis; and construction effects assessment. The air quality analysis (documented in the FDR/EA) shows the following:

- There would be a slight decrease in pollutant concentrations at locations along the proposed tunnel cap.

- In the absence of mitigation, there would be a slight increase in pollutant concentrations near the tunnel exit portals.
- The highest predicted total concentrations near the tunnel portals (including a background concentration) are well below the applicable health-based ambient air quality standards (e.g., 63% of the annual average PM2.5 standard).
- The Project includes air quality mitigation measures to minimize air quality effects. These measures were not credited in the quantitative analysis.

The air quality analysis methodology/assumptions and results were developed in coordination with and reviewed by an interagency air quality group established for the Project. The group consisted of USEPA, NYSDEC, FHWA, and NYSDOT and met at least every other month throughout the EA. In addition, the air quality analysis methodology was developed based on conservative assumptions that over predict rather than under predict pollutant concentrations. As documented in the FDR/EA, based on the air quality analysis results and the measures that would be implemented to minimize air quality effects, the Build Alternative would not have an adverse effect on air quality.

Regarding asbestos-containing materials, the NYSDOT has confirmed the presence of non-friable asbestos containing materials in certain caulking materials on the retaining wall expansion joints and at the base of metal guard rails on the top of the retaining walls. Testing completed in December 2023 confirmed that no asbestos is present in the waterproofing material on the back of the retaining walls (FDR/EA Section 4.18.2). Asbestos containing materials would be removed consistent with a project-specific health and safety plan in compliance with all federal and state regulatory requirements to protect workers and the public. Asbestos containing materials are routinely addressed in transportation projects and their presence does not automatically constitute an adverse effect. Also, asbestos does not pose an “in-place” risk. Effects are associated with removal; however, contract abatement measures/requirements would mitigate any potential adverse effects.

Environmental justice considerations are addressed in Section 4.4 of this FDR/EA.

C1501.04 Performing an EA does not preclude the need for an EIS. To the contrary, where an EA identifies various mitigation measures that should be undertaken to minimize the environmental effects of the project there is an implication of significant environmental impact. The EA in this project identifies the need for the mitigation of construction noise, traffic, and air quality effects for two to three years, and long term mitigation of air quality created by the proposed build alternative. This should suggest to the agencies that there are significant impacts with respect to construction and air quality which require deeper investigation. Throughout the EA and the scoping documents, the agencies suggest potential adverse impacts that will fall largely on the residents living in the project area but have yet to address them. As the Joint Lead Agencies, the Federal Highway Administration and NYSDOT are under both state and federal obligations to go beyond the Environmental Assessment (EA) and conduct a comprehensive EIS.

R1501.04 Please see the response to comment 1501.03.

The Build Alternative includes measures that are designed to mitigate (avoid, minimize, rectify, reduce, or compensate) effects associated with the proposed undertaking. These measures are documented in the FDR/EA and include:

- Minimization and rectifying measures during construction: construction vibration mitigation plan; construction noise mitigation plan; dust control plan; work zone traffic control plans; and
- Minimization measures post-construction: tree planting/establishment of vegetative buffer; tunnel washing for dust control; tunnel design elements to minimize air quality levels at portals.

C1501.05 III. The NYSDOT Must Illicit Meaningful Public Participation From The Directly Impacted Community That Reside Just a Stone’s Throw Away From Kensington Expressway Project Proposal.

SEQR affirmatively identifies public participation as an “important aspect” of state law, noting that public participation allows “the public and other agencies to provide input into the planning or review process, resulting in a review with a broader perspective” and involves sharing timely and accurate information with the public and providing “effective means for the public to provide timely comments.” Despite these obligations, the NYSDOT failed to demonstrate meaningful public involvement. In fact, the NYSDOT presented only one redevelopment option and solicited support of a forgone conclusion of their plan before engaging in meaningful public participation. Upon information and knowledge presented to us the NYSDOT brought a pre-drafted form letter to a recent community meeting to solicit signatures of support for the project. Thus, thwarting any chance of engaging in meaning public participation. The action of a state official leveraging their authoritative and discretionary power to pressure laypersons to blindly sign a pre-drafted form, raises serious concerns of meeting the strict standards of meaningful public participation. Over a hundred community members attended a recent community meeting and expressed concerns about the lack of options the NYSDOT had presented, providing only one option “capping” the expressway. The pre-filled form surfaced mere days after residents raised significant concerns with the project.

R1501.05 As documented in Chapter 5 of the FDR/EA, the NYSDOT has been and will continue to be committed to an open and meaningful public involvement program for the Project. To date, this program has included public meetings, including a Project Scoping Meeting (6/30/22) and Public Information Meeting (6/20/2023), a public hearing (9/27/2023), NYSDOT attendance at more than 60 community events and meetings, 14 monthly stakeholder meetings, multiple public comment opportunities, and a community outreach office staffed by community outreach liaisons. The public input received has helped shape the Project, including the extension of the northern tunnel limit, improvements to approximately 9 miles of local streets in the immediate project vicinity, planting of a tree-lined median and landscaping on the tunnel cap, and dismissal of above ground infrastructure, such as large buildings with exhaust stacks. Public engagement opportunities will continue into the final design and construction phases of the Project.

The Project included a scoping process. During this scoping process, the NYSDOT conducted a comprehensive evaluation, in consideration of input from the community and Project stakeholders, to develop and identify reasonable (feasible and practical) alternatives for the Project. A total of 10 concepts were explored and objectively evaluated based on available information, appropriate analysis, and public and agency input. The evaluation of these concepts is documented in the Project Scoping Report, which is publicly available on the project website. As documented in Chapter 5 of the FDR/EA, the scoping process included a public scoping meeting consisting of two sessions and a formal comment period following the scoping meeting.

The NYSDOT did not authorize the preparation or distribution of pre-written comments and does not support or condone this type of one-sided approach to public involvement. In order to make an

informed decision on the Project, the NYSDOT needs to hear any and all perspectives, regardless of whether the commenter does or does not support the Project.

Any NYSDOT employee who may have attended the East Side Parkways Coalition meeting on 11/8/2023 was there based on personal interest and did not represent the agency.

C1501.06 Community concerns varied but maintained a consistent theme. A need for more robust understanding of the projects short- and long-term impacts, requesting more than just one option for redevelopment, and additional time to review the hundreds of pages. Specific concerns included concerns about the of increase air pollution at the end of the tunnel, the future use of land that will become available by the Kensington Expressway capping. A valid fear of history repeating itself by displacing residents. An analysis of future land use demands an EIS to consider the unintended harms.

The NYSDOT response to the above was unacceptable. The NYSDOT extended the public comment period by a mere 10 days. Ostensibly in hopes of obtaining a late influx of positive comments to crowd out the wide array of concerns raised by community members. These superficial attempts at depicting public positive support—including the pre-script support form—fall woefully short of the state’s obligation to ensure meaningful public participation. Indeed, the NYSDOT, to date, fail to demonstrate proactively seeking community participation, input, and meaningful dialogue—elements that are hallmark to the meaningful public participation requirement. With at least one resident stating “The deal is already done. This is a ‘dog and pony’ show.”

R1501.06 The FDR/EA documents the assessment of traffic, social, economic, and environmental effects, including indirect/secondary and cumulative effects, resulting from implementation of the Project. The analyses that have been conducted for the Project would not differ if an EIS were prepared. As documented in the FDR/EA, the Project would not require the relocation of any residences or businesses. The future use of the land on the tunnel cap would be publicly accessible greenspace, with maintenance anticipated to be taken by the City of Buffalo via a Memorandum of Agreement with NYSDOT (FDR/EA Section 3.4.1.12). This future use of the land is part of the Project and a commitment by NYSDOT.

As documented in Chapter 5 of the FDR/EA and stated in the response above, the NYSDOT has been and will continue to be committed to an open and meaningful public involvement program for the Project.

Regarding the length of the comment period, FHWA’s NEPA implementing regulations (23 CFR 771) require that an EA be available for public inspection for 30 days. The original 45-day public comment period for the DDR/EA exceeded this requirement. Based on the level of public interest and to afford the public more time to submit comments, the NYSDOT subsequently extended the comment period an additional 14 days, for a total of 59 days.

C1501.07 **IV. The NYSDOT Must Prioritize Efforts to Recue Environmental Harms in Disadvantaged Communities Consistent with The Climate Leadership and Community Protection Act (“CLCPA”)**

New York’s landmark legislation enacted to address climate change and its inequitable burdens on disadvantaged communities. The CLCPA makes clear that the state must prioritize the health and safety of environmental justice communities in advancing greenhouse gas reduction goals. It recognizes that climate change disproportionately affects “disadvantaged communities” and demands those communities benefit from the state’s transition to cleaner, greener sources of energy, reduced

pollution, and cleaner air. The CLCPA defines disadvantaged communities as those who “bear the burdens of negative public health effects, environmental pollution, impacts of climate change...or comprise of high concentrations of low- and moderate-income households.”

Section 7(3) demands that state agencies, when considering and issuing administrative approvals and decisions, “shall not disproportionately burden disadvantaged communities” and “shall prioritize reduction of greenhouse gas emissions and co-pollutants in disadvantaged communities....” Section 7(3) makes clear the Legislature’s intent to prioritize reductions of greenhouse gas emissions and co-pollutants in communities like those next to the Kensington Expressway.

As explained supra–Section I, the Kensington Expressway proposed project increases air pollution to the “disadvantaged community.” The residents, who are predominately Black, have been cut off from meaningful economic resources and exposed to a higher rate of pollutants and toxins. The goals of the CLCPA are to prioritize the safety and health of the community that has been carrying the brunt of harm caused by the original build of Kensington Expressway. Finally, the NYSDOT failed to meaningfully consider any alternatives to reroute traffic that would reduce the exposure from vehicle pollution in this community to meet the demands of the CLPA.

R1501.07 As documented in Section 4.4 and Section 4.10.5 of the FDR/EA, the NYSDOT assessed the Project’s effects to disadvantaged communities and the Project’s consistency with the Climate Leadership and Community Protection Act (CLCPA). The Project would be consistent with the CLCPA and would not result in adverse effects to disadvantaged communities.

During the project scoping process, the NYSDOT evaluated a concept (Concept 10) that involved removal of NYS Route 33 and diversion of traffic to other roadways. The assumed limits of removal were NYS Route 198 to downtown. The evaluation included an analysis of changes in traffic volumes and volume to capacity ratios as a result of Concept 10 using the GBNRTC regional travel demand model. It is important for an analysis of a facility removal, such as Concept 10, to take into account trip redistribution and the Metropolitan Planning Organization’s land use forecast and other travel demand data, rather than using arbitrary assumptions. The GBNRTC regional travel demand model was appropriate analysis tool for analyzing a scenario where travel routes would shift regionally. The Project Scoping Report documents the evaluation and ultimate dismissal of this concept. As stated, the expressway cannot be removed or filled in due to the issues related to diverting the 75,000 daily trucks and cars that currently use the expressway to local streets and other key roadways (many of which are in disadvantaged communities). These issues include the following:

- Safety (diverting traffic onto radial streets would result in higher crash rates on local streets with intersections compared to retaining the expressway).
- Increased crash rates with pedestrians and bicyclists due to their exposure to increased traffic on local streets.
- Conflict with potential Complete Streets/road diet improvements to radial streets undertaken by the City of Buffalo to increase nonmotorized accessibility and safety.
- Increased emergency vehicle response times and decreased access to hospitals.
- Increased emissions of air pollutants near homes and community facilities, because “stop and go” traffic on local streets produces more pollutants than continuously moving traffic.
- Travel time reliability for those commuting through the area.

- Exceeding the capacity of key roadways, such as I-190, I-90, and City of Buffalo arterial streets, resulting in traffic congestion and safety issues in other parts of the city or requiring widening/expansion that could have social/environmental effects.

NYSDOT subsequently undertook a supplemental traffic analysis for Concept 10 in order to provide the public information on additional performance measures for key roadways/intersections affected by redistributed traffic (FDR/EA Appendix B8). The additional performance measures include level of service and speed. The results further illustrate how poorly traffic would operate with removal of the expressway.

C1501.08 We must ensure the awful history of the past does not repeat itself. For the above reasons we are requesting the NYSDOT conduct an Environmental Impact Statement to determine the full impact of the project, including the future land use and air quality impacts. We are requesting an extended public participation process that includes meaningful public participation from residents in the impacted neighborhoods. Finally, we are requesting compliance with the CLCPA to consider alternative proposals that prioritize decreasing exposure to this community, including rerouting cars traveling through this neighborhood for the benefit of the suburbs.

R1501.08 Please see the responses to the above comments.

New York State Building and Construction Trades Council

C804 The NYSBCTC is in strong support of the Kensington Project Expressway. This project will be transformative for the Western New York Region and is the first step in revitalizing East Buffalo, a long-disadvantaged area, where there will be benefits for generations to come. With the assurance of a project labor agreement, the local trades will be able to provide meaningful workforce development and create job opportunities in the community through the use of pre-apprenticeship and apprenticeship programs.

Once the project is completed, the positive economic impact will extend beyond the construction duration, revitalizing the communities of East Buffalo. This project will reunite the Humboldt Parkway, bringing in new green space, and reconnecting a divided neighborhood.

We look forward to working with the State, local leaders, and the community in maximizing the benefits associated with this project. We urge you to move this significant economic development endeavor forward. Thank you for the opportunity to provide these comments and we are eager to work with you on making this project a reality.

R804 Comment noted.

New York State Chapter of the Associated General Contractors of America

C406 AGC is supportive of this transformative project, the Kensington Expressway. Improving traffic flow, reducing pollution for future residents, and making green spaces with a walkable community make a huge impact on the wellbeing of everyone; and creating infrastructure that will last for generations.

R406 Comment noted.

North Atlantic States Regional Council of Carpenters

C1669 I am writing on behalf of the North Atlantic States Regional Council of Carpenters in support of the Kensington Expressway Project. We represent over 11,000 New York members- including carpenters, pile drivers, shop and millmen, millwrights, and floor coverers- who strongly wish to see this project advance.

The Kensington Expressway Project presents a long-awaited opportunity to reconnect neighborhoods that were separated decades ago. First conceived in the late 1970s, this project has been nearly fifty years in the making. The project will undoubtedly revitalize East Buffalo, which has long suffered the consequences of the highway that created the East-West divide and will be transformative to the city of Buffalo for generations to come. Many of our brothers and sisters belong to the Buffalo community and look forward to the positive impact that reuniting neighborhoods will bring.

Not only will the completion of the project breathe new life into Buffalo, but so will the building process itself. With the assurance of a project labor agreement, comes the prospect of potentially three to four years of job opportunity and workforce development growth in the area. For our members, new projects with PLAs are synonymous with continued job security, and access to fair wages. Local hire provisions will also ensure that quality job and business opportunities come first to laborers who have endured the negative impacts of the East-West divide, thus guaranteeing that the building process will align with the spirit of the project overall.

Furthermore, we strive to encourage more youth to join the carpenter workforce through apprenticeships and see the Kensington Project Expressway as a chance to engage in a growing workforce across WNY that will have. We know as well as anyone that over the past three decades, construction employment locally has become stagnant, according to NY Department of Labor data. As more of our brothers and sisters reach retirement age, the need to introduce more young people to a career in trades has become more pressing. But more importantly, we want to see the young people of WNY getting into fair wage, union supported jobs that will build up their communities. The Kensington Expressway Project offers WNY the chance to redevelop our trades demographics and offer job security to those just entering into the workforce.

It is our utmost desire to see this effort completed in a timely fashion and in accordance with project labor agreements. We strongly support the Kensington Expressway Project and all the constructive changes it will bring to Buffalo's] neighborhoods and workforce. The community has waited long enough to see it's community reunited, and our trades do not wish to see important infrastructure opportunities pass us by.

We look forward to working closely with the Department of Transportation and other state and local partners to ensure this project moves forward and thank you for the opportunity to provide our comments.

R1669 Comment noted.

Olmsted Network

C1506.01 Return Humboldt Parkway

Frederick Law Olmsted and partner Calvert Vaux created a system of parks and parkways in Buffalo, New York to benefit the ENTIRE community, earning Buffalo the moniker of “the best planned city in the world.” Key to the plan was Humboldt Parkway, connecting the city’s two largest parks (Delaware and Martin Luther King, Jr. (formerly known as Humboldt Park)) via a wide tree-lined boulevard.

One hundred years later, the intrusion of the 33-Kensington Expressway devastated Humboldt Parkway, dividing neighborhoods and prompting economic, social and cultural consequences, which haunt Buffalo to this day. In addition, the intrusion of the 198 Scajaquada Expressway tore apart Delaware Park, the “crown jewel” of the Olmsted Park and Parkway System in Buffalo, NY. Rather than the “best planned city in the world,” Buffalo became a city segregated by design, displacing thousands of African Americans.

R1506.01 The NYSDOT acknowledges the detrimental effect that the construction of the Kensington Expressway had on the local communities. Section 2.1 of this FDR/EA describes the Project history and how the construction of the expressway led to the existing condition.

C1506.02 Now sixty years later, thanks to the Governor and state and federal leaders, there is a real chance to right that wrong. There is an opportunity to pay respect to Olmsted’s parks and parkways, duly recognized on the National Register of Historic Places, by returning to the vision of a city united through greenspace.

The current plan for the 33-Kensington Expressway is neither a good design nor good use of funds. The proposed cap will “cover” a mere 4,500 feet of the expressway— at an immense per foot cost. It will do nothing to return Frederick Law Olmsted’s original parkway design. It won’t ensure beautiful allées of trees. It won’t significantly reduce heat and provide shade. It won’t stitch back the community. It will be just one more insulting “solution” inflicted on the residents of Buffalo’s East Side without real consultation or expertise.

R1506.02 The NYSDOT, in consultation with FHWA, considered the original Humboldt Parkway as part of the environmental review process. As documented in Chapter 1 of this FDR/EA, the purpose of the Project is to reconnect the community surrounding the defined transportation corridor and improve the compatibility of the corridor with the adjacent land uses, while addressing the geometric, infrastructure, and multi-modal needs within the corridor in its current location. Although restoration of the original Humboldt Parkway is not the purpose of the Project, the NYSDOT and FHWA recognize the importance of its history to the project area. Transportation decision-making for this Project has incorporated design features of the original Humboldt Parkway to the greatest extent practicable, including but not limited to:

- A planted 90-foot-wide center median that aligns with the entrance area of the Buffalo Museum of Science and the location of the original southern entrance to Humboldt Parkway.

- Trees would be planted in diagonal rows ('alternating pairs of trees') based on the Olmsted plan for tree arrangement and would include 24 feet between rows and 60 feet between trees (as scaled from the Olmsted plan beginning just north of the Buffalo Museum of Science).
- Street trees would be planted on the residential sides of Humboldt Parkway to create a parkway feeling.
- The planting list for the original Humboldt Parkway was considered during the development of the landscape planting plan. Tree species recommendations were developed in coordination with the Buffalo Olmsted Parks Conservancy and the City of Buffalo. Tree species selection also considered tree root systems, mature size, and ability to survive in urban conditions (see Section 3.4.4 and Appendix A1 of this FDR/EA).

Appendix D1 of this FDR/EA provides a consistency assessment of the Build Alternative with the applicable goals of the Buffalo Olmsted Parks Conservancy's *The Buffalo Olmsted Park System: Plan for the 21st Century*.

The origins of this Project are in a community driven design concept advocated for by various community organizations, including the Restore Our Community Coalition (ROCC). As this concept was further developed through preliminary engineering, NYSDOT and FHWA consulted extensively with the local community, as documented in Chapter 5 of this FDR/EA.

C1506.03 State leaders, Federal Highway Administration and NYSDOT have ignored environmental and health impacts and are continuing the abusive behavior practiced in the 1960s when the 33- Kensington Expressway was imposed on Buffalo's East Side. The proposed cap is not the solution for the neighborhoods around the 33; they deserve better and the residents of the entire City of Buffalo deserve better.

The 33-Kensington Expressway proposal is unacceptable and should be rejected. It's time to return the Humboldt Parkway to its original grandeur.

When the city and state first began to revisit the designs of 198, community members opposed the solution by the NYSDOT, demanding a tree-lined boulevard that would reunite the cultural assets in keeping with Olmsted's original plan. Ultimately the Greater Buffalo Niagara Regional Transportation Council (GBNRTC) took over the planning process. As a result, after decades of hard-fought advocacy, these neighborhoods succeeded in identifying a safe and park-appropriate multi-modal roadway through Delaware Park. The same is needed for the 33- Kensington Expressway and the totality of these roads must be stitched back together - "One Road Now."

R1506.03 Regarding restoration of Humboldt Parkway, see the response to comment C1506.02.

As described in Section 1.4.2 of this FDR/EA, the Region Central Initiative is a planning-level study for the NYS Route 198/Scajaquada Expressway Corridor. The plan proposed by GBNRTC for the Scajaquada Expressway is a conceptual plan that will have to be vetted through engineering analysis to examine its feasibility.

The social, economic, and environmental effects of the Kensington Expressway Project were assessed, as documented in Chapter 4 of this FDR/EA. The Build Alternative was developed based on a balanced consideration of the need for safe and efficient transportation; the social, economic, and

environmental effects of the Build Alternative; and national, state, and local environmental protection goals.

The NYSDOT has provided, and will continue to provide, meaningful opportunities for public involvement in the Project, as documented in Chapter 5 of this FDR/EA.

C1506.04 According to NYSDOT, there is just one solution for the 33-Kensington Expressway— a partial cap. But that should not be the end of the discussion. The cap will NOT restore Humboldt Parkway; it is just another temporary fix to a historic divide. Unless other options are explored, the same communities that have borne the brunt of racism, pollution and inequitable investment will be victimized once again.

R1506.04 During the project scoping process, the NYSDOT undertook a comprehensive and objective evaluation of a range of concepts for the Project, as documented in the Project Scoping Report. Of the 10 concepts considered, it was determined that two concepts (combined to form the Build Alternative) would meet the project purpose and all of the objectives. The remaining concepts did not meet the project purpose and objectives and were dismissed from consideration.

As documented in Section 4.4 of this FDR/EA, the Build Alternative would not result in adverse effects to environmental justice populations.

C1506.05 One real option is creating a boulevard. Much like the 198 solution, a boulevard approach to the 33 would reunite the communities and come close to restoring the Humboldt Parkway. Rather than seriously studying this option, NYSDOT has summarily rejected it on the grounds that there is too much traffic on the 33.

R1506.05 As documented in the Project Scoping Report, Concept 9 (four-lane boulevard) did not meet the project purpose and objectives and was therefore dismissed from further consideration.

C1506.06 Buffalo needs to rebuild ALL its infrastructure for a more equitable future. Returning the 33 to a boulevard can be an important step to achieve that goal. And it can be a way for the NY governor to show leadership in the cause of social justice.

It's time that the Governor and citizens demanded the same kind of ambitious planning that leaders demanded in Olmsted's time. By thinking at the scale of the problem and reimagining both of Buffalo's expressways, Buffalo can develop a holistic plan that will be economically and environmentally sensible, connect communities rather than separate them and be worthy of Buffalo's Olmsted heritage.

R1506.06 See the responses to comments R1506.02 and R1506.04.

Preservation Buffalo Niagara

Note: NEPA-related responses only are provided below. For additional responses pertaining to the Section 106 process, refer to the December 22, 2023 FHWA memorandum to the Section 106 Consulting Parties provided in Appendix D10: Finding Documentation.

C1 Will homeowners be compensated for any loss of property value or increased insurance costs due to the project?

R1 Negative property value effects are not anticipated given the benefits of the Build Alternative in terms of aesthetics, greenspace, noise reduction and east-west connectivity. Consideration of potential property value changes (which could affect insurance costs) is provided in Section 4.21 of this FDR/EA.

C2 How will the NYS Department of Transportation ensure that the project does not worsen the existing environmental and social inequities that have afflicted the East Side for decades due to redlining, disinvestment, and segregation?

R2 As documented in Section 4.4 of this FDR/EA, the Project would not result in disproportionately high and adverse effects on environmental justice populations. Chapter 4 of this FDR/EA documents the Project's effects on air quality, noise, aesthetics, property values, and many other topics.

As documented in Chapter 4 of this FDR/EA, the Build Alternative has numerous aspects likely to improve quality of life, including reduced noise levels along the tunnel cap, reduction in impervious surface/stormwater runoff, support for increased physical activity and connectivity with the new greenspace and pedestrian/bicycle infrastructure improvements, improved aesthetics, and construction employment/economic benefits.

C3 We strongly recommend the NYSDOT conduct more comprehensive and inclusive public outreach with the residents of Buffalo who will be most affected by the project.

R3 As documented in Section 4.4.4 and Chapter 5 of the FDR/EA, the NYSDOT has been and will continue to be committed to an open and meaningful public involvement program for the Project. To date, this program has included a Project Scoping Meeting, Public Information Meeting, public hearing, NYSDOT attendance at more than 60 community events and meetings, 14 monthly stakeholder meetings, multiple public comment opportunities, mailings, project website, and a Project community outreach office staffed by community outreach liaisons. As stated in Chapter 5, the stakeholder group established for the Project consists of Restore Our Community Coalition; Hamlin Park Community & Taxpayers Association, Inc.; The Black Chamber of Commerce of Western New York, Inc.; Buffalo Olmsted Parks Conservancy; True Community Development Corporation; Buffalo Museum of Science; Citizen's Alliance, Inc.; Delavan Grider Community Center; The African American Cultural Center; Resource Council of WNY; Masten Block Club Coalition, Inc.; Winslow Block Club; MLK Block Club; the Eastside Parkways Coalition; City of Buffalo; and elected officials.

All members of the public were invited to project outreach events to learn more about the project, including the June 2022 Public Scoping Meeting, June 2023 Public Information Meeting, and the September 2023 Public Hearing. Methods used to notify homeowners in the Project area include flyers, mailings, advertising, email blasts, the project website, and attendance at community events, among others (see Chapter 5 of this FDR/EA). The NYSDOT also attended dozens of local community events to discuss the Project. Project documents were made available on the project website and at the Community Outreach Office.

Restore Our Community Coalition

Please see Consolidated Response A at the end of this Section.

Resource Council of Western New York

Note: NEPA-related responses only are provided below. For additional responses pertaining to the Section 106 process, refer to the December 22, 2023 FHWA memorandum to the Section 106 Consulting Parties provided in Appendix D10: Finding Documentation.

C1 The other concern rests with the exhaust fumes and the build design to allow for ventilation as a piston design driven by vehicular traffic movements. This in practice seems well under perfect conditions. The build design also allows for ventilation fan towers to be activated under certain circumstances. Indirect effects are exhaust fume levels as the tunnel exits west bound near best street. As traffic comes to a stop for an extended period of time, what are the exhaust plan design to mitigate adverse effects on the APE adjoining the Buffalo Museum of Science and the Charles Drew magnet School?

R1 Ventilation fan towers are not part of the design of the tunnel ventilation system. The ventilation system does include jet fans that would operate based on air quality sensors within the tunnel (see FDR/EA Section 3.4.3.5 of this FDR/EA).

The air quality analysis for the Project used regulatory models and followed USEPA and FHWA guidance and procedures (see Appendix D7 of this FDR/EA). The air quality analysis that was conducted for the Project (documented in Section 4.9 of this FDR/EA) shows the following:

- There would be a slight decrease in pollutant concentrations at locations along the proposed tunnel cap.
- In the absence of mitigation, there would be a slight increase in pollutant concentrations near the tunnel exit portals.
- The highest predicted total concentrations near the tunnel portals (including a background concentration) are well below the applicable health-based ambient air quality standards.
- The Project includes air quality mitigation measures to minimize air quality effects. These measures were not credited in the quantitative analysis.

As documented in the FDR/EA, based on the air quality analysis results and the measures that would be implemented to minimize air quality effects, the Build Alternative would not have an adverse effect on air quality.

River Heritage Conservancy

C1117.01 Humboldt Parkway, a key component of Buffalo's famed Olmsted park system, is at risk of losing a restoration opportunity forever. In the early days of the Buffalo Olmsted Parks Conservancy, I was engaged in its planning efforts due to my role as President of the Louisville Olmsted Parks Conservancy and board member of the National Association for Olmsted Parks. I vividly recall seeing the yawning gap in the City's interconnecting parkways and hearing discussions about the potential to cap the Kensington Expressway, regain greenspace, and reconnect neighborhoods.

Recently, I was elated to hear that the State of New York was undertaking this project. Now I am alarmed to learn that design decisions are being made in the absence of studies that are required whenever federally funded alterations are being planned for National Register properties. Research has shown that remnants of Humboldt Parkway remain, and that much more research is needed.

R1117.01 The Project has been developed in compliance with Section 106 of the National Historic Preservation Act (NHPA). Section 4.6 and Appendix D10 (Finding Documentation) of this FDR/EA include information on appropriate studies conducted to identify historic properties and consider input from consulting parties. Humboldt Parkway is not eligible for the National Register of Historic Places (NRHP), see response to comment C1117.03.

C1117.02 Because the current plan for NYS Route 33, Kensington Expressway Project (PIN: 5512.52) would have significant cultural and/or environmental impacts, an Environmental Impact Study (EIS) is required. The EIS should include a traffic study of Buffalo and radial streets, an air quality study for the East Side, and an evaluation of commuting trends.

R1117.02 FHWA and NYSDOT coordinated with the State Historic Preservation Office (SHPO), local preservation groups, community members and the Advisory Council on Historic Preservation (ACHP) as part of the Section 106 consultation process documented in Appendix D10 of this FDR/EA. There will be No Adverse Effects to historic properties resulting from this Project, as documented in Section 4.6 and Appendix D10 of this FDR/EA.

Appropriate traffic studies were conducted as documented in Appendix C of the Project Scoping Report (PSR), Sections 2.4.1 and 3.4.1 of this FDR/EA, and Appendices B1 through B8 of this FDR/EA. Appendix B8 includes supplemental analysis of the effects that NYS Route 33 removal would have on other roadways, including radial streets. Travel demand factors (including commuting trends/remote work) were considered as documented in Appendix F of the Project Scoping Report (PSR).

An air quality analysis was completed as documented in Section 4.9 and Appendix D7 of this FDR/EA.

The NEPA/SEQRA class of action (Environmental Assessment) has not determined the level of public outreach or analysis conducted for this project. For more detailed information on the rationale for preparation of an Environmental Assessment for this project, refer to response to comment C9-6 of this appendix.

C1117.03 A Cultural Landscape Report (CLR) for the historic Humboldt Parkway should also be undertaken. These two studies would identify potential adverse effects, define appropriate treatment, and inform management and investment decisions.

R1117.03 FHWA, in coordination with NYSDOT, had coordinated with the State Historic Preservation Office (SHPO) on the need for a Cultural Landscape Report, in the context of Section 106 of the National Historic Preservation Act (NHPA), as amended, and its implementing regulations under 36 CFR Part 800. A Cultural Landscape Report was considered as information was gathered and research was performed in the identification of historic properties. An Architectural Reconnaissance Survey, which considered the historical context and information directly related to the historical and architectural development of the Humboldt Parkway, was prepared for the Project by the New York State Museum. In the context of Section 106 of the NHPA, designed landscapes eligible for the National Register of Historic Places (NRHP) are categorized as a site. The National Park Service (NPS), a Bureau of the United States Department of the Interior (USDOI), provides guidance on how to apply the National Register Criteria for Evaluation, which considers categories of historic properties, how to evaluate a property within its historic context, and how to identify the type of significance of a property. Specifically, this guidance states that a designed landscape that has had major changes to its historic design, vegetation, original boundary, topography/grading, architectural features, and circulation system is not eligible for

the NRHP. The construction of the Kensington Expressway in the 1950s and 1960s removed the original Humboldt Parkway, including original features that were part of its designed landscape. For this reason, the original Humboldt Parkway is not eligible for the NRHP; therefore, a Cultural Landscape Report is not warranted as part of the Section 106 process for this proposed undertaking.

A historical restoration of Humboldt Parkway is not the purpose of the Project (see Section 1.3 of this FDR/EA). Nevertheless, the Build Alternative has incorporated design features of the original Humboldt Parkway to the greatest extent practicable.

- C1117.04** Going without these reports will ensure that reviewing agencies and decision makers lack sufficient context and understanding for determining the appropriateness of capping the Kensington Expressway. As for all significant projects, full design options for rehabilitating Humboldt Parkway should be developed with community participation.
- R1117.04** See responses to comments C1117.02 and C1117.03 of this appendix regarding the need for an EIS and CLR, respectively. Extensive community participation has been solicited throughout the Project as documented in Chapter 5 of this FDR/EA.

Robinson, Terrence (Section 106 Consulting Party)

Note: NEPA-related responses only are provided below. For additional responses pertaining to the Section 106 process, refer to the December 22, 2023 FHWA memorandum to the Section 106 Consulting Parties provided in Appendix D10: Finding Documentation.

- C1** Regional effect analysis and participation has been absent or stifled.
- R1** Regarding regional effects, appropriate study areas were used for each topic area as documented Chapter 4 of the FDR/EA. Regarding public participation opportunities, refer to Chapter 5 of the FDR/EA.
- C2** Olmsted Park and Parkway System –The concept of the Olmsted heritage, its preservation, restoration, and development is a pillar of City of Buffalo Plans for municipal growth and development. The current road project altered the historic fabric of the area. The proposed new project continues the scheme by frustrating development of the GBNRTC Region Forward concept and the restoration of the Scajaquada watershed.
- R2** The NYSDOT acknowledges the detrimental effect that the construction of the Kensington Expressway had on the local communities (Section 2.1 of this FDR/EA). The reference to "GBNRTC Region Forward" is interpreted to mean the "Region Central" planning study for the NYS Route 198 corridor. The Build Alternative would not preclude other projects outside the study area, including the Region Central recommended concept. GBNRTC was a participating agency during the project development process.

The Project would have beneficial effects on stormwater because of the incorporation of appropriate stormwater management design and a reduction in impervious surfaces. The stormwater management design was developed in coordination with the Buffalo Sewer Authority and the New York State Department of Environmental Conservation. For detailed information on stormwater considerations, refer to Section 4.15 and Appendix D3 of this FDR/EA.

- C3** Continuous high-level noise and acute traffic disruption for a lengthy period (3 to 4 years) within a confined geographic area.
- R3** Construction noise effects and mitigation measures are discussed in Section 4.20.1 of this FDR/EA. Mitigation measures include the development and implementation of a construction noise mitigation plan, which would include a construction noise monitoring program (including action levels triggering changes in construction methods), restricting the hours during which construction work can occur, and implementing temporary construction noise barriers, shrouds or enclosures to reduce noise from equipment, among other commitments.
- C4** No reduction in volume of harmful air emissions.
- R4** As stated in Section 1.3.1 of this FDR/EA, the purpose of the Project is to reconnect the community surrounding the defined transportation corridor and improve the compatibility of the corridor with the adjacent land uses, while addressing the geometric, infrastructure, and multi-modal needs within the corridor in its current location. The Build Alternative meets this project purpose.

The Project would also not cause traffic demand or increase capacity; however, an air quality analysis was conducted for the Project to inform the decision-making process. The air quality analysis methodology/assumptions and results were developed in coordination with and reviewed by an interagency air quality group established for the Project. As documented in Section 4.9 of this FDR/EA, based on the air quality analysis results and the measures that would be implemented to minimize air quality effects, the Build Alternative would not have an adverse effect on air quality (see response to comment C9-6).

- C5** High local traffic volume, restricted highway access, and limited parking will have an immediate adverse impact particularly for congregations at historic churches in the project area.
- R5** Access to churches would be maintained throughout construction. Details would be specified in the Work Zone Traffic Control Plans that will continue to be developed during final design (see Section 3.5.2 of this FDR/EA). Mitigation commitments that would serve to minimize temporary construction traffic-related effects on the churches include the requirement to maintain two lanes of traffic in each direction on the Kensington Expressway through all construction phases, maintaining through traffic on Humboldt Parkway, maintaining traffic on Northampton Street and East Ferry Street using temporary bridges, and using temporary pedestrian only bridges to maintain crossings at least every 1,300 feet, and replacing the Best Street bridge in phases to maintain vehicle and pedestrian access (see Section 4.20.4 of this FDR/EA).

The duration of parking impacts in any one block of Humboldt Parkway for support of excavation wall construction is approximately two weeks. During this time, off-street parking and side street parking would need to be utilized. Construction workers would not be permitted to park in public on-street parking, the contractor would be required to provide off-street parking at another location (see Section 4.20.4 of this FDR/EA). Public outreach would continue through construction to inform the public (see Section 5.8 of this FDR/EA).

- C6** High levels of dust and airborne emissions from deconstruction of asbestos containing material from existing infrastructure over a lengthy period (3-4 years) in a confined geographic area may have a serious impact on the health and safety of residents and visitors within the APE.

- R6** Asbestos containing materials are routinely addressed in transportation projects. As documented in Section 4.18.2 of this FDR/EA, the NYSDOT confirmed the presence of non-friable asbestos containing materials associated with the five bridge structures within the transportation corridor and in certain caulking materials on the retaining wall expansion joints and at the base of metal guide rails on the top of the retaining walls. Testing completed in December 2023 confirmed that no asbestos is present in the waterproofing material on the back of the retaining walls (see Section 4.18.2 of this FDR/EA). Asbestos containing materials would be removed and disposed of consistent with a Project-specific health and safety plan in compliance with all federal and state regulatory requirements to protect workers and the public.
- Construction air quality and mitigation measures are addressed in Section 4.20.3 of this FDR/EA.
- C7** Economic impacts from congestion, dirt, noise, and inconvenience issues.
- R7** Construction traffic, air quality, and noise effects and mitigation measures are provided in Section 4.20 of the FDR/EA. The construction air quality mitigation commitments include a Dust Control Plan, among other measures (see Section 4.20.3.2 of this FDR/EA).
- C8** There is the potential for a large-scale remediation scenario.
- R8** Sections 4.18 and 4.19 of this FDR/EA document the consideration of asbestos, lead and hazardous materials, including mitigation measures, as appropriate.
- C9** There is a disconnection from direct access to the Route 33 by eliminating Humboldt Parkway - Utica Exits and reduction in travel lanes while increasing necessity of use of the single lane route.
- R9** The Build Alternative does not include a reduction in travel lanes on the Kensington Expressway or Humboldt Parkway. Under the Build Alternative, drivers would have multiple convenient ways of accessing NYS Route 33, including the full interchange at Best Street (ramp intersections with Best Street improved with roundabouts and off-ramps widened to two lanes). The new two-directional roadway between Northampton Street and West Parade Avenue would facilitate efficient local access to the Best Street area with minimal change in travel times. The Best Street off-ramp from NYS Route 33 eastbound is about ½ mile from the eastbound off-ramp that would be removed. Similarly, the NYS Route 33 westbound on-ramp at Best Street is about ½ mile from the westbound on-ramp that would be removed. The westbound off-ramp near Butler Avenue would also remain available. Partial interchanges, such as the ramps being removed, are undesirable from a safety and operational perspective because they do not provide for all traffic movements and increase the risk of wrong way movements on the ramps.

Slow Roll Buffalo

- C806.01** While we applaud DOT officials for extending the current public comment period two more weeks through November 10th, it's merely another half-step. We hereby call for the following:

Repeating the calls of fellow community organizations, we request the public comment period be extended 90 days for deeper community engagement.

R806.01 The original 45-day public comment period for the DDR/EA exceeded the 30-day public comment period required under FHWA’s NEPA implementing regulations (23 CFR 771.119 (d)). Based on the level of public interest and to afford the public more time to submit comments, the NYSDOT subsequently extended the comment period an additional 14 days, for a total public comment period of 59 days. Additionally, this appendix also includes comments received up to January 10, 2024. Opportunities for public engagement have been ongoing throughout the development of the Project (see Chapter 5 of the FDR/EA). Opportunities for public involvement will continue through final design and construction (see Section 5.8 of this FDR/EA).

C806.02 Repeating our 2019 call to install the GBNRTC as liaison between Buffalo residents and DOT officials, more recently echoed by leaders of fellow SCC & ROCC member Buffalo Olmsted Parks Conservancy, who said, “Viewing this as a highway project, only, is short-sighted and does not provide the comprehensive review necessary to determine how to best provide holistic transportation, community restoration and social justice remedies.”

R806.02 The FHWA is the federal lead agency and NYSDOT is the joint lead agency for this Project because the Kensington Expressway is a state highway operated and maintained by the NYSDOT and the Project would be funded by state and federal sources. GBNRTC is a planning organization that can conduct studies but does not design or build projects. Note that GBNRTC has been involved in the development of the Project as a participating agency (see Section 4.1.1 of this FDR/EA).

The project purpose and objectives are not limited to highway-related considerations and include reconnecting the community with continuous greenspace (see Section 1.3 of this FDR/EA). A broad range of environmental considerations were evaluated along with consideration of public input during the environmental review process.

C806.03 The DOT should conduct a Full Environmental Impact Statement, including options for both capping the Kensington Expressway and fully restoring Humboldt Parkway. Echoing our partners from the Clean Air Coalition, “A project of this scale within a Disadvantaged Community under the NYS Climate and Community Protection Act needs to have an in-depth environmental review beyond the scope of the Environmental Assessment currently presented.”

R806.03 Removal of NYS Route 33 was considered and dismissed in the Project Scoping Report. See the response to comment C4.2-1 for additional information.

As documented in Section 4.10.5 of this FDR/EA, the Build Alternative is consistent with the Climate Leadership Community Protection Act (CLCPA). The Build Alternative would not have an adverse effect on disadvantaged communities as documented in Section 4.4 of this FDR/EA.

The NEPA/SEQRA class of action (Environmental Assessment) has not determined the level of public outreach or analysis conducted for this Project. For more detailed information on the rationale for preparation of an Environmental Assessment for this Project, refer to response to comment C9-6 of this appendix.

C806.04 “This review should include Air Quality monitoring and analysis as well as modeling and assurances of air quality safety during construction. The presence of asbestos in the retaining walls is of concern and the public safety from this hazardous substance should be further evaluated and more details given to the public. Concentrations of lead in the soil of the highway corridor should be investigated prior to construction.”

R806.04 Section 4.20.3 of this FDR/EA documents the temporary air quality effects that could occur during construction of the Build Alternative, as well as the measures that would be implemented to avoid and minimize these effects. The construction air quality mitigation measures include requiring the use of newer/lower emitting equipment, a dust control plan, idling restrictions, and a construction air quality monitoring program (including action levels that would trigger investigation and changes in construction methods).

Asbestos containing materials are routinely addressed in transportation projects. As documented in Section 4.18.2 of this FDR/EA, the NYSDOT confirmed the presence of non-friable asbestos containing materials associated with the five bridge structures within the transportation corridor and in certain caulking materials on the retaining wall expansion joints and at the base of metal guide rails on the top of the retaining walls. Testing completed in December 2023 confirmed that no asbestos is present in the waterproofing material on the back of the retaining walls (see Section 4.18.2 of this FDR/EA). Asbestos containing materials would be removed and disposed of consistent with a project-specific health and safety plan in compliance with all federal and state regulatory requirements to protect workers and the public.

Work activities will be performed in accordance with the contract documents. Special procedures, precautions, and requirements for handling contaminated materials would be identified following NYSDOT specifications and guidelines before construction for the protection of soil and groundwater resources and worker safety. During construction, excavated soils would be temporarily stockpiled and sampled for laboratory analysis. Based on the test results, the stockpiled soils would be characterized for off-site disposal or on-site reuse (if appropriate) in accordance with federal, state, and local regulations. A health and safety plan, including dust monitoring, would be implemented during construction for the protection of workers and the surrounding community.

Town Highway Superintendents Association of Erie County, Inc.

Please see Consolidated Response B at the end of this Section.

Trinidad Neighborhood Association Block Club

C1177.01 The Trinidad Neighborhood Association Block Club supports the Kensington Expressway Project to cover a portion of Route 33, with a preference that the project meet limits of the Region Central project at Delavan to complete the “One Road” concept reconnecting MLK Jr. and Delaware Parks.

R1177.01 As described in Section 1.4.1 of this FDR/EA, the NYSDOT and FHWA established the transportation corridor and proposed tunnel limits for this Project in consideration of the following factors: the presence of the depressed highway section with retaining walls, opportunities for connectivity with existing parkland and community resources, and physical and environmental constraints. Prior to the June 30, 2022 public scoping meeting, the NYSDOT and FHWA had defined the limits of the transportation corridor as Best Street to East Ferry Street. In consideration of public comments

received during the scoping comment period, the limits were subsequently extended approximately 600 feet north to Sidney Street. As documented in Section 1.4.1 of this FDR/EA, Best Street and Sidney Street represent logical termini/rational endpoints for this Project.

As documented in Section 1.4.2 of this FDR/EA, the Kensington Expressway Project has independent utility, and would not preclude the consideration of potential future projects in other portions of NYS Route 33 or in the NYS Route 198 corridor.

C1177.02 We agree this project and its initial phase is a vital part of attaining the goal to reconnect a community that has been marginalized for decades and disenfranchised from the current economic resurgence of Buffalo.

The construction of Route 33 brought tremendous economic and environmental harm and devastation to the residents and businesses along Humboldt Parkway, Hamlin Park, the Trinidad Park neighborhood, MLK Park neighborhoods and business corridors in the City of Buffalo, especially Fillmore and Jefferson Avenues.

Recreating a green space and access across the East-West segments of our streets disrupted by the expressway will help remediate the physical and psychological barrier to social and economic vitality for residents, businesses, and anchor institutions around Humboldt Parkway.

Removing the direct impact of pollution from the Kensington Expressway traffic will be a significant health benefit from said project while maintaining an important transportation link for the regional traffic.

R1177.02 The NYSDOT acknowledges the detrimental effect that the construction of the Kensington Expressway had on the local communities. Section 2.1 of this FDR/EA describes the Project history and how the construction of the expressway led to the existing condition. The purpose of the Project is discussed in Section 1.3 of this FDR/EA and includes reconnecting the community with continuous greenspace.

Air quality effects, including beneficial air quality effects along the tunnel cap, are documented in Section 4.9 of this FDR/EA. Environmental justice considerations are addressed in Section 4.4 of this FDR/EA.

C1177.03 To prevent the original mistake of constructing the Expressway against the interests of the immediate community, the Trinidad Neighborhood Association further supports the full involvement of community stakeholders in the design process, and that the designers heed the community goal to ensure that the infrastructure designed will lead to a revitalized, walkable, and healthy urban environment.

R1177.03 Stakeholders have been extensively involved in the development of the Project as detailed in Chapter 5 of this FDR/EA (including 15 stakeholder group meetings through January 2024).

C1177.04 We request: Historic Land Report be completed as part of the process for adherence to historic cross-sections of the parkway including tree heights with the restored parkway

R1177.04 The comment requesting a Historic Land Report is interpreted to refer to a Cultural Landscape Report. FHWA, in coordination with NYSDOT, had coordinated with the State Historic Preservation Office (SHPO) on the need for a Cultural Landscape Report, in the context of Section 106 of the National

Historic Preservation Act (NHPA), as amended, and its implementing regulations under 36 CFR Part 800. A Cultural Landscape Report was considered as information was gathered and research was performed in the identification of historic properties. An Architectural Reconnaissance Survey, which considered the historical context and information directly related to the historical and architectural development of Humboldt Parkway, was prepared for the Project by the New York State Museum. In the context of Section 106 of the NHPA, designed landscapes eligible for the National Register of Historic Places (NRHP) are categorized as a site. The National Park Service (NPS), a Bureau of the United States Department of the Interior (USDOI), provides guidance on how to apply the National Register Criteria for Evaluation, which considers categories of historic properties, how to evaluate a property within its historic context, and how to identify the type of significance of a property. Specifically, this guidance states that a designed landscape that has had major changes to its historic design, vegetation, original boundary, topography/grading, architectural features, and circulation system is not eligible for the NRHP. The construction of the Kensington Expressway in the 1950s and 1960s removed the original Humboldt Parkway, including original features that were part of its designed landscape. For this reason, the original Humboldt Parkway is not eligible for the NRHP; therefore, a Cultural Landscape Report is not warranted as part of the Section 106 process for this proposed undertaking. Nevertheless, the Build Alternative has incorporated design features of the original Humboldt Parkway to the greatest extent practicable (see response to comment C7.5-6 in this appendix).

C1177.05 We request: Health Impacts Assessment

R1177.05 The FDR/EA documents the effects (as defined by 40 CFR 1508.1(g)) of the proposed action on the human environment, which includes consideration of potential effects on public health and safety. As documented in Section 4.9 of this FDR/EA, the Project will not result in exceedances of the National Ambient Air Quality Standards (NAAQS), which are criteria established by the USEPA to protect public health, including the health of sensitive populations such as asthmatics, children, and the elderly. As documented in this FDR/EA, the Build Alternative will provide public health benefits, such as access to new greenspace, increased opportunities for physical activity related to the proposed bicycle and pedestrian improvements, reduced noise levels, and improved aesthetics.

C1177.06 We request: Maintenance Sustainability Study including estimated annual budgets and maintenance responsibilities for the concept

R1177.06 Information on maintenance costs is provided in Section 3.6.3 of this FDR/EA. Information on ownership and maintenance jurisdiction is provided in Section 3.4.1.12 of this FDR/EA.

C1177.07 We request: Parking Spaces are not completely eliminated for residents along the parkway

R1177.07 As discussed in Section 3.4.1.10 of this FDR/EA, the Build Alternative would require the elimination of up to 51 on-street parking spaces out of approximately 173 spots available in residential areas along Humboldt Parkway. Of these 51 total on-street parking spots, it is expected that 25 spots would be removed due to new curb bump outs which are incorporated into the Project to improve intersection sight distances and to shorten pedestrian street crossings. The remaining 26 on-street parking spots to be removed are on Humboldt Parkway southbound between Northland Avenue and East Ferry Street and need to be eliminated in order to provide a continuous bicycle lane, and to provide consistent street tree plantings in tree lawns (or snow storage areas) between the sidewalk and curb. A parking demand study, included in Appendix A9, was completed for this section of Humboldt Parkway, which identified that parking along these two blocks has very low usage. Additionally, residences on

Humboldt Parkway in this area have access to off-street driveways. No commercial business parking would be impacted. Therefore, the proposed parking removal would not adversely affect residents or access to businesses. Details of the locations where the Build Alternative would impact parking spaces is provided in Appendix A9.

C1177.08 We request: In-depth examination of the impacts of the pedestrian crossings and movement at the roundabouts

R1177.08 See response to comment C1177.11 in this appendix.

C1177.09 We further request the NYSDOT provide more clarity and supporting data on the following:

- We need further assurance that the ventilation system that is being proposed does not cause severe health ramifications as the construction of the Route 33 did originally.

R1177.09 The National Ambient Air Quality Standards (NAAQS) are health-based standards set by USEPA that include consideration of sensitive populations. The air quality analysis (including the use of the NAAQS) was developed in coordination with and reviewed by an interagency air quality group. The analysis used regulatory models and followed USEPA and FHWA guidance and procedures (see Appendix D7 of this FDR/EA). The highest concentrations predicted are well below the NAAQS. In addition, the Project includes air quality mitigation measures to minimize air quality effects (see Section 4.9.4.6 of this FDR/EA). These measures were not credited in the quantitative analysis.

C1177.10 We further request the NYSDOT provide more clarity and supporting data on the following:

- We further urge the proper treatment and disposal of any hazardous materials such as asbestos during construction, being that the construction levels of dust be minimized, and residents' well-being remain at the forefront of this project.

R1177.10 As documented in Section 4.18.2 of this FDR/EA, asbestos containing materials would be removed and disposed of consistent with a project-specific health and safety plan in compliance with all federal and state regulatory requirements to protect workers and the public.

The construction air quality mitigation commitments include a Dust Control Plan, among other measures discussed in Section 4.20.3.2 of this FDR/EA.

C1177.11 We further request the NYSDOT provide more clarity and supporting data on the following:

- While roundabouts are highly effective in keeping traffic patterns flowing, the Best Street configuration is quite unique and extremely complex.
- We urge further investigation regarding the impacts of the pedestrian crossing and movement, especially during summer months and when annual events take place in MLK Park for the safety of our community.

R1177.11 The Best Street bridge roundabout design includes a 10-foot-wide multiuse path for pedestrian movements along the roundabout and crosswalks with clearly marked pedestrian priority signage and appropriate lighting at night (see Section 3.4.2.1 of this FDR/EA). In general, roundabouts improve safety for pedestrians by reducing vehicle speeds and reducing crossing distances. The splitter islands provide a refuge such that pedestrians only need to cross one direction of traffic at a time. Design details for the pedestrian crossings of the roundabout and potential measures to increase driver awareness of the need to yield to pedestrians will continue to be developed during final design.

- C1177.12** We further request the NYSDOT provide more clarity and supporting data on the following:
- We have concerns about acquiring small parcels of land for ADA walkway accessibility. If the parkway adds frontage to the houses along Humboldt Parkway, why is it necessary to acquire small portions of homeowners' land?

- R1177.12** Right-of-way acquisitions for ADA curb ramps are part of the local streets improvements and are not required on Humboldt Parkway. Temporary easements from residences on Humboldt Parkway are required for replacement of water service lines. Table 3.4-6 in Section 3.4.3.1 of this FDR/EA lists the anticipated right-of-way acquisitions for the Build Alternative.

After the environmental review process is completed, NYSDOT will prepare an acquisition map for each impacted property. The map will detail the size, location, and type of acquisition (permanent or temporary) impacting the property. NYSDOT Office of Right of Way staff will then meet with the property owner to review the acquisition area, discuss the project impacts on the property, explain the acquisition process and inform the property owner of their rights throughout the acquisition process.

- C1177.13** We further request the NYSDOT provide more clarity and supporting data on the following:
- We also have concerns about gentrification that can occur in neighborhoods and urban areas that are experiencing a renaissance period of growth and infrastructure changes.
 - We would further ask that housing protection programs be developed, and systems implemented for the protection of the current resident property owner population in the project target area to ensure socioeconomic growth and stability will be realized for all.

- R1177.13** As documented in Section 4.21 of this FDR/EA, it is not expected that the Project would indirectly result in gentrification of the community in the foreseeable future. Potential effects on property values are discussed in Section 4.21 of this FDR/EA, including existing programs that assist low-income homeowners and renters. The Project does not and would not preclude independent actions by other agencies or community groups to provide additional direct investment in the community.

- C1177.14** We further request the NYSDOT provide more clarity and supporting data on the following:
- The current concept still needs more clarification and context including a thorough analysis and environmental impact study and on related health concerns.

- R1177.14** The FDR/EA documents the effects (as defined by 40 CFR 1508.1(g)) of the proposed action on the human environment, which includes consideration of potential effects on public health and safety. Environmental impacts (including air quality, noise, hazardous materials, and others) were thoroughly evaluated as documented in this FDR/EA.

- C1177.15** We are confident that our neighborhood transformation will thrive by reconnecting our community and restoring the greenspace designed by Fredrick Law Olmsted as a capstone parkway within the City of Buffalo parks systems.

Converting this now decaying bathtub portion of the expressway into a beautiful greenway and connector and improving the visual quality and natural environment of Humboldt Parkway will catalyze the improvement of property values and assist in revitalizing business districts along Fillmore and Jefferson Avenues and the East Side of Buffalo.

A restored Humboldt Parkway is essential for a complete renaissance of our beautiful city everyone can participate in the progress being made, and those neighborhoods that have been scarred for decades can finally be restored.

R1177.15 Comment noted.

Upstate Rebar

Please see Consolidated Response B at the end of this Section.

Vision Niagara

C957.01 We have carefully reviewed the available subject documents and we are united with our colleagues and the project commentators who are disappointed in, and disagree with, not only the process undertaken, but also the current recommendations of this project.

It is an unfortunate repeat of history and a travesty to our community that the restoration of the incredible jewel that was the Humboldt Parkway, as designed by Frederick Law Olmsted, has been dismissed.

We stand in unison with all our colleagues on the Scajaquada Corridor Coalition who have worked so hard to remove the limited access roadways that negatively impact our urban core as we re-envision and restore the Scajaquada Creek corridor and our legacy parks and parkways which include the historic Humboldt Parkway.

We align ourselves with the East Side Parkways Coalition, Buffalo Olmsted Parks Conservancy, Citizens for Regional Transit, Preservation Buffalo Niagara, Clean Air Coalition, GObike Buffalo, a rapidly growing number of other organizations and numerous individual commentators, to oppose this project's audacious dismissal of the full restoration of the historic Humboldt Parkway.

R957.01 During the project scoping process, the NYSDOT evaluated a concept (Concept 10) that involved removal of NYS Route 33 and diversion of traffic to other roadways. The assumed limits of removal were NYS Route 198 to downtown. The evaluation included an analysis of changes in traffic volumes and volume to capacity ratios as a result of Concept 10 using the GBNRTC regional travel demand model. It is important for an analysis of a facility removal, such as Concept 10, to take into account trip redistribution and the Metropolitan Planning Organization's land use forecast and other travel demand data, rather than using arbitrary assumptions. The GBNRTC regional travel demand model was appropriate analysis tool for analyzing a scenario where travel routes would shift regionally. The Project Scoping Report documents the evaluation and ultimate dismissal of this concept. As stated, the expressway cannot be removed or filled in due to the issues related to diverting the 75,000 daily trucks and cars that currently use the expressway to local streets and other key roadways (many of which are in disadvantaged communities). These issues include the following:

- Safety (diverting traffic onto radial streets would result in higher crash rates on local streets with intersections compared to retaining the expressway).
- Increased crash rates with pedestrians and bicyclists due to their exposure to increased traffic on local streets.

- Conflict with potential Complete Streets/road diet improvements to radial streets undertaken by the City of Buffalo to increase nonmotorized accessibility and safety.
- Increased emergency vehicle response times and decreased access to hospitals.
- Increased emissions of air pollutants near homes and community facilities, because “stop and go” traffic on local streets produces more pollutants than continuously moving traffic.
- Travel time reliability for those commuting through the area.
- Exceeding the capacity of key roadways, such as I-190, I-90, and City of Buffalo arterial streets, resulting in traffic congestion and safety issues in other parts of the city or requiring widening/expansion that could have social/environmental effects.

NYS DOT subsequently undertook a supplemental traffic analysis for Concept 10 in order to provide the public information on additional performance measures for key roadways/intersections affected by redistributed traffic (FDR/EA Appendix B8). The additional performance measures include level of service and speed. The results further illustrate how poorly traffic would operate with removal of the expressway.

C957.02 Vision Niagara agrees with commentator Greg Stubbs (Saturday, April 1, 2023 4:31 PM) who writes: ‘The entire process conducted by the NYSDOT has been disingenuous from the beginning. They presented ten “alternatives”. But set a project goal of “maintain the vehicular capacity of the existing transportation corridor”. The Kensington is a six-lane expressway. By setting a goal of maintaining the vehicular capacity of the existing transportation corridor, the NYSDOT effectively eliminated nine of the ten alternatives from the very start. The “selected” alternative by default and of no surprise is capping less than a mile of the Kensington and maintaining the six-lane expressway. As documented in Section 4 of the Project Scoping Report (PSR), the potential social, economic, and environmental effects of the Project will be evaluated and documented in the Draft Design Report/Environmental Assessment for the Project, but only for the selected concept. The project goal of “maintain the vehicular capacity of the existing transportation corridor” should be eliminated.’

R957.02 The objective to maintain the vehicular capacity of the existing transportation corridor is supported by the identified needs documented in Section 1.3.2 of this FDR/EA. During the project scoping process, the NYSDOT undertook a comprehensive and objective evaluation of a range of concepts for the Project, as documented in the Project Scoping Report. Of the 10 concepts considered, it was determined that four of the concepts (No Build and Concepts 7, 9, and 10) did not meet the project objective to maintain the vehicular capacity of the existing transportation corridor and thus, were dismissed from further consideration. Two of the concepts, Concepts 5 and 6, were determined to meet the project purpose and all of the project objectives. These concepts were combined to form the Build Alternative and advanced for further study in the Environmental Assessment.

C957.03 Mr. Stubbs entire point-by-point submission is excellent, and we wish to additionally highlight his comments that include: ‘The cost to fill-in, restore and extend Humboldt Parkway (Concept #10) costs less than the Concept #9 multiway boulevard and is a fraction of the Concept #6 cap cost. It addresses the injury to the communities along the entire corridor that the Kensington has inflicted. The cost to construct the cap is, conservatively, at least 14 times more than the cost of filling in and restoring the parkway over the same distance. The remainder of funding of \$792MM (\$855MM - \$63MM) would provide for extending the parkway downtown. The balance of the funding could be invested in the major north-south commercial corridors along Bailey,

Fillmore, Jefferson and Michigan and the radials renovating them as complete streets. The increased traffic flow would reinforce and support the East Side Collaborative Fund and the \$65 million East Side Corridor Economic Development Fund that is in place to help revitalize the East Side with needed investment along the significant commercial arteries of Bailey, Fillmore, Jefferson and Michigan. These major avenues and the radials have more than enough capacity to compensate for the loss of the Kensington Expressway. The population of Buffalo before the Kensington Expressway was built had double the population it has today. An alternative would be to fund the extension of Metrorail to the airport.'

R957.03 See the response to comment C957.01. The traffic analysis of NYS Route 33 removal documented in Appendix B8 of this FDR/EA included consideration of the capacity of radial routes. In some cases, the capacity of these routes will be reduced in the future compared to existing conditions because of road diet/bike lane projects.

The Niagara Frontier Transportation Authority (NFTA), the only organization with the authority to implement mass transit projects in the area, is not currently proposing rail service in the transportation corridor. The Project has been and will continue to be designed to not preclude potential future light rail projects, but these would be separate, independent projects.

C957.04 In addition, Vision Niagara heartily supports Buffalo Olmsted Parks' project comment statement (letter dated October 25, 2023) that says:

'We continue to declare that the restoration of the historic Humboldt Parkway (previous Option 10) is our preferred approach. We now realize that we have overwhelming community support in a "ONE ROAD NOW" concept that restores and reconnects the MLK Jr. Park with Delaware Park. We request that NYSDOT, FHWA and NYSOPR&HP initiate truly meaningful design discussions with the concerned organizations and community about this preferred approach.'

R957.04 See the response to comment C957.01.

C957.05 We also agree with commentator Robert Galbraith (comments included in the Appendix E2 Summary) who summarizes that the:

'DOT must give complete and fair consideration to removing the Kensington Expressway entirely and restoring the street grid that was destroyed to construct it for a number of reasons:

1. Removing the expressway is the only way to reduce automobile pollution and attendant disease in the neighborhoods on both sides of the expressway;
2. The Kensington Expressway was built for a city of twice the population that Buffalo currently has and maintaining its level of capacity is unnecessary;
3. Removing the expressway and restoring the former parkway is in far better alignment with state climate goals than preserving an urban highway for generations to come; and
4. Removing the expressway and restoring the former parkway will cost significantly less than constructing a tunnel, especially if air filtration is to be installed.'

R957.05 See the response to comment C957.01. In addition, note that the Build Alternative meets air quality standards (see Section 4.9 of this FDR/EA). The transportation need for the expressway is supported by the traffic analyses documented in Sections 2.4.1 and 3.4.1, as well as Appendix B8 of this FDR/EA.

The Build Alternative is consistent with the Climate Leadership and Community Protection Act (CLCPA) as documented in Section 4.10.5 of this FDR/EA. Air treatment is not required, see Section 3.2.2.2 of this FDR/EA.

C957.06 Alongside our colleagues, Vision Niagara reiterates that this project's current objective, to maintain the vehicular capacity of the transportation corridor, undeniably rejects the one alternative that benefits our community the most.

This one alternative, to restore Olmsted's Humboldt Parkway in its entirety, is the only alternative that contributes to the reinstating of the splendor of our park system. It serves to reunite our neighborhoods, restore our damaged ecological resources, positively improve our health and wellbeing, enhance our regional assets, begin the healing of the wrongs of our past, promote the highest and best use of our financial resources, and ultimately, serves to protect our ability to move forward into the future in a manner that honors the spirit of civic design excellence.

Vision Niagara will only support efforts that will remove this limited access roadway entirely and that will fully restore and expand our legacy parks and parkways.

R957.06 See the response to comments C957.01 and C957.02.

Consolidated Response A

American Rated Cable and Communications, Inc.

B.U.I.L.D. of Buffalo, Inc.

Restore Our Community Coalition

CConA.01 [Commenter] supports the Kensington Expressway Project to cover a portion of Route 33, with a preference that the project meet limits of the Region Central project at Delavan to complete the "One Road" concept reconnecting MLK Jr. and Delaware Parks.

RConA.01 As described in Section 1.4.1 of this FDR/EA, the NYSDOT and FHWA established the transportation corridor and proposed tunnel limits for this Project in consideration of the following factors: the presence of the depressed highway section with retaining walls and available project funding; opportunities for connectivity with existing parkland and community resources; and physical and environmental constraints. Prior to the June 30, 2022 public scoping meeting, the NYSDOT and FHWA had defined the limits of the transportation corridor as Best Street to East Ferry Street. In consideration of public comments received during the scoping comment period, the limits were subsequently extended approximately 600 feet north to Sidney Street. As documented in Section 1.4.1 of this FDR/EA, Best Street and Sidney Street represent logical termini/rational endpoints for this Project. As documented in Section 1.4.2 of this FDR/EA, the Kensington Expressway Project has independent utility, and would not preclude the consideration of potential future projects in other portions of NYS Route 33 or in the NYS Route 198 corridor.

CConA.02 This project and its initial phase is a vital part of attaining the goal to reconnect a community that has been marginalized for decades and disenfranchised from the current economic resurgence of Buffalo. The construction of Route 33 brought tremendous economic and environmental harm and devastation

to the residents and businesses along Humboldt Parkway, Hamlin Park Trinidad Park and MLK Park neighborhoods and business corridors in the City of Buffalo, especially Fillmore and Jefferson Avenues. Recreating a green space and access across East-West segments of streets disrupted by the expressway will help remediate the physical and psychological barrier to social and economic vitality for residents, businesses, and anchor institutions around Humboldt Parkway. Removing the direct impact of pollution from the Kensington Expressway traffic will be a significant health benefit from said project while maintaining an important transportation link for the regional traffic.

RConA.02 The NYSDOT acknowledges the detrimental effect that the construction of the Kensington Expressway had on the local communities. Section 2.1 of this FDR/EA describes the Project history and how the construction of the expressway led to the existing condition. The project purpose, objectives and needs are discussed in Section 1.3 of this FDR/EA, including the objective to reconnect the community with continuous greenspace.

The air quality effects resulting from the Build Alternative, including beneficial air quality effects along the tunnel cap, are documented in Section 4.9 of this FDR/EA.

CConA.03 To prevent the original mistake of constructing the Expressway against the interests of the immediate community, [Commenter] further supports the full involvement of community stakeholders in the design process, and that the designers heed the community goal to insure that the infrastructure designed will lead to a revitalized, walkable, and healthy urban environment.

RConA.03 As documented in Chapter 5 of this FDR/EA, the NYSDOT has, and will continue to engage, stakeholders in the development of the Project. This engagement has included 15 stakeholder group meetings through January 2024.

CConA.04 The current concept still need some clarification and context including a thorough analysis of environmental impact and related public health concerns.

RConA.04 The FDR/EA documents the effects (as defined by 40 CFR 1508.1(g)) of the proposed action on the human environment, which includes consideration of potential effects on public health and safety. Environmental impacts (including air quality, noise, hazardous materials, and others) were thoroughly evaluated as documented in Chapter 4 this FDR/EA.

CConA.05 We further request: Historic Land Report be completed as part of the process for adherence to historic cross-sections of the parkway including tree heights with the restored parkway.

RConA.05 The comment requesting a Historic Land Report is interpreted to refer to a Cultural Landscape Report. FHWA, in coordination with NYSDOT, has coordinated with the State Historic Preservation Office (SHPO) on the need for a Cultural Landscape Report, in the context of Section 106 of the National Historic Preservation Act (NHPA), as amended, and its implementing regulations under 36 CFR Part 800. A Cultural Landscape Report was considered as information was gathered and research was performed in the identification of historic properties. An Architectural Reconnaissance Survey, which considered the historical context and information directly related to the historical and architectural development of Humboldt Parkway, was prepared for the Project by the New York State Museum. In the context of Section 106 of the NHPA, designed landscapes eligible for the National Register of Historic Places (NRHP) are categorized as a site. The National Park Service (NPS), a Bureau of the United States Department of the Interior (USDOI), provides guidance on how to apply the National Register Criteria

for Evaluation, which considers categories of historic properties, how to evaluate a property within its historic context, and how to identify the type of significance of a property. Specifically, this guidance states that a designed landscape that has had major changes to its historic design, vegetation, original boundary, topography/grading, architectural features, and circulation system is not eligible for the NRHP. The construction of the Kensington Expressway in the 1950s and 1960s removed the original Humboldt Parkway, including original features that were part of its designed landscape. For this reason, the original Humboldt Parkway is not eligible for the NRHP; therefore, a Cultural Landscape Report is not warranted as part of the Section 106 process for this proposed undertaking. Nevertheless, the Build Alternative has incorporated design features of the original Humboldt Parkway to the greatest extent practicable (see response to comment C7.5-6).

CConA.06 We further request: Health Impacts Assessment

RConA.06 The FDR/EA documents the effects (as defined by 40 CFR 1508.1(g)) of the proposed action on the human environment, which includes consideration of potential effects on public health and safety. As documented in Section 4.9 of this FDR/EA, the Build Alternative would not result in exceedances of the National Ambient Air Quality Standards, which are criteria established by the United States Environmental Protection Agency (USEPA) to protect public health, including the health of sensitive populations such as asthmatics, children and the elderly. As documented in this FDR/EA, the Build Alternative would provide public health benefits, such as access to new greenspace, increased opportunities for physical activity related to the proposed bicycle and pedestrian improvements, reduced noise levels, and improved aesthetics.

CConA.07 We further request:
Maintenance Sustainability Study including estimated annual budgets and maintenance responsibilities for the concept.

RConA.07 Information on maintenance costs is provided in Section 3.6.3 of this FDR/EA. Information on ownership and maintenance jurisdiction is provided in Section 3.4.1.12 of this FDR/EA.

CConA.08 We further request: Parking Spaces not be completely eliminated for residents along the parkway.

RConA.08 As discussed in Section 3.4.1.10 of this FDR/EA, the Build Alternative would require the elimination of up to 51 on-street parking spaces out of approximately 173 spots available in residential areas along Humboldt Parkway. Of these 51 total on-street parking spots, it is expected that 25 spots would be removed due to new curb bump outs which are incorporated into the Project to improve intersection sight distances and to shorten pedestrian street crossings. The remaining 26 on-street parking spots to be removed are on Humboldt Parkway southbound between Northland Avenue and East Ferry Street and need to be eliminated in order to provide a continuous bicycle lane, and to provide consistent street tree plantings in tree lawns (or snow storage areas) between the sidewalk and curb. A parking demand study, included in Appendix A9, was completed for this section of Humboldt Parkway, which identified that parking along these two blocks has very low usage. Additionally, residences on Humboldt Parkway in this area have access to off-street driveways. No commercial business parking would be impacted. Therefore, the proposed parking removal would not adversely affect residents or access to businesses. Details of the locations where the Build Alternative would impact parking spaces is provided in Appendix A9.

CConA.09 We further request: In-depth examination of the impacts of the pedestrian crossings and movement at the roundabouts.

RConA.09 The Best Street bridge roundabout design includes a 10-foot-wide multiuse path for pedestrian movements along the roundabout and crosswalks with clearly marked pedestrian priority signage and appropriate lighting at night (see Section 3.4.2.1 of this FDR/EA). In general, roundabouts improve safety for pedestrians by reducing vehicle speeds and reducing crossing distances. The splitter islands provide a refuge such that pedestrians only need to cross one direction of traffic at a time. Design details for the pedestrian crossings of the roundabout and potential measures to increase driver awareness of the need to yield to pedestrians would continue to be developed during final design.

CConA.10 The current concept still needs some clarification and context including a thorough analysis of environmental impact and related public health concerns.

RConA.10 The FDR/EA documents the effects (as defined by 40 CFR 1508.1(g)) of the proposed action on the human environment, which includes consideration of potential effects on public health and safety. Environmental impacts (including air quality, noise, hazardous materials and others) were thoroughly evaluated as documented in this FDR/EA.

CConA.11 We are confident that our neighborhood transformation will thrive with reconnecting our community and restoring the greenspace designed by Frederick Law Olmsted as a capstone parkway within the park system.

Converting this now decaying bathtub portion of the expressway to a beautiful connector, improving the visual quality and natural environment of Humboldt Parkway will catalyze improvement of property values and assist in the revitalization of business districts along Fillmore and Jefferson Avenues. A restored Humboldt is essential for a complete renaissance of Buffalo where everyone can participate in the progress, and those neighborhoods once scarred can be restored.

RConA.11 Comment noted.

Consolidated Response B

Construction Exchange of Buffalo & WNY

Fair Apportionment of Infrastructure Revenue

Town of Aurora Superintendent of Highways

Town Highway Superintendents Association of Erie County, Inc.

Upstate Rebar

CConB.01 I am writing to express my support for the ROCC (Restore Our Community Coalition)/Covering the Rt. 33 Kensington Expressway Project. This initiative has been a community-led advocacy effort for 15 plus years by residents from the immediately surrounding neighborhoods. I support Phase One of the ROCC project which is designed to reconnect neighborhoods that were divided due to the original construction of the Rt. 33 Kensington Expressway in the 1950's. By covering a portion of the Rt. 33 Kensington Expressway from Sidney Street to Northampton Street, it is our collective vision to restore Frederick Law Olmsted's design for Humboldt Parkway for recreational greenspace, to stabilize and

increase area property values, allowing opportunities for families to create generational wealth, and improve community health by reducing vehicular emissions. This \$1 billion construction project has the ability to create thousands of household-sustaining jobs and training opportunities for many years here in a low-income community of color that has experienced decades of disinvestment, discrimination, redlining, and most recently, a heinous and violent act of racism. The reclamation infrastructure project is restorative and social justice. The expressway's retaining walls have reached the end of their lifespan. Redesigning and reconstructing this area will enhance public safety and neighborhood aesthetics. In closing, I support the ROCC/Covering the Rt. 33 Kensington Expressway project and desire to see it create jobs for area residents, improve public health by creating recreational space and reducing upper respiratory illnesses, beautify the surrounding neighborhoods, reconnecting neighborhoods, improving transit safety and efficiency, and increasing area property values.

RConB.01 Comment noted. Information on potential economic effects, environmental justice, air quality, aesthetics, parkland and safety is provided in Chapter 4 this FDR/EA.