

Public Comment by Citizens for Regional Transit

November 10, 2023

Re: KENSINGTON CORRIDOR PROJECT

PIN: 551252

AGENCY: NYSDOT

AIR QUALITY: NON

DESCRIPTION: RECONNECTING NEIGHBORHOODS ON EAST AND WEST SIDES OF 1.3-MILE SECTION OF NY RT 33 KENSINGTON EXPRESSWAY.

PROJECT SCOPE: STUDIES

LET DATE: FFY 25

TOTAL PROJECT COST: \$1,079,160,000

To Whom it May Concern:

Citizens for Regional Transit (CRT) has attended all NYSDOT's Kensington Project public meetings and your Public Hearing on 27 September 2023. The Comments read by our president, Douglas Funke, at the Public Hearing summarize our comments.

We also stand by the letter we sent NYSDOT on 29 July 2023. Today's letter is an update and expansion.

These comments are in two parts:

(Part 1) 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.

(Part 2) 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.

Part 1. The Kensington Project must move forward in the context of WNY transportation long range plans.

Citizens for Regional Transit (CRT) opposes the NYS DOT 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 NYS DOT 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.

History

Today we have the benefit of learning from history. Plans for the Kensington Expressway were announced November 3, 1950. In a news story published by the Buffalo Evening News, "State Offers Expressway Plan to City" the Buffalo Common Council was approached by NYS with plans for the Kensington Expressway.

The article states the objectives of the proposed Kensington expressway project as:

"The expressway is designed to break traffic out of its present shackles and to allow an auto driver to cut his running time in half from the airport to downtown or Bailey Ave. to downtown with proportionate saving of time between intermediate points and also to relieve traffic congestion on adjacent streets."

"...to build a two-way, six-lane arterial, separated by a park strip and landscaped along the sides. Its capacity will be 75,000 vehicles a day. It will be devoid of traffic lights, but will have large directional signs."

The cost of the project includes the taking of "639 Residences, 71 other buildings in its path."

Between 11/3/1950 and the start of construction, the plan evolved. NYS championed an elevated highway, but the neighborhood wanted a depressed roadway. The Buffalo Common Council ultimately approved the depressed version we have today.

Does the Kensington Expressway meet its original objectives?

Today we can evaluate whether the project goals were met. NYS DOT traffic count data indicates the highway carries 75,000 cars daily at East Utica Street. Congestion on nearby urban streets and arterials was eliminated. Time savings for motorists was achieved. By these measures and by “level of service” standards the Kensington Expressway is a success story, although at times level of service suffers.

The projected costs were realized. 639 Residences and 71 other buildings were destroyed. Families were displaced. Businesses were ruined. The linear park of Humboldt Parkway connecting Delaware Park and Humboldt Park was ruined. Olmsted parks were disconnected.

Unanticipated consequences and costs

The Kensington Expressway planners thought the expressway would add value to the neighborhood. They said values would rise. They didn't. Property values fell by 80% on Humboldt Parkway and surrounding streets. The most beautiful street in the city, some said in the nation, was transformed into the ugliest street imaginable, ruining Buffalo's reputation as an Olmsted City and costing the entire city immense loss of value and tax revenue.

Inducing 75,000 cars daily from city streets and arterials to the expressway resulted in streets having little traffic. The consequence was economic collapse of the East Side. While reducing congestion and improving safety on Buffalo's arterials, the lack of traffic caused most businesses to close and ruined the east side neighborhoods transitioning them from livable, walkable neighborhoods to business deserts and deteriorated housing.

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 NYS DOT 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.

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.

Deterioration of the expressway walls and bridges leads to today's NYS DOT 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.

Proposed Build Alternative Objective Deficiencies

According to the [NYS DOT Kensington Expressway web site](#) on October 23, 2023:

“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 transportation corridor is defined as NYS Route 33 (Kensington Expressway) and Humboldt Parkway between Best Street and Sidney Street.”

NYS DOT’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.

Objective failure #1: Scope

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.

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.

Objective failure #2: New York’s Climate Leadership & Community Protection Act Requirements are Ignored

State law demands that the Kensington Expressway project reduce vehicle miles traveled and consider public transportation. The CLCPA requirements are not met by the NYS DOT project objectives. The project objectives must include CLCPA requirements.

Additional Factors to Consider

Population changes

MacroTrends¹ from the United Nations shows the Buffalo Area Metro Area Population as follows:

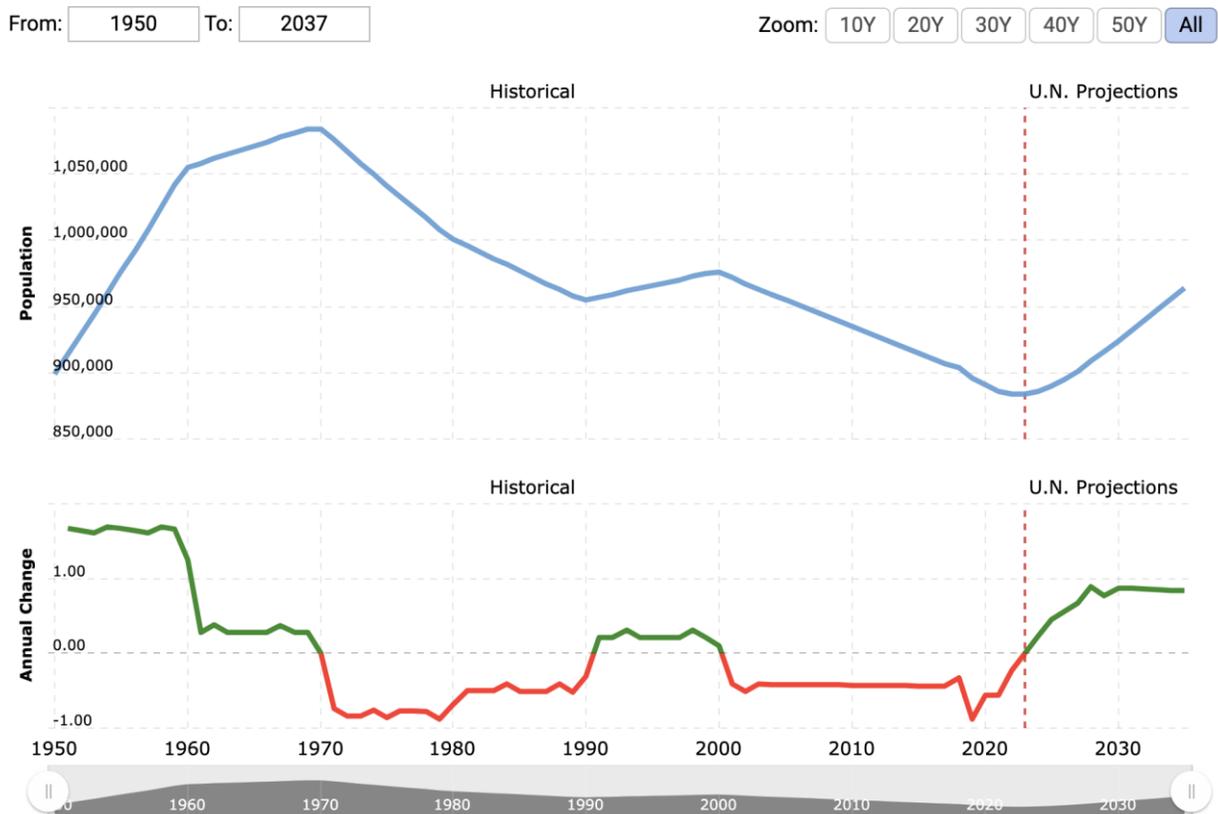
1950 899,000

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.

Figure 1 Buffalo Metro Area Population 1950-2037



¹ [Buffalo Metro Area Population 1950-2023 | MacroTrends](#)

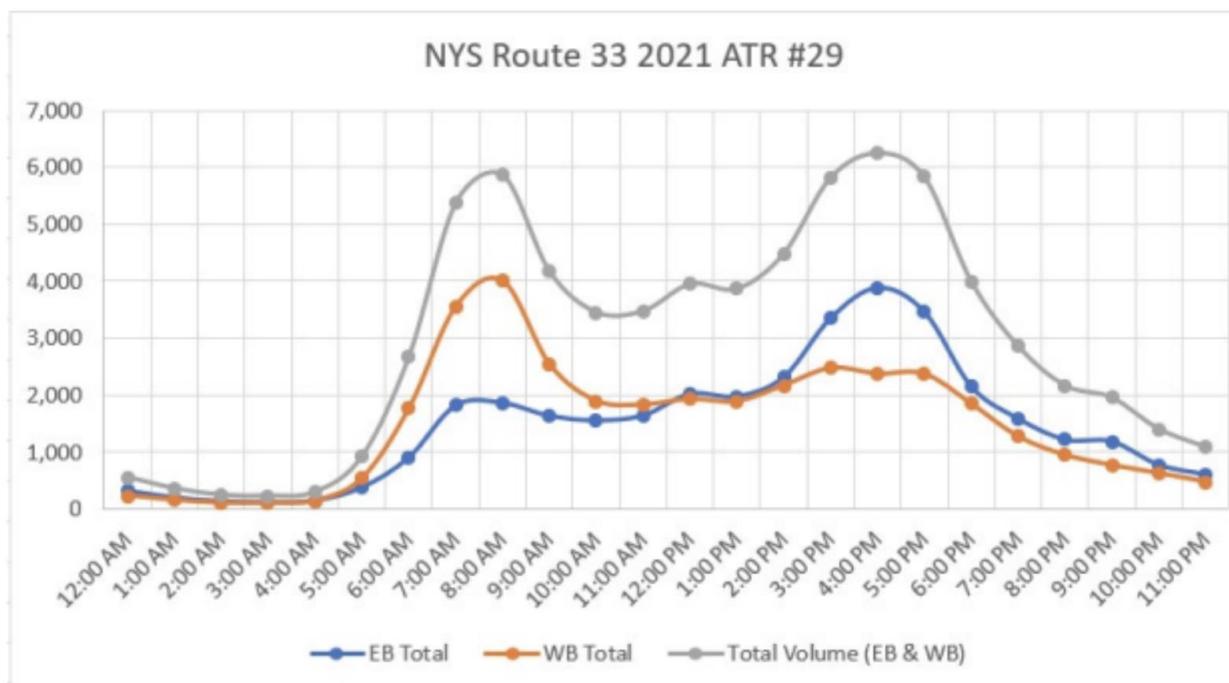
Aging Infrastructure

The Kensington Expressway is not the only infrastructure in WNY that has passed its useful lifespan. CRT is aware that the Skyway Bridge, NY 198, and NY 33 are high priority projects under consideration.

Highway Capacity vs Light Rail Rapid Transit (LRRT) Capacity

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

Figure 2 NYS Route 33 Existing 24-hr Traffic Counts



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.

Facing Kensington Expressway reconnection facts

NYS DOT 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.

NYS DOT 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.

CRT 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

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 NYS DOT while Kensington plans are finalized.

NY-33, Kensington Expressway

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.

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.

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 NYS DOT and the NFTA are up to the task.

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 NYS DOT and NFTA are capable of handling the two large construction projects of the East Side and southtowns Metro Rail extensions simultaneously.

Part 2 Complying with NYS Environmental laws.

Introduction

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.

NYS Environmental Laws Violated

Based on a legal expert's opinion, CRT believes the DDR/EA build alternative selected by the NYS DOT 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.

Specific DDR/EA CLCPA and Draft Scoping Plan Violations

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. 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.

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.

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.

Project Scope Shortcomings

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.

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.

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. NYS DOT 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}

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.)

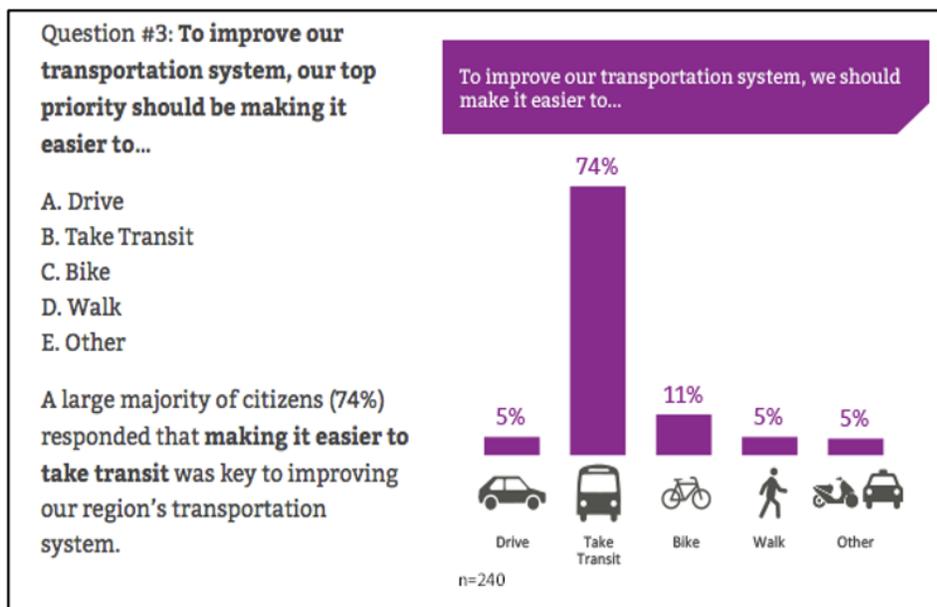
⁵ Comprehensive Transit Oriented Development Final Report. GBNRTC / WSP. August 2018. (https://www.nftametrorailexpansion.com/pdfs/buffalo_tod_book_export_20180919.pdf)

⁶ NFTA-METRO Transit Development Plan, April 2019. (http://www.nfta.com/pdfs/2019/public_info/2019-transit_development_plan.pdf)

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.

Figure 3 UB Regional Institute Survey Results



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.

Figure 4 One Region Central Participant Comments

How should we move forward?

- “106 out of 115 (92%) maps said increase ways to get around without a car is a guiding principle”
- “On average participants added 59 miles of metro rail

How do our choices play out?

- “A larger percentage of jobs and homes would be served by transit”
- “We would depend less on cars for our daily trips, conserve more energy, and emit less carbon”

What could we do differently?

- “Connect land use to transportation, especially public transit”
- “The region should make transit funding and system improvement a top priority for advocacy and action”

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

The East Side/Airport LRRRT 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 NYS DOT’s defined project scope.

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.

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 NYS DOT 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.

Failure to Address Economic Justice Requirements

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.

Conclusion

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.

On behalf of Citizens for Regional Transit.

Sincerely,

Douglas Funke
President
Citizens for Regional Transit