



Charles H. Nesbitt, Jr.
Chief Administrative Officer
cnesbitt@orleansny.com

COUNTY OF ORLEANS
Chief Administrative Officer

3 South Main Street, Ste 2
Albion, New York 14411
Phone: (585) 589-7053
Fax: (585) 589-1618

October 22, 2015

Mr. Kevin Bush
Regional Director
New York State DOT
1530 Jefferson Road
Rochester, NY 14623

Dear Mr. Bush:

I received a forward of your email, dated October 5, 2015, to the various highway superintendents of Orleans County. You indicate that the email is a "...follow up to phone calls and messages about responsibility for locally owned bridges over the Erie Canal that have posted weight restrictions." I believe this is in error as our concerns are most certainly about state owned canal infrastructure and assets.

For decades municipalities in Orleans County have been able to plow the adjoining roadways without operational difficulty as the condition of the bridges over the canal in our county had been maintained adequately to support what can be considered normal snow and ice removal operations and practices. Sadly, this is no longer the case as the state has allowed certain bridges in our county to deteriorate to the point that we are no longer able to utilize traditional highway snow removal practices due to failure by the State of New York to maintain a minimum standard of service.

Last year, Orleans County officials met with New York State Department of Transportation (NYSDOT) officials to discuss the deteriorating condition of the canal infrastructure and the negative effects disproportionately impacting Orleans County. At that time, we asked that NYSDOT officials begin to consider and pursue, in an orderly fashion, a maintenance and repair program that will address the problems with the canal infrastructure in a long term comprehensive manner. Orleans officials indicated that we understood that with so many bridges to repair over a limited geographic area that studies may need to be done to prioritize certain routes and ensure that any necessary closures, due to a lack of state resources, be carefully planned and coordinated. We left those meetings with a sense that the concept was a reasonable request and that some sort of coordinated plan should and would be pursued.

In stark contrast to the orderly and coordinated plans we suggested and discussed, NYSDOT is still pursuing essentially the same course, letting the bridge inventory fall into disrepair and throwing all the decisions and consequences into the laps of the locals in terms of how to react to the systemic failure. Whatever the reasons are for the failure, the NYSDOT shirking its responsibilities as owner of the crumbling assets by failing to assist in a responsible way to deal with the consequences is unacceptable.

In today's tax cap environment, municipalities operate under very strict constraints. Orleans County is not able, nor should we or our towns be expected, to make up for the state's systemic failures by putting the safety of the public or our employees at risk. Some of the bridges located in Orleans County and operated by

New York State are so inadequate that they are unable to accept a loaded passenger SUV, a fact that should be pointed out to the public by your department.

I appreciate that you point out Section 62 of the Canal Law. While I agree that Canal Law 62 describes "**Maintenance by state** of certain bridges over the canal system." I think you're wrong in your interpretation. The law indicates that "bridges constructed as part of the barge canal improvement **shall be reconstructed, improved, maintained and repaired at the expense of the state** under the supervision and direction of the commissioner of transportation". This is clearly not happening and **shall** is not permissive language. The law goes on to further state that it is the commissioner that has the power to close canal bridges in the event that such bridge or bridges are no longer required for the public convenience, not an unnamed municipality as you imply in your email.

The Federal Highway Administration defines routine maintenance as "consists of work that is planned and performed on a routine basis to maintain and preserve the condition of the highway system **or to respond to specific conditions and events that restore the highway system to an adequate level of service.**" Based on that definition and the actual content of Section 62, it seems odd that you would claim that snow and ice removal as a maintenance function is not your issue. The way I read Section 62 is that the maintenance of the Erie Canal bridge inventory, which a reasonable person may define using the federal standard, is your responsibility. Furthermore, research by the Orleans County Attorney indicates that the case law does in fact support our position that you own and hold responsibility for the approaches.

It would seem that the state, and particularly NYSDOT Region 4, has been able to rely on the goodwill of the local governments for many years. This is a model that would have continued without incident had the bridges been maintained or some coherent plan been put in place. We ask that you take the lead to develop a comprehensive solution to this systemic problem that does not rely on expansion of the goodwill efforts of the local governments but rather on taking responsibility for your own assets.

Thank you for your time and I look forward to your response.

Sincerely,



Charles H. Nesbitt, Jr.

Cc: Commissioner, New York State DOT
Hon. Robert Ort
Hon. Stephen Hawley
Hon. Jane Corwin
Orleans County Legislature
Robert Bulman, Park Strategies
Orleans County Town Highway Superintendents and Supervisors