



# COUNTY OF ERIE

**MARK C. POLONCARZ**

COUNTY EXECUTIVE

April 23, 2015

Karen M. McCarthy  
Clerk, Erie County Legislative Branch  
92 Franklin Street, Fourth Floor  
Buffalo, New York 14202

Dear Ms. McCarthy,

Attached are the following documents that I request that you share with the Members of the Erie County Legislature:

1. Joint letter from both Erie and Cattaraugus Counties to the New York State Department of Transportation regarding the Bridge Replacement Project over Cattaraugus Creek.
2. Recently passed resolution from the Cattaraugus County Legislature formally stating the Body's concern that Cattaraugus County would not agree to accept the transfer of the bridge as proposed.
3. Letter from Chairman Mills stating his position on the transfer of the 219 bridge.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jonathan D. Rivera", is written over a horizontal line.

Jonathan D. Rivera  
Liaison to the Legislature  
Erie County Executive's Office

## COUNTY OF ERIE

Mark C. Poloncarz, County Executive  
95 Franklin Street  
Buffalo, New York 14202

## COUNTY OF CATTARAUGUS

Norman L. Marsh, Chairman, Catt. Co. Legislature  
303 Court Street  
Little Valley, New York 14755

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April 23, 2015

Joan McDonald, Commissioner  
New York State Department of Transportation  
50 Wolf Road  
Albany, New York 12232

**Re: Bridge Replacement Project  
South Cascade Drive/Miller Road (Formerly US Route 219) Bridge over  
Cattaraugus Creek  
Towns of Concord and Ashford (Erie and Cattaraugus Counties)**

Dear Commissioner McDonald:

Over the past several months, Erie and Cattaraugus Counties have had a series of discussions and meetings with the New York State Department of Transportation ("NYSDOT") regarding your current intention to transfer ownership of a new bridge over Cattaraugus Creek to Erie County and Cattaraugus County.

Both counties have been concerned by NYSDOT's proposal for some time, tracing back to prior efforts by NYSDOT approximately five years ago to transfer ownership of the existing old bridge to the counties. We are sure you can understand the concerns of local governments when faced with State proposals of this kind that essentially create a new "mandate" on municipalities.

The recent meetings and discussions have included NYSDOT headquarters staff and Region 5 director Darrell Kaminski. In several recent telephonic conferences, State Senators Patrick Gallivan and Catharine Young also participated, along with representatives from the Governor's office.

### **Proposed State Repair and Maintenance Funding Allotment**

Chief among our concerns is the issue of ongoing maintenance and repair costs for the bridge which would be borne by the counties. Due to our concerns, State officials recently informed us that \$300,000 in one-time funding was included in the 2015-2016 State Budget in order to assist the counties in paying for maintenance and repairs over a 24 year period. NYSDOT has also agreed to conduct bridge washing for a ten year period. We appreciate this allocation and consideration and the intention therein.

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Through dialogue, we have made progress and we seek to continue the interchange with the State in order to find common ground. That being said, there are still several issues that cause distress for both counties.

Given the propensity for severe weather conditions and wear and tear on bridges and roads in Western New York, we believe the State allotment of \$300,000 is not sufficient for likely future needs. For instance, NYSDOT's own data shows that a complete deck replacement would be needed around year 25 (if not sooner) – a project that would cost at least \$2.8 million. When we raised this financial issue in telephone calls and meetings, state officials asked us to provide an alternative cost estimate.

When it comes to infrastructure, we must take the long view. That is why the counties have concluded that an annual allotment from the State for maintenance, repair and amortization for a replacement bridge in 75 years would be \$1,039,000 per year over the expected life of the new bridge. This would include needed funds for multiple deck replacements and other annual maintenance needs including deck sealing, painting, inspections and other structural needs.

**We understand the complexities of the State's budget process and the inability to predict the outcome of future State budgets. If the State is willing to commit to providing \$1,039,000 in annual maintenance funding for the bridge upon transfer of ownership via a binding agreement, the counties are amenable to accepting ownership. However, if we should reach agreement on this point and in the future the State does not provide such funding, we require a reversionary clause be included in the agreement in order to transfer ownership and maintenance of the bridge back to the State. We also recommend the binding agreement between the counties and the State should include periodic maintenance reviews by all parties at five year intervals.**

In response to our concerns on funds for maintenance and repair, NYSDOT officials have asserted that federal highway funds and Consolidated Local Street and Highway Improvement Program ("CHIPS") funding will be available to the counties to pay for maintenance and repairs on the bridge in the years to come. While both counties appreciate the state's sentiment about such funding sources, we know from experience that there are no guarantees on such funding.

Over the past years, both counties have experienced a dramatic reduction in federal funding for construction projects, forcing local governments to rely on local funding for major projects, including bridges. We are concerned about the availability of future federal funds when recent history shows such funding is precarious and outside of the counties' control. Complicating this process is the fact that funding and authority for the federal Highway Trust Fund expires on May 31, 2015, and there are no signs that the Congress will adopt a spending bill or reauthorize the Fund for a multi-year period.

Also, while additional CHIPS funds from the state are always welcomed and appreciated, any such appropriations would be better served on helping the counties to maintain and fix both counties' existing road networks. Erie County has over 2,400 lane

**Erie and Cattaraugus County Letter to NYSDOT Commissioner McDonald**  
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miles and Cattaraugus County has over 800 miles of county-owned and maintained roads and bridges and we can ill-afford to have to rely on future CHIPS funds to also maintain the former Route 219 bridge when we already have so many pressing needs for our existing roads and bridges.

**Indemnification and Legal Liability**

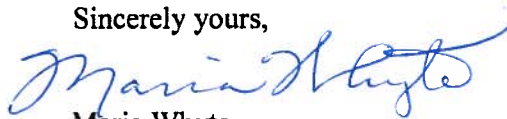
The counties continue to need assurances and appropriate indemnification from the state concerning legal exposure, should we agree to accept ownership of the bridge. As repeatedly stated in telephone calls with the State, both counties remain concerned about our legal liability and exposure for any accidents or incidents that may occur on the lengthy and high bridge structure which would be the largest facility in both counties' inventory. To date, the state has not addressed this indemnification issue.

**Conclusion**

Over the past three months, we have held many teleconference calls and several meetings between both counties as well as with NYSDOT and other State officials concerning this issue. These positive and productive discussions have encouraged us that a mutually-beneficial solution may be reached if the State can commit to providing the counties with long term financial support and limiting our liability. If the State is unwilling or unable to commit to these terms, we urge you to work with us to consider other options that may satisfy all parties and achieve the project's objectives.

We appreciate your attention and consideration and respectfully urge NYSDOT to continue the dialogue with the counties and to consider our remaining concerns that will lead to a mutually-acceptable resolution for the residents and taxpayers of our communities.

Sincerely yours,



Maria Whyte  
Deputy Erie County Executive



Norman L. Marsh  
Chairman, Cattaraugus County Legislature

Enclosure

cc: Mark C. Poloncarz, Esq., Erie County Executive  
John Loffredo, PE, Commissioner of Public Works  
Erie County Legislature  
Jack Searles, Cattaraugus County Administrator  
Joseph Pillittiere, Cattaraugus County Commissioner of Public Works  
Cattaraugus County Legislature

## REPRESENTATIVE ERIE COUNTY BRIDGE



Average Erie County bridge length - 83 feet long

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## FORMER US ROUTE 219 BRIDGE



State bridge (BIN 1041590) – 652 feet long



**AUTHORIZING THE CHAIR TO EXECUTE JOINT LETTER WITH  
ERIE COUNTY OPPOSING PROPOSED TRANSFER OF ROUTE 219 BRIDGE**

Pursuant to Section 450 of the County Law.

- I. WHEREAS, by Acts 523-2007, adopted October 10, 2007; 86-2011, adopted February 9, 2011; and 75-2015, adopted February 11, 2015, the Cattaraugus County Legislature has formally stated its opposition to NYSDOT's ("DOT") planned transfer of jurisdiction and future maintenance responsibility regarding the existing bridge crossing Cattaraugus Creek at Zoar Valley, which was erected by DOT in 1956 (identified as BIN 1041590) or a replacement bridge which DOT now proposes to erect (hereinafter "the bridge"), to Cattaraugus and Erie Counties ("the Counties") pursuant to Highway Law Section 62, and
- II. WHEREAS, pursuant to law, DOT may, with the consent of the State Director of the Budget, elect to retain jurisdiction of the bridge and continue to maintain it as part of the state highway system, and
- III. WHEREAS, the Legislature hereby restates that while it supports the continued existence of the bridge at its present location under the jurisdiction of DOT, it is opposed to the proposed jurisdictional transfer of the bridge unless the State commits by contracting with the Counties to provide sufficient funding to maintain the bridge in the future and to hold the Counties harmless from and indemnify them for all liabilities and damages to which the Counties may become responsible upon and following such transfer of jurisdiction, and
- IV. WHEREAS, it is estimated that the annual allotment from the State required to fund ongoing maintenance for the bridge's 75-year useful life is minimally in the amount of \$1,039,000.00, far exceeding the \$300,000.00 reserve the State has created to fund such maintenance for the first 22 years, and
- V. WHEREAS, DOT has threatened to abandon the bridge unless the Counties agree by April 25, 2015 to execute a maintenance agreement pursuant to which the Counties would commit to accept responsibility for its future maintenance, and
- VI. WHEREAS, this time constraint is unreasonable and not in the best interests of the parties, and

VII. WHEREAS, the State has refused to consider retaining the bridge in its inventory and to consider other alternatives such as constructing a new entrance to and exit from the newly completed Route 219 Expressway to provide better access to businesses located along the former Route 219 in Springville, and

VIII. WHEREAS, over 75% of the County's annual budget already represents unfunded or severely underfunded mandates imposed on it by the State, and

IX. WHEREAS, as representatives of the citizens and taxpayers of Cattaraugus County and fiduciaries in whom the public has reposed its trust to use public funds in a responsible manner, and further in view of the fact that the County is subject to a tax cap and tax freeze imposed by the State, this Legislature cannot willingly accept the transfer of the bridge as proposed, and

X. WHEREAS, the importance of coming to a mutually agreeable resolution to protect the affected communities and the taxpayers cannot be overstated, and

XI. WHEREAS, it has been proposed that the Counties issue a joint letter to DOT Commissioner Joan McDonald again expressing their concerns as outlined herein and requesting that the State either consider alternative courses of action or commit to fully and properly fund future maintenance of the bridge by the Counties, now, therefore, be it

I. RESOLVED, that the Chair of the Legislature be, and hereby is, authorized and directed, on behalf of Cattaraugus County, to execute a letter to NYSDOT Commissioner Joan McDonald, on the condition that an authorized representative of Erie County also signs such letter, expressing and conveying the Legislature's concerns and that Cattaraugus County will not agree to accept the jurisdictional transfer of the bridge as proposed.

## REPRESENTATIVE ERIE COUNTY BRIDGE



Average Erie County bridge length - 83 feet long

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## FORMER US ROUTE 219 BRIDGE



State bridge (BIN 1041590) – 652 feet long





## ERIE COUNTY LEGISLATURE

**HON. JOHN J. MILLS**

**CHAIRMAN OF THE LEGISLATURE**

**11<sup>TH</sup> DISTRICT LEGISLATOR**

April 22, 2015

Hon. Mark C. Poloncarz  
County Executive  
95 Franklin St.  
Buffalo, New York 14202

Executive Poloncarz,

Over the past few weeks, Erie County has been engaged with the State of New York in negotiations that could decide the fate of the former Route 219 Bridge that traverses Cattaraugus Creek to connect Erie and Cattaraugus counties.

Historically, I have been opposed to transferring this bridge to Erie and Cattaraugus counties, even as recently as March I raised concerns and opposition. My concerns centered on the costs to replace and maintain the bridge, as well as any unforeseen costs that might come forward.

Even after listening to all the conversations taking place, some of these concerns still exist, however I now believe it's time to take action and show leadership.

We all know this bridge is critical to the communities surrounding it. It is a vital transportation route through the heart of southern Erie County that brings consumers to local businesses and towns. More than 90 small businesses in Springville depend on this bridge to survive. When the bridge was under emergency repair in 2012, businesses and residents felt the effects of the closure. Fortunately, we have an opportunity available to us that would ensure the survival of these communities.

Due to the efforts of Senator Gallivan, Senator Young and Governor Cuomo \$20 million was secured to build a state-of-the-art bridge that would replace the current deteriorating structure, as well as a commitment of \$300,000 to help with future maintenance costs. This is not a small commitment. It is an investment from the State of New York that will be directed to a long standing public safety concern and economic driver.

If Erie County cannot come to an agreement with the state, not only will we lose out on the committed funding, but the State of New York could permanently abandon the bridge as is its right under state law.

Erie County and its residents would be left with a 652 -foot long eyesore. We cannot fully predict what the impact would be on the local economy if the bridge closed, but we can safely assume that sales tax revenues would plummet and some businesses might be forced to close.

Local officials and the business community want this issue resolved as soon as possible. They have seen enough of the "kicking the can down the road" mentality, and while there are concerns related to the county taking ownership of the bridge, we cannot afford the alternative.

I believe we need to step up to the plate.

I strongly urge you to consider the offer from the State of New York. The funding committed during the budget process is at risk of being lost. This could be our only chance to protect businesses in the area, create local construction jobs and preserve the local economy. This is not a time to play a dangerous game of chicken that we are likely to lose.

I appreciate your consideration to this matter.

Sincerely,

A handwritten signature in blue ink that reads "John J. Mills". The signature is written in a cursive, flowing style.

John J. Mills  
Chairman Erie County Legislature