New York State Local Technical Assistance Program

Legal Liability Issues for Transportation Plans

David P. Orr, PE

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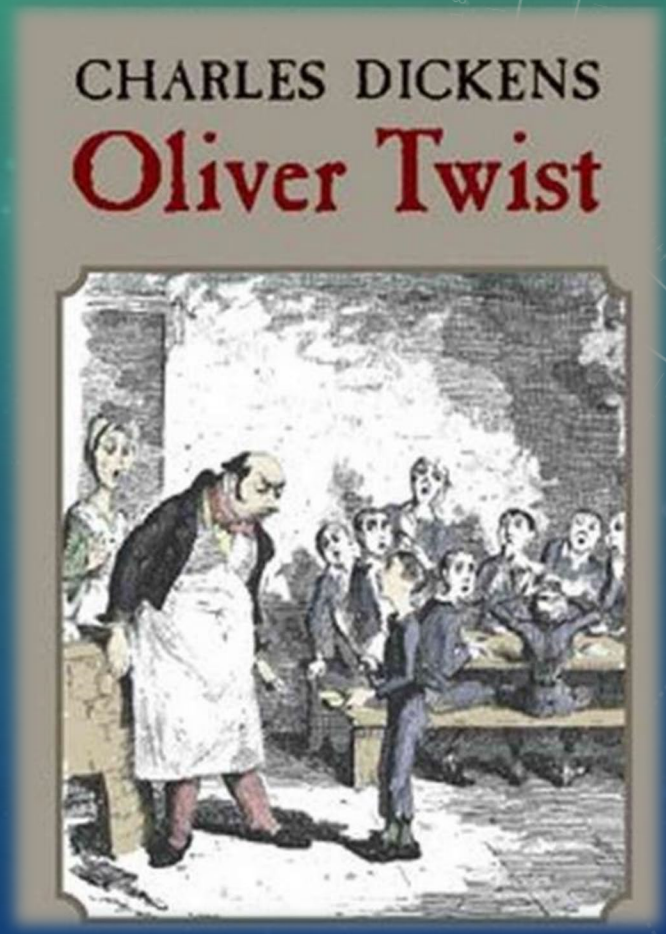
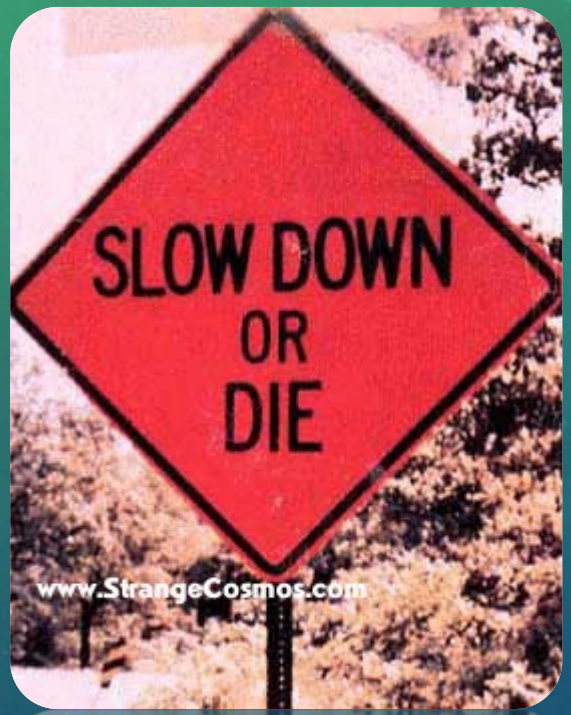
Cornell Local Roads Program
New York State LTAP Center

A Caveat

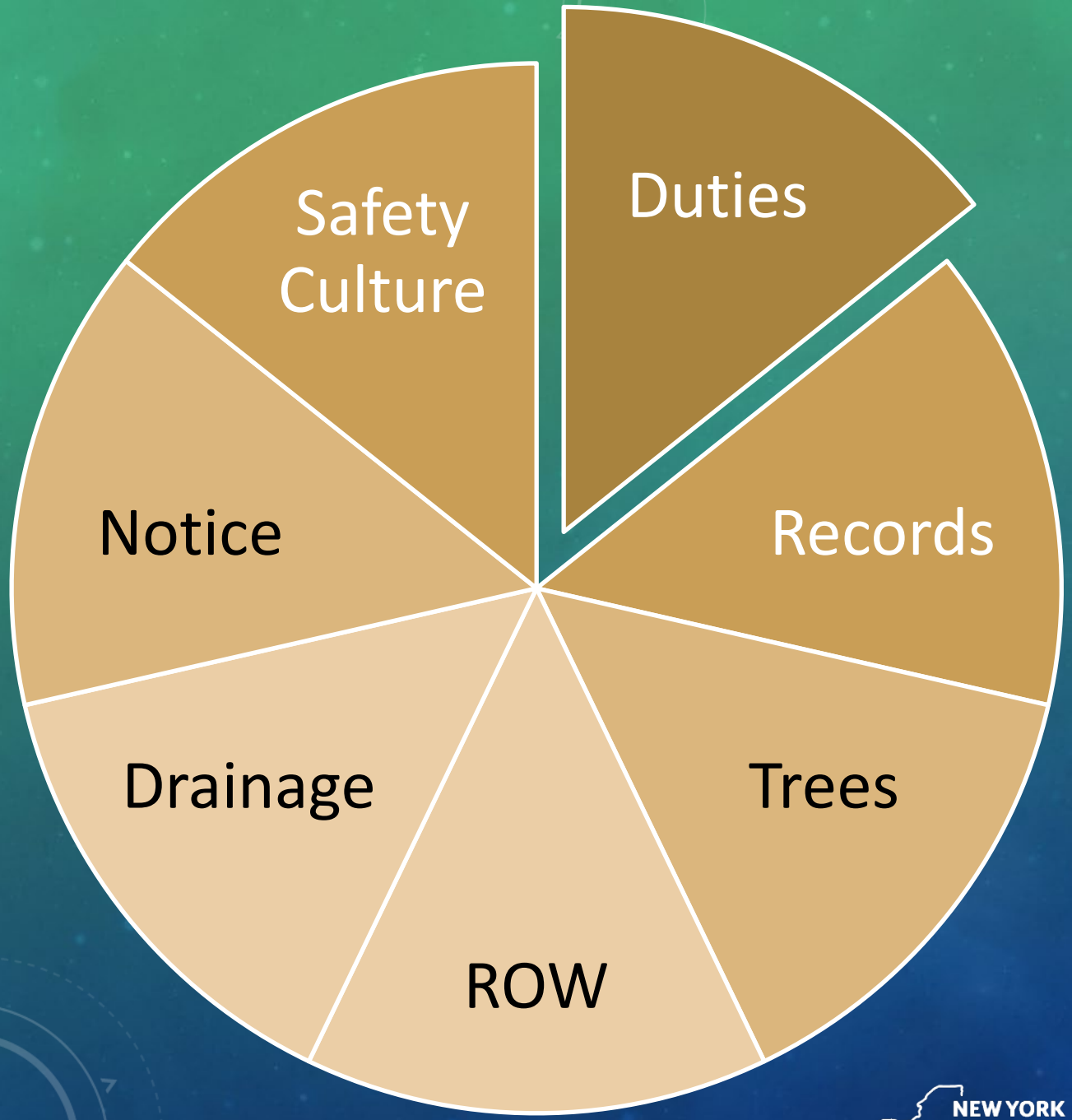
The Law



Liability, Risk, and Torts



How do we reduce liability?



Duty of Care
Breach of Duty
Causation
Damages

Qualified Immunity

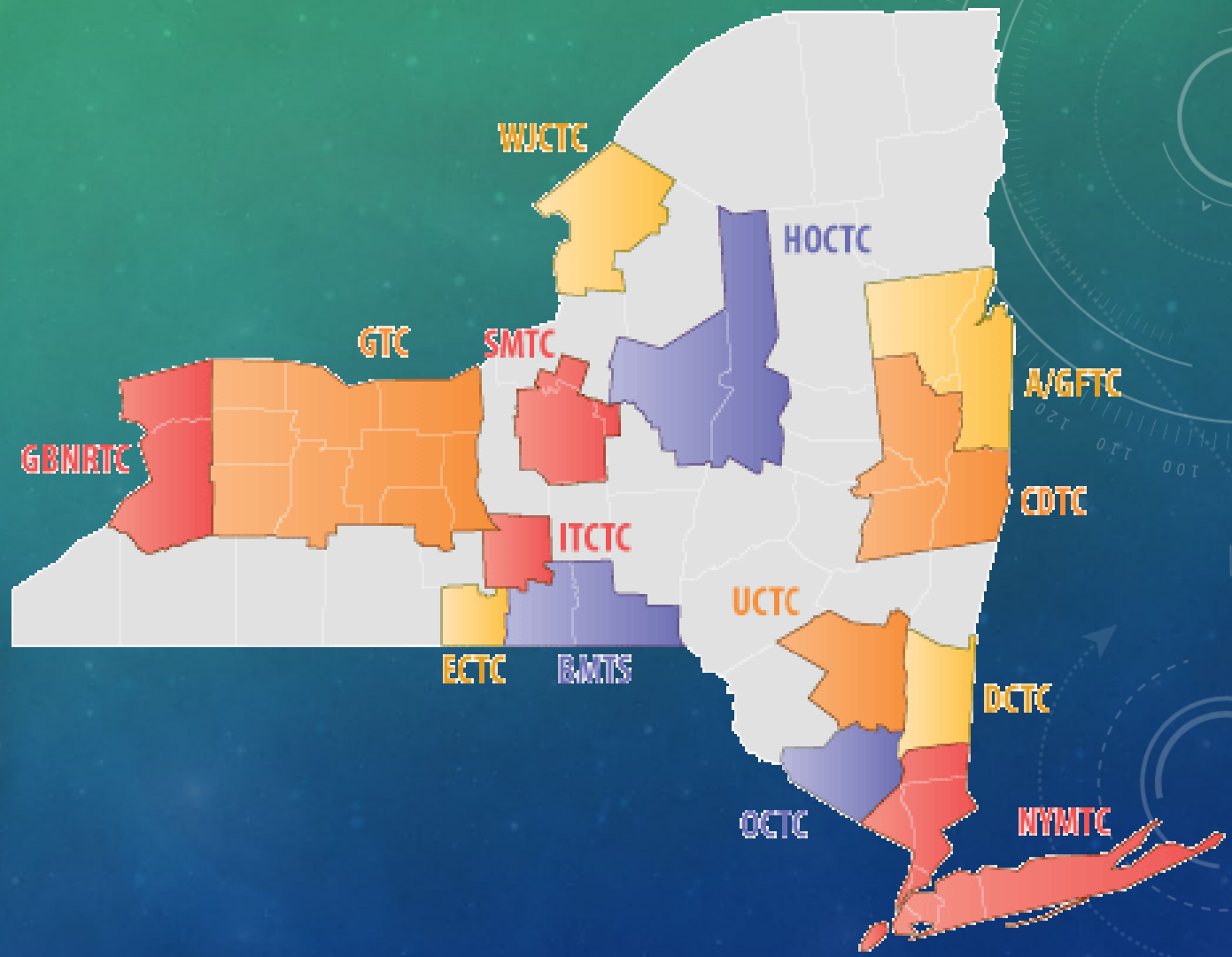
Duties

Notice

Records

Department Responsibilities

MPO Duties


WJCTC
HOCTC
GTC
SMTC
A/GFTC
GBNRTC
CDTC
ITCTC
UCTC
ECTC
BMTS
DCTC
OCTC
NYMTC

Nondelegable Duties

Duties
Records
Qualified Immunity
Notice

What did you have for lunch on May 8, 2019?

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Transportation Plans

Chemung County LRSP - Elmira

Records
Notice
Duties
Qualified Immunity

Notice

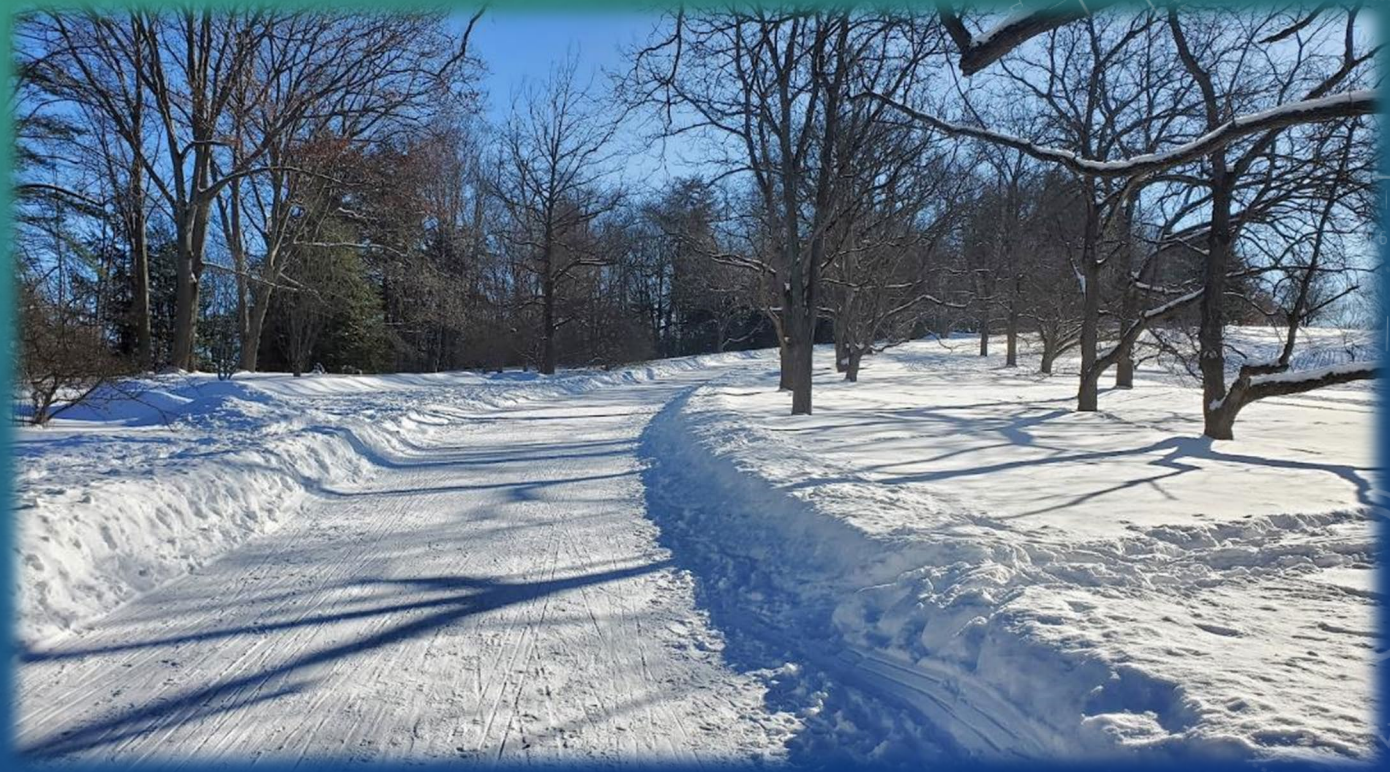
- Written/Actual
- Constructive

Written Notice Laws

- Municipalities cannot be aware of “every defect” *Gorman v. Town of Huntington, 12 NY3d 275, 279 (2009).*
- *Opportunity to fix from written knowledge*

Written Notice Categories

- Physical Defects
- Snow and Ice Defects



Affirmative Act / Negligence Exception

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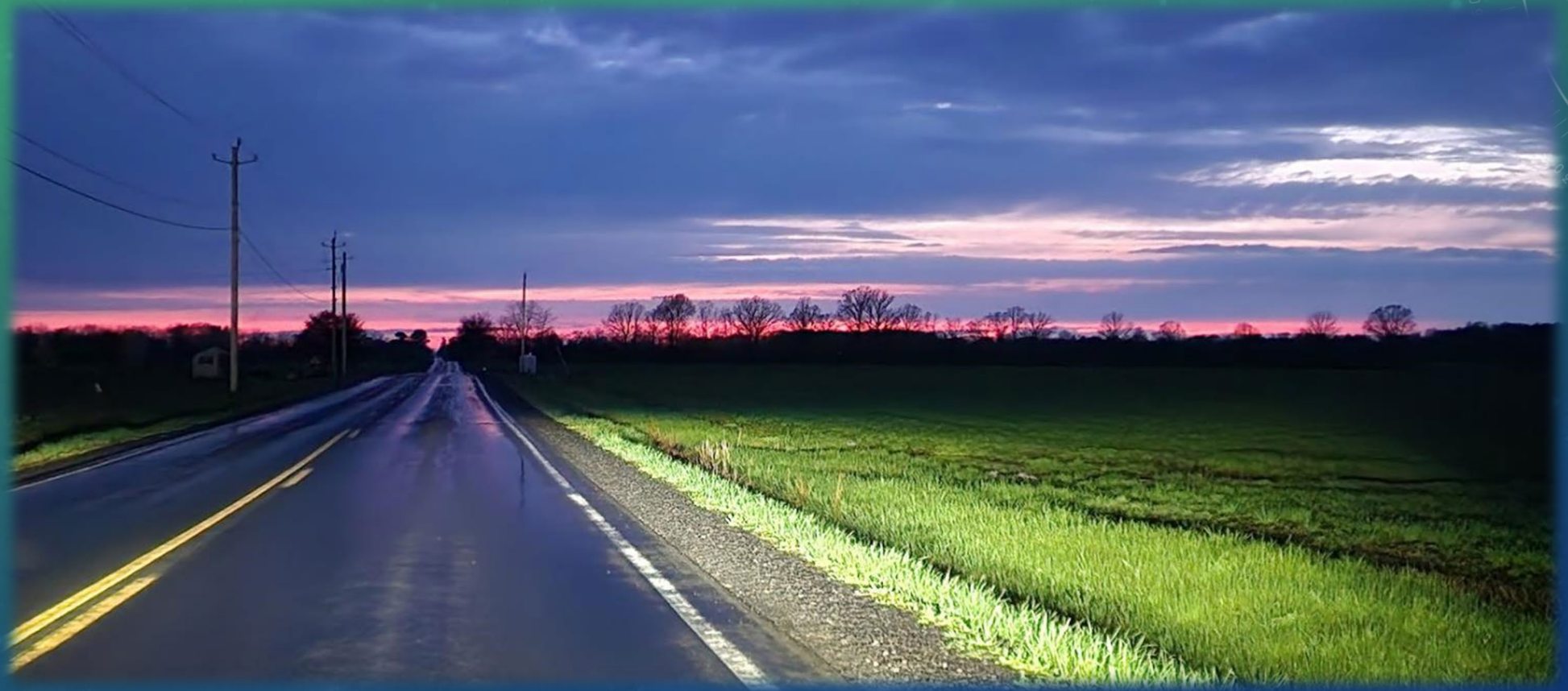
Written Notice Laws
Do Not Apply to Highway Design Claims

Transportation Plans

Do Transportation Plans Constitute Written Notice?

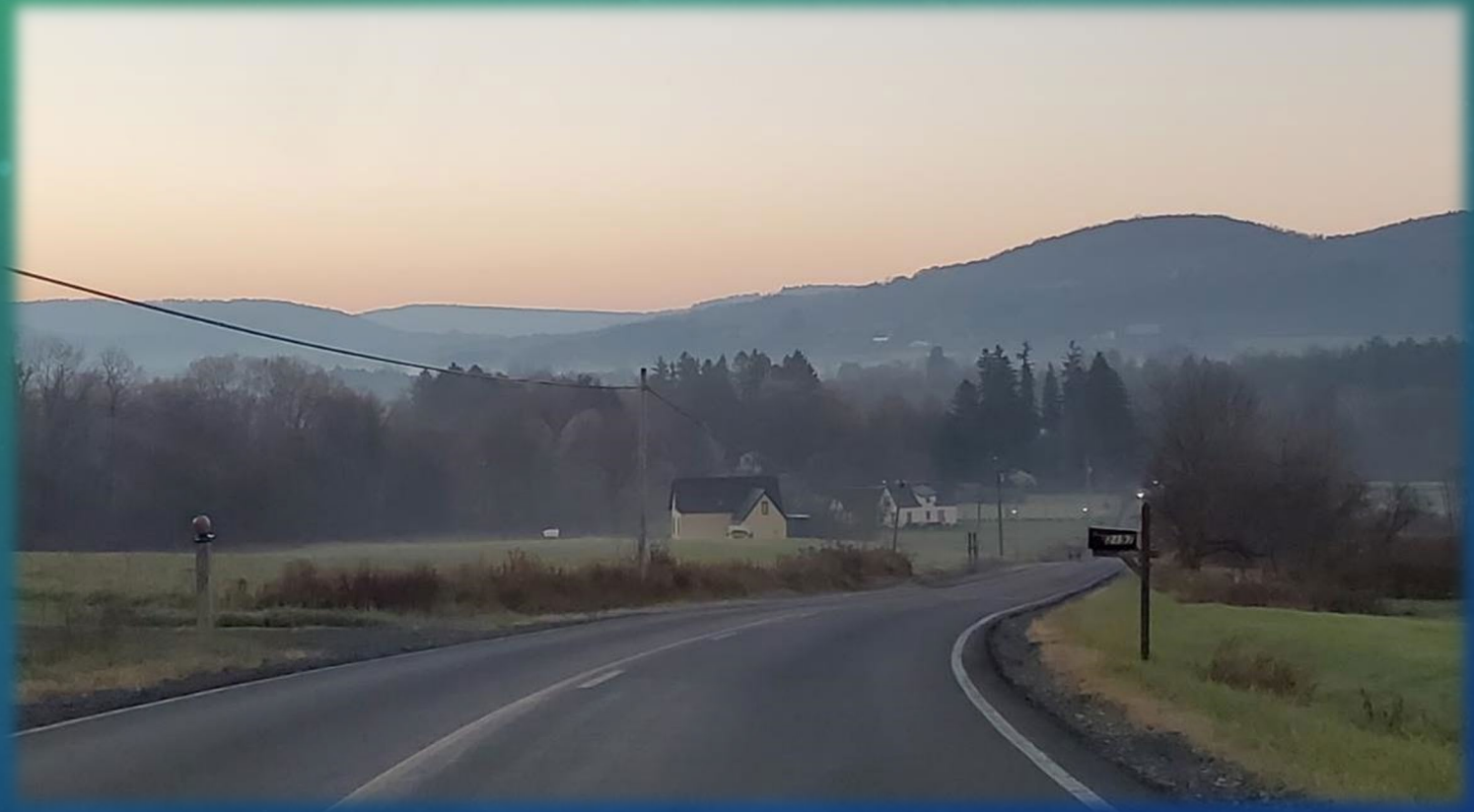


Chemung County LRSP - Elmira

- 23 USC 407

Notice
Qualified Immunity
Records
Duties

Negligent or Defective Highway Design



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Qualified Immunity

Qualified Immunity Protection

- Perform a study of actual conditions
- Develop a correction plan
- Use a reasonable and rational basis

Transportation Plans

Chemung County LRSP - Elmira

Can Still be Sued

Following the Plan!

How Does a Plan Change Liability?

Qualified Immunity

Duties

Notice

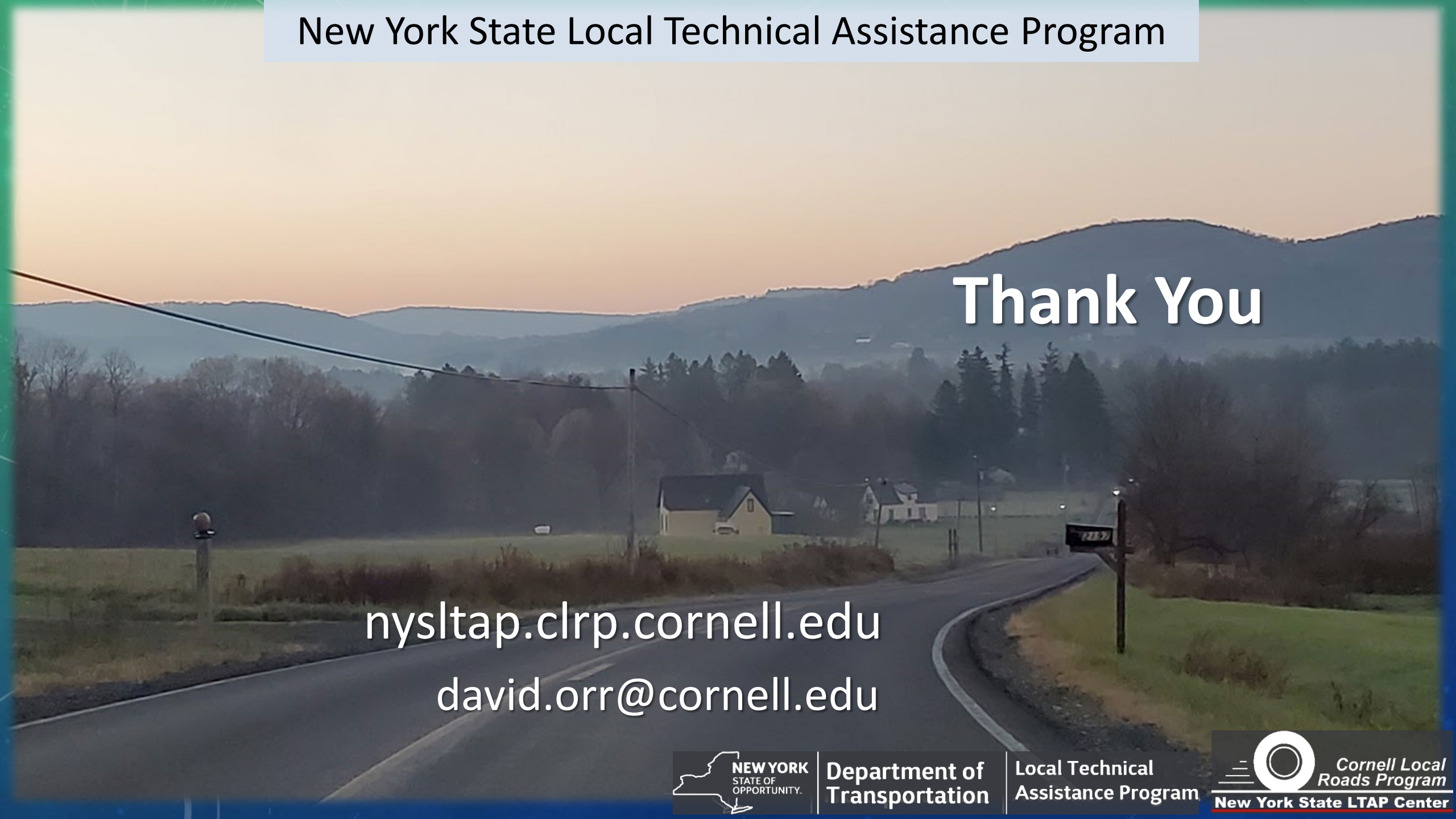
Records

Redundancy

Source: FHWA

How do we reduce liability?

Always Expect the Unexpected



Thank You

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