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Department of Public Works

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# Memo

*Date:* May 11, 2020

*To:* City Council

*From:* Chapin Spencer, Director

*CC:* Norman Baldwin, P.E., Assistant Director/City Engineer  
Susan Molzon, P.E., Senior Public Works Engineer

*Subject:* Champlain Parkway Project Update

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To keep City leaders updated on the progress of the Champlain Parkway project, I have provided periodic reports to the City Council. The last update was provided at the December 2, 2019 meeting. We are closer than ever at advancing to construction on this project – which significantly improves multi-modal connectivity, enhances stormwater management and reduces truck traffic on residential streets and near a neighborhood school. A significant amount of work and planning has gone into this project, funded by a beneficial federal/state funding opportunity. While these federal/state funding opportunities are exceedingly rare, we are excited to finally make these improvements to the Burlington streetscape.

## **BACKGROUND**

The Champlain Parkway, formerly the “Southern Connector” originated in the 1960’s as a four-lane limited access highway to improve vehicular access between downtown Burlington and I-89. Today’s two-lane version, with a multi-modal design that includes significant stormwater, bike/pedestrian, and traffic calming components, represents a fundamental departure from the project’s distant origins and will complement and foster the growing vitality of the South End well into the future. Specifically, this project will:

- Build a new 25 MPH city street between Home Avenue and Lakeside Avenue that will expand South End connectivity.
- Construct 1.5 miles of new shared-use path in the South End – creating a continuous shared-use path from the border of South Burlington at Queen City Park Road to Pine Street and Kilburn Street where new buffered bike lanes will connect to downtown on Pine Street up to Maple Street.
- Decrease the volume of truck and commuter traffic on overburdened residential streets through the Home Avenue, Flynn Avenue, and Champlain Elementary School neighborhoods – allowing for future street redesign opportunities in those areas.
- Install two major stormwater features that together with other project components will improve stormwater management over current conditions.
- Install new sidewalk, pedestrian signals, and transit shelters.

- Complement the Railyard Enterprise Project's multi-modal connectivity between Pine Street and Battery Street so that there will be more connections between downtown and the South End.

The Champlain Parkway design has become – through years of persistent and thoughtful effort – a greatly improved project. More background on the project, and my past memos that describe design refinements, can be found at [www.champlainparkway.com](http://www.champlainparkway.com).

The City, and the State of Vermont Agency of Transportation (VTTrans) acknowledge that this transportation corridor will need to evolve as the needs of the South End evolve. In 2016, the State provided a letter which confirms the City will have the latitude to initiate new projects to support local planning goals, enhance economic development and strengthen the resiliency and diversity of the transportation system along the Champlain Parkway corridor once the project is completed.

We continue to manage a shrinking number of ongoing issues that have the potential to set this project back, and we are projecting a schedule to start construction in 2021.

## **DESIGN PHASE MILESTONES**

Over the last two years, the City has achieved a number of important milestones for this project. These include:

- VTTrans issued the Right-of-Way clearance for this project, following the necessity and compensation hearings in 2018.
- All necessary temporary and permanent rights for construction of the Champlain Parkway have been secured.
- The Vermont Superior Court and the Vermont Supreme Court rejected two legal challenges related to the Project's wetland permitting.
- The City secured a renewal of the Project's Operational Stormwater Permit, and has defended a challenge to the permit at the Vermont Superior Court, Environmental Division (the case is now on appeal to the Vermont Supreme Court).
- Legal appeals of the challenges to the City Council's May 2018 necessity hearing were dismissed by the Vermont Superior Court, and the City is defending appeal to the State of Vermont Supreme Court.
- The City developed a Corrective Action Plan (CAP) in order to isolate soils that will be disturbed during construction. Due to the industrial history of the South End, the soils in the project area are impacted by typical urban contaminants. The goal of the CAP is to ensure the safety of the construction workers and the public both during and after construction. The State of Vermont Department of Environmental Conservation (DEC) approved the Corrective Action Plan in March 2019.
- The City executed Utility Agreements for all telecommunication and electric utilities affected by the project.
- In July 2019, the City and the State of Vermont executed an amendment to the Cooperative Agreement for this project, which secures funding for the construction phase of this project.
- In September 2019, the City, in collaboration with the Federal Highway Administration (FHWA) and VTTrans, held an open house and neighborhood meeting to engage the Maple Street and King Street neighborhood.
- The City entered into a contract with WSP USA for construction inspection services in November 2019.

## **LEGAL CHALLENGES**

We continue to manage a shrinking number of legal challenges:

### Stormwater Permit Appeal

Fortieth Burlington, LLC (which owns the “Innovation Center” building on Lakeside Avenue) appealed the Project’s Operational Stormwater Permit to the Vermont Superior Court, Environmental Division. The City prevailed on a number of motions substantially limiting the scope of Fortieth’s appeal, and resolved several others by settlement before trial. Fortieth has appealed two of the issues on which the City prevailed to the Vermont Supreme Court. Briefing in that case is anticipated to take place in May/June.

### Appeals of Necessity Decision

Fortieth and the Pine Street Coalition (the “Coalition”) have also brought separate appeals challenging the City Council’s June 2018 necessity decision acquiring property interests for the Project right of way. The superior court dismissed those appeals on the ground that, because neither had property interests at stake, Fortieth and the Coalition lacked standing to challenge the City Council’s decision. Both parties appealed that decision to the Vermont Supreme Court. Argument in both cases took place December 10 and we are awaiting a decision from the Court.

### National Environmental Policy Act (“NEPA”) Challenge

In the summer of 2019, the Coalition filed a federal lawsuit challenging certain aspects of FHWA’s 2018 NEPA re-evaluation. At FHWA’s request, the Court stayed the lawsuit in August 2019 to allow FHWA additional time to update its NEPA analysis. The City is cooperating on those efforts. In connection with a previous update, we asked outside legal counsel to prepare a memorandum describing the NEPA process and the City’s understanding of the NEPA review at that time. Because that memorandum contains analysis and advice related to ongoing litigation, we are not able to share it publicly, but can provide a copy to interested Councilors upon request.

We are actively managing these challenges and will provide future updates as these matters proceed.

## **PROJECT FUNDING**

This project is funded primarily through the Economic Growth Center (EGC) Funding Program. The project participation percentages are: 95% Federal; 3% State; and 2% Local. The Local Share for this project is budgeted and paid for through the Department of Public Works Street Capital and Sustainable Infrastructure Bond revenues.

In addition to the project eligible expenses which will be participating at the percentages identified above, there are a number of costs associated with this project which are not eligible for reimbursement from Federal and State funds. These ineligible expenses include the disposal of contaminated soil from the Pine Street corridor, differential costs for street lighting along the new section of roadway, differential costs for undergrounding Burlington Electric Department utilities, additional landscaping, amenities for pocket parks, and cobblestone paving, bricking and stamping for pedestrian crossing treatments. These ineligible costs account for approximately \$2.5M in

construction costs which will be the sole responsibility of the City. This will be budgeted and paid for through the DPW Street Capital and Sustainable Infrastructure Bond revenues.

## **ONGOING EFFORTS**

We continue to renew all necessary permits required for the construction of this project. The project team is working to secure an agreement with the railroad for work associated with the rail grade crossings.

On October 11, 2019, FHWA published a Notice in the Federal Register to advise the public that it was rescinding the 2010 Record of Decision for the project to conduct additional public outreach and analysis with respect to environmental justice issues. On January 27, 2020, FHWA published a Notice of Intent to prepare a Limited-Scope Supplemental Environmental Impact Statement (EIS) to address changes subsequent to 2010 in FHWA guidance and methodology for performing environmental justice analyses, updated demographic information contained in the latest available census data, and to provide additional opportunities for meaningful public involvement. This Supplemental EIS is limited in scope to assess impacts to low-income and minority populations and will address a limited portion of the project along Pine Street between Maple Street and Main Street. As part of this effort, additional public outreach will be conducted in June or July 2020. Information about these public engagement opportunities will be made available on the project website at [www.champlainparkway.com](http://www.champlainparkway.com).

We continue to work collaboratively with our partners at FHWA and the State of VTrans to progress through the final design and permitting phases. We anticipate advertising for construction in late 2020 and beginning construction in 2021.

## **PUBLIC OUTREACH**

In September 2019, the project team hosted an open house and neighborhood meeting to engage the Maple Street and King Street neighborhood. Translated materials and interpreters were made available for this meeting, and both written and verbal comments were submitted by the public for consideration by FHWA, VTrans and the City. Additional background on this project and future project updates are also available on the project website at [www.champlainparkway.com](http://www.champlainparkway.com)

Various stakeholders have requested briefings and information on the Project, which we have or will be providing. As this project's timeline advances, we will plan to conduct additional outreach to stakeholders and the public.

## **NEXT STEPS**

We anticipate bringing forward a request for approval of a contract amendment for the project's design engineers, Clough, Harbour & Associates, at the 5/18/2020 Board of Finance and City Council meetings. This contract amendment will authorize the consultant to continue to work on the project to finalize construction plans and bid documents, to assist with the City's public engagement efforts, to continue to renew all necessary permits for the project, and to advance the NEPA process.

Feel free to contact us to discuss any of this in further detail.