



**City of Burlington**  
Department of Public Works

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# Memo

*Date:* November 26, 2019

*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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## BACKGROUND

The Champlain Parkway will be a two-lane, 25 MPH road serving as a vital 2.8-mile multi-modal transportation link between I-189 and our downtown. This Federally, State and Locally funded project will improve traffic circulation, decrease the volume of truck traffic on overburdened residential streets, make environmental upgrades, and increase bicycle and pedestrian safety in the project area.

The Champlain Parkway design has become – through years of successful effort – a greatly improved project. It is a two-lane, multi-modal city street and includes significant stormwater, bike/pedestrian, and traffic calming components so that the project will complement and foster the growing vitality of the South End well into the future. More background on the project, and my past memos that describe design refinements, can be found at [www.champlainparkway.com](http://www.champlainparkway.com).

We continue to manage a shrinking number of ongoing issues that have the potential to set this project back, and we are still projecting a schedule to start construction in 2020.

## DESIGN PHASE MILESTONES

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

- The State of Vermont Agency of Transportation 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.
- Legal appeals of the necessity hearing have been dismissed by the Vermont Superior Court, and an appeal to the State of Vermont Supreme Court is currently pending.

- 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.
- 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

An appeal to the Vermont Superior Court, Environmental Division for the Operational Stormwater Permit for this project is currently pending. That appeal was brought by Fortieth Burlington, LLC (“Fortieth”). The City prevailed on a number of motions substantially limiting the scope of Fortieth’s appeal. A trial on the remaining issues raised by Fortieth is now scheduled for December 3-6.

### 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 is scheduled for December 10.

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

In the summer of 2019, the Coalition filed a federal lawsuit challenging certain aspects of the Federal Highway Administration’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. We have asked our legal counsel at Dunkiel Saunders to prepare a memorandum further describing the NEPA process and the City’s understanding of the current status of the NEPA review. Because that memorandum contains analysis and advice related to ongoing litigation, it is being provided separately. We have also requested legal counsel’s participation in an executive session on December 2 to address NEPA issues and answer questions from the Council.

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.

We continue to work collaboratively with our partners at the Federal Highway Administration and the State of Vermont Agency of Transportation to progress through the final design and permitting phases. We anticipate advertising for construction in the first half of 2020 and beginning construction in 2020.

## **PUBLIC OUTREACH**

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.

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