



Colchester Selectboard
October 12, 2021

ACTION SHEET

Causeway Reversion

RECOMMENDED ACTION: The Colchester Selectboard authorizes the Selectboard Chair to notify the State of Vermont that it is reverting ownership to the Causeway back to the State of Vermont, and authorizes the Town Manager to enter any agreements or sign documents related to this reversion.



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www.colchestervt.gov

TO: Colchester Selectboard

FROM: Aaron Frank, Town Manager and
Glen Cuttitta, Parks and Recreation Director

DATE: October 7, 2021

RE: Colchester Causeway Ownership Reversion

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Issue: Shall the Colchester Selectboard authorize the Selectboard Chair to notify the State of Vermont that it is reverting ownership to the Causeway back to the State of Vermont, and authorize the Town Manager to enter any agreements or sign documents related to this reversion.

Summary: We recommend reverting ownership of the Causeway back to the State of Vermont. The Causeway is uninsurable and the frequency and cost of storm and high-water damage is increasing. This damage is beyond town's staff ability or the town's financial capacity to handle. Given the Causeway is a statewide resource and that the state has more staff and fiscal resources, we are recommending that the Selectboard enact the language in the deed reverting the Causeway's ownership back to the State of Vermont.

Damage History: Material Lost in Storms

Year	Cubic Yards
2018	12,450
2011	8,600
1993	600
1962-1992 (30 yrs.)	1,775

The intensity and frequency of storms are increasing. Until 2011 the data available to us indicates the costs of maintaining the Causeway was not a financial drain on the Town.

Without State and FEMA assistance on the 2011 and 2018 storms the Town would be significantly financially burdened by the major Causeway Repairs. The State of Vermont has the ability to handle significant but temporary emergency repairs to the Causeway quickly and efficiently.

Below is information on the history of the Causeway, the 2011 flood, the 2018 flood and wind damage, ongoing maintenance, insurance, damage history, staff capacity, fairness, and fiscal concerns.

History of Causeway

The Rutland Railroad opened a rail line in 1901 after building the Causeway the prior year. By 1962, Vermont's interstates, 89, 91, 93, 189 and 289 were completed. Following both a decline in use and multiple employee strikes, the Rutland Railway ceased to operate. In 1963 the State of Vermont acquired the Railroad's assets. The Town acquired the Causeway south of the "cut" or opening between the section connecting to South Hero and the section connecting to Colchester in 1966.



Northbound 8/10/62 from Signal 130.4

From 1966 until the 1990's the Causeway was primarily used for walking and fishing. In the 1990's cycling became a more prominent use, increasing significantly in ridership and regionally renown after 2004 when the Winooski River Bike Bridge was completed and Local Motion moved their ferry from the Winooski River to the "cut" bridging the gap-between the north and south segments of the Causeway.

Flooding of 2011

The materials lost in the 2011 storm included 8,600 cubic yards (or 6.4% of the total Causeway volume). Materials lost included fine aggregate path surface course, dense graded crushed stone path subbase, and type IV stone. Krebs and Lansing estimated 7,300 cubic yards of material was needed. FEMA estimated 7,080 cubic yards was needed. During construction it was determined that a total of 8,600 cubic yards was needed to restore the Causeway to the pre-storm condition. FEMA concurred with this and participated in funding 75% of the 8,641 cubic yards.



The Causeway was damaged in 2011 by prolonged flooding as record snowmelt and heavy spring rains brought Lake Champlain to flood stage (100 feet above mean sea level) on April 13, 2011. The lake remained above this level for 67 days until June 19, 2011. A new record was set on May 6, 2011 when Lake Champlain crested at 103.27 feet. Fortunately, the Causeway was not beset with the heavy wind and waves that damaged it in 2018. The Causeway was closed from April 23, 2011 to October 26, 2012 which represents a significant loss of service.

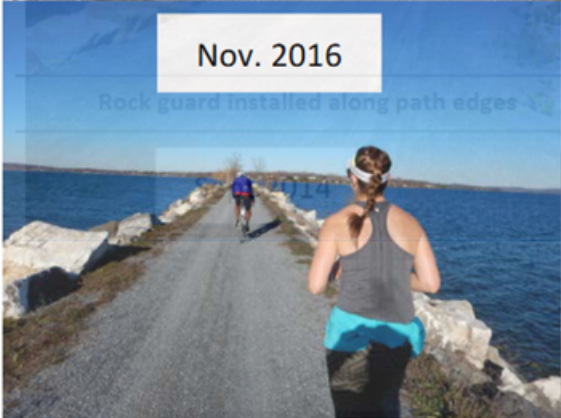
May 3, 2018 Condition

Unless there is a very high water situation or relatively high water with wind/waves, the Causeway is generally safe from damage. It needs little if any annual heavy maintenance (truckloads of rock).



May 3, 2018 Condition (cont.)





Storm of 2018

The National Weather Service issued a tornado watch for Vermont, including Chittenden County on May 4, 2018. **The May 4-5 storm was significant for the Causeway in that both extremely high lake levels and sustained wind levels occurred. Lake Champlain was 99.82 feet above sea level on May 4, 2018 and at 99.91 feet on May 5, 2019, according to the US Geological Survey.**

There were **"surface wind speeds of 60 to 80 mph"** and "downburst wind signature near Airport Park in Colchester, VT," also, "collapsing thunderstorm near Airport Park in Colchester, Vermont...winds of 60 to 70 knots...damaging wind gusts over Colchester Point, "according to the National Weather Service.

The National Weather Service advisories say that waves of 4 feet to 7 feet occur on Lake Champlain at winds of 25-35 knots (29 to 40 mph). Given the lake level was 100' the day of the storm, the Causeway path surface is 103', and the wind speed was up to double the NWS advisory, **the Causeway was overtopped by waves much more than 4'.**

The storm continued from late afternoon on May 4th until the morning of May 5th. The Causeway was pummeled for hours by wind and waves

<https://twitter.com/NWSBurlington/status/992482613016387585>

<https://www.weather.gov/btv/Summary-of-the-Severe-High-Wind-and-Hydro-Event-on-May-4-2018>

https://waterdata.usgs.gov/nwis/dv?cb_00010=on&cb_00011=on&cb_00095=on&cb_62614=on&format=html&site_no=04294500&referred_module=sw&period=&begin_date=2018-05-03&end_date=2018-05-06

<https://forecast.weather.gov/product.php?site=BTV&issuedby=BTV&product=REC&format=CI&version=12&glossary=0>

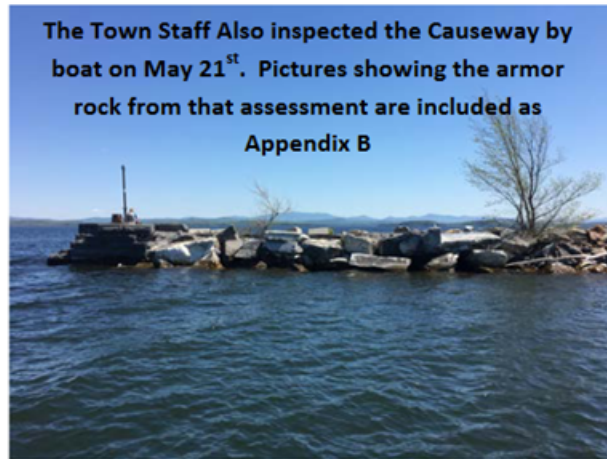


Airport Park is 1.05 miles from the Causeway. Above is a picture taken near Airport Park in Colchester and another looking towards Colchester from Essex (just to the East of Colchester) on May 4, 2018.

Damage Assessment

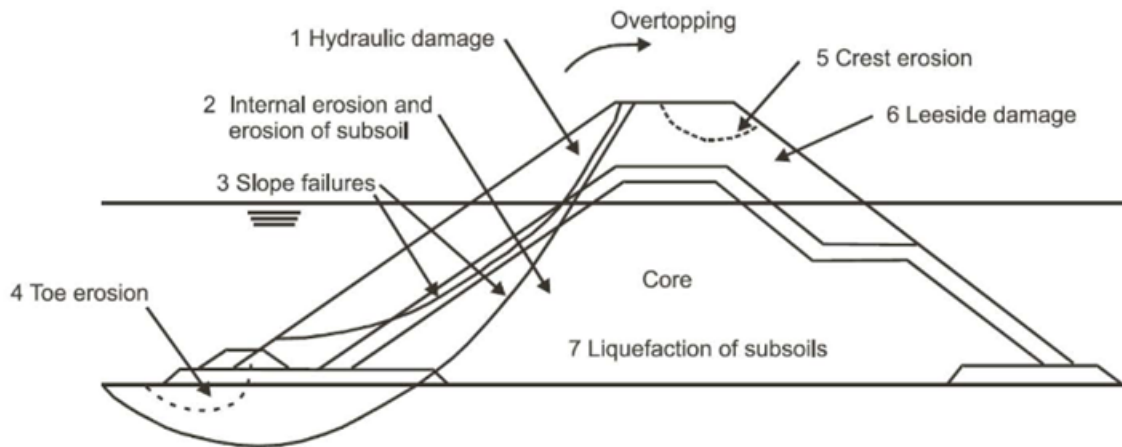
On May 5th, Parks and Recreation Director Glen Cuttitta surveyed the trail. Town Manager Aaron Frank and Glen determined that it was not safe for the public to use, and closed the path to the public. Later we opened the path from Mills Point Road to the bridge on the path. The Town was supported by Krebbs and Lansing Consulting Engineers in a subsequent formal damage assessment, FEMA claim, construction plans and contractor oversight.





The Town Staff Also inspected the Causeway by boat on May 21st. Pictures showing the armor rock from that assessment are included as Appendix B

Below is a diagram of how the Causeway was damaged by the high water, wind and waves.



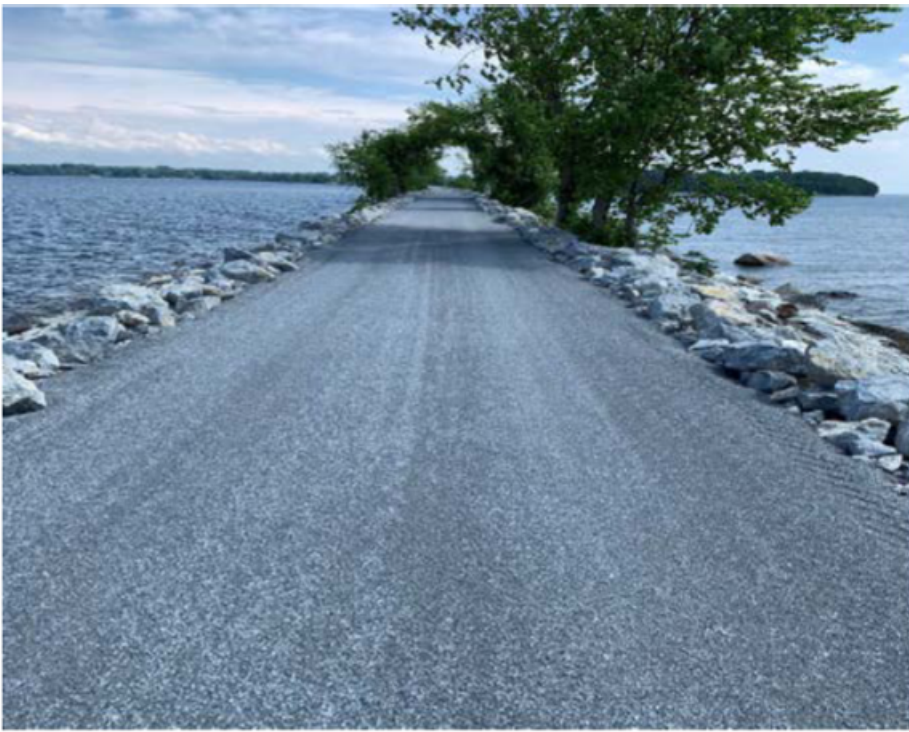
The materials lost in the 2018 storm included 12,450 cubic yards (or 9.3%) of the total Causeway volume. This included fine aggregate surface course, dense graded crushed stone path subbase, Type I stone fill and Type IV armoring stone. The material includes 2,105 cubic yards of fine aggregate path surface material (or 1.6% of the total Causeway volume); 1,094 cubic yards of dense graded crushed stone path subbase material (or 0.8% of the total Causeway volume); 601 cubic yards of Type I stone fill placed during the emergency repairs (or 0.4% of the total Causeway volume); and 8,650 cubic yards of type IV stone material (or 6.5% of the total Causeway volume).

State Emergency Repair

The State of Vermont, through Governor Scott and Transportation Secretary Flynn, recognized that while the Causeway is an asset to the Town of Colchester, it is also important to the region and State, both as a recreation opportunity for residents but also tourism. The tourism component is an important economic aspect of the Causeway being open during peak season. Local Motion runs the bike ferry during the busy summer period, which adds to the use of the Causeway, the State recreation opportunities, the tourism draw, and the economic benefit. The Governor and Transportation Secretary offered to step in and complete emergency work replacing about 2,550 cubic yards, of the total lost volume of 12,450 cubic yards. This emergency work was completed at a cost to the State of \$308,000, allowing the Causeway to re-open by July 4th, 2018.

Conclusion

On May 3, 2018, Colchester Causeway contained 133,850 cubic yards of fill, surface and slope material. The Causeway lost 12,450 cubic yards (or 9.3%) of fill, surface and slope material in the May 4-5 storm. After the emergency repair by the State, the Causeway needed about 9,900 cubic yards (7.4% of total) material to bring it back to its May 3, 2018 pre-storm condition. The final repair work focused on restoring slopes to a minimum of 1.5:1 slope; anchoring the Type I stone used during the emergency repairs with type IV stone to stabilize slopes against high water levels and wave action; restoring the guard rock to stabilize the path surface; and restoring the path surface to the pre-storm elevation. The final repair work was considered completed by contractor JP Sicard following a final inspection on July 29, 2020. Repair work, including the emergency repair, totaled about \$1.8M of which most was state and federal funding leaving the Town's share at about \$30,000.



Ongoing Annual Maintenance

Ongoing maintenance consists of inspections at least every month, trimming growth and occasionally adding of surface material. Since the 2011 damage, we added 30 cubic yards of surface material in 2014 due to settling of the repairs completed in fall of 2013, and roughly 85 cubic yards of material in July 2016.

Insurance

We cannot obtain insurance coverage for the Causeway. We requested VLCT Property and Casualty Intermunicipal Fund to find insurance for the Causeway, insuring the risk between \$20,000 which we could annually budget and the FEMA threshold of \$1M. Their broker, JLTRe, contacted numerous property and flood insurance markets in an attempt to find some flood coverage for the Colchester portion of the Causeway.

Markets queried included standard property carriers, wholesale flood specialty programs, various London facilities such as Lloyds, etc. They also reached out to a local agency who is an appointed agent for a retail insurance flood program not accessible to our broker.

In the end, no carrier expressed any interest in offering any quote on the risk, at any deductible level. They were also unable to point to any alternative markets or other coverage options. The change in appetite for flood risk is

primarily due to the series of significant flood events, i.e. Houston in 2017 and in the Carolinas in 2018. The fact that the Causeway has experienced damage numerous times in the past 20 years only serves to make carriers more unwilling to quote this risk. *Lastly, the National Flood Insurance Program (NFIP) is only designed for structures (buildings) and thus, the Causeway does not qualify under that program.*

So, unfortunately, there are no coverage options available. Looking ahead, we see the current trend in flood insurance only getting worse given the prospects for climate change combined with our loss history.

Fairness

The State of Vermont owns the Causeway portion that is connected to South Hero and pays the full share of the local FEMA match for that portion. South Hero has businesses that benefit directly from the Causeway whereas Colchester has no businesses on the bike path as do the communities to the north or south. The City of Burlington has a paved path that needs very little maintenance. After 30 plus years they have just completed a multi-year project to repave portions of the existing path and added a new segment. South Hero has no expenses related to the biking corridor because it is all on road/shoulder bike riding. Both communities receive economic gains from the Causeway. Colchester maintains the most volatile section of the corridor and receives very little economic benefit. This also speaks to the appropriateness of a statewide funding partnership.

Staff Capacity

The State of Vermont has more leverage with FEMA and has multiple full-time disaster financial recovery staff—some ex FEMA--which is ideal. They wouldn't have as many challenges to receive FEMA funding as the State is a direct FEMA grantee who has ongoing business with FEMA. They can also direct a VTrans contractor to complete work; we don't have that much influence over the contractors. Additionally, they also have the capacity, as we saw in the summer of 2018, to quickly raise \$308,000 to make repairs that are not FEMA related.

Fiscal Concerns

We could easily have \$999,999 in uninsured and non-FEMA eligible damage in any given year. The history of three storms causing damages over a period 26 years, or an average of \$868,000 per storm with ever increasing damages, does not bode well for the future. The Town does not have an ability to insure the Causeway, making damages to it a burden of the Colchester taxpayers.

QUIT CLAIM DEED

KNOW ALL MEN BY THESE PRESENTS, That the State of Vermont, a sovereign state of the United States of America, acting by and through the Commissioner of Forests and Parks, Grantor, in the consideration of Eight Hundred and Ninety Dollars (\$890.00) paid to its full satisfaction by the Town of Colchester in the County of Chittenden and State of Vermont, Grantee, has REMISED, RELEASED AND FOREVER QUIT-CLAIMED unto the said Town of Colchester and its successors and assigns, all right and title which it, the said State of Vermont has in and to a certain piece of land in Town of Colchester, County of Chittenden, State of Vermont and Town of South Hero, County of Grand Isle and State of Vermont, described as follows, viz:

Being a part of original Tract #1, Rutland Railroad Tract Map #V2-128, as deeded to Rutland Canadian Railroad by Homer and B. H. Porter, by Warranty Deed dated May 20, 1899, recorded in Volume 30, Page 475-476 of the Colchester Land Records. And also by Quit-Claim deed of Vermont Life Insurance Company to Rutland Canadian Railroad, dated June 23, 1899, recorded in Volume 30, Page 473 of the Colchester Land Records and also by a Quit-Claim Deed to the Rutland Canadian Railroad from J. A. and A. L. Barnes, dated June 23, 1899, recorded in Volume 30, Page 472 of the Colchester Land Records and being all and the same as Tract #2, Rutland Railroad Tract Map #V2-129, by Warranty Deed of B. H. Porter to Rutland Canadian Railroad, dated July 13, 1900, recorded in Volume 30, Page 486 of the Colchester Land Records. And also being that portion of the causeway, so-called, which lies in Lake Champlain and which was constructed by the Rutland Canadian Railroad by virtue and Act of Congress, dated February 4, 1899, being also the said causeway depicted on Maps #V2-128, #V2-129, #V2-130 and #V2-131 and a portion of the causeway depicted on Map #V2-132 extending to the southerly edge of the former drawbridge #270 on Map #V2-132. The entire area is more specifically described as beginning at Town Highway #31 where it crosses the old railroad right-of-way the easterly side of said crossing being at the approximate railroad centerline Station #6743+90 and the westerly side of said right-of-way being at Station #6745+20, extending northerly to Station 6944+59, meaning to convey the entire width of said railroad right-of-way between the points herein described. Station 6933+57 to Station 6944+59 lies in the Town of South Hero, County of Grand Isle and State of Vermont.

There is reserved from this right-of-way any easements which may presently be of record.

This conveyance is made and executed under authority and terms of No. 197 of the Acts of 1965.

TO HAVE AND TO HOLD all right and title in and to said quit-claimed premises, with the appurtenances thereof, to the said Town of Colchester, its successors and assigns for such period as this parcel of land is actively used or maintained by the Town of Colchester for public right-of-way purposes. These lands will revert to the State if and when the town does not actively use and maintain them for the purpose of a public right-of-way. And

Furthermore, the said State of Vermont does for itself and its successors and assigns, covenant with the said Town of Colchester and its successors and assigns, that from and after the ansealing of these presents, the said State of Vermont will have and claim no right in or to the said quit-claimed premises, except as stated aforesaid.

IN WITNESS WHEREOF the Commissioner of Forests and Parks as the duly authorized agent of and for the State of Vermont, has caused this instrument to be signed and sealed by him thereof, this 16th day of December, A.D., 1966.

IN PRESENCE OF:

Robert A. Farington
Margaret Lanchier

STATE OF VERMONT

By Robert B. Williams
Robert B. Williams, Commissioner
Department of Forests and Parks

APPROVED:

Roland E. Keenan
Roland E. Keenan, Chairman
Board of Forests and Parks

APPROVED:

Philip H. Hoff
Philip H. Hoff, Governor

APPROVED:

William Kearns
William Kearns, Commissioner
Department of Administration

STATE OF VERMONT)
SS
Washington County)

At Montpelier this 16th day of December, A.D., 1966, Mr. Robert B. Williams personally appeared and acknowledged this instrument by him sealed and subscribed to be his free act and deed and the free act and deed of the State of Vermont.

Before me, John W. Pyles
Notary Public

APPROVED AS TO FORM:

J. D. Mages
Attorney General

COLCHESTER, VT. CLERK'S OFFICE,

January 13 19 67

Received for record at 11:00 o'clock P.M.

and Recorded in Vol. on 4 Page 82

Land Records. 90 83

Witness:

Russell H. Smith
Town Clerk



781 Blakely Road • Colchester, Vermont • 05446 • 802.264.5500

www.colchestervt.gov

BY ELECTRONIC MAIL

October 12, 2021

Commissioner Michael Snyder
Vermont Department of Forests, Parks and Recreation
1 National Life Drive, Davis 2
Montpelier, VT 05620-3801
michael.snyder@vermont.gov

Re: Colchester Causeway Reversion to State of Vermont

Dear Commissioner Snyder:

I write on behalf of the Town of Colchester (the Town) to inform the State of Vermont, Department of Forests, Parks and Recreation that the Town shall cease its use and maintenance of the so-called Colchester Causeway bike path, and to request that the State of Vermont acknowledge its obligation to maintain the Colchester Causeway moving forward.

For background, on December 5, 1967, the then-Department of Forests and Parks issued a Quitclaim Deed to the Town of Colchester releasing, amongst other portions of lands, the lands that comprise the portion of the so-called Colchester Causeway that lie in Lake Champlain and were constructed by the Rutland Canadian Railroad. This portion of the Colchester Causeway begins at the northerly end of Colchester Point and extends north until it reaches “the Cut” in Lake Champlain. The State included a reversionary clause in the Quitclaim Deed that made clear that the State had quitclaimed the property unto the Town

for such period as this parcel of land is actively used or maintained by the Town of Colchester for public right-of-way purposes. These lands will revert to the State if and when the town does not actively use and maintain them for the purpose of a public right-of-way....

Quitclaim Deed, Vol. 4, Page 82 of the Colchester Land Records.

The Town shall cease its “active use and maintenance” of the Causeway as of January 1, 2022. It makes sense for the Town and the Department to officially acknowledge the reversion of the property to the State pursuant to the granting deed, and to record that agreement in the Town of Colchester Land Records to put title searchers and others on notice.



Additionally, it would obviate any need to go through any legal process to fully and clearly re-title property in the name of the State of Vermont. The Town would be pleased to prepare the necessary documents and to work with appropriate Department staff to indicate the State's acknowledgement of the reversion.

If you have any questions concerning this issue, please do not hesitate to reply to this letter, or you may also call Town Manager Aaron Frank at (802) 264-5509.

Sincerely,

Pam Loranger, Selectboard Chair
Town of Colchester

Cc: Governor Phil Scott
Agency of Administration Secretary Susanne Young