



# Advocacy **Advance**

a partnership of

**Alliance**  
for  
Biking & Walking

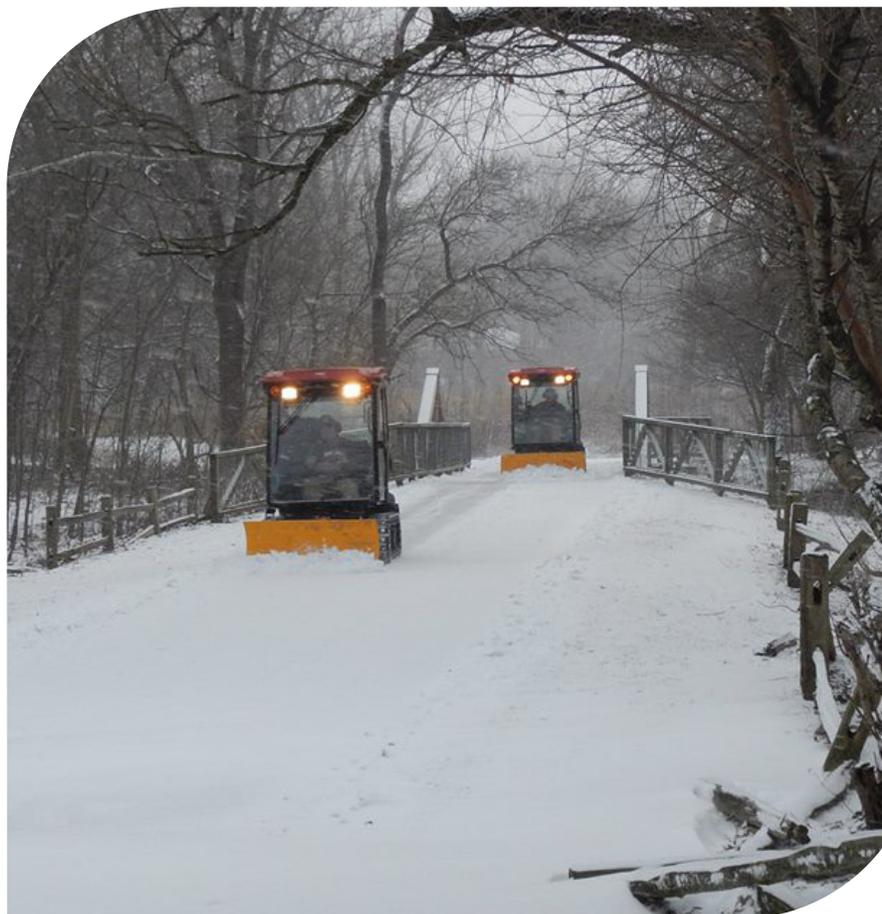
**THE LEAGUE**  
OF AMERICAN BICYCLISTS



## How Communities are Paying to Maintain Trails, Bike Lanes, and Sidewalks

This report addresses both the technical and political challenges of how communities are paying to maintain trails, bike lanes, and sidewalks. It examines agency maintenance policies and provides examples of communities who've successfully made these facilities a priority.

December 2014



# Table of Contents

**Trail maintenance ..... 4**

- Madison, WI: Prioritization, planning, and agency cooperation ..... 5
- Minneapolis, MN: Strong internal and external support ..... 6
- Columbus, OH: Dedicated funding for the regional parks agency ..... 7
- Dayton & Miami Valley, OH: Coordination is key ..... 7
- Arlington, VA: Trail counters and advocacy add up to new plowing policy ..... 9

State funding for recreational trail maintenance ..... 9

- Lake Tahoe, CA: State and local grant programs require maintenance planning ..... 10
- States still figuring out maintenance for bicycling and walking facilities ..... 10

Federal funding for trail maintenance ..... 11

- Recreational Trails Program (RTP) ..... 11
- Federal Lands Access Program (FLAP) ..... 12

**Protected bikeway maintenance ..... 13**

- Salt Lake City, UT: Winter maintenance ..... 14
- Syracuse, NY: Connective corridor winter maintenance ..... 14
- Washington, DC: Mobilizing political will ..... 15

**Bicycle lanes and other bicycle infrastructure ..... 16**

- Cincinnati, OH: Bicycle facilities are like any other road facility ..... 16
- Long Beach, CA: Diverse local sources for bicycle facility maintenance ..... 17
- Arlington, TX: Big plans and broad support for maintenance ..... 17

**Other federal funding for maintenance of bicycle and pedestrian facilities ..... 18**

**Sidewalk maintenance ..... 18**

- Long Beach, CA: City takes responsibility for sidewalk repairs ..... 21
- Los Angeles, CA and Atlanta, GA: A tale of two (large and sprawling) cities ..... 22
- How are cities funding sidewalk maintenance programs? ..... 23

**Sidewalk liability: A major source of confusion and neglect ..... 24**

- When in doubt, blame England ..... 25
- How do states deal with sidewalk liability today? ..... 25
- Americans with Disabilities Act provides new incentives for communities and property owners ..... 27

**Conclusion ..... 27**

**Acknowledgements ..... 28**

## How Communities Are Paying to Maintain Trails, Bike Lanes, and Sidewalks

As part of the Advocacy Advance partnership between the League of American Bicyclists and the Alliance for Biking and Walking, we travel around the country and talk to people about how to fund bicycling and walking projects. We get to see what's happening all over the country and pick up on the exciting trends (e.g. multimodal ballot initiatives; Vision Zero) and common challenges. Sometimes the challenges are technical in nature; sometimes they are political.

We often hear people say: "If my community builds this *trail/ protected bikeway/ sidewalk*, even if we use federal funds, we will have to foot the bill for maintenance – and we can't afford it." For example, one advocate in a large rural western state explained the dilemma:

*What we're running into and hearing is that Parks Departments are becoming resistant to more urban paths being built because they are then expected to maintain them with no additional funding. Parks Departments are becoming strapped. How can we build a case for more facilities when there's no money to maintain them? Our Department of Transportation will build separate paths but then sign agreements with counties or communities that will maintain them. It's a really tough sell because counties don't want that responsibility so they don't want them built.*

Having heard this several times, we decided to find out how other communities fund the on-going maintenance of their bicycling and walking facilities. We contacted planners and advocates in different communities to ask not just about trails, but also sidewalks and on-road bicycle facilities, like protected bikeways.

The response we heard from communities who are overcoming this challenge was remarkably consistent across community size, context, and project type: ***We build and maintain our bicycling and walking facilities because they are a priority for our community.***

This report addresses both the technical and political challenges. It examines agency maintenance policies and procedures for bike/ped maintenance and it provides several examples of communities who've successfully made these facilities a sufficient priority to overcome the challenge of paying for maintenance. We share examples related to sidewalks, trails, and protected bikeways.



**Above:** In Columbus, Ohio, trail plowing equipment is owned and operated by the agency, Metro Parks, and is used to maintain several Greenway systems. They deploy if snow is greater than 2 inches. Columbus also has unplowed trails for cross-country skiing within Metro Parks, but the main commuter trails are plowed. Photo courtesy of Keith Mayton/ The Columbus Dispatch.

## Trail maintenance

The benefits of trails are numerous, almost too numerous, to list. Here are a few of the most compelling reasons for communities to build, maintain, and support trails:

- » Trails increase the values of nearby properties – a [statistical analysis](#) of housing values in Marion County, Indiana found that greenway trails and conservation corridors in the county raised property values in excess of \$140 million. Within 1/2 mile of the Monon Trail, the flagship of Marion County’s greenway trail system, property values were 11% higher.
- » Trails attract business activity as multi-use (transportation, recreation, destination) facilities – a [survey](#) of businesses along the Great Allegheny Passage found that between \$30-40 million in annual business revenue was attributed to trail users.
- » Trails increase local tax revenues – often more than paying for their own maintenance. For example a [study](#) of Maryland’s Northern Central Rail Trail found that the state received \$303,000/year in trail-related tax income while paying \$192,000/year in maintenance.

True accounting of the benefits that trails provide – business investment, tax income, equipment sales, health care savings, and others – make trails an incredibly good investment. Unfortunately, they provide benefits in a multi-faceted way that is not always easily captured. In contrast, new road construction provides

### Chattanooga, TN: Trails as economic development

In Chattanooga, the Tennessee Riverpark shows why communities should consider the advantages of new biking and walking facilities, trails, and paths rather than the potential costs of maintenance. A comprehensive waterfront redevelopment plan that included miles of greenway trails connecting the Chickamauga Dam and downtown Chattanooga has revitalized the City to the point that it has now passed into [legend](#). The redevelopment plan [was credited](#) with increasing city and county property taxes by 99% in the first decade after the Riverpark was opened.

certain benefits in time and congestion improvements that are easily captured by increased gas tax revenues from increased driving. Using [diverse and advanced metrics](#), which go beyond the metrics used by engineers for roads, can provide a rich and persuasive picture to doubters.

## Madison, WI: Prioritization, planning, and agency cooperation

From a budget perspective, "We treat bicycling infrastructure no different from other infrastructure we have," says Arthur Ross, Pedestrian-Bicycle Coordinator for the City of Madison, WI, Traffic Engineering Division. When asked if the city is reticent about building new trails and bike lanes because of future maintenance costs, Ross responded: "We don't ask that about other development. We don't stop building housing because of the cost of trash pick-up and sewers."

Madison's 2014 capital budget includes \$500,000 for "The Bikeways Program, [which] includes various types of bicycle related improvements throughout the City including resurfacing of existing bike paths (priority ranked based on pavement ratings)."

The City doesn't automatically add funding to the maintenance budget when new bicycle facilities are built. New bike lanes, like those installed during a [road diet](#) for example, may require an additional pass by the plow. This additional time requirement means that plowing routes need to be prioritized. Likewise, bike trail plowing is not a line item in the budget. The City prioritizes higher-use trails.

Cities can get creative in their budgeting to accomplish their maintenance goals. In 2012, Madison added several new positions to split their time between agencies (a rare event) and their activities between winter snow removal and other responsibilities. Two of these positions worked part of the year in Traffic Engineering. From the 2012 budget highlights: "The addition of a 1.0 FTE Maintenance Painter and a 1.0 FTE Traffic Control Maintenance Worker, who will staff a second pavement marking truck from April through October of each year. From November through March, these employees will transfer to Parks to work on bus stop snow removal in conjunction with the Streets Division." This specifically added capacity for snow removal around bus stops.

"Coordination is the word," says Ross, the City's Bicycle and Pedestrian Coordinator. One example of that is the sharing of bus stop snow removal staff with other agencies. The work "crosses departments," Ross says. It's not just the Streets Department. "We also rely on citizens to report problems on our website," he adds. In Madison, maintaining streets and trails is a joint effort.

Madison has developed several documents to improve its maintenance practices. The Department of Public Works' [Procedures for Snow & Ice Control](#) states: "*City owned sidewalks and the School/ Handicap Crosswalk lists are maintained during regular business hours during a storm. Parks and City Engineering are also involved in maintaining City Bike Paths during and after a snow event. **The main bike routes are maintained starting at 4:00 a.m. on weekdays in order to be traversable by the morning commute.***" [Emphasis added.]

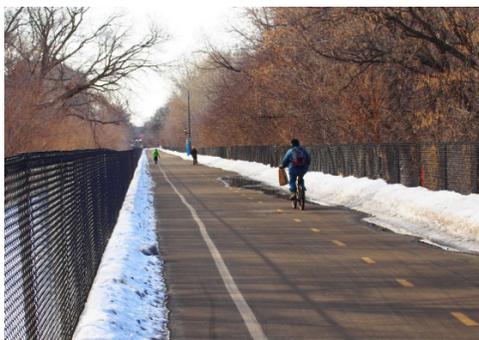
The City's bike network maintenance plan, [Public Works Bikeway Maintenance: Making Bicycling a Viable Mode of Transportation](#), developed by the Public Works Department, lays out policies and procedures for the following:

- » Pavement management (including potholes & patches and utility cuts)
- » Pavement markings, signage and lighting
- » Vegetation maintenance
- » Snow and ice control (including arterial bikeways, on-street bike lanes, other bikeways)
- » Bicycle parking facilities
- » Glass and debris removal
- » Pavement sweeping
- » Graffiti removal
- » Storm grates
- » Bicycle parking
- » Removal of abandoned bicycles

## Minneapolis, MN: Strong internal and external support

In Minneapolis, trail and roadway maintenance is often funded with local funding sources. This makes maintenance priorities more a matter of allocating local resources rather than specific policies written in laws or ordinances. When maintenance of bicycle facilities is brought up as a reason for not creating bicycle facilities, the City will often let the public speak for them about the need for those bicycle facilities.

There are many local voices to speak up for bicycling. There are several bicycle advocate groups, such as the Minneapolis Bicycle Coalition and the Midtown Greenway Coalition; an active local bicycling forum in [MPLS Bike Love!](#); and a bicycle commuter rate that has been in the top 4 out of the 70 largest cities in America in every year of the American Community Survey. This strong community support has led to national recognition, including being ranked as the best bicycling city in America by [Bicycling Magazine](#) and as a Gold-Level [Bicycle Friendly Community](#). The [Minneapolis Bicycle Coalition](#) supports bicycling



**Above left and middle:** Snow clearing on the Midtown Greenway in Minneapolis. Photo courtesy of City of Minneapolis. **Above right:** Photo courtesy of [Pedal Minnesota](#).

throughout the city, including a “Report a Bike Issue” utility that utilizes the SeeClickFix program of Minneapolis 311. This internal and external support for bicycling makes the politics of supporting investments, and operations, easier.

The [Midtown Greenway](#) is the centerpiece of the Minneapolis’ bicycle infrastructure, providing a year-round, virtually car-free path across South Minneapolis. While the City clears snow to keep the Greenway open throughout the year, the [Midway Greenway Coalition](#) is a grassroots organization that engages the community to protect, improve, and use the greenway including through maintenance [activities](#) such as cleaning and sweeping; managing the Adopt-A-Greenway program; and maintaining gardens and native flowers along the Greenway.

### Columbus, OH: Dedicated funding for the regional parks agency

In Columbus, Ohio, the [Columbus and Franklin County Metro Parks](#) (Metro Parks) is a regional public agency responsible for more than 150 miles of recreational trails which are a part of the largest connected, off-street paved trail network in the United States. Metro Parks owns and operates small plow machines specifically for its trails. The plows are deployed whenever snow is greater than 2 inches. Metro Parks is a politically independent public agency created by Ohio law in 1945. Its primary funding source is a 10-year, property tax (0.75-mill) approved by Franklin County voters in 2009. Each year more than 7 million visitors enjoy Metro Parks and many of their maintained trails, such as the [Olentangy](#) and [Scioto](#) trails, serve as important bicycle commute routes for residents in Columbus and Franklin County. Since 2005, Columbus has experienced almost [60% growth](#) in people commuting by bicycle.

### Dayton & Miami Valley, OH: Coordination is key

Don’t suggest to the folks in Dayton, Ohio and in the Miami Valley that their 330-mile trail network must be too expensive to maintain. “Our philosophy is different,” says Andy Williamson, who is Vice President of Bike Miami Valley and formerly worked for Five Rivers Metro Parks. “Trails are part of the Metro Parks mission and they should be funded. In Dayton and the Miami Valley, trails are a priority.”

That priority is shared by agency staff, politicians, and the public, says Williamson. It helps to be backed up by numbers. Politicians see the impact not just anecdotally, but with data as well. The Metropolitan Planning Organization (MPO) conducted a study that shows an annual nearly \$15 million economic impact of the trail system, which cost a total of approximately \$50 million over 30 years. “We have regional trail committee meetings and 50 people show up,” Williamson says. That creates the political environment to support the maintenance of trails.

The region’s extensive trail network goes through many different jurisdictions so coordination is important. Overall, coordination between trail-managing agencies is carried out through the regional MPO, the Miami Valley Regional Planning Commission,

says Amy Dingle, Director of Outdoor Connections for Five Rivers MetroParks. Quarterly meetings bring a majority of trail managing agencies together to discuss any issues and collaborate together.

“While we successfully market the Miami Valley Trails as a single entity, they are in fact maintained by at least ten separate agencies,” Dingle summarizes. “Federal funds have been used for construction and re-construction of the trails, but regular maintenance is a local responsibility.”

Dingle provided more information on the how the trail network and maintenance gets funded:

Maintenance is the commitment of the local agency in return for the federal construction funds. Funding for construction has come from many sources, including federal highway dollars, local public-private partnerships, and state Clean Ohio Trail Fund. Some of these pots of money, for construction and major capital improvements like re-paving, are managed by the local MPO. The federal construction funds have generally been from [the Congestion Mitigation and Air Quality Improvement Program \(CMAQ\)](#) and the re-construction funds for repaving have been [Surface Transportation Program \(STP\) funds](#).

“In the 1970s at the beginning of the Great Miami River Recreation Trail’s construction, the key to success was contiguous land ownership along nine city riverfronts,” Dingle explains. The Miami Conservancy District (MCD), a regional water management agency, owned or controlled that land for flood protection purposes and gladly approved its use as an ideal location for paved multi-use trails. MCD built and/or maintains nearly 35 miles of trail in the region and formally permits a few dozen additional miles of trail on its property in four counties. Local municipalities are largely responsible for funding the maintenance of trails in their jurisdiction. These are the four primary methods:

1. Special assessment of the jurisdiction is paid to the maintenance organization – this is how MCD funds maintenance
2. Memoranda of Agreement between jurisdiction and maintenance organization – some county-wide park districts use this tool
3. County-wide levy paid by property owners to the maintenance organization – other county-wide park districts use this tool
4. The city takes care of the trail within its boundaries from its general fund – several cities in the region including Piqua, Troy, Tipp City and Kettering.

## Arlington, VA: Trail counters and advocacy add up to new plowing policy

The "polar vortex" wreaked havoc on commuters throughout the country in 2014. In Arlington, VA, just across the Potomac River from Washington, DC, extreme winter conditions helped reset Arlington's plowing priorities. During the winter, the local advocacy

group the Washington Area Bicyclist Association (WABA) noted that Arlington's automated trail counters showed a precipitous drop after snowfall on major bicycle commuter routes such as the Custis trail, which recorded over 76,000 trips last winter according to one of the 20+ automatic counters in the County.

Thanks to data and an engaged advocacy community, the County will now plow four highly-used trails during and immediately after snowstorms rather than after secondary and neighborhood streets. This policy change, with an accompanying \$309,000 in set aside funding, means that these trails will be plowed at the same time as priority arterial roads. Arlington is also starting a pilot program to pre-treat the County's protected bike lanes.

### State funding for recreational trail maintenance

Some states provide funding for multi-use trails, either on or off-road, in the form of competitive grants, often funding projects that are well-designed. In a review of state funding sources for multi-use trails, the [Indiana Greenways Foundation](#) found [several states](#) that provide funding for trail maintenance through grant programs or other mechanisms. Often this funding is focused on major maintenance such as rehabilitation and reconstruction of trails, but in some cases states will pay for routine maintenance and operations.

STATE	FUND	DESCRIPTION
Illinois	<a href="#">Illinois Bicycle Path Grant</a> program  Established 1990	<b>Revenue source(s):</b> Fees associated with vehicle title and registration.  <b>Fund use:</b> Provides grants to local governments for up to 50% of project costs for bicycle paths, including renovation.
Indiana	Recreational Trail Maintenance Fund  Established 2014	<b>Revenue source(s):</b> General assembly appropriations; donations, gifts, and other money received; and federal grants or appropriations. <i>Note: A steady source of funding was not identified when the Fund was established.</i>
Iowa	<a href="#">Iowa State Recreational Trails</a> program  Established 1987	<b>Revenue source(s):</b> General assembly appropriations; private grants and gifts; and federal grants or loans. For FY 2015, it is expected that slightly over \$6 million will be available.  <b>Fund use:</b> Provides grants to public agencies and nonprofit organizations for up to 75% of project costs for trails dedicated to public use, including renovation but not routine maintenance. From FY 2009 to 2013, \$3 million was awarded each year.
Michigan	<a href="#">Michigan Recreational Improvement Fund Grant</a> program  Established 1994	<b>Revenue source(s):</b> A portion of gas sales tax proceeds. FY 2014 total is approximately \$657,000.  <b>Fund use:</b> Provides grants to state project and state and local partnership projects for the operation, maintenance, and development of recreational trails.

STATE	FUND	DESCRIPTION
Minnesota	<a href="#">Minnesota Parks and Trails Fund</a>  Established 2008	<b>Revenue source(s):</b> Receives 14.25% of state sales tax revenue resulting from the Clean Water, Land, and Legacy Amendment.
Wisconsin	<a href="#">Wisconsin State Trail Pass</a> program  Established for bicyclists on rail-trails in 1978; expanded to other trail users in 1994.	<b>Revenue source(s):</b> Passes are required on certain state trails and funds from pass sales are deposited in a Conservation Fund used to operate and maintain state trails, parks, and recreation areas. In 2013, Wisconsin collected \$1.26 million in state trail pass fees.

### Lake Tahoe, CA: State and local grant programs require maintenance planning

Through field observation and public agency input, the Lake Tahoe Regional Planning Agency was made aware that multi-use paths and sidewalks were not being maintained to a high enough standard. To determine their options, they hired Alta Planning + Design to find successful examples of maintenance, and maintenance funding in comparable communities where outdoor activities are significant drivers of tourism.

That [report](#) found that while grants generally do not pay for maintenance activities, several grant programs – from sources such as the North Lake Tahoe Resort Association, California Tahoe Conservancy, and Southern Nevada Public Land Management Act – that pay for new construction require maintenance schedules and funding sources in their applications. While enforcement of these requirements is often lacking, it shows the necessity for thinking about maintenance at the start of construction.

### States still figuring out maintenance for bicycling and walking facilities

A [recent online survey](#) of state DOT maintenance personnel conducted by the Minnesota DOT found that the majority of survey respondents (51%) do not clear snow from pedestrian and bicycle facilities. None of the survey respondents said that their agency pre-treats trails before snow events.

Despite the advantage of trail investments and maintenance, communities often look to community groups to perform important maintenance tasks. In 2005, the Rails-to-Trails Conservancy published “Rail-Trail Maintenance & Operation: Ensuring the Future of Your Trail—A Survey of 100 Rail-Trails,” which leveraged the experience of trail maintenance organizations and trail managers to provide a resource for groups interested in ensuring the maintenance of their community trails. It continues to provide a great account of the common activities and funding issues facing groups that care for trails. Notably, it provides estimated costs of the services provided by community groups that allow community groups, and the communities that the benefit, to understand the costs of trail maintenance and assess how community groups can contribute to routine maintenance of trails.

For more information on how state funding sources are being used to pay for walking and biking projects, see our resource, "[State Revenue Sources that Fund Bicycling and Walking Projects.](#)"

## Federal funding for trail maintenance

Federal transportation funding is generally focused on providing capital funding for road projects. In the last federal transportation bill, Moving Ahead for Progress in the 21st Century (MAP-21), three programs that were focused on bicycling and walking – Safe Routes to School, Recreational Trails, and Transportation Enhancements – were consolidated into one program: the Transportation Alternatives Program (TAP). This consolidation was accompanied by a roughly 30% reduction in funding. However, bicycling and walking projects continue to be eligible under other federal transportation funding programs and states and MPOs can make project selection criteria that are compatible with Complete Streets policies that have proliferated in recent years.

To learn more about funding eligibility, Advocacy Advance has developed "[Find It, Fund It!](#)" - a tool that centralizes and simplifies information about funding eligibility. It aims to connect people interested in getting infrastructure or other programs funded with all potential federal funding sources that can be utilized towards those interests.

## Recreational Trails Program (RTP)

Although bicycling and walking projects can be built with many federal funding sources, the capital funding bias of federal transportation funding means that there are only a handful of programs that can fund bicycling and walking facility maintenance, and particularly trail maintenance. The federal [Recreational Trails Program](#) (RTP) is the primary program for funding trail maintenance. It is also important for trail maintenance funding because two other federal programs that can fund trail maintenance do so because they can fund any project that is eligible for RTP funding. There are many eligible uses for RTP funds, but most notable from a maintenance perspective are:

- » Maintenance and restoration of existing trails.
- » Development and rehabilitation of trailside and trailhead facilities and trail linkages.
- » Purchase and lease of trail construction and maintenance equipment.
- » Assessment of trail conditions for accessibility and maintenance.

According to information from the [RTP Database](#), since 2010, close to \$15 million in RTP funds has been spent on maintenance-related activities, leveraging over \$10 million in other funds. [Federal rules](#) require local match funding of 20% of a project cost, but some states may require up to a 50% match. The amount of money leveraged by federal recreational trails funding shows both the popularity of this program and the competitive nature of this grant funding, resulting in matching funds that far exceed the minimum requirements.

When RTP was reauthorized in 2012 it was created as set-aside within TAP. Each fiscal year, the Governor of each state may opt out of the RTP program. If a state opts out of RTP, the funds remain as TAP funds and can be used for biking and walking

projects, including trails. There are two major disadvantages for trail maintenance funding if a governor opts out of RTP:

1. The state loses the ability to use the funds for state recreational trails program administrative costs, and
2. Trail projects must be treated as projects on a Federal-aid highway, which affects contracting and wage rate regulations.

#### Cincinnati, OH

Recently, the City of Cincinnati received \$500,000 from TAP to rehabilitate a segment of the Lunken trail often used by bicycle commuters. The City of Cincinnati will provide \$125,000 in matching funds for this federal grant. [Upon receiving the grant](#), Mayor John Cranley said that "Expanding and improving our trail network is critical to making our city a safer, healthier community." The 5-mile Lunken trail was originally constructed in [1973](#) and connecting the trail to downtown Cincinnati has been a community goal for decades.

The ability for governors to opt-out of RTP provides an annual test and demonstration of the support for multi-use trails. So far, results have been encouraging and national, state, and local bicycling and walking advocates have done an excellent job in ensuring that governors understand the importance of these investments for communities. In FY 2013, the first year in which governors could opt out of RTP, only [Florida and Kansas](#) chose to not participate. However, both states [continued to allocate funding](#) to trails. In FY 2014, [only Florida](#) has opted out of RTP, but has [reiterated](#) its commitment to fully fund trails using state funds.

Any project that is eligible for RTP funds is also eligible for [Surface Transportation Program](#) (STP) and TAP funds. [STP](#) is a much larger program that has [extremely broad eligibility](#). STP may be appealing to states or localities that do not have experience with bicycling and walking-specific funding programs or would like to spend more money than they are allocated under those programs.

## Federal Lands Access Program (FLAP)

Federal lands can be excellent places to enjoy the outdoors. Whether national parks or managed lands, many federal lands have taken steps to accommodate and encourage bicycling and walking. According to the [FHWA](#), "Michigan's vehicle-free Mackinac Island, Maine's Acadia National Park carriage roads and the Route of the Hiawatha rail-trail straddling the Montana/Idaho border all demonstrate successful models for accessing public lands without motor vehicles." Other parks have worked to reduce vehicle traffic and promote alternatives. Utah's [Zion National Park](#) allows only certain buses on a major six-mile stretch of road and bicyclists have increased with the reduced congestion and traffic.

Bicycling in particular has proved a popular form of tourism, with a 2013 study by [Travel Oregon](#), the state's tourism commission, found that travel-generated expenditures for Oregon trips with bicycle activity amounted to over \$325 million during 2012.

The prospect of tourism and better land conservation helped MAP-21 created a new federal funding program that aims to improve access to national parks and other federal lands called the [Federal Lands Access Program \(FLAP\)](#). This program distributes approximately \$250 million per year, primarily to western states with large areas of federal lands. Trails

that are on, are adjacent to, or provide access to federal lands can receive funding according to the federal guidelines that established the program. Each state has created its own process for applying for FLAP funds. FLAP specifically provides that its funds can be used for preventative maintenance, rehabilitation, restoration, and reconstruction of transportation facilities, which includes provisions for pedestrians and bicyclists.

Multi-use trails for bicyclists and pedestrians are an excellent way to enjoy the natural beauty of federal lands and can increase interest in and use of federal lands. More information, including a webinar hosted by Advocacy Advance and FHWA, is available on the [Advocacy Advance website](#).



**Left:** A unicyclist braves a Salt Lake City winter that creates tricky road conditions for everyone. Photo courtesy of Laura Seitz/ Deseret News.

## Protected bikeway maintenance

As protected bikeways – such as cycle tracks and buffered bikeways – become more popular in the United States, communities are searching for ways to pay for their construction, while grappling with new challenges to keep them free from debris and snow, and maintain pavement quality. To answer the question of how to pay for construction, we wrote “[How Communities are Paying for Innovative On-Street Bicycle Infrastructure](#)” which cites funding sources currently being used by cities for 175 different projects. The second part, dealing with maintenance, we attempt to address here with stories from several known for their “four-season” weather.



## Salt Lake City, UT: Winter maintenance

When it comes to handling and paying for the winter maintenance of protected bikeways, “no one has all of the answers, we’re just trying to figure out what works,” says Becka Roof, Bicycle/Pedestrian Coordinator in Salt Lake City’s Transportation Division. Finding the resources to maintain the city’s new cycle tracks can be challenging. “The people in the Transportation Division think protected bike lanes are a great idea. But we’re not the ones who do the maintenance. [The ones who do it] think they’re a terrible idea,” Roof says laughing.



But maybe the maintenance crews in Salt Lake City have it relatively easy. The City has the advantage of having very wide rights of way and wide streets. Their one-way protected bike lanes can be 11 feet wide from curb to delineator post. Wide enough to fit a standard snow plow. “That’s a luxury not all community have,” Roof acknowledges. In practice, Salt Lake City uses pick-up trucks and plows to the gutter rather than the curb to avoid damaging the concrete curb, which can “get busted up by snow plow blades.” The City has also had to adjust its treatment of pedestrian crosswalks. Using the pick-up truck instead of the larger plows helps clear the pedestrian crossings.



If the plowing has been experimental, so has the budgetary process. The City has tracked the cost of plowing the protected bikeways to prepare for the next year’s budgetary request. Some of the equipment is bike-specific and requires additional expenses, but much of the needed equipment is not new. “It’s been another learning experience,” says Roof. The facilities are new, so the budgetary process is new as well.

## Syracuse, NY: Connective corridor winter maintenance

“Snow plowing is huge business” in Syracuse, NY, says Transportation Planner Paul Mercurio. “Small changes [like new protected bike lanes] don’t break the bank. It’s a matter how quickly. We have the equipment.” It’s a question of how much of a priority it is that determines how quickly the bike facilities are plowed.

That priority is actually a matter of policy in a snow-savvy city like Syracuse.

1. Steep hills and emergency routes to hospitals
2. Major arterials

**Top:** The need for special attention to pedestrian crosswalks adjacent to protected bikeways. Photo courtesy of Becka Roof. **Middle:** A plowed protected bikeway in Salt Lake City, UT. Photo courtesy of Becka Roof. **Bottom:** A plowed protected bikeway along the Connective Corridor in Syracuse, NY, during winter. Photo courtesy of Max Bloch/ NCC News.

3. Neighborhood streets
4. Dead end streets and cycle tracks

The hierarchy puts bicycle facilities at the bottom because of volumes of traffic, despite at bicycle mode share of 2% according to the US Census Bureau’s American Community Survey.

Like other cities, Syracuse uses pick-up truck plows for its cycle tracks. Mercurio has a piece of advice for communities thinking about building protected bikeways and are worried about maintenance: build a network of connected facilities. They are easier to plow if they are connected to one another. “It’s good planning and good for maintenance,” he says.

### Washington, DC: Mobilizing political will

In 2012, a candidate for a local political office, Kishan Putta, was campaigning for better bus service on 16th Street NW, a busy street in Washington, DC, when he saw several people on bikes using that hectic arterial road instead of the parallel two-way protected bike lane located one block away on 15th Street NW. Putta asked the cyclists why they made that choice and what he heard surprised him: the pavement condition on 15th made it too bumpy to ride on. The deterioration was a result, he learned, of the lane having been a parking lane for years.



**Above:** A local Washington, DC blog, “Tales from the Sharrows,” covered the local election of Kishan Putta, who ran on getting a protected bike lane repaved. Blogger Brian McEntee [wrote](#): “Local political candidates are finally pandering to cyclists. I don’t know if Kishan Putta will actually be able to get the cycle track repaved (I suspect these things are done on a schedule and I don’t know how much influence the local Advisory Neighborhood Commission would have), but that this kind of pandering even exists in DC shows how far we’ve come. Things are changing.”

As he asked around, he heard stories of flat tires from the pavement condition. He heard about parents who wanted to use bikes to drop children off at day-care, but felt they couldn’t. “I had heard from so many people,” he says, he made it a major issue in his campaign for Advisory Neighborhood Commission, Washington, DC’s version of a neighborhood council. And he believed it was a winning issue: “Not only did I have the busiest bus route in the city in my district on 16th Street, I had the most popular bikeway as well.”

Local bicycling advocates agree. “The key ingredient to getting the 15th Street cycle track repaved and maintained was its popularity,” says Shane Farthing, Executive Director of the Washington Area Bicyclist Association (WABA). “Because so many people used the facility, user concerns about deficient conditions bubbled up not only to advocates like WABA, but also to local and citywide elected officials.”

That popularity helps. “In many cases, the advocacy group has to play the middle-man, aggregating and delivering bike-related constituent concerns to officials,” Farthing says. “But in this case, elected officials heard directly and insisted that the transportation department take corrective action.”



**Top:** The repaved cycle track on 15th Street NW, Washington, DC. **Bottom:** Even recently repaved protected bikeways require sweeping. Photo courtesy of Darren Flusche.

Putta and his allies used what he called a “multi-pronged” strategy, including an email campaign, a well-attended public meeting on bicycling in the neighborhood, and harnessing the power of personal stories. The public meeting “kicked off the conversation” with the District Department of Transportation (DDOT). They were interested, but nothing happened at first. Advocates then used a series of news reports, especially the local National Public Radio station, WAMU, to put a spotlight on the issue.<sup>1</sup>

*Power mapping* is the process of identifying who has the power to make the decision you want made and what will persuade them, usually that means determining who that person listens to and persuading them first. In the case of the 15th Street cycle track, advocates used the media to make repaving the bike lane a legitimate issue. Eventually, City Councilmembers voiced their support publicly and urged the Department to prioritize the bike lane.

So where did the money come from? “A few years ago, the City Council allocated \$1,500,000 local capital funds annually for pedestrian and bicycle safety enhancements,” says DDOT Bicycle Program Specialist, Mike Goodno. “I used \$600,000 of this money to repave the cycle track, upgrade the sidewalk ramps, curbs, and gutter.”

Final lessons from the campaign to repave the bike lane? “There is no substitute for polite persistence,” says Putta. “We wouldn’t let them forget about it. We tried everything we could.” And it worked.

## Bicycle lanes and other bicycle infrastructure

### Cincinnati, OH: Bicycle facilities are like any other road facility

In Cincinnati, bicycle lanes are treated like other road facilities and contracted out to private firms for regular sweeping. The bidding process occurs every two years and additional requirements, and costs, for specific bicycle lane sweeping are relatively new. Sweeping costs were reported at between \$55-62 per curb mile of bicycle lanes for sweeping once a month plus an additional sweep in March, April, May, September, and October – peak months for bicycle traffic in a city with slightly lower bicycle commuter rates than average. Funding for street sweeping comes from the stormwater management fund, which is paid for by utility bills to citizens.

<sup>1</sup> [Repairing of D.C.’s Busiest Bike Lanes Wraps Up](#), WAMU National Public Radio – 11.14.2013  
[D.C. Finally Begins Repaving Its Most Popular Bike Lane](#), WAMU, National Public Radio – 9.10.2013  
[Most Popular Bike Lane in DC to be Repaired](#), WAMU, National Public Radio – 6.18.2013

As with maintenance funding, reconstruction funding is also handled in the same way as other road facilities with a wide mix of federal, state, and municipal funding used when a road or bicycle lane is repaved. The City often uses road repaving or rehabilitation as an opportunity to [implement its bicycle plan](#) and create or improve bicycle lanes. For the most part, bicycle lanes are still new facilities and have not reached the 15-30 lifespan prior to reconstruction or shorter term preventative maintenance.

### Long Beach, CA: Diverse local sources for bicycle facility maintenance

The majority of funding for bike project maintenance in Long Beach comes from local sources. At this point, the City primarily worries about future maintenance for bike facilities as their bikeway system is built out. These worries are not as great as with car maintenance because of the lighter loads that bicycles put on asphalt compared to cars, there is even [some suggestion](#) that giving more space for bikes can reduce maintenance costs over time.

The City budgets about \$10-15 million per year for repaving and resurfacing. Funding comes from sources like gas taxes, Proposition C, and Community Development Block Grant (CDBG) funding. A [2008 audit](#) showed that only \$1.3 million per year of Long Beach's streets and sidewalk revenue of between \$8-22 million per year came from the gas tax. [Proposition C](#) was approved by Los Angeles County voters in 1990 with revenues generated by a half-cent sales tax and can be used on transit-related improvements to streets. [CDBG funds](#) come from the Department of Housing and Urban Development (HUD) and not less than 70 percent of CDBG funds must be used for activities that benefit low-and moderate-income persons. This can include the construction of public facilities and improvements, such as streets and sidewalks, and economic development activities.

Each year Long Beach gets funding from the Los Angeles County [Transportation Development Act](#), which is divided between the City of Long Beach's Department of Public Works and Department of Parks, Recreation, and Marine. The Department of Parks, Recreation, and Marine uses a portion of those funds for bike path and sidewalk construction and repairs.

### Arlington, TX: Big plans and broad support for maintenance

In Arlington, Texas, the city is just beginning to put down bicycle facilities, but has an [ambitious plan for a hike and bike system](#). Arlington is one of several cities in Texas that collect a quarter-cent sales and use tax exclusively for the maintenance and rehabilitation of existing public streets, as allowed by [Texas statute](#). This spring, voters in Arlington [approved](#) the renewal of the street maintenance tax until 2019 by a vote of 81% to 19%. This means that bicycle facilities built prior to that vote can now be maintained with those sales tax revenues, which pay for between 90-95% of all street maintenance in the City.

## Other federal funding for maintenance of bicycle and pedestrian facilities

The Federal Transit Administration's State of Good Repair program, created by MAP-21, is the first program dedicated to the repairing and upgrading high capacity rail and bus transit systems. This dedication to high capacity transit includes repairing and replacing passenger stations and terminals and maintenance equipment. The majority of transit passengers begin as pedestrians and in many systems, bicycles can create better access to transit. To learn more about how investments in biking and walking work to support transit check out "[First Mile, Last Mile: How Federal Transit funds can improve access to transit for people who walk and bike.](#)"

## Sidewalk maintenance

Sidewalks provide tremendous value to communities by making walking safer and easier. Even without sidewalks people will walk, leading the [FHWA](#) to recommend that "[g]iven that people walk despite not having facilities—for exercise, going to friends' houses, accessing transit, etc.—it is neither rational nor acceptable to build places that do not have places for people to walk." In addition, sidewalks, like trails, can be more than transportation facilities; they can be "a place to abide, to meet others, and to participate in neighborhood life."<sup>2</sup> The uniqueness of sidewalks as multi-functional facilities should be a great asset for their construction and maintenance.

Sidewalks are integral to successful economic districts, residential housing, and transit. They are low-cost, low maintenance, and provide numerous benefits to individuals and their community. However, sidewalks often face challenges, particularly related to maintenance. Even where sidewalks are recognized for the [integral role](#) to access transit and other activities, the maintenance of sidewalks can be a complicated picture that, in the worst case, leads to disrepair of facilities and community and developer resistance to new sidewalks.

There are several [common objections](#) from property owners when sidewalks are proposed, but this section addresses the objections that involve funding:

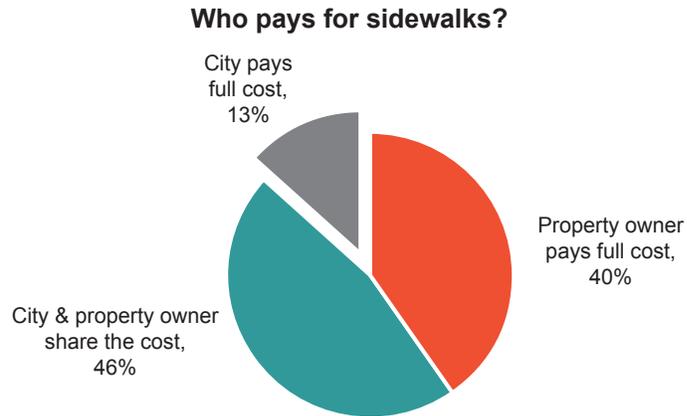
- » Routine sidewalk maintenance
- » Sidewalk repair and reconstruction

As will be discussed later in this report, liability issues play a prominent role in the party that is responsible for sidewalk maintenance. However, resistance to sidewalks from property

<sup>2</sup> Loukaitou-Sideris and Renia Ehrenfeucht, Vibrant Sidewalks in the United States: Reintegrating Walking and a Quintessential Social Realm (Access Magazine Spring 2010), p. 22

owners is most likely when a community assigns either partial or total maintenance responsibility to abutting property owners.

Making abutting property owners responsible for sidewalk maintenance is common, for both routine maintenance and reconstruction. A [2010 survey](#) of 82 cities in 45 states found that 40% of cities require property owners to pay the full cost of repairing sidewalks, 46% share the cost with property owners, and 13% pay the full cost of repairing sidewalks.



Source: 2010 survey of 82 cities in 45 states

It is easy to understand why property owners in the 86% of cities where they must pay all or part of the cost for sidewalk repairs are hesitant to accept this responsibility. Here are some of the basic problems that occur when abutting property owners are responsible for sidewalk maintenance:

POTENTIAL PROBLEM	DESCRIPTION
Creates financial reason for homeowners to resist sidewalks	Sidewalk repairs can regularly be several thousands of dollars, a significant cost for an individual or business.
Creates the appearance of inconsistency	Often there are circumstances where cities pay for sidewalk reconstruction even if the abutting property owner is responsible by ordinance. Common circumstances include: (1) Damage due to street trees that are in the City's right of way or were planted by the City, and (2) Adjacent street reconstruction
Public may see enforcement as arbitrary	Many cities rely upon tips for sidewalk repair requests and lack sidewalk inventories, master plans or prioritization processes. This may result in situations where one neighbor must rebuild their sidewalk at their own expense despite more serious disrepair in other areas.
Enforcement may be politically difficult	Enforcing sidewalk repair ordinances against property owners imposes a significant cost on those property owners, creating a political constituency motivated to reduce sidewalk repair enforcement. It also undermines the value of sidewalks as a shared public resource and makes property owners and the City adversaries rather than partners.

POTENTIAL PROBLEM	DESCRIPTION
Costs may be inequitable	In some instances inequity can arise because of the built environment, such as situations where only one side of a street has sidewalks and the related maintenance costs. In other instances, the cost of sidewalk repairs can negatively affect the credit of property owners through liens on their property or force them into bad financial decisions.

**Trajectory of potential sidewalk disrepair:**



To address the serious problems created by the most common way cities deal with sidewalk maintenance, many cities share costs with property owners or adopt other policies to make their sidewalk repair enforcement more palatable.

- » Cost sharing programs are the most common way that cities ease the burden on property owners. Cost sharing often means that the City will pay **50-75%** of the cost of a sidewalk repair.
- » Use the borrowing ability of the City to provide low cost financing to property owners. In [Princeton, New Jersey](#), the Borough allows homeowners to pay for their sidewalk repair assessments over the life of the Borough’s ten year municipal bond at the same interest rate as the Borough.
- » Assess repairs at the time of property transactions. In [New Jersey](#), a Certificate of Occupancy must be issued whenever a property is sold, and sometimes when a rental property is occupied by a new tenant. Before a Certificate of Occupancy is issued, the building is inspected for safety hazards, including unsafe sidewalks and curbs. Most sidewalk repairs in New Jersey that are initiated by individual property owners occur as a result of this policy. This process helps property owners because the repairs can be paid for with cash generated by the real estate transaction. In [California](#), cities such as Piedmont and Pasadena have adopted point-of-sale programs similar to the Certificate of Occupancy program in New Jersey.
- » Equity-based assistance payments. The Portland DOT has an application for those making less than \$35,000 per year to have repair costs covered by the state.

**Trajectory of potential sidewalk repair:**



Damage suitable for inclusion on the Sidewalk Repair Program schedule. Photos courtesy of the City of Long Beach.

**Long Beach, CA: City takes responsibility for sidewalk repairs**

The City of Long Beach, CA is a Silver Level [Walk Friendly Community](#), with its sidewalk standards, sidewalk availability, and repair program cited as reasons for the award. Despite these proactive policies, the City has still been sued regarding its compliance with the American Disabilities Act. In response to at least one recent suit, City Attorney Charles Parkin was able to use the City’s plan and process to respond to claims. However, as in most transportation funding discussions, [he said](#) “[i]t really is an allocation of resources issue.”

Since the mid-1990s, the City of Long Beach has been allocating at least \$1 million per year to its [Sidewalk Repair Program](#) and currently spends about \$3-4 million per year, primarily for residential roadways. In 2000, the City completed a sidewalk inventory of damaged sidewalks and curbs, and since that time the Engineering Bureau of the Public Works Department and each of the City’s 9 Council Districts create a prioritized list for priority repairs. Citizens can also report sidewalk and curb damage to the City for inclusion on the list for scheduled repair, but repairs will only be scheduled if:

- » The sidewalk has a vertical separation of more than ½ inch,
- » The sidewalk has loose or spalled concrete,
- » The sidewalk has reverse sloped concrete causing drainage problems to private property,
- » The curb has a major joint displacement causing a trip hazard, or
- » The curb has ponding of water beyond the gutter on a regular basis.

## Los Angeles, CA and Atlanta, GA: A tale of two (large and sprawling) cities

Both Los Angeles and Atlanta are large, sprawling, cities facing enormous backlogs of sidewalk maintenance. In Los Angeles, there are an estimated 4,700 miles of sidewalks in need of repair; the City faces an estimated \$4-6 million per year in liability for sidewalk injury lawsuits; and it may cost between \$1.2-1.5 billion to repair its sidewalk network.<sup>3</sup> In Atlanta, 395 miles of sidewalks are in disrepair; the city has recently had to pay out \$1 million and \$3 million for liability lawsuits stemming from sidewalk injuries; and it may cost \$152 million to repair its sidewalk network.<sup>4</sup>

Faced with these massive maintenance issues, caused by long-term neglect or lack of enforcement of city policies, both cities are now taking steps to address these issues:

LOS ANGELES	ATLANTA
Los Angeles has <a href="#">eliminated a permit fee</a> that created a disincentive for property owners to fix their own sidewalks	Atlanta created a sidewalk trust fund in 2012 because payments made by property owners for sidewalk repairs made by the City were deposited in the general fund. By June 2012, after the creation of the sidewalk trust fund, \$1.5 million had been deposited in the fund.
Los Angeles council members, such as Mitch Englander and Joe Buscaino, have considered multiple potential funding sources, include a <a href="#">\$4.5 billion bond</a> measure and the creation of <a href="#">beautification assessment districts</a>	Atlanta has increased funding for sidewalk maintenance dramatically, from \$42,000 in FY2010 to \$860,000 in FY 2013; but has yet to secure a long-term funding strategy.
Los Angeles City Council has approved \$27 million for sidewalk fixes around city building and sites	Atlanta City Council members have considered multiple potential funding sources, including a <a href="#">\$250 million bond</a> measure which would provide \$75 million for sidewalks and curbs in its current form.

Both Los Angeles and Atlanta have pedestrian advocacy groups contributing to increased attention and funding for sidewalk maintenance. In Los Angeles, [LA Walks](#) is encouraging citizens to participate in an online poll to make sidewalk funding an important part of LA's potential street bond and share good and bad sidewalk conditions using the hashtag #LAsidewalks. In Atlanta, [PEDS](#) has been a major part of the City Council's Sidewalk Task Force and currently has two campaigns for Safe Routes to Transit and Safe Sidewalks.

3 Gerald Hicks, League of California Cities, "But It's Your Sidewalk! Sidewalk Repair and Liability" May 8, 2014.  
 4 Carrillo et al., Georgia Institute of Technology, "The Costs of Owning and Operating Sidewalks: A Strategy for the City of Atlanta" Dec. 12, 2012.

## How are cities funding sidewalk maintenance programs?

Last year the FHWA released "A Guide for Maintaining Pedestrian Facilities for Enhanced Safety." This excellent report discusses maintenance issues, techniques, and funding. Through a survey process, it identified the following funding sources as ways that communities were paying for sidewalk maintenance.

FUNDING SOURCE	CITIES
Bonds	Boulder, CO; Lee's Summit, MO; and Durham, NC were identified in the <a href="#">FHWA Research Report</a> that accompanied the Guide as communities where voter-approved bonds contributed significant amounts to those communities' sidewalk maintenance and repair budgets.
Community-wide Assessments	Ithaca, NY was identified for its yearly assessment of between \$70 and \$140 to be used for sidewalk repair and construction.
Coordination with other improvements	Ironwood, MO; and Davidson, NC were identified in the <a href="#">FHWA Research Report</a> that accompanied the Guide as communities that were using coordination to facilitate and fund sidewalk improvements. In Ironwood, the city coordinated sidewalk replacement with water and sewer line replacement. In Davidson, the city has had success informally coordinating with developers.
Enforcement Camera Revenues	Fort Worth, TX was identified for using revenue from red light cameras for sidewalk construction and maintenance. Twenty five percent of camera revenues go to sidewalk maintenance
Federal Funds	Numerous federal programs were identified that can and are commonly used for sidewalk maintenance. These programs include the Safe Routes to School Program and Transportation Enhancements, both of which are now part of the Transportation Alternatives Program under MAP-21. Another common and ongoing source of federal funds is Community Development Block Grants, administered by the Department of Housing and Urban Development. In addition, any communities took advantage of the American Recovery and Reinvestment Act of 2009 by repairing sidewalks.
Gas tax	North Carolina, Arizona, Oregon, and Washington were identified in the <a href="#">FHWA Research Report</a> that accompanied the Guide as states that distribute funds to local governments according to formula and allow local governments to use those distributions on sidewalk maintenance.
General fund	This was identified as a common source of funding sidewalk repairs across many communities. It was found that cities often separate sidewalk repair funding from road repair funding, making those programs compete for funding and subject to shifting priorities.
Homeowners Associations	The Columbia Association of Columbia, MD was identified for assessing an annual fee as part of offering comprehensive community services to members of its homeowners association, including maintenance for 93 miles of path and walkways.
Improvement districts	Sidewalk maintenance is a <a href="#">common activity of Business Improvement Districts (BIDs)</a> and other Improvement Districts. Pioneering BIDs were formed in urban areas with shrinking commercial centers to provide services that would allow those commercial centers to compete with newer developments like malls, which provided controlled pedestrian environments.

FUNDING SOURCE	CITIES
Property Owner Assessment	Many communities were identified as having property owner assessment programs of varying effectiveness , including Madison, WI; Minneapolis, MN; Seattle, WA; Hoboken, NJ; Ithaca, NY; and Boulder, CO. According to the <a href="#">FHWA Research Report</a> , many communities do not follow through with assessments due to administrative and political considerations. Madison was highlighted for having an active assessment program, where property owners are responsible for 100% of new sidewalk installation and half the cost of sidewalk replacement.
Sales tax (often by way of General fund)	Fort Collins, CO was identified in the <a href="#">FHWA Research Report</a> that accompanied the Guide for using 33% of its sales tax revenues for street maintenance and repair.
Sidewalk millage tax	Ann Arbor, MI was identified as a community with a millage (property) tax that generated \$560,000 or more per year for sidewalk repair and replacement. The tax was approved by over 60% of voters.
State local aid funds	Wisconsin, Virginia, Arizona, Minnesota, Massachusetts, and Maine were identified in the <a href="#">FHWA Research Report</a> that accompanied the Guide as states that provided local aid funding for sidewalk repair in certain circumstances.
Tax Increment Financing	Fort Worth, TX was identified as using tax increment financing (TIF) for pedestrian facility maintenance in commercial areas. TIF is a method of creating debt backed by future increases in tax revenue due to investments in infrastructure such as sidewalks.
Utility Fees	Corvallis, OR and Cheney, WA were identified as communities that include a sidewalk maintenance fee in municipal utility charges. In Corvallis, the fee is included in a City Services bill that includes water and sewage. In Cheney, the fee is included in an electrical and natural gas bill.
Vehicle license, wheel tax, and parking fees	Seattle, WA; and Arizona were identified for funding sidewalk repairs and improvements with these vehicle-related charges. In Seattle, vehicle license fees contribute to the City's ADA program. In Arizona, the Highway User Revenue Fund receives funding from license fees and is distributed to cities and counties.

## Sidewalk liability: A major source of confusion and neglect

Tort liability encompasses the laws that decide who is responsible and must pay when someone is injured. Generally, state statutes and local ordinances will assign responsibility to a particular party. Case law, created by the decisions of judges, interprets those statutes and ordinances and applies them to the facts in individual cases – ideally creating clear and reasonable rules that give governments and individuals guidance in how to avoid liability for injuries.

Unfortunately, statute, ordinances, and case law regarding sidewalk liability often do not provide clear rules for governments and individuals. Rather than taking positive steps to maintain sidewalks to avoid injuries, and therefore avoid liability, the confusion created by sidewalk tort liability has led governments and individuals to neglect sidewalk maintenance in the hopes that no action will make another party responsible for inevitable injuries that result from lack of maintenance.

## When in doubt, blame England

Neglect of sidewalk maintenance can be traced back to the early common law rule in many states, which found that abutting property owners were not liable for the condition of a public sidewalk without some positive action creating an unsafe condition or attempting maintenance or repair.<sup>5</sup> The incentive created by this rule was for property owners to do no maintenance.

As public goods, it seems reasonable that governments might be liable for the condition of public sidewalks. However, the common law rule was that the government had sovereign immunity, stemming from the [English principle](#) that the monarch can do no wrong. The effect of this was that neither abutting property owners nor governments were responsible for sidewalk maintenance under common law rules. No party had an incentive to maintain sidewalks and the most economically reasonable action was for both parties to avoid any positive actions that would show that they took responsibility for public sidewalks. This was a formula for neglect and state laws, local ordinances, and case law have been working from this premise to create systems that promote competent maintenance and not neglect.

## How do states deal with sidewalk liability today?

Communities can rely upon sidewalk liability laws, rather than political consensus, to manage the relationship between property owners and municipalities regarding sidewalk repairs. In most states, a state law or numerous state laws will provide the context for how communities can allocate responsibility between their government and property owners. By choosing which party is responsible, and the types of actions that a party can be responsible for, these rules can create important incentives for property owners and communities.

For example, in Pennsylvania municipalities are only liable for defects in design or construction of sidewalks, which gives them an incentive to have sidewalk design and construction done by private developers in order to avoid the possibility of liability. This may contribute to municipal governments in Pennsylvania being less proactive in creating and maintaining sidewalks. The table below shows some ways in how states have allocated responsibility between municipalities and property owners according to liability rules.

<sup>5</sup> Burke, Donald F. Jr., Esq. (2012) "Slipping Through the Cracks: The Shoddy State of New Jersey Sidewalk Liability Law Cries Out For Repair," Seton Hall Legislative Journal: Vol. 36: Iss. 2, Article 9 p. 226. Available at: <http://scholarship.shu.edu/shlj/vol36/iss2/9>

STATE	RULE
Pennsylvania	Municipality is liable for defect in design or construction, if municipality did design or construction. Abutting owner liable for failure to maintain or repair.
New Jersey	Commercial owners are responsible, but non-commercial are not. Residential owners are only responsible to local government if the local government has made them responsible for snow clearing or other routine maintenance.
<a href="#">North Carolina</a>	Contributory negligence makes liability unlikely. Property owners are responsible for cost, but cities perform reconstruction and maintenance work.
<a href="#">New Hampshire</a>	Municipalities are responsible by statute and case law. Municipalities have comprehensive and extensive maintenance programs.
<a href="#">California</a>	Adjacent property owner is responsible for costs. Municipalities responsible for providing notice to property owners and can be generally liable. Recent drift, post-2004, to ordinances where property owner can be generally liable. Summary is that it's really case-by-case.
<a href="#">Wisconsin</a>	Municipalities are responsible by statute and by case law. Municipalities can impose cost, but not liability on property owners.

Shifting liability between property owners and different governments creates a complicated picture of sidewalk responsibility. Often this leads to confusion regarding who is responsible and sidewalks falling into disrepair because responsible parties believe that others are responsible. When property owners are responsible, governments can find it politically difficult to enforce ordinances that require routine maintenance activities, such as snow clearing, or reconstruction activities.

The table below highlights some of the ways in which liability can be shifted between parties. When thinking of sidewalk repair ordinances, communities should consider how they are shifting liability and what incentives they are giving to potentially liable parties to do, or not do, certain maintenance-related

PARTIES THAT CAN BE LIABLE FOR INJURIES	PARTIES THAT CAN BE LIABLE FOR MAINTENANCE	REASONS THAT LIABILITY CAN BECOME MORE LIKELY	REASONS THAT LIABILITY CAN BECOME LESS LIKELY
State governments	State governments	Clear ownership of something that creates a maintenance issue	Sovereign immunity for a government
Local municipal governments	Local municipal governments	Design and construction problems that create maintenance problems	State laws or local ordinances that effectively assign liability to other parties
Property Owners	Property Owners	Commercial use of property that invites others onto property	Reasonable maintenance efforts and/or plans
Homeowners' Associations	Homeowners' Associations	Actions that create maintenance problems	Contributory negligence or other general liability rules that make recovery for injuries difficult
Business Improvement Districts	Business Improvement Districts	Attempted maintenance	
Nobody, absent some other action		Lack of attempted maintenance or maintenance plan	

## Americans with Disabilities Act provides new incentives for communities and property owners

### *Barden v. Sacramento*

In 2002, the Ninth Circuit Court of Appeal ruled that city sidewalks were covered by the Americans with Disabilities Act and must be accessible in *Barden v. the City of Sacramento*. This created a precedent that public entities must address barriers to sidewalk use such as missing or unsafe curb cuts and barriers that block access along the length of sidewalks. The [US Solicitor General at the time](#) urged the Supreme Court to reject the case, recognizing that “[p]roviding and upkeeping a network of walkways for pedestrians to get around town is a quintessential, not to mention ages old, government service.”

When the Supreme Court rejected the appeal and the City entered into a settlement agreement (where it would spend 20% of its transportation funds for sidewalk accessibility improvements for 30 years), it prompted a reconsideration of the municipal role in sidewalk maintenance. In the ensuing decade, municipal governments and the [Department of Justice](#) have decided upon various standards for transition plans and other policies so that municipal governments can fulfill their duties. Private litigants have also prompted re-examinations of sidewalk maintenance policies that have led to impassable and inaccessible public facilities by following the basic allegation of *Barden* – that the ADA was violated because the City allowed sidewalks to fall into disrepair.

There has been some rollback of the decision in *Barden*. In *Barden*, sidewalks were determined to be “programs” under the ADA. This determination meant that sidewalks needed to be maintained to be immediately accessible. More recent decisions, including those by the United States Access Board, have taken the position that sidewalks are “facilities.” As “facilities,” only newly constructed or altered sidewalks must be made accessible. Jurisdictions in the [Ninth Circuit](#) – Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington – are still bound by the *Barden* decision, but there is [some suggestion](#) that other jurisdictions may not have such a pressing incentive from the ADA.

## Conclusion

There are many reasons for a community to pay for the maintenance of its bicycling and walking facilities, including liability, popular demand, and the economic impact of a well-maintained system. There are various ways to pay for it, including local and federal sources. The stories in this report illustrate one consistent thread: communities will build and maintain their active transportation infrastructure when there is popular support and political will to do it.

## Acknowledgements

Simon Blenski, Bicycle Planner  
Public Works Department, City of Minneapolis, MN

Amy Dingle, Director of Outdoor Connections  
Five Rivers Metro Parks, Dayton, OH

Shane Farthing, Executive Director  
Washington Area Bicyclist Association, Washington, DC

Sharon Gates, Administrative Analyst  
Department of Parks, Recreation, and Marine, City of Long Beach, CA

Mike Goodno, Bicycle Program Specialist  
District of Columbia Department of Transportation, Washington, DC

Melissa McVay, Senior City Planner  
Department of Transportation and Engineering, City of Cincinnati, OH

Paul Salvatore Mercurio, Transportation Planner  
Department of Public Works, City of Syracuse, NY

Phil Pugliese, Director  
Active Living and Transportation Network, Chattanooga, TN

Kishan Putta  
Washington, DC

Becka Roolf, Bicycle/Pedestrian Coordinator  
Transportation Division, Community and Economic Development, Salt Lake City, UT

Arthur Ross, Pedestrian-Bicycle Coordinator  
Traffic Engineering Division, City of Madison, WI

Derek Wieske, Assistant City Engineer  
City of Long Beach, CA

Andy Williamson, Great Lakes Region Director  
International Mountain Bicycling Association

Alicia Winkelblech, Planning Manager  
Long Rang Community Development and Planning, City of Arlington, TX