

**City of Portage**  
**Common Council Committee of the Whole Meeting**  
**(This may constitute a meeting of the Park and Recreation Board as a**  
**quorum of members may be present, but no business of the Board will be**  
**taken up.)**  
**Council Chambers of City Municipal Building**  
**115 West Pleasant Street, Portage WI**  
**Tuesday, September 30, 2014, 7:00 p.m.**  
**Agenda**

1. Call to Order
2. Roll Call
3. Discussion and possible recommendation of proposed P.A.T.H.S.  
(Portage Area Trails and Heritage System) program
4. Adjournment

MEMO

TO: Mayor Tierney  
FROM: Shawn Murphy, City Administrator   
DATE: 7/24/14  
Re: Proposed PATHS Program Funding

As you know, City staff (City Attorney, Engineering Dept., Finance, Parks & Recreation and Business Development & Planning) has been working to determine the feasibility of implementing a viable funding mechanism in response to your proposal to move ahead on constructing the PATHS (Portage Area Trails Heritage System) map of trails, bike lanes and sidewalks in the City of Portage. This is a brief summary of the evaluation and conclusion/recommendations.

Using the PATHS Master Plan map, adopted by Plan Commission earlier this year, staff evaluated the impact of fully designing and constructing the remaining proposed trails (11 miles), bike lanes (25 miles) and sidewalks (1.5 miles) and subsequently maintaining the completed facility consisting of 14.6 miles of paved trails, 5.7 miles of un-paved trails, 32.3 miles of bike lanes and 12.7 miles of concrete sidewalks (65.3 miles total). A rough initial cost estimate of \$2.32 million was given to fully complete the installation in 2014 dollars. However, that estimate did not include engineering/design costs, legal costs, or other special construction features (retaining walls, grading, street crossings, etc.). To develop a truer actual cost to finish the entire trail system Bob and Erin conducted a more in-depth analysis of lying out and constructing the proposed trail system in the southwest section of the City (see attached map of Loop 1).

From their more comprehensive analysis, the trail route in this Loop was evaluated to determine if additional construction features were needed (retaining walls, cutting/filling, street crossing, etc.). Additionally the route was analyzed in terms of impact on adjacent properties and geographical features (streets, river, drainage, use of public ROW vs private property, permits needed, etc.). The Loop 1 section includes 1.5 miles of paved trail (new) and 3.6 miles of new bike lane designations. Admittedly, this section proved to have several unique features that may not be present in other areas of the City (permitting and design considerations along the Wisconsin River, for example) but it does have other considerations that are not unique but were not initially considered when developing the initial construction cost estimate (street crossing, grading, retaining walls, etc.). As a result, the cost estimate for this section increased from approximately \$136,000 to \$396,600 (estimated). Crudely

interpolating this city-wide would result in an estimated total construction cost in excess of \$3,000,000.

Additionally, issues of impacts to adjacent properties and features as a result of the construction were discussed. Again, using the analysis of Loop 1 trail layout, several construction related challenges were encountered that did not impact cost but had a significant impact on traffic, property rights, etc. The designation of bike lanes on established streets in Loop 1 (3.56 miles) would eliminate all public parking on both sides of Cook Street (Pierce to MacFarlane) and W Wisconsin (Macfarlane to Cemetery). Also a significant number of public and private trees would need to be removed to provide sufficient area to construct and maintain the trail.

Maintenance of the trail was also discussed. Dan contacted several agencies who own and maintain public multi-use trails and observed that maintenance varies but has been recently (and significantly reduced) due to levy limits. Maintenance includes, mowing, tree/brush trimming & removal, crack filling, repairs, etc. A rough average of the agencies contacted determined that annual maintenance cost per mile of trail is \$1550. Using this average, the cost to annually maintain the completed 65 mile trail system would be \$100,750. It was noted that 28 of the 65 miles are already in place so the additional cost would be approximately \$57,350. Dan noted that due to levy limit restrictions some agencies have turned to use of volunteer assistance and user fees with mixed results; however they are not a stable, reliable source of assistance or revenue. As a result of limited funding and budget prioritizations, trail maintenance is very likely to get lower priority than other areas of the budget and therefore, deferred.

Jesse reviewed the legal implications of funding options available for a trail system. Specifically, he evaluated a utility structure, special assessment, utility district and general obligation debt. In summary, the City can legally create a utility (DOR confirms that such a utility would not result in a corresponding reduction to our Tax Levy), however the funding mechanism for the utility is problematic. A simple one uniform fee applied to every utility customer would not stand up to a constitutional challenge. Additionally, additional precautions would be needed to insure that any funding from a utility would NOT be used to finance any general fund expenditures. Special assessment can be used, however, only for properties that have no sidewalk or trail currently. Use of special assessment against an abutting property for a proposed trail in which the property already has a sidewalk has been successfully challenged in court. A utility district, separate from the City, could be established which would have the power to levy a special district tax on properties within the district (similar to Fire or Sewer districts). While this potentially could offer some relief from property tax levy limits, it would

require the establishment of a separate governmental entity (i.e., "Portage Trail District") that would adopt an annual budget and impose a levy on taxable properties separate from the Council.

Some discussion occurred relative to political impact and strictly prioritizing needs. While it was felt that the completion of the trails system would be a huge asset to the city, attract tourism, add to the quality of life, be a great amenity for business retention/attraction, etc.; it was more strongly noted that we have storm sewers collapsing, road surfaces in advanced stages of deterioration, insufficient staff to maintain existing facilities, etc. Essentially, it was concluded that proposing this major public amenity without adequately addressing the more basic, but essential/critical functions of local government would have a significant adverse impact on our ability to address these functions and therefore be a mistake without ability or access to significant additional, ongoing funding.

**Conclusion:**

Unfortunately due to state mandated restrictions on funding/revenue abilities imposed on local governments, it was our conclusion and recommendation that undertaking this program would divert additional public tax funded allocations away from current City infrastructure maintenance and replacement which is currently under-supported.

Staff encourages continued engagement and partnership with other public/private agencies where possible to continue to work toward completion of the PATHS system. Further exploration of grants, donations, etc. with city participation to the extent possible is strongly encouraged. For example:

- The Columbia County Silent Sports coalition has been working on designation of a county-wide trail system. Potential exists to partner with this group and explore more funding opportunities.
- The City completed a Master Plan for Veteran's Memorial Field complex in which a trail connection between the Fox and Wisconsin Rivers was promoted in conjunction with the Wauona Trail re-alignment, emphasizing the historical significance of that route to Portage. This is also a potentially important connection the Fox Wisconsin Heritage Parkway, Ice Age Trails Association, Colonial Dames of American and the Daughters of American Revolution organizations. As a result, exploration of partnerships with these entities exists to participate on that trail segment.

- Divine Savior Hospital has expressed a strong interest and pledge funding towards the further development and completion of the trail system in Portage (the completion of the trail segment through Gunderson Park in 2013 was a direct result of their interest and participation).

These are some of the numerous opportunities that can be explored and pursued for future and ongoing partnerships toward the goal of completing the PATHS construction in a more limited, piecemeal fashion. Incorporating PATHS construction elements into annual street reconstruction projects, where applicable would also provide a means to construct segments of the trail system utilizing existing funding and staffing resources.

Adopting this method of approach would provide incremental completion of the PATHS program over the course of 10-15 years. Developing a comprehensive, total construction cost estimate without conducting a more detailed analysis of each section of the City in which the PATHS program would be constructed would not be reliable. While the total cost will be well in excess of \$3,000,000 over that time period, the City's ability to both construct the entire trail system and subsequently maintain it will be greatly enhanced.

Attachments: Loop 1 Map

Memo dated 7/10/14 from J. Spankowski

Cc: D. Kremer  
J. Mohr  
B. Redelings  
E. Salmon  
S. Sobiek  
J. Spankowski

## MEMO

DATE: July 25, 2014  
TO: Shawn Murphy, City Administrator  
FROM: Jesse Spankowski, City Attorney  
SUBJECT: Sidewalk Utility

The purpose of this memo is to provide a legal opinion regarding the City's options for the creation and funding of a sidewalk utility for the PATHS program.

### *Creation of Sidewalk Utility*

It is my opinion that the City may choose to establish a sidewalk utility. Wis. Stat. §66.0621 contains a broad definition of public utility, which includes transportation related facilities as well as "any other necessary public works projects that are undertaken by the municipality." In addition, the City's Statutory Home Rule Powers provide the City with the power to create utilities that constitute a valid public purpose. In this case, the establishment of the PATHS program would constitute a public purpose because it is an action for the health, welfare and commercial benefit of the City. In contrast to utilities related to furnishing heat, light, water, or power, a sidewalk utility would not be established or governed pursuant to Wis. Stat. §196, and therefore is not subject to regulation by the Public Service Commission. In sum, I do not believe there is any statute or caselaw that would be contrary to the City establishing a separate sidewalk utility.

### *Funding of Sidewalk Utility*

By far the harder issue is determining appropriate funding sources for a sidewalk utility. In general, utilities are funded by one or more of the following options: 1) Special Assessments, 2) Special Charges, 3) Regulatory Fees, 4) Excise Fees, and 5) User Fees. For this type of utility, special charges, regulatory fees and excise fees are not applicable so I will not analyze those options in this memo.

### *User Fees*

In this case, it is proposed that the sidewalk utility be funded by a fee that is charged on an equal basis to each parcel within the City. This fee would be set up like the proposed Storm Water Utility (SWU) fee in that it will be strictly based on the expenses attributable to the utility. This type of user fee is based upon the municipality acting within its governmental capacity as it is not operated for profit. The SWU is a user fee system because storm water is generated by every property owner within the city, and the SWU divides that storm water usage on an ERU basis. The fee rate system in the SWU is therefore logically connected to the actual usage of each property. However, unlike the storm water fee, it would be very difficult to draw the conclusion that every property owner within the city would be a user of the sidewalk utility funded projects. I located one exception to actual usage being a requirement of a user fee, and that was with respect to a fire protection charge, in which a municipality includes an extra monthly charge to each property for providing fire protection services. In this case, the Court concluded that the

availability of the fire protection service was enough to justify the additional fee, and that water does not actually need to be used on a particular property to justify the charge. *City of River Falls v. St. Bridget's Catholic Church*, 182 Wis. 2d. 436, 443 (Ct. App. 1994). However, in that case, the municipality was authorized under Wis. Stat. §196.03(3)(b) to collect this fee, and the Court appeared to give significant weight to the statutory authorization. With the sidewalk utility, there is no such statutory authorization, so I believe the fire protection charge is distinguished from a sidewalk utility charge.

Therefore, in this scenario, the sidewalk utility user fee begins to look more like a tax than a fee. If it is concluded that the sidewalk utility fee is actually a tax, then it would run the risk of violating the uniformity clause of the Constitution because it would be applied evenly to each property regardless of the value of the property.

For the above reasons, I do not believe the City may properly utilize a user fee per property to fund the sidewalk utility. A variation on a user fee system would be requiring a user to purchase a permit to use the trails, which would not cause the legal issues raised above, but would be very difficult to administer and enforce.

#### Special Assessments

Another option for funding a sidewalk utility would be through the use of special assessments. The City has long used special assessments for other sidewalk related projects, and the process would be substantially the same for using special assessments within a sidewalk utility. However, the major legal issue is related to whether the PATHS program is a valid use of the special assessment power. To be valid, the special assessment must be for a municipal project that confers a special benefit to the assessed property. With respect to PATHS, there would be concern that the project is a general, community wide project, as opposed to a local improvement. For example, if a subject property already has a sidewalk, it may be suspect to specially assess the property for installation of an additional sidewalk or trail on the property. In addition, a recent court decision found that a municipality's special assessment on a property for construction of a recreational trail was impermissible because the trail was a general improvement that did not confer a special benefit to the assessed property. *Hildebrand v. Town of Menasha*, 2011 WI App 83, 334. In that case, the analysis was very fact specific to the intent of the Town in creating the recreational trail, and the Court distinguished the Town's trail system from the sidewalk system. This included the maintenance of the trail, the rules of the trail, advertisement of the trail, and the trail's purpose within a larger regional trail system.

Based on this analysis it may be possible to do some of the funding of the sidewalk utility through special assessments, but care would have to be taken to ensure the special assessments are related to a benefit conferred on the assessed property. The City would also need to determine whether the PATHS system would fall under the "Streets" department or the "Parks" department as well as other items related to maintenance of the PATHS system. In areas where the sidewalk would be analogous to initial sidewalk installations on properties special assessments could very well be a funding source.

#### Utility District

Pursuant to Wis. Stat. §66.0827, a 3<sup>rd</sup> or 4<sup>th</sup> class City may establish utility districts, and may direct that the cost of utility district highways, sewers, *sidewalks*, street lighting and water for fire protection not paid for by special assessment be paid out of the district fund. Further, Wis. Stat. §66.0827(2) provides that the fund of each utility district shall be provided by taxation of the property in the district. This option would be in the form of a special tax, and any funds received would be held in a segregated utility district fund. It requires a ¾ vote of the all the members of the governing body to establish a utility district. At this point, I am uncertain if a utility district would allow the municipality to exceed its levy limits, or if any taxation within the utility district would be subject to the levy limit.

Summary

Funding a sidewalk utility presents legal challenges, and I would advise against implementing a fee charged against every property owner on an equal basis. In my opinion, this would strongly resemble a tax, and as such would be subject to Constitutional challenges. However, there are some other options that may be available, and there is no restriction against using multiple funding sources for a utility.

Please let me know if you have follow-up questions, or would like to discuss this matter further.

## MEMO

TO: Common Council  
FROM: Mayor Tierney  
DATE: 9/26/14  
Re: Proposed PATHS Program

Based upon staff evaluation (as summarized in Memo by Shawn Murphy dated 7/25/14) I wish to propose a PATHS funding program to get this decades old initiative launched with a stable funding source and a feasible completion projection. The City has analyzed, proposed, discussed and attempted a PATHS program since the 1990's with limited success. The 2008 Comprehensive Plan cited the PATHS program as a transportation goal to implement. Divine Savior Hospital expressed a willingness to partner with the City to promote and financially assist with the development of the PATHS program. The DOT requires the provision of pedestrian facilities in the reconstruction of roadways when federal funding is utilized. Obesity rates in this country are at their all-time highest. The time is right to commit to this program.

The City faces several challenges in funding this program, financially, legally and operationally. Therefore, I am proposing consideration of a special use taxing district to provide adequate and stable funding for this program that will allow the City to borrow funds for the construction of the system without such debt counting against our general fund borrowing capacity and levy limits. In addition, the establishment of the PATHS funding mechanism will allow the City to demonstrate a structural commitment to funding and place itself in a better position for grant opportunities, donations, and other exploration of other complimentary sources of funding.

Other possible sources of funding include exploration of a city vehicle registration fee or Wheel Tax. Wisconsin law allows a town, village, city or county to collect an annual vehicle registration fee (wheel tax) in addition to the regular annual registration fee paid for a vehicle. All vehicles with automobile registration or truck registration at 8,000 lbs. or less kept in the municipality or county are subject to the wheel tax. This includes most special license plates with automobile or truck registration. State law does not specify the amount of the wheel tax. However, the municipality or county must use all revenue from the wheel tax for transportation related purposes. Currently the DOT collects the following wheel taxes:

- City of Beloit (\$10)
- City of Janesville (\$10)
- City of Milwaukee (\$20)
- St. Croix County (\$10)

Grant funding is also possible through the following state and federally funded programs:

- Transportation Enhancement (TE)

Bicycle & Pedestrian Facilities Program (BPFP)  
Safe Routes to School Program (SRTS)  
Recreation Trail Aids (RTA)

Enclosed is a proposed PATHS map and background analysis. This will be presented and discussed in more detail at the Committee of the Whole.

Cc: S. Murphy  
D. Kremer  
J. Mohr  
B. Redelings  
E. Salmon  
S. Sobiek  
J. Spankowski



# PATHS MASTER PLAN

CITY OF PORTAGE

COLUMBIA COUNTY, WI

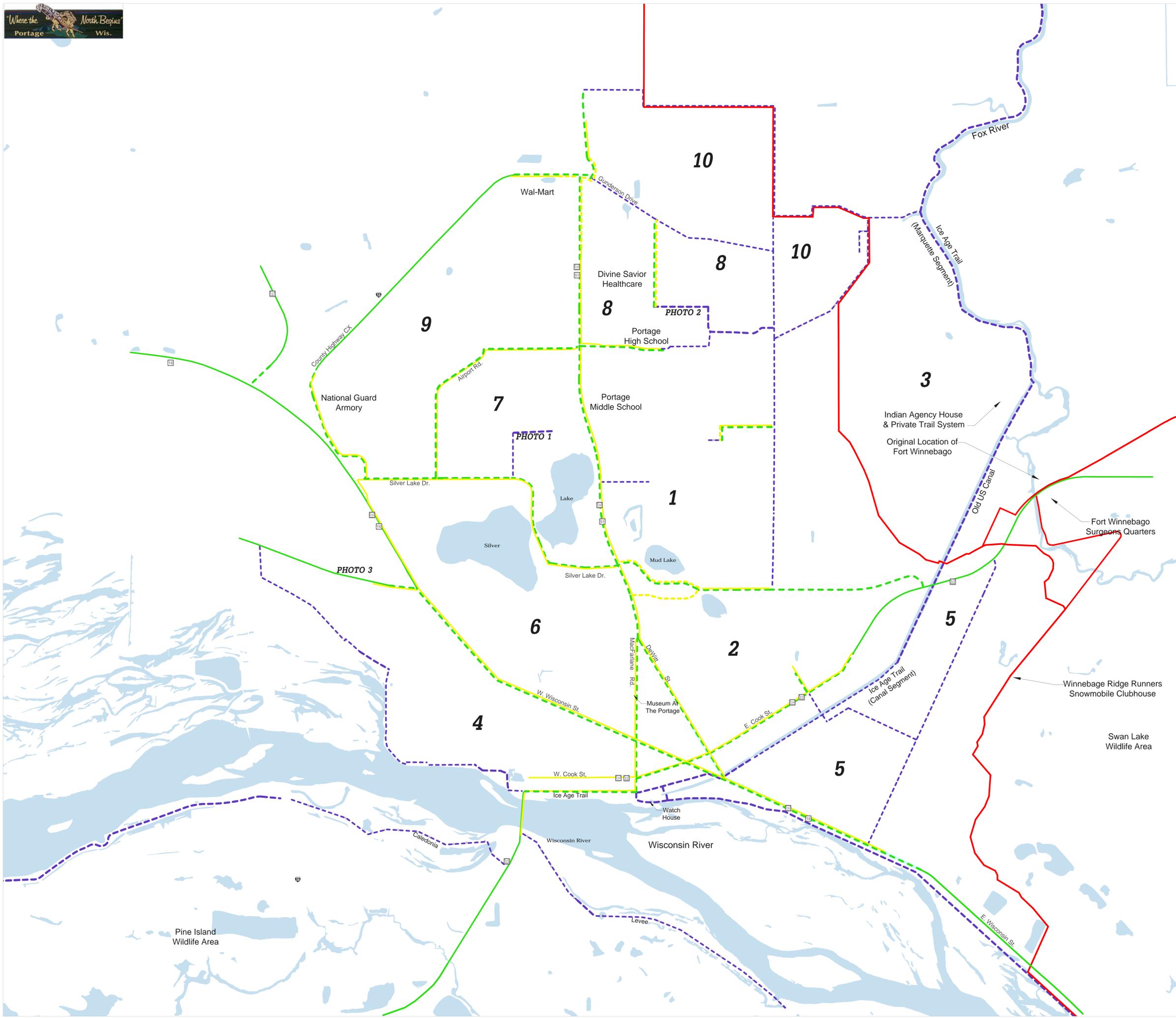
September 26, 2014

DRAFT



## LEGEND

	Existing and Proposed Multi-Use Trails (E is on Easement)
	Existing Bike Lane
	Existing Sidewalks as Connector
	Snowmobile Trail
	Proposed Bike Lane
	Proposed Sidewalks as Connector



#1 - PAVED TRAIL



#2 - UNPAVED TRAIL



#3 - RURAL BIKE LANES



EXAMPLE OF URBAN BIKE LANES



Pine Island Wildlife Area

Swan Lake Wildlife Area

Wisconsin River

Wisconsin River

Caledonia

Levee

Watch House

Museum At The Portage

Delving St.

MacFarlane Rd.

Silver Lake Dr.

Silver Lake

Lake

PHOTO 1

Portage Middle School

PHOTO 2

Portage High School

Divine Savior Healthcare

Gunderson Drive

Wal-Mart

9

7

1

6

4

2

5

5

3

8

10

10

Fox River

(Marquette Segment)

Ice Age Trail

Indian Agency House & Private Trail System

Original Location of Fort Winnebago

Old US Canal

Ice Age Trail (Canal Segment)

W. Wisconsin St.

E. Cook St.

W. Cook St.

Ice Age Trail

E. Wisconsin St.

Fort Winnebago Surgeons Quarters

Winnebago Ridge Runners Snowmobile Clubhouse

Swan Lake Wildlife Area

National Guard Armory

County Highway CX

Airport Rd.

PHOTO 3

PHOTO 3