

**ATTORNEY GENERAL'S
VERMONT HEALTHY WEIGHT INITIATIVE**

**REPORT OF THE LAND USE WORKING GROUP
TO
ATTORNEY GENERAL WILLIAM H. SORRELL**

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I. Introduction: Land Use Initiatives to Address Health and Fitness

A. Land Use Policies are an important part of the solution to obesity.

The Obesity/Land Use Working Group developed recommendations for improving health, nutrition, and fitness from the perspective of state and local land use regulation. Land use policies play important roles on both sides of the obesity equation: physical activity on one hand, and food and nutrition on the other. Studies establish a strong correlation between a community's built environment and its residents' levels of physical activity.¹ Transportation policies, town planning, and development standards can all play a role in fostering greater levels of physical activity.² And continued planning for the preservation, protection, and enhanced viability of our agricultural lands and our agricultural economy, will play an important part in addressing the food and nutrition side of obesity.³

B. Land Use Working Group participants brought diverse interests and expertise.

Among those contributing to the work of the Obesity/Land Use Working Group were representatives from state government (Agency of Agriculture, Food & Markets, Agency of Commerce, Department of Economic, Housing & Community Development, Agency of Transportation, Department of Forests, Parks & Recreation, Department of Health, Department of Vermont Health Access, State Employees' Wellness Program, and Farm to Plate initiative), the University of Vermont (Office of Health Promotion, Jeffords Center, Center for Sustainable Agriculture, Center for Rural Studies, and medical experts), the U.S Forest Service, Green Mountain National Forest, and many other interested institutions, organizations, and individuals, including AARP Vermont, the Intervale Center, Northeastern Vermont Regional Hospital, Rutland Regional Medical Center, Smart Growth Vermont, the Rutland Regional Planning Commission, the Rutland Area Physical Activity Coalition, and the Vermont Recreation and Parks Association.⁴

C. Priorities and approach of the working group

The working group sought to avoid repeating work that had already been done, in Vermont and elsewhere, but rather to build upon the extensive published studies, observations, analysis, and best practice recommendations. The goal was to identify where there are barriers to the implementation of recognized best practices in Vermont, and to formulate policy recommendations to eliminate those barriers.

In addition, the working group focused on the high-priority policy changes most relevant to Vermont's demographics and communities. Some interesting and potentially effective practices that may be useful in other localities were determined by the group not to be sufficiently feasible and relevant to the situation in Vermont to warrant inclusion in this report. (E.g., zoning requirements to limit the density of fast food restaurants may make sense in a congested urban neighborhood but at least at this point it appears the solutions to Vermont's food access challenges lie elsewhere.)⁵

The working group divided into subgroups to address three major obesity-related issues within the land use arena: food access, availability, and utilization; land use and transportation planning; and physical activity and access. As work progressed, because these topics are closely interrelated, the group's final recommendations evolved to fall into three slightly reconfigured issue areas, each contributing an overall Policy Recommendation, and a series of strategy recommendations.

The three Policy Recommendations are set forth in section II on the following page. Subsequent sections of this report discuss the evidentiary basis and background, and describe specific strategy recommendations in greater depth.

II. Obesity/Land Use Policy Recommendations

The three major Land Use Policy recommendations of the Land Use Working Group are listed below. The following sections of this report provide background, including the current situation in Vermont, published studies, and expert recommendations, and explain the strategies recommended by the working group to implement these policies.

POLICY 1: INCORPORATE COMMUNITY HEALTH CONCERNS, ESPECIALLY FOOD SUPPLY AND ACCESS TO PHYSICAL ACTIVITY, INTO LAND USE AND COMMUNITY PLANNING.

Recognize as important statewide priorities, and integrate into state and local land use and community planning processes, the following:

- *Community health issues, including pedestrian access and recreational facilities*
- *Community food environments, including availability of healthy food*
- *Transportation planning to optimize pedestrian and bicycling facilities and access*
- *Identification and preservation of agricultural lands*

POLICY 2: SUPPORT VERMONT'S AGRICULTURAL ECONOMY AND COMMUNITY ACCESS TO LOCAL, NUTRITIOUS FOOD.

Improve the supply and availability of nutritious food by:

- *Supporting and preserving Vermont's agricultural lands*
- *Strengthening Vermont's agricultural economy*
- *Expanding current programs to increase access of locally produced healthy foods*

POLICY 3: FOSTER AND IMPROVE RESIDENTS' ACCESS TO SAFE RECREATION AND PHYSICAL ACTIVITY, BY INCORPORATING FACILITIES, INCLUDING FOR PEDESTRIANS AND BICYCLISTS, INTO COMMUNITY PLANS AND DEVELOPMENTS.

Improve public planning to encourage and support Vermonters engaging in physical activity, by:

- *Incorporating appropriate pedestrian, bicycle, and other facilities into the design of communities and public projects*
- *Increasing access to appropriate and safe facilities for recreational physical activity through planning new facilities where needed, and improving access to existing facilities*

III. Basis for Recommendations and Discussion

A. POLICY 1: INCORPORATE COMMUNITY HEALTH CONCERNS, ESPECIALLY FOOD SUPPLY AND ACCESS TO PHYSICAL ACTIVITY, INTO LAND USE AND COMMUNITY PLANNING

1. Background

Community design is an important factor in the health of the residents of a community. Researchers and public health experts have identified such community characteristics as the availability of parks, sidewalks, and bicycle facilities, the accessibility of healthy and affordable foods, and support for walking and biking as important in fostering healthy populations.⁶

The Vermont Department of Health has acknowledged the importance of community planning in preventing obesity in Vermont. The April 2006 “Fit and Health Vermonters” plan identifies as a priority: “Vermonters will live in communities that support healthy eating and physical activity. . . . Planning projects including comprehensive plans, zoning, and subdivision ordinances will include ways to increase accessibility and availability for healthy eating and physical activity.”⁷ A January 2009 VDH report to the Legislature reiterated that community planning processes “such as zoning, land use planning, and the design of growth centers and revitalization projects offer opportunities to incorporate features that support healthy living,” but noted that “because incorporation of these features into the design is generally not required, other issues are often more compelling and push long-term health considerations off the table.”⁸

The working group identified several means by which Vermont can better assure that our built environment is conducive to the promotion of good health. The strategy recommendations below would assist health officials, community leaders, and land use planning experts to incorporate public health priorities in the planning and developing of Vermont’s communities.

2. Framework for Vermont land use planning and regulation

The Vermont Planning and Development Act, 24 V.S.A. §§ 4301 et seq., authorizes municipalities to conduct local land use planning and regulation, and provides statutory land use goals as a framework to guide local plans and decision-making.⁹ Among the 13 statewide planning goals are the goals that development be planned to:

- maintain historic settlement patterns of compact village and urban centers, separated by rural countryside;
- provide safe, convenient, economic, and energy efficient transportation systems, including public transit options and paths for pedestrians and bicyclists;
- maintain and improve the quality of the state’s land resources;
- maintain and enhance recreational opportunities; and
- encourage and strengthen agriculture.¹⁰

To be eligible for local planning grants, municipalities’ plans must be consistent with these and other specified state planning goals.¹¹

More than 200 of Vermont’s 251 cities and towns have adopted local municipal planning and zoning ordinances to govern local development.¹² These local plans and ordinances are formulated and implemented by local planning commissions, development review boards, or zoning boards, depending on each town’s administrative structure. Each municipal land use plan must include ten mandatory elements established by state law.¹³ These include a land use map, an energy plan, and a housing element. Beyond the ten required elements, municipalities have considerable flexibility in determining the scope and content of their local plans to address local priorities and goals, e.g., local health care, or community “walkability.”¹⁴

Vermont also has 11 regional planning commissions, charged with helping communities determine how and where development will go, providing technical assistance to local planning commissions, coordinating local and regional mapping projects, and participating in state-level reviews, such as under Act 250, 10 V.S.A. §§ 6001 et seq. State law also requires each regional planning commission to prepare and update a regional plan every five years, and to harmonize local plans with the regional plan.¹⁵ In recent years, regional planning commissions have faced reduced funding.

For major development projects, Vermont requires a separate review process under Act 250.¹⁶ An Act 250 permit, from the District Environmental Commission or (on appeal) the Vermont Environmental Court is required in addition to local zoning approvals. The Act 250 review process includes consideration of potential pollution and congestion caused by a proposed development, and the impact the project would have on a variety of factors including regional growth, and rural growth areas, primary agricultural soils, and the costs of scattered development.

3. Smart Growth Principles

In its December 2007 report to the Legislature, the Vermont Health Care Reform Commission included several recommendations to reduce chronic illnesses such as obesity and diabetes, through improved nutrition and physical activity.¹⁷ The Commission warned: “A breakthrough improvement is required in our existing strategies that support improved eating habits and greater physical activity if we are going to reverse the sustained trend of increased obesity.”¹⁸ The Commission delineated several recommended strategies to create healthier community planning, including: “Build upon existing legislation that encourages Smart Growth principles in land use planning, growth centers, and downtown revitalization.”¹⁹

“Smart Growth” describes a pattern of compact community design, maintaining compact village centers separated by rural countryside.²⁰ Smart Growth principles encourage mixed-use development, including diverse housing options, diverse transportation options and walkable communities, public access to open space, and protection of farm and forest land.²¹ The Health Reform Commission Workgroup #2 Final Report, on which the Commission’s recommendations were based, noted that growth patterns in Vermont over the last several decades have tended to mirror national trends of development farther away from traditional village centers, downtowns and “growth centers,” and that roadways designed exclusively for cars can make walking and bicycling to and from work or school more difficult and less safe.²²

As further noted in the Health Reform Commission workgroup report, state law already encourages Vermont municipalities to support “smart growth” principles.²³ Growth center legislation passed in 2006, 24 V.S.A. §§ 2790-91, built upon the Vermont Downtown Program (first established in 1998) and instituted a new designation to allow towns to designate appropriate growth areas, and provide incentives for compact growth.²⁴ This legislation recognizes and encourages community efforts to revitalize Vermont’s traditional village centers. As of October 2010, there are 103 designated village centers, and that number is expected to increase steadily. Vermont has, as well, 23 designated downtowns, six growth centers, and two New Town Centers.²⁵ These special designations offer regulatory and financial incentives for compact growth around economically and socially vibrant centers. In 2010, the Legislature enacted a reform of the growth center program (S.64), to improve standards to better concentrate development in existing downtowns.

The Vermont Legislature has also acknowledged the connection between “smart growth” principles and public health. In 2008, in Act 203 addressing health care reform, the Legislature directed the Commissioner of Health to develop recommendations to “[p]romote

the goals of physical activity, nutrition, and healthy living in planning processes that involve zoning and land use, growth centers, and downtown revitalization.”²⁶

Currently, through the federally funded Communities Putting Prevention to Work program, the Vermont Department of Health is coordinating with the state Department of Economic Housing and Community Development and community partners to incorporate public health considerations into land use planning and zoning. This innovative approach builds on recommendations of national public health leaders to “support physical activity as part of everyday life,” by using “smart growth strategies . . . including compact and mixed-use zoning, affordable housing, thriving retail, transit oriented development, urban infill, walkable and bikable street design, and green building practices.”²⁷

The Obesity/Land Use working group has formulated a series of proposals for legislative amendments to continue to move Vermont forward in fostering development patterns conducive to the health of the community. These include adoption of a state land use goal of public health and wellness, and the recognition and encouragement of the use of several tools by which state and local planning can achieve that goal.

4. Community Health and Wellness Goal

The Vermont Planning and Development Act establishes, at 24 V.S.A. § 4302, a series of goals to guide municipalities, regional planning commissions and state agencies in their ongoing planning for the future land use and development of Vermont. Primary among those goals is: the maintenance of the historic settlement pattern of compact village and urban centers separated by rural countryside. Among the other goals are the provision of safe, convenient, economic and energy efficient transportation systems, including public transit and paths for pedestrians and bicyclists; and the provision of safe and affordable housing.

Given the acknowledged importance of land use planning and community design in addressing community health, the Obesity/Land Use working group recommends the addition, in the land use planning goals listed in 24 V.S.A. § 4302, of a community health goal: *“To ensure the availability, to all Vermonters, of nutritious and affordable food, and the opportunity, for all Vermonters, to engage in safe, healthy and accessible physical activity.”*

5. Health Impact Assessments

Recently recognized as an effective tool in improving community wellness, Health Impact Assessments (HIAs) incorporate public health analysis into planning for land use,

transportation, and other public policymaking.²⁸ A Health Impact Assessment analyzes the potential impacts on public health of a proposed project or plan. The World Health Organization (WHO) and Centers for Disease Control and Prevention (CDC) both support using HIAs in land use planning, to incorporate expert analysis regarding public health, in the process of community planning.²⁹ One public health expert, initially skeptical of HIAs, now says they are “essential” to help “Americans avoid continuing to make ‘bone headed decisions’” in planning and public policy.³⁰ The working group recommends that HIAs be used in Vermont, at the state and local levels, to assure that considerations of community health are taken into account in the formulation of public policy, especially local and regional land use and transportation planning.

The United States has lagged behind other nations in the utilization of HIAs, and health experts are encouraging governments to catch up in their use of HIAs in decision-making.³¹ For a decade or more, countries in Europe and Asia, as well as Canada have used HIAs to integrate public health considerations into planning for growth and development.³² American jurisdictions have recently begun to use HIAs as part of their planning regimes.³³ For example, local governments in California have used health impact assessments in formulating local general plans to govern municipal or countywide growth and development, in a variety of settings, from urban, suburban, and rural.³⁴ In 2007, the California Department of Public Health established the Local Public Health and Built Environment (LPHBE) Network to provide training, technical assistance and grants to local governments seeking to construct their built environment in a manner which will best support healthy, active living.³⁵

A diverse range of communities – including Atlanta, Denver, and Galveston, Texas – has conducted and utilized HIAs. In the Atlanta area, small cities have been able to take advantage of the base of information and analysis done for a regional project, the Atlanta BeltLine.³⁶ In Washington State, a HIA was required as part of a “project impact plan” analyzing potential effects of a proposed replacement bridge for a highway corridor near Seattle. The analysis, conducted by a regional agency, the Puget Sound Clean Air Agency (PSCAA), was intended to inform decision makers about “air quality, carbon emissions and other public health issues” related to the proposed project, allowing those considerations to be taken into account in planning,³⁷ and raising awareness of these issues among legislators and decision makers.³⁸

HIAs may be employed as part of a larger environmental impact analysis, or performed as an independent analysis.³⁹ They may be conducted by public health officials in the course of their work, or provided separately by volunteers, or through funding from a charitable foundation.⁴⁰ Experts opine that HIAs are most effective when they involve multi-disciplinary collaboration with community members, planners, experts, and decision-makers.⁴¹ Incorporating a health impact analysis into an environmental review process can allow

development and planning decisions to be informed not only by the potential impacts on air and water quality and other aspects of the physical environment, but also by factors such as the walkability of neighborhoods, and the availability of safe areas for physical activity.⁴²

The working group recommends utilization of HIAs in Vermont.

6. Community Food Assessments

Community Food Assessments (CFAs) are another valuable tool to assist planners and policy makers to integrate consideration of access to healthy food into community planning.⁴³ Since 1999, the US Department of Agriculture has advocated studying food access issues, and the Economic Research Service of the USDA has endorsed Community Food Assessments to identify and address problems communities face in accessing sufficient nutritious food.⁴⁴ CFAs identify environmental factors that affect the food access and health of local populations. Such analyses have found poorer nutrition and higher rates of chronic conditions such as heart disease in communities with inferior access to food stores.⁴⁵

Utilizing CFAs as a tool in land use planning enables community planners and decision makers to identify impediments to their community's food security,⁴⁶ and to incorporate into their planning decisions efforts to improve community members' access to a nutritionally adequate diet, through a sustainable food system.⁴⁷ The CFA can assess many components of the food environment: the home food environment, the food store environment, the restaurant food environment, the school food environment, the workplace food environment and the macro food environment, which includes the food supply.⁴⁸

CFAs can identify "food deserts," where food is not available locally to a community. In a "food desert," families must travel longer distances to shop for food, or resort to less healthy prepared foods available closer to home.⁴⁹ The problem of food deserts is especially troubling for the most impoverished, who often do not own a car, further hindering access to healthy food.

CFAs may use geographical data to identify places where residents must travel the farthest to purchase food. Using GIS (Geographic Information System) technology allows researchers to use publically available geographic data to analyze food accessibility.⁵⁰ This approach has been criticized for assuming that all members of a community have equal access to transportation and assuming that stores where food is available are well documented.⁵¹ Despite any weaknesses, using GIS-based tools allows researchers or health or government officials to quickly identify areas likely to face challenges in getting good food. In order to supplement publicly available data, and to improve the weaknesses of GIS measures, researchers have systematically travelled the roads of a county and recorded all food stores and

the types of store (convenience store, grocery store, etc.) and their locations. Researchers can use this data to check the accuracy of publicly available lists of store locations. In one study, 35% of the stores were not accounted for on public lists, and were only discovered by traveling the roads and recording the actual locations of stores in the area.⁵²

Community Food Assessments also may utilize direct surveys to learn from residents the issues they face in accessing nutritious foods. A survey might cover topics such as stores' advertising for healthy foods, the availability, quality and price of fresh fruits and vegetables in stores, the availability of meat, dairy, rice, bread, cereal, oil, juices, spices and snack food.⁵³

In other rural states, CFAs have identified problems with food access and security and assisted planners in ameliorating them.⁵⁴ In rural Kansas, for example, policy makers are seeking to bring new food retail businesses in to fill the needs of small communities identified as food deserts. By working with a grocery store in a nearby town, one such new business has seen some success. Because they were unable to get deliveries made in very small quantities to their small town, organizers have been able to place orders along with a larger grocer in a bigger town, then to collect their food supplies from that town and offer the food locally in their small community.⁵⁵

In Iowa, for example, studies by the Leopold Center for Sustainable Agriculture have pointed to areas where improvements were possible to improve the food security of Iowans and those in other, neighboring Midwestern states.⁵⁶ One focus of the programs and studies from the Leopold center is encouraging local food production. Their studies have identified programs to encourage sustainable local food production such as Community Supported Agriculture (CSAs), farmers markets, local meat production, and increasing production of fruits and vegetables.⁵⁷ One study found that increasing food and vegetable production to meet seasonal demand, and offering local fruits and vegetables through producer-owned retail stores in Midwestern markets would benefit both farmers and consumers.⁵⁸ Another study showed that institutions could purchase premium local meat at prices competitive with conventionally sourced meat, which doesn't provide the same benefit to local economies.⁵⁹

Closer to home, the Intervale Center of Burlington, a nonprofit organization that coordinates a range of local agriculture, food education, and recycling programs,⁶⁰ has conducted research to explore impediments to Vermont farmers marketing and distributing food within the state,⁶¹ and is working to improve local food systems based on the results of that research. Other programs in Vermont designed to improve food security include Farm to School and Farm to Table initiatives and the Food Systems Research Collaborative, dedicated to studying food systems and planning for improvement of Vermont's food systems.⁶²

At the state level, in 2009, the Legislature established the Farm to Plate (F2P) Initiative, directing the Vermont Sustainable Jobs Fund, in consultation with the UVM Sustainable Agriculture Council and other stakeholders, to develop a 10-year strategic plan to strengthen Vermont's farm and food sector. Among the stated goals of the authorizing statute was to "[i]mprove access to healthy local foods."⁶³ The Legislature directed the sustainable jobs program to "inventory Vermont's food system infrastructure," to "[i] Identify gaps in the infrastructure and distribution systems and identify ways to address these gaps."⁶⁴ The Farm to Plate Strategic Plan is expected to be released in January 2011.

The working group recommends that Vermont build and expand on the use of Community Food Assessments, at the state and local levels, to identify and address community nutritional needs.

7. Land Use Planning Recommendations: Policy and Strategies

POLICY 1: INCORPORATE COMMUNITY HEALTH CONCERNS, ESPECIALLY FOOD SUPPLY AND ACCESS TO PHYSICAL ACTIVITY, INTO LAND USE AND COMMUNITY PLANNING

Recognize as important statewide priorities, and integrate into state and local land use and community planning processes, the following:

- *community health issues, including pedestrian access and recreational facilities*
- *community food environments, including availability of healthy food*
- *transportation planning to optimize pedestrian and bicycling facilities and access*
- *identification and preservation of agricultural lands*

STRATEGY RECOMMENDATIONS

- *Wellness goal:* Revise Title 24, Chapter 117 land use planning provisions, to add a goal of community health and wellness in state and local planning: *"To ensure the availability, to all Vermonters, of nutritious and affordable food, and the opportunity, for all Vermonters, to engage in safe, healthy and accessible physical activity."*
- *Health Impact Assessments:* Encourage assessment of community health issues in planning for future growth and development, by considering, for example, pedestrian access, recreational spaces, and transit options.
- *Community Food Assessments:* Encourage communities to complete community food assessments, and to utilize the results of those assessments in their planning and decision-making.

- *Ongoing coordination:* Coordinate with Communities Putting Prevention to Work program, to incorporate public health considerations in land use planning, and provide ongoing resources to support local communities' evaluation of health and wellness in community planning. Continue state support of existing programs promoting smart growth principles (e.g., 24 V.S.A. Chapter 76A) and expand application of smart growth principles in local and state permitting and funding programs where applicable.

B. POLICY 2: SUPPORT VERMONT'S AGRICULTURAL ECONOMY AND COMMUNITY ACCESS TO LOCAL, NUTRITIOUS FOOD

In studying how to improve access to healthy food through land use measures, one focus of the Land Use Working Group was support for Vermont's agriculture and its farmers. This section discusses the group's recommendations to incorporate agricultural viability and food access concerns into community planning. These recommendations seek to build on existing state and local programs, and to identify high priority areas for improvement.

1. Background: Food and Agriculture

The availability and accessibility of nutritious food is a crucial factor in promoting health, and healthy weight. Nationwide, we have an estimated shortfall of 13 million acres of farmland needed to grow sufficient fruits and vegetables for Americans to meet the minimum daily requirement of fruits and vegetables set by the U.S. Department of Agriculture.⁶⁵ Most of these commodities are now grown in urban fringe areas, which are subject to the greatest development pressure.⁶⁶

For this reason, experts working on food and nutrition agree that we must act now to preserve farmland, especially on the urban and suburban fringes and in prime growing areas.⁶⁷ First on a list of recommendations from the Robert Wood Johnson Foundation, aimed at improving access to healthy foods, is: "preserve farmland for local farmers and steer development away from open spaces."⁶⁸ Farmland preservation goes hand in hand with increasing access to healthy and affordable local foods. Among the evidence-based strategies recommended by the Institute of Medicine is to "promote efforts to provide fruits and vegetables in a variety of settings, such as farmers' markets, farm stands, mobile markets, community gardens, and youth-focused gardens."⁶⁹ Similarly, the Centers for Disease Control, in recent recommendations and reports regarding obesity best practices, focused on improving the accessibility of healthy, affordable foods, and recommended a series of measures to

improve the availability of food from farmers' markets, and encouraging the use of local foods.⁷⁰

At a regional level, through the New England Farm and Food Security Initiative (NEFFSI), the New England Governors' Conference has launched an effort to Keep Farmlands in Farming. NEFFSI will focus, regionally and with federal agencies and funders, on regional-scale research, projects, and investments to enhance and strengthen New England's food system infrastructure, protect the region's farmlands, and improve access to nutritious foods for the region's people.⁷¹ NEFFSI seeks to protect the region's agricultural base, by increasing the regional capacity to produce and process New England-grown foods.⁷²

2. Promotion and support of Vermont Agriculture

Reflecting the high value that Vermonters place on their farms, and Vermont's historic role as an agricultural leader, a great deal of work is being done in Vermont relating to agriculture and food systems in state and local government, business and non-profits. The Vermont Agency of Agriculture, among its other functions, provides technical and other support to Vermont farmers, and has worked to develop local, regional, national and international markets for Vermont products. This includes efforts to promote specialty crop block grants distributed by the USDA. Vermont's specialty crops include apples, vegetables, and berries. The Agency of Agriculture has also compiled and posted a comprehensive list of Community Supported Agriculture (CSA) farms,⁷³ and, through its "Buy Local, Buy Vermont" program, encourages residents to visit their local farm stands, orchards, and farmers' markets.⁷⁴ The Agency also has taken steps to review and improve state food purchasing practices to increase use of local agricultural products, and to facilitate matchmaking between agricultural producers and potential customers.⁷⁵

The Vermont Housing and Conservation Board (VHCB) also fulfills an important role in maintaining the viability of Vermont agriculture. The Legislature established VHCB as an independent, state-supported funding agency providing grants, loans and technical assistance to nonprofit organizations, municipalities and state agencies for, among other things, the conservation of important agricultural land.⁷⁶ The VHCB Farmland Preservation Program is focused on retaining the state's quality agricultural land base in strong farming regions of the state. Since 1987, 500 farms comprising 128,400 acres of agricultural land have been conserved with VHCB funds.⁷⁷ In addition, the Vermont Farm Viability Enhancement Program, funded by VHCB in collaboration with the Vermont Agency of Agriculture, Food and Markets, with funding assistance provided by the USDA Natural Resources Conservation Service (NRCS),

offers business planning and technical assistance services to Vermont farmers as part of a statewide effort to improve the economic viability of Vermont agriculture.⁷⁸

The State Legislature has enacted a range of measures to protect and promote Vermont agriculture. For example, farmers are protected by statute against nuisance suits by neighbors arising from their reasonable agricultural activities.⁷⁹ In the 2010 legislative session, Act 101 established the Vermont agricultural innovation center, for the promotion of value-added agriculture in Vermont.⁸⁰ Through funding from the USDA and a competitive RFP process, this program provides funds for projects that offer technical assistance, market development, and other expert assistance and support to farmers and producers of value-added agricultural products.⁸¹ Another 2010 law, Act 158, created a permanent Vermont agriculture development board and charged it with (1) optimizing the agricultural use of Vermont lands and resources, (2) expanding markets and identifying and developing new markets for food, fiber, and forest products, and value-added agricultural products, including farm-derived renewable energy; and (3) identifying opportunities and challenges related to infrastructure, product development, marketing, training, research and education.⁸²

The Legislature has also established the Vermont Sustainable Agriculture Council, to identify needs, set goals, select priorities, and make annual recommendations regarding sustainable agriculture.⁸³ Under the Farm to Plate Investment Program, created by the Legislature in 2009, the Vermont Sustainable Jobs Fund and the Vermont Sustainable Agriculture Council and other stakeholders are developing a 10-year strategic plan to strengthen Vermont's farm and food sector, for release in January 2011.⁸⁴

There is widespread support among Vermonters for the preservation of the state's agricultural economy and historic working landscape, and increased public awareness of the importance of local food systems. Interest in local food in particular has grown quickly in the last several years, driven by both an interest in healthy foods and a commitment to support local agriculture.⁸⁵ A study conducted in 2007-09 by the Council on the Future of Vermont, a project of the Vermont Council on Rural Development, found that the most widely-held value, with which more than 97% of Vermonters in a telephone poll, and 93% in an online poll, agreed, was that they valued Vermont's working landscape and its heritage.⁸⁶ In a perhaps somewhat less scientific poll, collating survey results from 13,500 Vermonters in March 2010, Senator Bill Doyle's most recent Town Meeting Day Survey, 88% agreed that "locally grown food and farmers' markets" are "an important part of Vermont's economic future."

At the same time, Vermont farmers are feeling economic pressure. Although Vermont has a strong agricultural economy, in a recent survey by the Center for Rural Studies, almost one third of Vermont farmers surveyed stated that they planned to sell some or all of the land they use for farming, most of those in one to 5 years.⁸⁷ Slightly more than one-third of farmers

responding to this survey said they felt pressure to sell or develop their land; this increased as the level of development on surrounding lands increased.⁸⁸

3. State Planning Law: Identification and preservation of agricultural land

One of the requirements of the Vermont Planning and Development Act is that a town land use plan must identify agricultural lands within the town.⁸⁹ State law further requires the Secretary of Agriculture, Food and Markets to establish guidelines to assist the municipal and regional planning commissions in identifying agricultural lands.⁹⁰ Identification of the highest quality agricultural soils will allow farmland protection efforts to focus on these valuable resources as part of land use planning for future development, and for the future of Vermont agriculture.⁹¹ Factors listed by statute as relevant to the identification of agricultural lands are: soil characteristics; parcel size; the importance of agriculture to the region or locality; availability of agricultural services in the region, and the importance of the land to the character of the locality.⁹²

The working group recommends that Vermont act to strengthen and support state, regional and local efforts to identify, support and preserve agricultural resources in the local land use planning and zoning process. This was identified as a potentially fruitful area for legislative action.

4. Current Use Program

Under Vermont's "Current Use" tax policy, the owner of forest or agricultural land enrolled in the program may pay property taxes based on the value of the property remaining in farmland or forest use, rather than its "highest and best use" or development valuation.⁹³ The statutory purposes of this Agricultural and Managed Forest Land Use Value Program are to support the preservation of Vermont's productive agricultural and forest land and achieve greater tax equity for undeveloped lands.⁹⁴

Since enactment of the Current Use program in 1978, over 15,000 properties have been enrolled in the program, totaling more than 2,000,000 acres. The program has enabled many working farms to continue their operations. There have, however, been criticisms of the program: it has resulted in lower property tax revenues, and, although Current Use was intended to apply only to land devoted to long-term agricultural or forest use, some property owners have temporarily "parked" land in Current Use to lower their taxes while planning development.

During the 2010 Legislative session, the importance of retaining Vermont's working landscape through the stable funding of the Current Use Program was discussed from the opening day until the final hours of the session. This important statewide program has sparked many discussions on the fundamental question of the appropriate tax treatment of agricultural lands. We anticipate that Current Use will again play a prominent role in the 2011 Legislative session.⁹⁵ The working group has identified maintaining the long-term viability of the Current Use program as a high priority to aid in the conservation of Vermont's agricultural land resources.

Review and analysis by the working group identified some aspects of the Current Use program that could be improved to increase the availability of lands for agricultural uses. Adding requirements of monitoring or reporting, for example, could better assure that property designated as "agricultural land" to qualify for current use value appraisal actually is, and remains, in agricultural production. In order for lands to qualify under the Current Use program as "managed forest land," they must be subject to a forest management plan or conservation management plan, and the owner must file an annual report detailing compliance with that plan.⁹⁶ Lands included in Current Use as "agricultural land" must generally be "in active use to grow hay or cultivated crops, pasture livestock or to cultivate trees bearing edible fruit or produce an annual maple product, and which is 25 or more acres in size,"⁹⁷ but unlike forest lands, agricultural lands are not subject to a management plan or annual reporting requirement. The working group has noted that as a result of the statutory dichotomy, there are lands within the Current Use program that are designated as agricultural but which may not be in active agricultural use.

It is beyond the scope of this working group to draft legislative language, but we recommend serious consideration be given to legislation requiring reporting and monitoring to assure compliance with statutory requirements that agricultural lands in the Current Use program be in agricultural use.

The working group also recommends that Vermont continue to invest the funding required for the maintenance of this very important property tax relief program, in light of the broad and long-term economic benefits to preserving the state's agricultural and forest land base. Equitable property taxation is a critical part of the survival of agriculture in Vermont, and as such, important, to the state's agricultural economic future and the provision of fresh, local, and nutritious food and fiber to Vermonters.

In addition, as discussed below, the Land Use working group addressed potential legislative reform from not only the nutrition side, but the physical activity side of the obesity issue as well. In reviewing options for enhancing the public accessibility of open space and forested lands for recreational purposes and physical activity, the working group also recommended consideration of legislation facilitating recreational uses of Current Use lands.

5. Workplace CSAs

The Centers for Disease Control recently published a comprehensive analysis and guide to policymakers analyzing strategies to improve access and availability of fruits and vegetables.⁹⁸ One of CDC's seven recommended evidence-based strategies is the expansion of "farm-to-where-you-are" programs "in all possible venues."⁹⁹ Among those venues, workplaces are important because of the amount of time many people spend at work. An excellent mechanism to provide employees with fresh produce is through participation in local CSAs. The CDC noted in particular the potential benefits of fruit and vegetable deliveries through workplace CSAs, and the increased popularity of CSA deliveries as a means of obtaining farm produce: the number of CSAs in the United States has grown from about 400 in 1993 to over 12,500 in 2007.¹⁰⁰ CDC points out further that CSAs support regional fruit and vegetable production and distribution to provide consumers with high quality fresh produce at an affordable cost, therefore encouraging farmers to produce these foods. CSA participants get access to fresh produce, perhaps the only access individuals have within a reasonable distance in some communities. Increased access to fruits and vegetables may lead to increased consumption of fruits and vegetables, based on preliminary evidence compiled by CDC.¹⁰¹ Businesses can assist employees in being able to afford CSA membership by offering a payroll deduction mechanism to make the CSA payments.

In Vermont, we are fortunate to have a wide range of existing CSAs, and many farmers, businesses, and non-profits interested in exploring possible models for the distribution of produce at workplaces. For example, the Intervale Food Hub combines the produce from about 20 core farms, which it markets and distributes to local workplaces in the Burlington area. The Department of Health has partnered with the Intervale and others in facilitating deliveries to VDH offices as well as private workplaces. This is a model that is currently successfully being implemented. The working group recommends its expansion to other worksites around the state.

As a major employer, the State of Vermont is well-situated to be a leader in making CSA participation and deliveries available to state workers. An initial analysis by the State Employees' Wellness Program confirmed that there is interest among state

workers, but also identified legal and institutional barriers to implementing such a program statewide, in particular as a formal “employee benefit.”

The working group recommends that one or two additional state agencies or public or private worksites be identified to pilot CSA workplace delivery programs. In the course of designing and implementing a pilot program, the Attorney General’s Office should work with the affected agencies and the Department of Human Resources to assure that legal concerns relating to the public bid process, liability, and state access issues be resolved. The CDC, acknowledging a certain level of formal government regulations applicable to public employers, has published useful guidance describing its own employee “Garden Market Demonstration Project.”¹⁰²

The working group also recommended the further development of a “matching program” for farmers and employers, to enable employers who wish to provide CSA deliveries to their employees to find willing farmers to make direct sales through workplace CSAs. This could be an expansion of the CSA directory now being compiled and made available by the state Agency of Agriculture, Food & Markets. Alternatively, such a matching program could be implemented like the Vermont Fresh Network (a partnership of restaurants and farms that seeks to assist in the utilization and marketing of locally grown food), through a non-profit organization or a public-private partnership.¹⁰³

In addition, the working group has concluded that the state should continue and expand the provision of training and education for farmers and employers who may be interested, to develop supportive CSA business models that can benefit both.

6. Agricultural Support and Development

In seeking ways to improve healthy eating in Vermont, the working group identified limited facilities for processing fresh produce, and for slaughtering and processing meat, as a factor relevant to the supply of local, healthy food to Vermonters. The Legislature, in establishing priorities for federal monies available to Vermont under ARRA, declared as a specific agricultural priority, “[s]upport for in-state slaughter and processing facilities through grants and technical assistance from the agency of agriculture, food and markets.”¹⁰⁴

The working group formulated several proposed strategies that could potentially improve the situation. As stated above, however, the Vermont Sustainable Jobs Fund, in coordination with the Vermont Sustainable Agriculture Council and myriad other stakeholders, is engaged in a comprehensive analysis through the Farm to Plate initiative to formulate a 10-year strategic plan to strengthen Vermont’s farm and food sector. This process will identify

gaps in the infrastructure and distribution systems, and recommend ways to address those gaps. For example, with regard to slaughter facilities, the posted draft findings of the Farm to Plate Initiative are that Vermont needs, not the construction of more facilities, but to develop profitable models for year round livestock production, slaughter and processing.¹⁰⁵ It appears that Vermont can address inefficiencies in the current slaughter and meat processing system, through, e.g., improved equipment or training, without having to significantly increase the total number of inspected meat processing facilities in the state.¹⁰⁶

Because the Farm to Plate Strategic Plan is expected to be released in January 2011, the working group has not wanted to duplicate that undertaking. Rather, we recommend that the Legislature and the new administration, along with all stakeholders, continue to support the Farm to Plate process and carefully review its report with an eye to incorporating its recommendations to bolster our agricultural economy and improve Vermonters' access to local, healthy food. Meanwhile, the working group's recommended strategies on improving agricultural processing and development are listed below in the hope that they may move the ongoing dialog forward.

7. Community Gardens

Community gardens (plots of land made available for community members to grow produce for individual families or cooperatively) are increasingly being recognized as a positive amenity that can support public health, by providing nutritious produce and a venue for nutrition education, and by encouraging physical activity through gardening.¹⁰⁷ In addition to other "healthy community" planning measures, the working group would encourage incorporation of community gardens into new developments.¹⁰⁸

For existing communities where residents seek to establish new community gardens, this trend has raised questions of what liability might be associated with opening a community garden.¹⁰⁹ In addition, community gardens often host public events and workshops. Although gardeners can be required to sign "hold harmless" agreements releasing the landowner and garden coordinating group from liability, it is not practical to have all attendees at a community potluck or cooking workshop do the same. This was an issue for two neighborhood gardens in Burlington coordinated by an all-volunteer grassroots community group (Grow Team O.N.E.).¹¹⁰ Both gardens are on private land leased for a small fee (\$1/year) to the community group. The solution was an agreement with the Burlington Department of Parks & Recreation, which operates a network of community gardens in the city. The department was able to extend its existing garden coverage to the two independent gardens. This makes it possible to hold a

variety of public activities at the sites, including community potlucks and gardening, nutrition, and wellness workshops.

Many community gardens are coordinated by small community groups like Grow Team O.N.E. that do not have the means to purchase liability insurance for more public use. Without a larger organization to provide insurance, these groups are limited in the programming they can offer to the community.

The working group recommends consideration of a legislative amendment to clarify that landowners and garden coordinating groups are protected from liability. Analysis by the Attorney General's Office indicates that community gardening could be considered a recreational activity, and thus landowners protected from liability, under the state's recreational use statute, 12 V.S.A. §§ 5791-5795. Recreational use is defined by the statute as an "activity undertaken for recreational, educational or conservation purposes,"¹¹¹ and community gardens can serve all three purposes. For many, gardening fits the definition of recreation, "a pastime, diversion, exercise, or other resource affording relaxation and enjoyment." Furthermore, community gardens are educational in that they teach children and adults about cultivating plants, and can be the site for skill-building, nutrition and wellness workshops. Gardening also conserves open space for agriculture and it can help to add nutrients to the soil, conserving it for future agricultural use.¹¹²

The list of recreational activities found in the statute does not include "gardening" specifically, but "gathering [...] cultivated plants" and "gleaning" are both included and both are elements of gardening.¹¹³ The statute might logically be amended to cover all aspects of gardening to alleviate any possible liability concerns; consideration should also be given to including gardening coordinating groups within that protection.

8. Agricultural Policy Recommendations and Strategies

POLICY 2: SUPPORT VERMONT'S AGRICULTURAL ECONOMY AND COMMUNITY ACCESS TO LOCAL, NUTRITIOUS FOOD

Improve the supply and availability of nutritious food by:

- *Supporting and preserving Vermont's agricultural lands*
- *Strengthening Vermont's agricultural economy*
- *Expanding current programs to increase access of locally produced healthy foods*

SPECIFIC STRATEGIES

- *Identification of Agricultural lands:* Strengthen and support state, regional and local efforts to identify, support and preserve agricultural resources in the local land use planning and zoning process.
- *Current Use program:*
 - Strengthen Current Use program to better protect agricultural lands, and to assure that agricultural lands in the program are put to productive use; consider inclusion of agricultural use of forestlands.
 - Consider incentives for making lands within the Current Use program accessible for public recreational uses.
 - Provide sufficient funding for management, implementation and enforcement of the Current Use program.
- *Workplace CSAs: Facilitate participation in CSAs (Community Supported Agriculture) by employees at their workplaces throughout Vermont.*
 - Develop a “matching program” for farmers and employers, to enable employers who wish to provide CSA deliveries to their employees to find willing farmers to make direct sales through workplace CSAs.
 - Develop recommendations for policy changes to facilitate implementation of CSAs statewide by eliminating identified barriers (e.g., financial and liability issues).
 - Initiate additional CSA pilot programs in state agency offices; share information with other agencies and employers wishing to promote CSAs.
- *Processing facilities:* Provision of adequate processing facilities for agricultural products helps both support the agricultural economy and provide affordable local foods to Vermont residents.
 - Coordinate programs for local food purchasing by institutions (Farm to Institutions, Farm to Schools) with provision of local food processing; use school, church or other institutional kitchens for canning, etc. for later use.
 - Identify a “pilot region” in the state in which to concentrate efforts (obtaining federal and other grant funding, dealing with accessibility issues) to expand/improve local processing facilities such as a cannery to process local foods for later use by schools and other institutions; include an evaluation element to follow up on how well the program works and analyze how to expand it to other regions.

- *Agricultural Development:* Support the development of agricultural markets and distribution in Vermont through mechanisms such as:
 - Statewide clearinghouse or “matching” program for agricultural producers and those looking for agricultural products. (Similar to Vermont Fresh Network, which serves restaurants.)
 - Use specialty crop block grants to encourage farmers to grow healthy food.
 - Comprehensive funding and commitment over the next decade, for the expansion of agricultural development focusing on locally produced healthy foods, responding to the desire, the need, and the environmental and health benefits of a locally produced healthy diet.
- *Community Gardens:* Strengthen supports for local community gardens by addressing concerns about property owner liability. Consider legislative action.

C. POLICY 3: FOSTER AND IMPROVE VERMONTERS’ ACCESS TO SAFE TRANSPORTATION, RECREATION AND PHYSICAL ACTIVITY OPPORTUNITIES, BY INCORPORATING FACILITIES FOR PEDESTRIANS AND BICYCLISTS INTO COMMUNITY PLANS AND DEVELOPMENTS.

The recommendations discussed in this section deal with promoting two aspects of healthy communities that, evidence shows, can increase residents’ levels of physical activity: transportation planning (including facilities for walking and bicycling and public transportation), and recreational facilities (including parks and open space).¹¹⁴ As pointed out by the Vermont Health Care Reform Commission, by incorporating these considerations into state and local land use and transportation planning, Vermont can create healthier communities through increased levels of physical activity for Vermonters.¹¹⁵

1. Background: Planning communities to support Physical Activity

Nationally, people of all ages walk and bicycle less than they did a generation ago. For example, adults’ walking trips decreased by 32% from 1977 to 1995.¹¹⁶ The percentage of all children walking or bicycling to school has dropped precipitously, from approximately 50% in 1969 to just 15% in 2001.¹¹⁷ Since 1991, however, in recognition of these trends, bicycling and walking have received increased attention and funding, and progress is being made. In 2009,

bicycling and walking trips together made up 11.9% of trips made by all transportation modes – up from 7.9% in 1990.¹¹⁸

There is extensive evidence that residents of traditional village neighborhoods – which provide sidewalks, safe intersections and crosswalks, and access to nearby destinations – walk more for daily transportation than residents of typical suburban, single-zone developments.¹¹⁹ And, improving access to facilities for recreational physical activity (including parks and trails) and recreational programs has been shown to increase activity levels among all age groups – especially when combined with public education and outreach.¹²⁰

The inclusion of appropriate pedestrian and bicycle infrastructure, and recreational facilities, as components of larger projects is an incremental cost that will ultimately improve the health of Vermonters and save substantially in health care costs, by increasing physical activity levels.¹²¹

Vermont has recognized the importance of planning for healthy communities to support physical activity. For example, in Act 203, the 2008 Vermont Legislature enacted a multi-pronged health care reform initiative. Act 203 addressed, among other things, “healthy community design,” directing the Commissioner of Health to develop recommendations to “promote and support opportunities for physical activity at the community level through increasing access to walking and bicycle paths, bicycle lanes, safe routes to schools, indoor and outdoor recreational facilities, and parks and other recreational areas.”¹²² VDH’s 2009 Healthy Living Initiatives Report to the Legislature included a finding that “Literature and experience confirm that an investment in infrastructure that provides easy access to exercise opportunities and incorporates features that make walking a preferred routine creates long term health benefits.”¹²³

As discussed above in sections III.A.2-3, several Vermont land use statutes encourage “smart growth” or compact, city-centered development and “walkable” communities. The Vermont Planning and Development Act statute also recognizes the impact that land use planning can have specifically on recreational opportunities, and provides that land use planning and development should “maintain and enhance recreational opportunities for Vermont residents and visitors.”¹²⁴ Among the stated purposes and goals of the statute are that “[g]rowth should not significantly diminish the value and availability of outdoor recreational activities;” and that “[p]ublic access to noncommercial outdoor recreational opportunities, such as lakes and hiking trails, should be identified, provided, and protected wherever appropriate.”¹²⁵

2. Active Transportation: Planning for safe and convenient physical activity through bikeways, trails, pedestrian connections, and public transportation.

Vermont has made efforts to improve infrastructure, safety, and access for bicyclists and pedestrians. The working group recommends that the state build on existing efforts to promote bicycling and walking, as well as other self-propelled modes of travel, and public transit.

This issue has attracted a great deal of recent attention at the national level. The 2010 National Physical Activity Plan states: “People can lead healthier, more active lives if our communities are built to facilitate safe walking and biking and the use of public transportation, all considered forms of active transportation.”¹²⁶ There is evidence of “a strong and significant association between bicycling infrastructure and frequency of bicycling for both recreational and commuting purposes.”¹²⁷ The CDC has recommended that state and local governments take an active role in supporting, developing, and maintaining infrastructure such as bike lanes, shared-use paths, bike routes on existing and new roads, and bike racks near commercial and public spaces.¹²⁸ In 2010, CDC published its Recommendations for Improving Health through Transportation Policy. These guidelines, formulated with input from the US Department of Transportation and public health organizations, include recommendations for promoting active transportation and healthy community design.¹²⁹

Assuring the safety of pedestrians and bicyclists also has been shown to be effective in increasing levels of physical activity in adults and children.¹³⁰ Rather than optimizing streets and roadways from the perspective of accommodating more cars or faster speeds, streets can and should be engineered for lower speeds, or retrofitted with traffic calming measures or improved street crossings for pedestrians.¹³¹ Concern about traffic safety discourages people from biking and walking, and communities that address traffic safety concerns can increase these activities. For instance, a 2003 study found that 43 % of people with safe places to walk within 10 minutes of home met recommended activity levels; just 27 % of those without safe places to walk met the recommendation.¹³²

The evidence is sufficiently compelling that the US Department of Transportation, an agency traditionally focused on the safety of motorists and accommodation of motor vehicles, in March 2010 published new policy recommendations to support the development of pedestrian and bike-friendly neighborhoods. The new DOT policy is: “to incorporate safe and convenient walking and bicycling facilities into transportation projects. Every transportation

agency, including DOT, has the responsibility to improve conditions and opportunities for walking and bicycling and to integrate walking and bicycling into their transportation systems. Because of the numerous individual and community benefits that walking and bicycling provide — including health, safety, environmental, transportation, and quality of life — transportation agencies are encouraged to go beyond minimum standards to provide safe and convenient facilities for these modes.”¹³³

The United States Secretary of Transportation, on a recent blog posting, emphasized the connection between transportation policies and public health: “At DOT, we know transportation can be part of the solution, because the way people travel shapes our communities and affects our levels of physical activity. We recognize that *transportation is a public health issue.*”¹³⁴ The US Department of Transportation has also announced its “livability initiatives,” which include providing a range of transportation choices. With the EPA and the US Department of Housing and Urban Development, US DOT has formed the Interagency Partnership for Sustainable Communities, to assure integration of transportation planning with environmental and housing concerns.¹³⁵

The Vermont Legislature has enacted several important provisions to support bicycling and walking. Most recently, in 2010, Vermont enacted Act 114, the “Safe Passing” law, offering significant new protections to “vulnerable” roadway users, including bicyclists, pedestrians, wheelchair users, tractor operators, inline skaters, and equestrians.¹³⁶ With regard to facilities for these users, state-planning law enables municipalities to require bicycle and pedestrian facilities in new development.¹³⁷ Municipalities are also authorized to establish and maintain bicycle routes.¹³⁸ State law also provides for formation of local bicycle/pedestrian advisory committees.¹³⁹ The state Transportation enhancement grant program funds a range of community-led projects to expand transportation choices, including the provision of bicycle and pedestrian facilities, bicyclist and pedestrian education, and preservation of abandoned railways for conversion to pedestrian or bike trails.¹⁴⁰ The Vermont legislature directed that preference should be given to bicycle and pedestrian facilities in evaluating proposals.¹⁴¹

The Vermont Agency of Transportation (VTTrans) has since 1991 employed a full-time state bicycle and pedestrian coordinator. The agency’s bicycle and pedestrian program monitors and advocates for bicycle and pedestrian infrastructure and safety, and the agency provides funding for bicycle and pedestrian projects. In 1998 the Agency adopted its first Bicycle and Pedestrian Plan, which was updated most recently in 2008. The Agency’s 2002 manual for pedestrian and bicycle facility planning and design recognizes walking and biking as integral parts of Vermont’s transportation system.¹⁴² In addition to standalone bicycle and pedestrian projects (funded through one of several programs), VTTrans works to incorporate

bicycle and pedestrian facilities in roadway reconstruction, paving and bridge projects as appropriate.

Another program, the Safe Routes to School program, was created at a national level with the passage of the most recent federal transportation bill in 2005. It aims to increase the number of school children in grades K-8 who walk or ride bicycles to school. Using an interdisciplinary approach, this program integrates elements of transportation, economics, health and physical activity, environmental awareness and safety. This program has funded projects at seventy Vermont schools, including safety education, chaperoned “Walking School Buses,” new sidewalks, improved crossings, and school zone signs.

Vermont has, thus, adopted and implemented many policies to promote bicycling and walking. The working group noted, however, that there are opportunities for further progress. A recent national ranking, published prior to Vermont’s adoption of the “Safe Passing” law, placed Vermont 34th among the states in bicycle-friendliness.¹⁴³

Studies have identified several state policies that can effectively encourage biking and walking.¹⁴⁴ Primary among these are requiring sidewalks and bike lanes in community design, and funding these amenities in highway programs.¹⁴⁵ Planning for the safety of pedestrians and bicyclists has been called the “Complete Streets” approach. There is a growing trend at both the state and local levels of government to adopt Complete Streets policies in order to foster physical activity and promote healthy living and more environmentally friendly transportation use. Complete Streets policies require all new and renovated streets to be designed and built in a manner safe for all users – bicyclists, pedestrians, transit riders, and motorists.¹⁴⁶

Vermont has not adopted formal “Complete Streets” legislation, though it adheres to many principals embodied in the Complete Streets concept. The Vermont State Design Standards, adopted in 1997, govern the design of transportation projects administered through VTrans.¹⁴⁷ These standards acknowledge the various users of transportation corridors in the state. With regard to large towns and cities, there is a call for “new or redefined pedestrian walkways and crossings” and design treatments that “promote safe pedestrian and bicycle traffic.”¹⁴⁸ Throughout the standards (except with respect to limited access highways) consideration is given to bicycle and pedestrian safety and access. Moreover, the 2002 Vermont Pedestrian and Bicycle Facility Planning and Design Manual acknowledges that bicycling and walking are “integral components of Vermont’s transportation system” and provides that VTrans will incorporate pedestrian and bicycle facilities in all transportation projects and programs.¹⁴⁹ The design manual includes detailed guidance on how to plan and design pedestrian and bicycle facilities.

H. 741, introduced in the 2010 legislative session, would have required the Agency of Transportation to adhere to “Complete Streets” principles. This legislation, supported by AARP Vermont, Smart Growth Vermont, and others, failed to pass out of committee. VTrans and the League of Cities and Towns raised concerns including the issue of costs. The working group recommends working with the VTrans and other concerned parties to review the issues and to pursue revised legislation to further enhance Vermont’s integration of bicycle and pedestrian safety and access in local and statewide transportation planning. Ideas from working group members include adoption of a “level of service” standard applicable to bicyclists (to measure bike-friendliness of roadways); and requiring specified levels of funding for bicycle and pedestrian projects (as a specified percentage of transportation spending).

3. Public transportation

Providing public transportation options, such as bus service, commuter transit, and related infrastructure, encourages the use of public transit. That, in turn, can increase the level of physical activity when transit users walk or ride bicycles to and from transit access points.¹⁵⁰ One study, in Charlotte, N.C., found that commuters who switched to transit rather than driving to work walked an average of 1.2 miles per day during the week, and after 6 months had reduced their BMI by an average of 1.18 points.¹⁵¹

The working group has been able to build on the good work of others who have already considered this issue and made recommendations. In 2009, the Snelling Center for Government convened a public planning process on behalf of the AARP Vermont, in collaboration with a broad range of stakeholders, to focus on improving Vermont’s public transportation planning and implementation.¹⁵² Although the prevention of obesity was not the focus of the effort, the Obesity/Land Use Working Group endorses the conclusions of the Snelling/AARP process, and recommends further attention be focused on those recommendations.

The final report of the Snelling/AARP project, *Transporting the Public*, lists several high-priority recommendations. The Working Group has highlighted those listed below, because they are consistent with earlier recommendations of the working group, relating to planning for healthy communities. In addition to the access, social service and environmental benefits emphasized in the AARP report, it is helpful to remember that funding for public transportation can result in greater physical activity and thus better health and lower public health costs.

The final Statement of Principles derived from the AARP/Snelling process included several of particular relevance to the discussion of this working group:

- Increasing options for transporting the public and enhancing mobility will benefit individual health and well-being, reduce isolation, improve physical and mental health, and improve access to economic and employment opportunities.
- Integrating land use and transportation policy development, planning and implementation is essential at the community, state and federal levels to ensure development patterns, site design and transportation systems will increase access and mobility for every stage of life while enhancing our community connections and protecting our natural environment.
- Addressing transit, bicycle, and pedestrian needs in the siting and design of development and redevelopment contributes to the vibrancy of our communities and businesses. New growth should be concentrated within town centers to connect housing, employment, commerce, community and health services.
- Determining funding options and priorities must include a true accounting of the full societal benefits and costs (financial, environmental and health) of the existing system (public and private) which are borne by all participants and sectors; and consideration of new resources and creative solutions such as more flexible spending of existing funds.

4. Recreational and shared-use trails

In Vermont, the working group concluded, planning for pedestrian access need not be limited to sidewalks. In rural areas, multi-purpose and/or recreation trails can and should be incorporated into community planning to allow residents safe places to walk (or bicycle) from their homes to schools, town centers, and other destinations.

Vermont boasts an extensive network of recreational trails on public lands, including Vermont State Parks and the Green Mountain National Forest. There is a state park within 30 minutes of most Vermont residents. The Green Mountain National Forest offers approximately 900 miles of multiple-use trails for hiking, cross-country skiing, snowmobiling, horseback riding, and bicycling.¹⁵³

State law requires coordination between the Agency of Natural Resources and VTrans, to coordinate the development of bicycle and pedestrian paths throughout the state.¹⁵⁴ In

1993, the Legislature established the Vermont Trails System, to “conserve and use the natural resources of this state for healthful and recreational purposes, and to provide transportation from one place to another.”¹⁵⁵ Vermont has developed an extensive, and nationally recognized, recreational trails system.¹⁵⁶ The state Department of Forests, Parks & Recreation administers the Vermont Recreation Trails Program, funded through US DOT and the Federal Highway Administration, as well as \$370,000 per year from state gas tax revenues. State investment in the trails program has remained constant since the inception of the program in 1993.

An example of a trail system that works well is the Cross Vermont Trail, an all-season non-motorized shared-use path, consisting of a continuous system of local trails and roads. This trail connects from one community to the next across Vermont following Burlington to Waterbury along the Winooski River Valley, into Montpelier and out to Plainfield and Marshfield and out to Groton and the Wells River Valley.¹⁵⁷ In the Mad River Valley, the Mad River Path is a series of walkways and trails connecting people, communities, schools, businesses, and special places. Mad River Path offers a continuous system of recreation trails through Warren, Waitsfield, Fayston, and Moretown.¹⁵⁸

The Cross Rivendell Trail is a 36-mile continuous trail system connecting Vershire, Fairlee, and West Fairlee in Vermont, continuing to Orford, New Hampshire and serving as an educational and recreational resource for these four towns. Cross Rivendell Trail is managed through a unique partnership between the Rivendell Trails Association (RTA) and the Rivendell Interstate School District, drawing upon the strength of each organization. This includes joint financial support for a part-time Trail Coordinator position responsible for coordinating trail and outreach efforts of the RTA as well as opportunities for place-based education programs within the schools’ curriculum.¹⁵⁹

The working group recommends including more recreational and multi-purpose trails, in addition to more traditional transportation options, into the development planning process. Trails and greenways are important aspects in the development of healthy communities, particularly in rural areas, to provide safe, accessible ways to connect people to places, and to one another. Vermont should develop more incentives to communities to integrate bike and pedestrian paths and non-motorized multi-use trails into land use and transportation plans. In particular, we should focus on providing linkages between existing trail segments, and on assuring that there are recreational and/or multi-use trails conveniently accessible to all areas of the state, with a special emphasis on connections between bicycle routes and pedestrian routes.

5. Increasing Availability of and Access to Recreational Facilities:

a) *Joint Use of Facilities: Addressing the Liability Issue*

In order to increase physical activity through recreational activities, Vermont needs to improve residents' access to facilities conducive to such activity. One obvious set of existing facilities is owned by local school districts throughout the state: school playgrounds, athletic fields and tracks, gymnasiums, etc. Yet, members of the working group pointed out that many of these facilities are not currently being made available for use by community members.

Vermont's 2006 statewide obesity prevention plan, "Fit & Health Vermonters," includes among its priority actions, School Output Measure 3: "By 2010, all Vermont schools will work with external partners to increase opportunities for nutrition and physical activity."¹⁶⁰ Among the recommended strategies is: "Make school facilities available to community members after school and on weekends for recreation."¹⁶¹ State law authorizes school boards to make school facilities and equipment available for public use, "if such purposes appear, in the judgment of the board, to be in the best interests of the district and are an efficient, economical, and appropriate use of the facilities and equipment."¹⁶² As school districts have sought to implement joint use of their facilities and equipment, however, concerns have arisen with respect to potential liability of the school district should a member of the public using the facilities sustain an injury.

Vermont statutes limit liability for private landowners that make their property available for public recreational use without charging a fee. 12 V.S.A. §§ 5791-5795. Further protecting landowners from tort liability is the "Vermont sports injury statute," providing that "a person who takes part in any sport accepts as a matter of law the dangers that inhere therein insofar as they are obvious and necessary." 12 V.S.A. § 1037.

For Vermont municipalities, including school districts, there is no statutory protection from liability. Vermont courts have held that whether a municipality or school district is subject to liability depends on whether the local governmental entity is engaged in "governmental" functions or instead in "proprietary functions."¹⁶³ The question of whether school districts risk liability exposure when allowing the shared recreational use of school facilities, is of concern to advocates working in public health nationally.¹⁶⁴

In some states, school districts that allow the use of school facilities or land to serve the public for recreational or other public uses are protected from liability; users are responsible for any damages that result.¹⁶⁵ The working group, in light of the important public interest served by allowing existing facilities within a community to be utilized by members of the community for physical activity, recommends consideration by the legislature of such a statutory protection

from liability, to encourage schools to open their facilities to the public under appropriate conditions.

b) Planning Creatively To Improve Vermont's Recreational Amenities.

As stated in Vermont's Statewide Obesity Prevention Plan, *Fit & Healthy Vermonters*, "healthy communities support healthy lifestyles by providing opportunities for physical activity and good nutrition as a means to prevent chronic conditions."¹⁶⁶ The working group supports VDH's efforts to coordinate with local planning commissions and zoning boards to achieve healthy community design. With respect to providing opportunities for physical activity, rather than duplicate current and ongoing efforts at the local level, the working group has formulated several suggestions for potential state policy changes to encourage the provision of additional recreational facilities and opportunities to Vermonters

As an example, Vermont should optimize the use of regulated flood plains for recreation. Flood plains are, obviously, inappropriate locations for many permanent structures, but to the extent consistent with public safety, such areas of restricted development should be made available for public use for hiking and other outdoor activity. Examples include trails with landscaped wetlands and/or rain gardens that would assist in reducing runoff in heavy storms. The working group recommends that work be done to clarify appropriate designs for facilities and recreational structures that could be provided in regulated flood plains.

For new housing and other private development projects, government can work with developers to encourage, and offer incentives for, the inclusion of recreational facilities in those projects. The working group recommends the formulation of statutory provisions to provide incentives (e.g., density bonuses, permit streamlining) for developers who provide recreational facilities for residents and community members. These could include parks and open space areas, shared use paths, playing fields, and community gardens.

The working group also recommended the consideration of the economic benefits, as well as the costs, of the provision of such facilities – for the developer, the municipality, and the residents. For example, an analysis of the economic impacts of multi-use bike paths in the Burlington area show large numbers of tourists use these paths, bringing tourism dollars into the state.¹⁶⁷ On health costs specifically, the World Health Organization has formulated a "health economic assessment tool" to help quantify the economic benefits (from reduced mortality) of providing bicycle infrastructure.¹⁶⁸ And evidence shows that communities with parks and similar amenities enjoy greater property values as well as a better quality of life.¹⁶⁹

6. Additional measures to support and encourage pedestrians and bicyclists

The working group developed a number of more specific recommendations to promote and encourage physical activity, especially biking and walking. Some of these are options for communities to consider instead of more formal shared-used paths and trails; others can increase utilization of existing bike facilities or simply enable interested community members to walk and bike where now they cannot safely or conveniently do so.

Paved road shoulders. Road shoulders are important to bicyclists and, in the absence of a sidewalk, to pedestrians because they provide an added measure of safety by increasing the space on the road that they are sharing with motor vehicles. Paved shoulders on rural roads can facilitate safe (and comfortable) bicycling although they do not create an officially designated bike lane.

Traffic calming measures. Roadways can be made safer for cyclists and pedestrians by a number of traffic measures in addition to separated bike paths. These include reducing speed limits (especially in congested areas), speed humps, traffic circles, and, in some cases, narrower roadways.

Bicycle accommodations. Bicyclists are more willing to bike to work if accommodations are made for them. For example, bus lines and transit agencies can be required or encouraged to allow bikes onboard or on racks on commuter and public transit vehicles. Offices, bus stations, and other public areas can be encouraged or required to provide such facilities as secure bike parking, lockers and showers for bicyclists, etc.

7. Physical Activity and Transportation Recommendations and Strategies

POLICY 3: FOSTER AND IMPROVE VERMONTERS' ACCESS TO SAFE RECREATION AND PHYSICAL ACTIVITY BY INCORPORATING FACILITIES, INCLUDING FOR PEDESTRIANS AND BICYCLISTS, INTO COMMUNITY PLANS AND DEVELOPMENTS.

- *Improve public planning to encourage and support Vermonters engaging in physical activity, by:*
 - *incorporating appropriate pedestrian, bicycle, and other facilities into the design of communities and public projects;*
 - *increasing access to appropriate and safe facilities for recreational physical activity through planning new facilities where needed, and improving access to existing facilities.*

SPECIFIC STRATEGIES

- *Roadways and pedestrian/bicyclist facilities:* Design transportation facilities for the safety and convenience of all users, including bicyclists and pedestrians, and ensure adequate funding for transportation facilities to accommodate all users including bicycles and foot traffic.
- *Public Transportation:* The availability of transit options enables residents to walk and/or bike more, and even to forego automobile ownership.
 - Incorporate analysis of public transportation impacts and options in the development review and approval process.
 - Conduct research and surveys as needed to identify community priorities in providing transportation options.
 - Incorporate land use considerations into transportation planning.
 - Improve transportation to retail food outlets (retail and farmers' markets) through affordable, public or business-provided transportation, alternate or added bus routes, store-operated shuttles, in and around senior housing and other concentrations of housing farther from food outlets. (See also, recommendation of the Retail Environment Working Group, pp. 4-7.)
 - Integrate food access considerations into public transportation planning, e.g. locating public transit stops, advertising.
- *Incorporate trails in development planning.* Encourage as part of community and transportation planning, the inclusion of trails, as well as more traditional transportation options. Trails can be used to connect communities, schools, and other facilities, and are important in increasing residents' options for physical activity.
- *Joint use of school and other public and private facilities.* Encourage and facilitate the joint use by community members, of public facilities such as school playgrounds and gyms; private institutions such as senior housing, child care centers, etc.; trails for bikes and pedestrians across public and private lands; and community gardens. Identify liability and other concerns, and develop legislative changes to facilitate joint use and provide appropriate protection to school districts.
- *Recreational and open space facilities:* Offer incentives for the provision of recreational facilities.
 - Optimize use of flood plains (public and private lands) for recreation.
 - Revise laws to provide incentives for developers to provide parks, bike paths, etc. (e.g., density bonuses, permit streamlining); analyze economic advantages of providing outdoor recreational facilities.
 - Encourage or require new developments (residential or mixed-use) to include outdoor open space, recreational facilities, community gardens, and similar elements.

- *Additional measures to support and encourage pedestrians and bicyclists:*
 - Road shoulder paving. In rural areas where bike lanes are not provided, well-maintained shoulders can provide space to facilitate safe use by pedestrians, runners, and bicyclists.
 - Traffic calming measures, including reduced speed limits, speed bumps, traffic circles, separated lanes where possible.
 - Bicycle accommodations: buses should accommodate bikes; communities and businesses should provide facilities for bicyclists, such as bike parking, lockers and showers in offices, train stations, and other appropriate locations.

IV. Healthy Weight Initiative Land Use Working Group Participant List

No assumption of endorsement of the proposals in the report of the Attorney General or the working groups can be made by the appearance of a name on this list. The following persons participated in the initiative in a variety of manners: by regularly or occasionally attending working group meetings, by participating in discussions by email, by monitoring the work of a working group, by providing information or expertise, or by expressing opposition to proposals. We appreciate the work of all participants.

Barre, Laura	Dartmouth College
Bianchi, Sasha	Vermont Department of Health
Coburn, Susan	Vermont Department of Health
Copeland-Hanzas, Rep. Sarah	Vermont Legislature
Cortez, Jennifer	Green Mountain Power Company
Dahlstedt Buss, Nina	Vermont Department of Health
Davis, Mandy	The Intervale Center
Diehl, Kathleen	Green Mountain and Finger Lakes National Forests
Feulner, Mike	Vermont Coalition for the Promotion of Physical Activity
Flynn, Karen	Vermont Department of Health
Gierzynski, Anthony	University of Vermont
Gustin, Emily	University of Vermont
Harwood, Mary	Smart Growth Vermont
Hyman, Jessica	University of Vermont - Center for Rural Studies
Ingulsrud, Faith	Vermont Department of Economic, Housing & Community Development
Jenson, Sylvia	Vermont Agency of Agriculture, Food & Markets
Kaplan, Jon	Vermont Agency of Transportation
Kell, Patrick	Vermont Mountain Bike Association
Kelley, Suzanne	Vermont Department of Health
Kittell, Senator Sarah	Vermont Legislature
Klein, Heidi	VT Public Health Association (VtPHA)
Lyons, Senator Virginia	Vermont Legislature
MacKay, Noelle	Smart Growth Vermont
Marchildon, Greg	AARP Vermont
McManus, Andrea	New England Culinary Institute
McRae, Glenn	The Intervale Center
Meyers, H. Bud	University of Vermont
Mihaly, Christy	Vermont Office of the Attorney General

Narkewicz, Sarah	Rutland Regional Medical Center
Nixon-Carter, Jenny	Rutland Area Physical Activity Coalition
Nunez, Tad	Vermont Recreation and Parks Association
Partridge, Rep. Carolyn	Vermont Representative
Perkins, Kit	Farm to Plate Initiative
Pierce, Corie	Sterling College Sustainable Agriculture Program
Pope, Aimee	Vermont Agency of Transportation
Ramirez, Elena	Licensed Psychologist - Doctorate
Reagan, Allison	Vermont Department of Health/ Office of Local Health
Roy, Rebecca	Vermont Department of Forests, Parks & Recreation
Ruggles, Laural	Northeastern Vermont Regional Hospital
Sawyer, Chip	University of Vermont - Center for Rural Studies
Schattman, Rachel	University of Vermont - Center for Sustainable Agriculture
Schreibman, Susan	Rutland Regional Planning Commission
Shattuck, Theodore	Rutland Area Physical Activity Coalition
Sprague, Kristin	Vermont Department of Health Access
Till, Rep. George	Vermont Legislature
Wachtel, Deborah	Fletcher Allen Health Care, Vermont Nurse Practitioner Association
Wallace-Brodeur, Jennifer	AARP Vermont
Watzin, Mary	University of Vermont - Rubenstein School of Environment and Natural Resources
Wilcke, Burton	University of Vermont
Winnie, Sherry	Vermont Department of Forests, Parks & Recreation
Yon, Bethany	Vermont Department of Health
Yost, Ryan	University of Vermont

V. ENDNOTES

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³ Robert Wood Johnson Foundation, Leadership for Health Communities, *Improving Access to Health Foods: A Guide for Policy Makers* (Fall 2007), at 4. <http://www.leadershipforhealthycommunities.org/images/stories/healthyeatingweb.pdf>.

⁴ A roster of the participants is provided at Exhibit 1 of this report.

⁵ For a compilation of land use planning techniques that could be brought to bear on the “fast food” issue, see, e.g., M. Ashe, et al., *Land Use Planning and the Control of Alcohol, Tobacco, Firearms, and Fast Food Restaurants*, *American Journal of Public Health* (Sept. 2003): 1407-8; for a critique questioning the effectiveness of a ban on new fast-food restaurants in Los Angeles, see R. Strum et al., *Zoning for Health? The Year-Old Ban on New Fast-Food Restaurants in South LA*, *Health Affairs*, no. 6 (2009), w1088-w1097 (published online Oct. 6, 2009; 10.1377/hlthaff.28.6.w1088). <http://content.healthaffairs.org/cgi/content/abstract/28/6/w1088>.

⁶ V. Lee et al., Prevention Institute, *Strategies for Enhancing the Built Environment to Support Health Eating and Active Living*, supra note 2, http://www.convergencepartnership.org/atf/cf/%7B245A9B44-6DED-4ABD-A392-AE583809E350%7D/CP_Built%20Environment_printed.pdf; Andrew Dannenberg et al., Use of Health Impact Assessment in the U.S.: 27 Case Studies, 1999-2007, 34 *Am. J. of Preventative Medicine* 241 (2008); Gopal K. Sing et al, *Neighborhood Socioeconomic Conditions, Built Environments, And Childhood Obesity*, 29 *Health Affairs* 503; CDC, *Health Community Design Expert Workshop Report* (Sept. 2009), http://www.cdc.gov/healthypplaces/publications/CDCExpertWorkshopReport_FINAL.pdf.

⁷ Vermont Dept of Health, *Fit & Healthy Vermonters: Preventing Obesity in Vermont, A Statewide Plan Engaging Individuals, Organizations, Communities, Government & Industry* April 2006, at 4. http://healthvermont.gov/family/fit/documents/Obesity_Plan.pdf.

⁸ VDH, *Vermont 2008: Healthy Living Initiatives: Report to the Legislature on Act 203 Sections 17, 18, 19 and 21* (Jan. 2009), at 3. http://healthvermont.gov/admin/legislature/documents/HealthyLivingInitiatives_legrpt011509.pdf.

⁹ Effective September 1, 2011, local ordinances are formally required to conform to the statutory provisions. 24 V.S.A. § 4481.

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¹¹ 24 V.S.A. § 4350(b).

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¹⁴ Vermont Land Use Education & Training Collaborative, *Essentials of Local Land Use Planning and Regulation* (May 2007), 18-19. <http://www.vpic.info/pubs/essentials/>.

¹⁵ 24 V.S.A. § 4348.

¹⁶ 10 V.S.A. §§ 6001 et seq.

¹⁷ Health Care Reform Commission, *Recommendations for 2008 Legislative Session*, as adopted December 4, 2007, 5-7.

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¹⁸ *Id.* at 5.

¹⁹ *Id.* at 6

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²¹ *Id.*; <http://www.smartgrowthvermont.org/learn/smartgrowth/>.

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²³ *Id.*

²⁴ 24 V.S.A., Ch. 76A Historic Downtown Development.

²⁵ Smart Growth Vermont website, <http://www.smartgrowthvermont.org/help/policies/>; Vermont Division for Historic Preservation website, <http://www.historicvermont.org/programs/designatedvillagecenters.htm>; Vermont Department of Housing and Community Affairs website, Planning Division pages, <http://www.dhca.state.vt.us/Planning/GrowthCenters.htm>; <http://www.dhca.state.vt.us/Planning/index.htm>; e-mail communication November 8, 2010 from Faith Ingulsrud, Coordinator, Planning & Growth Center Designation, Community Planning & Revitalization Division, Vermont Department of Economic, Housing & Community Development (DEHCD).

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<http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2008/acts/ACT203.htm>.

²⁷ Healthy Eating Active Living Convergence Partnership, *Promising Strategies for Creating Health Eating and Active Living Environments* (2008), at 6.

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The Partnership members include: CDC, Robert Wood Johnson Foundation, W.K. Kellogg Foundation, The California Endowment, Kaiser Permanente, and Nemours.

²⁸ See, e.g., *National Physical Activity Plan* (2010), Transportation, Land Use and Community Design, Strategy 3, Tactics. http://www.physicalactivityplan.org/transportation_st3.htm.

²⁹ <http://www.who.int/hia/en/>; <http://www.cdc.gov/healthyplaces/hia.htm>

³⁰ Dr. Richard Jackson, formerly of federal Centers for Disease Control and Prevention, and now professor of UCLA School of Public Health, quoted by P. Langdon in *Public Health: the next driver of planning decisions?* *New Urban News* 15:5 (July/Aug. 2010), 1,7. Examples of “boneheaded decisions” cited by Dr. Jackson are: “building big schools where much acreage is devoted to parking; providing federal agricultural subsidies for commodity crops (Americans consume an average of more than a pound a week of high-fructose corn syrup); and adding MTBE to gasoline. (MTBE is reportedly capable of causing central nervous system depression and increasing the risk of cancer, among other dangers.)” *Id.* at 7.

³¹ P. Langdon, *supra*, note 30, *Public Health: the next driver of planning decisions?* *New Urban News* 15:5 (July/Aug. 2010), at 1.

³² Division of Emergency and Environmental Health Services, Dep’t of Pub. Health and Human Servs. Centers for Disease Control and Prevention, *Health Impact Assessment Fact Sheet*, (2007) available at: http://www.cdc.gov/healthyplaces/publications/Health_Impact_Assessment2.pdf; European Centre for Health Policy, World Health Organization Regional Office for Europe Gothenburg Consensus Paper: (1999) available at: www.euro.who.int/document/pae/gothenburgpaper.pdf, Calvin Freeman, *Leveraging Land Use and Economic Development Practices to Improve Health Disparities*, California Health Policy Forum Brief 4 (2006); P. Langdon, *supra*, note 30, pp. 1,6.

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³⁴ E.C. Harris, et al., *Humboldt County General Plan Update: Health Impact Assessment: A Case Study*, 2 *Environmental Justice* 127 (2009) <http://www.humanimpact.org/component/jdownloads/finish/4/62>.

³⁵ See website of California Active Communities, <http://www.caactivecommunities.org/lphbe.html>; Tina Zenzola, *Creating Healthy Built Environments: Case Studies of Local Health Departments in California* (2010) http://www.safehealthycommunities.com/tools_publications.html.

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- ⁷³ Community-supported agriculture (CSA) is a partnership between a farm and individuals in the community in which the individuals pay a membership fee to a farm in return for a share of the harvest, which usually includes weekly deliveries of the farm's seasonal fruits and vegetables. CSAs vary in the number of farms involved, membership fee structure and schedule, food delivery methods, and level of participation of members in the operation of the farm.
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- ⁷⁹ 12 V.S.A. § 5751-53, Chapter 195, *Nuisance Suits Against Agricultural Activities*.
- ⁸⁰ The statutory definition of "Value-added agricultural product" is "any agricultural commodity or product that has been changed, produced, or segregated such that the market for the product has expanded and where the greater portion of the revenue derived from the value-added activity accrues to the producer of the commodity or product." 6 V.S.A. § 2961(a)(2).
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- ⁹² 6 V.S.A. § 8.
- ⁹³ 32 V.S.A. § 3751 et seq.
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- ¹⁰¹ *Id.* at 27-28.
- ¹⁰² <http://www.cdc.gov/nccdphp/dnpao/hwi/toolkits/gardenmarket/example.htm>.
- ¹⁰³ <http://www.vermontfresh.net/index.php>.
- ¹⁰⁴ Act 54, The Vermont Recovery and Reinvestment Act of 2009, §17(c)(2)(B). <http://www.leg.state.vt.us/DOCS/2010/ACTS/ACT054.PDF>.
- ¹⁰⁵ Draft Appendix E: *Meeting the Demand/Strategies for Expanding Vermont Livestock Production and Meat Processing* (Sept. 8, 2010), http://www.vsif.org/assets/files/Agriculture/Strat_Plan/Appendix%20E_Meeting%20the%20Demand.pdf.
- ¹⁰⁶ *Ibid.*
- ¹⁰⁷ See, e.g., *National Physical Activity Plan* (2010), in which under the Strategies for Parks, Recreation, Fitness and Sports, a recommended tactic is to “develop partnerships and programs such as ‘green gyms’ that promote physical activity through volunteer environmental stewardship opportunities (e.g., community gardening, ecological stewardship).” http://www.physicalactivityplan.org/parks_st6.htm.
- ¹⁰⁸ Community gardens are also cited as a means to enhance community connectedness. Kingsley and Townsend (2006) *Dig in to Social Capital: Community Gardens as Mechanisms for Growing Urban Social Connectedness*, *Urban Policy and Research*, 24(4) at 525; Alaimo, K., Reischl, T. M., and Allen, J. O. (2010) *Community Gardening, Neighborhood Meetings, and Social Capital*, *Journal of Community Psychology*. Wiley Subscription Services, Inc. <http://dx.doi.org/10.1002/jcop.20378>. Sullivan, Ashley F. (1999) *Community Gardening in Rural Regions: Enhancing Food Security and Nutrition*, Center on Hunger and Poverty, Tufts University. <http://www.eric.ed.gov/PDFS/ED439862.pdf>.

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¹¹⁰ www.gorwteamvt.com.

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¹¹² *Starting a Community Garden*, supra, <http://communitygarden.org/learn/starting-a-community-garden.php>.

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http://www.leg.state.vt.us/CommissiononHealthCareReform/Recommendations_as_passed_by_HCRC_12-4-07.pdf;

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<http://healthyamericans.org/reports/obesity2010/Obesity2010Report.pdf>.

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¹³⁷ Vermont Land Use Planning and Training Collaborative, *Bicycle and Pedestrian Facilities*, <http://www.vpic.info/pubs/implementation/pdfs/2-Bicycle.pdf> (accessed Aug. 6. 2010); 24 V.S.A. §§ 4416, 4417.

¹³⁸ 19 V.S.A. § 2307.

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¹⁴⁰ VTrans 2011 Grant Application Forms and Instructions, Transportation Enhancement Programs. <http://www.aot.state.vt.us/progdev/Documents/LTF/Enhancements/2011GrantApplicationFormAndInstructions.pdf>.

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¹⁴³ The League of American Bicyclists, in its 2010 Bicycle-Friendly States ranking, put Vermont 34th. <http://www.bikeleague.org/programs/bicyclefriendlyamerica/bicyclefriendlystate/>. In 2009, Vermont was ranked 21st.

¹⁴⁴ Robbins, LT, National Conference of State Legislatures, *Promoting Biking and Walking: The Legislative Role* (2002) on Robert Wood Johnson website, <http://www.rwjf.org/pr/product.jsp?id=14150>. (accessed Aug. 6. 2010.)

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¹⁴⁹ Vermont Agency of Transportation, *Vermont Pedestrian and Bicycle Facility Planning and Design Manual*, December 2002, at ix.

<http://www.aot.state.vt.us/progdev/Documents/LTF/FinalPedestrianAndBicycleFacility/PedestrianandBicycleFacilityDesignManual.pdf>.

¹⁵⁰ “Walking to and from public transportation can help individuals attain recommended levels of daily physical activity (Besser & Dannenberg, 2005). Public transportation includes mass transit systems such as buses, light rail, streetcars, commuter trains, and subways, and the infrastructure supporting these systems (e.g., transit stops and dedicated bus lanes). Improving access to public transportation may help promote more active lifestyles.” Keener, D., et al, *supra* note 127, *Recommended community strategies and measurements to prevent obesity in the United States: Implementation and measurement guide*. U.S. Department of Health and Human Services, CDC, at 53.

http://www.cdc.gov/obesity/downloads/community_strategies_guide.pdf.

¹⁵¹ New Urban News 15:5 (July/Aug. 2010) at 4, citing study by Dr. John M. MacDonald, Univ. of Pa., published in *Am. J. of Prev. Medicine* (Aug. 2010), and 2005 study by Besser and Dannenberg, cited *supra* note 150.

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¹⁵³ Green Mountain National Forest website,

http://www.fs.fed.us/r9/forests/greenmountain/htm/greenmountain/g_about.htm.

¹⁵⁴ 10 V.S.A. § 447.

¹⁵⁵ 10 V.S.A. § 441(a).

¹⁵⁶ <http://www.americantrails.org/awards/CRT10awards/Outstanding-State-Trail-Program-Award-Vermont.html>; <http://www.vtpr.org/recgrant/trgrant.cfm>

¹⁵⁷ For more information see <http://www.crossvermont.org/>.

¹⁵⁸ For more information, see <http://www.madriverpath.com/>.

¹⁵⁹ For more information, see <http://crossrivendelltrail.org/>.

¹⁶⁰ VDH, *Fit & Healthy Vermonters: Preventing Obesity in Vermont* (April 2006), at 4, 23,

http://healthvermont.gov/family/fit/documents/Obesity_Plan.pdf.

¹⁶¹ *Id.* at 23.

¹⁶² 16 V.S.A. § 563(30)

¹⁶³ *Marshall v Town of Brattleboro*, 121 Vt. 417, 425, 160 A.2d 762 (1960 Vt.). Something as essential as a bike path or park does not benefit the town financially, and is so important to the general public that it is considered a governmental rather than proprietary function of a municipality and immunity is therefore extended to the towns and cities responsible for their construction. A ski tow, however, which was built and run by a municipality, was held not to be so vital to a community that the town which operates one would be granted immunity from tort liability. *Id.*

¹⁶⁴ See, e.g., National Policy & Legal Analysis Network to Prevent Childhood Obesity, *Fifty-State Scan of Laws Addressing Community Use of Schools* (updated 3/2010); Summary of Legal Rules Governing Liability for Recreational Use of School Facilities,

<http://www.nplanonline.org/nplan/products/liabilitysurvey>,

http://www.nplanonline.org/system/files/JU_StateSurvey_FINAL_2010.03.19.pdf,

http://www.nplanonline.org/system/files/Liability_Recreational_Use_Facilities_CHART_FINAL_20100416.pdf.

¹⁶⁵ Delaware (14 Del. Code § 1056: Any groups of citizens permitted to use school property shall be responsible for any damages done to such property over and above the ordinary wear. Any school board that permits use of public school property for any use other than public school use shall not be liable in tort for any damages by reason of negligence in the construction or maintenance of such property); North Carolina (N.C. Gen. Stat. § 115C-524: A board of education may permit, through agreement, non-school groups to use school property for other than school purposes so long as use is consistent with the proper preservation and care of the public school property. No liability may attach to the board of education, individually or collectively, for personal injury suffered by use of the school property); South Dakota (S.D. Codified Laws § 13-24-20: A school board may grant the use of school facilities or land for any purpose which it considers advisable for a community service for such compensation as it determines. The school

is not liable for any damages resulting from the use, and the users are responsible to the school district for any and all damages resulting from the use.)

¹⁶⁶ VDH, *Fit & Healthy Vermonters: Preventing Obesity in Vermont* (April 2006), at 19, http://healthvermont.gov/family/fit/documents/Obesity_Plan.pdf.

¹⁶⁷ C. Zhang et al., UVM Transportation Research Center, *Estimating Tourism Expenditures for the Burlington Waterfront Path and the Island Line Trail* (Feb. 2010) UVM TRC Report # 10-003.

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¹⁶⁹ Trust for Public Land, *The Economic Benefits of Land Conservation* (2007) http://www.tpl.org/content_documents/econbens_landconserve.pdf.