

OUTLINE OF TESTIMONY REGARDING “ROAD RULE” IN PROPOSED ACT 250 LEGISLATION

Charles Storrow, Leonine Public Affairs, LLP

On Behalf of Vermont Attorneys Title Corporation

1. Vermont Attorney’s Title Corporation is a title insurer that insures the marketability of title to real estate based on an attorney’s examination of municipal land records and subsequent issuance of an opinion on the question of whether there is marketable title to the subject real estate.
2. Mortgage lenders typically require their borrowers to purchase title insurance to protect the lender’s title interest in the borrower’s real estate and borrowers/landowners can also purchase coverage for their own title interest. Title insurance is purchased via a one-time premium paid for at a real estate closing.
3. In the mid 1990s the Vermont Supreme Court ruled that in opining on the marketability of title an attorney must address the question of whether the subject property is in compliance with land use regulations such as local zoning, Act 250 and the state’s water supply and wastewater regulations. *See Hunter Broadcasting, Inc. v. City of Burlington, 164 Vt. 391 (1995); Bianchi v. Lorenz, 166 Vt. 555 (1997).*
4. The proposed “road rule” (amendment to definition of “development”) in the joint administration/VNRC Act 250 proposal will make it difficult for

attorneys to determine whether a parcel of real estate is in compliance with Act 250. This is due to the fact that a pre-existing, undeveloped parcel of land could, after the enactment of the Act 250 legislation, be developed with a commercial, industrial or residential structure that is served by a road or driveway more than 2,000 feet long and there would not be any instrument filed in the land records reflecting the length of the road/driveway.

5. **Proposal:** Require the Department of Environmental Conservation to amend its Waste Water and Water Supply Rules to: (a) require that the site plan submitted with an application for a WW/WS permit show any new road/driveway associated with the development activity for which a WW/WS permit is needed, and its length, and (b) that the WW/WS permit indicate whether a new road/driveway is part of the development activity and, if so, the length of the new road/driveway.