

# Title Search 101

Presented by James E. Knapp

Vermont Bar Association

February 12, 2021

# Required Disclaimer

- I am a full time employee of First American Title Insurance Company. This presentation does not represent the official position of First American Title Insurance Company.

# Why Search a Title

- Establish that the title is Marketable
- What's a Marketable Title – Title Standard 1.3

## **DEFINITION OF MARKETABLE TITLE**

- A marketable title is one that may be freely made the subject of resale. *Krulee v. Huyck & Sons*, 121 VT 304 (1959) A marketable title is one that allows an owner to hold the land free from the probable claim of another. It is a title which would allow the holder of the land if he or she wanted to sell, to transfer a title which is reasonably free from doubt. A title is marketable when its validity cannot be said to involve a question of fact and is good as a matter of law. *First National Bank v. Laperle*, 117 VT 144, 157 (1952).

# Title Search - Scope

- Provided by the Supreme Court
- *Estate of Fleming v. Nicholson*, 168 Vt 495, 1998
  - *In conducting a title search for a client, an attorney has a duty to inform and explain to the client the implications of any clouds on the title that would influence a reasonably prudent purchaser not to purchase the property. See [North Bay Council, Inc. v. Bruckner, 131 N.H. 538, 563 A.2d 428, 431 \(1989\)](#).*
- You may also need to know what your client plans to do with the property
  - Bare land
  - Commercial transactions

# Key Concepts

- Create a process for searching
  - People do them with different processes
- Create a checklist
- Be consistent in the process of searching
  - Do all your searches the same way

# Identifying Potentially Relevant Records

- Municipal Land Records
- Municipal Zoning or Planning Records
- State Records at Regional Engineer's offices
- District Environmental Commission Records
- Online permit databases
- Vermont Interactive Natural Resources Atlas

[Natural Resources Atlas | Agency of Natural Resources \(vermont.gov\)](#)

# Title Search – Preparation

- Be familiar with the Title Standards and relevant statutes
- Toolkit
  - Paper – include graph paper
  - Writing implements of choice
  - Highlighters
  - Scale and Protractor
- Parcel plotting software
- Research - town office location/ hours / special procedures / available digital records
  - Rules on using your cell phone camera

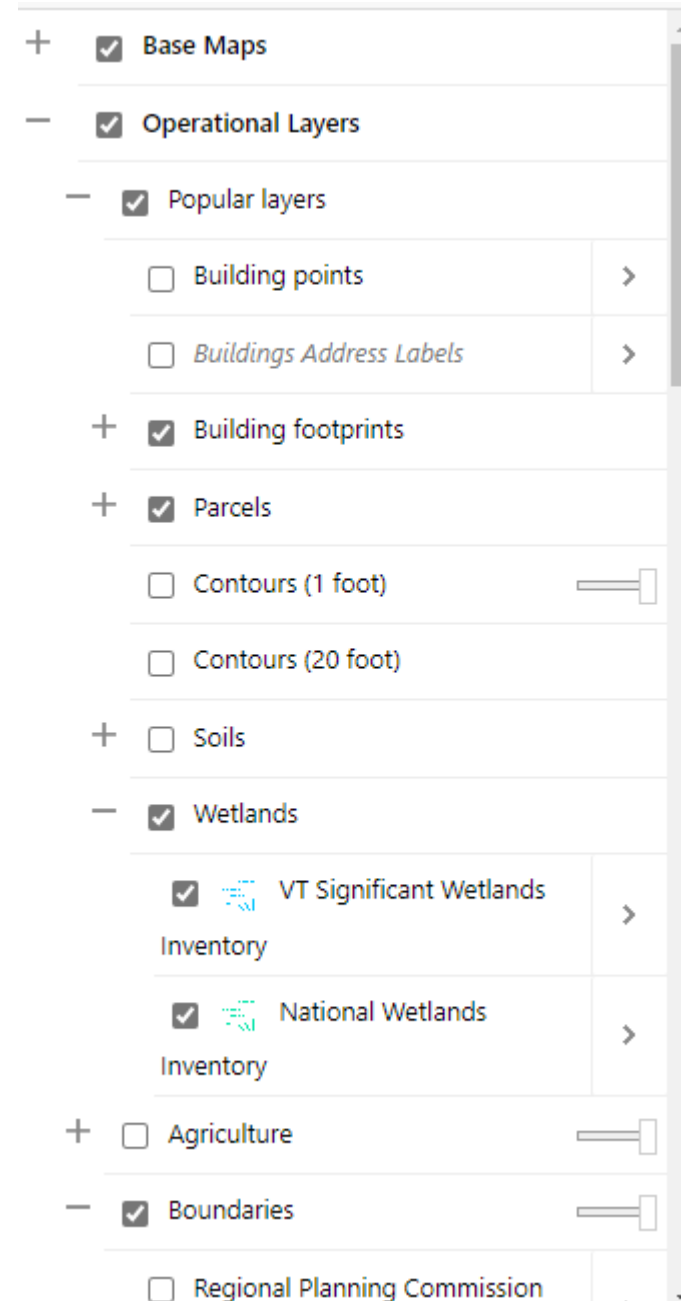
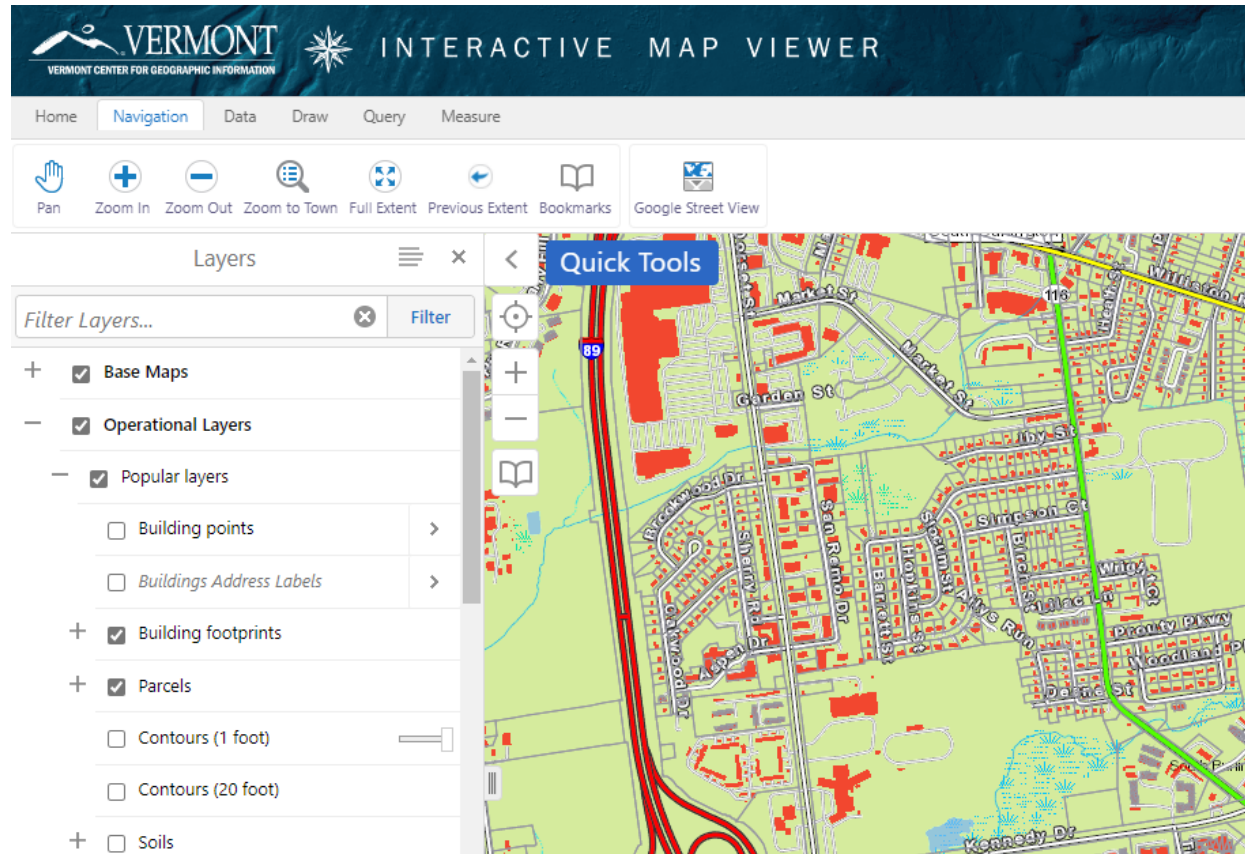
# Identifying the Property

- Review contract and related information
  - Understand the scope of the search before you start
- Use address – look at Google Earth or Parcel Maps (VGIS)
- Look at the Vermont Interactive Map Viewer
- Property Inspection – NOT RECOMMENDED
  - See what you should not see



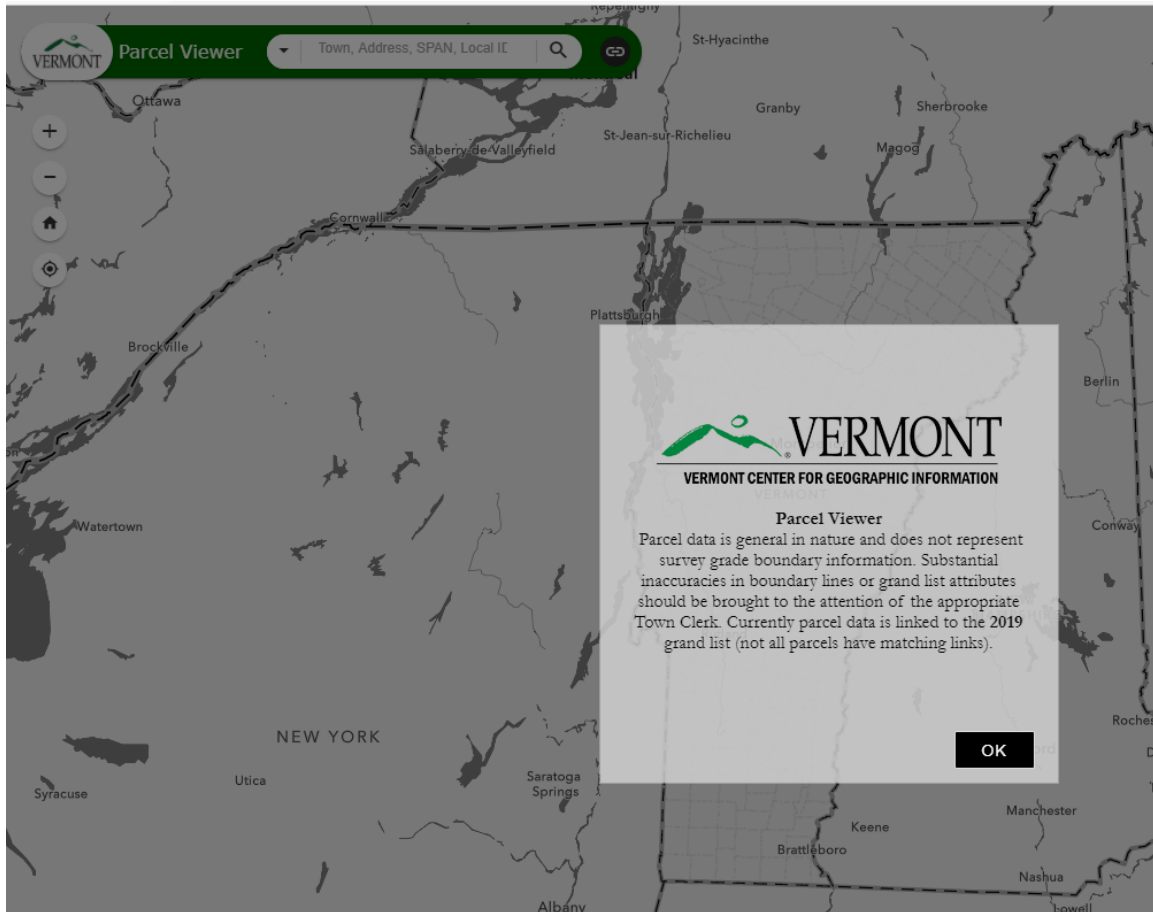
# Vermont Interactive Map Viewer

- [VT Interactive Map Viewer \(HTML5\) \(vermont.gov\)](https://vermont.gov)

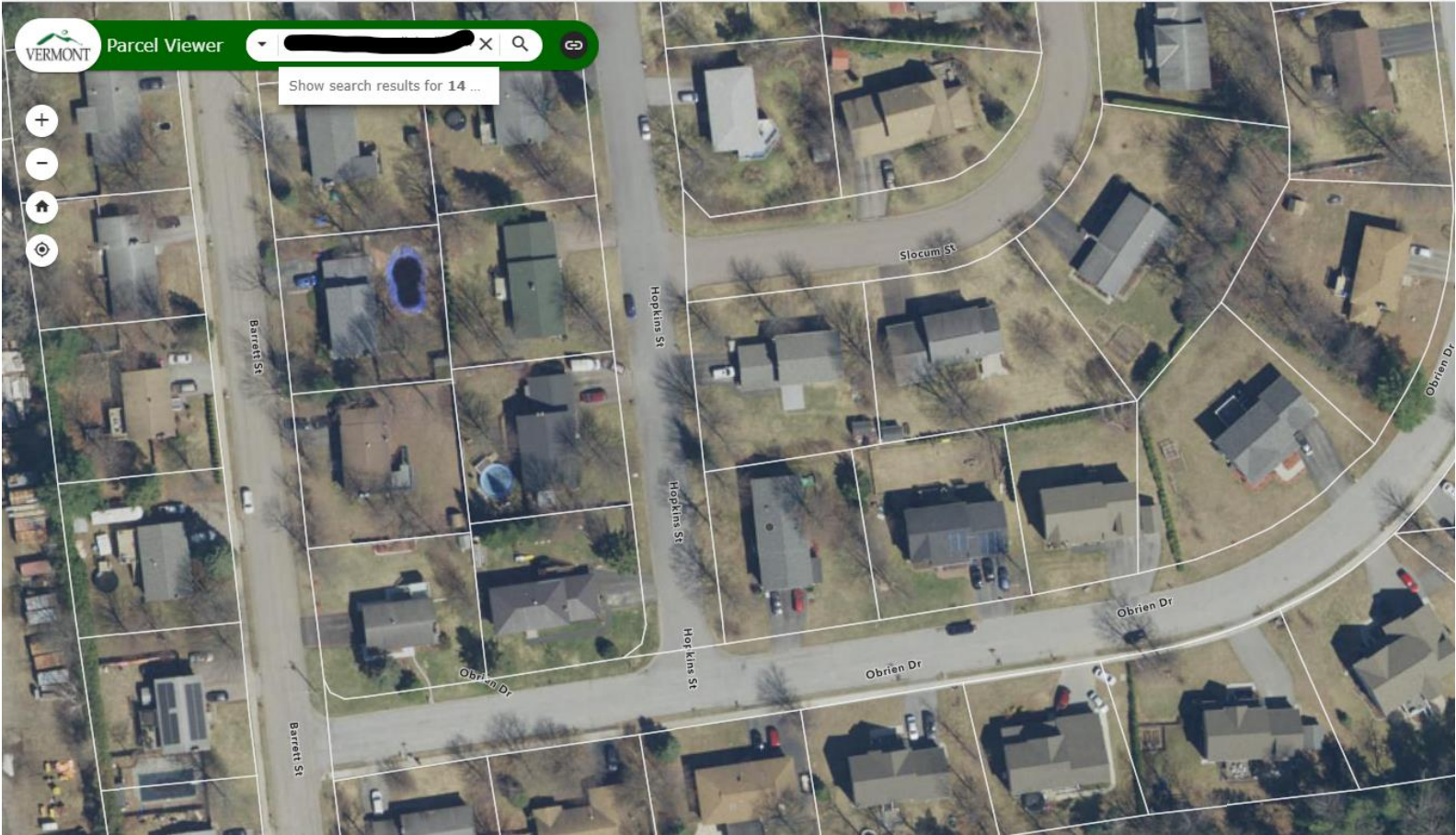


# Vermont (VGIS) Parcel Viewer

- <https://maps.vcgi.Vermont.gov/parcelviewer/>



# The Parcel Viewer



# What are you looking for?

- Name of the Owner (according to grand list)
- Nearby Streets
- Orientation of the lot
- Someone's perception of what the lot looks like
  - These are tax maps – they are not accurate representations (or at least assume they are not)

# Title Search Process

- Establish / validate the chain of title
- Identify and assess encumbrances – out conveyances
- Taxes / municipal charges – liens
- Land Use issues
- Special elements

# A Few Hints Before You Start

- Keep a running list of potential issues
- Be sure to resolve potential issues on the list

# The Chain of Title

# Starting the Search

- Locate the **Source Deed**
  - Deed by which the current owner acquired the property
- Read the deed closely
  - Match your perception of the property?
  - Good description?
  - Encumbrances identified?
- Copy or collect relevant information
  - Photocopy or ???



# Relevant Information – Diagram Chain

## Abstract Sheet

Document		Book	Page	
Grantor Names				
Grantee Names		Estate		

Recording Date	Document Date	Transfer Tax	Consideration	Acknowledgment	Entity Authority

Prior Deed Reference	Plan Recording	POA	POA Recording	POA Acknowledgement	

Description:

# Review the Information in each instrument

- Is the instrument valid
  - Execution valid
  - Authority to convey
  - Is there a Power of Attorney referenced? Find it!
- Compare parties – grantor should match the grantee in the prior deed
  - Exact match or explain additional names
    - Title Standard 8.1 (name variances)
- Compare property descriptions
  - Exact match – or explanation of differences

# Property Description - Types

- Reference to prior deeds
- Metes & Bounds or Courses and Distances
- Lot # on recorded plat.
  - Plat must be recorded if created or modified after July 1, 1988 - See 27 VSA Section 341(b)
  - Recording of any deed creating a subdivision or changing a boundary must be accompanied by a survey

# Instruments of Conveyance

- Deeds (warranty, quit claim, special / limited warranty)
- Decree of Distribution
- Divorce Decree
- Foreclosure Documents
  - Title derived from foreclosure (Title Standard 17.3)
  - Deed in lieu foreclosure (Title Standard 17.2)

# Property Transfer Records

- Property transfer records are relevant
- May disclose changes in use

# Common Interest Communities

- Property being searched is in a common interest community
- When was the project created –
  - pre-January 1, 1999 or post January 1, 1999.
- Collect the Declaration, Bylaws and Plans
  - Review for compliance with the applicable law
  - High risk proposition – assuming the project formation was correct because other units in the project have sold “*without objection.*”

# Where do you stop?

- The **ROOT DEED**
- 27 VSA §602 - A conveyance ->
- On record for not less than 40 years
- Properly executed
- Purports to create the interest being searched
- Nothing in the chain that divests the title
- SO, you need a good deed or other instrument that has been on record for no less than 40 years

# Issues with the chain of title

- 40+ years of descriptions that are nothing but reference clauses or start with a reference clause
  - *Being all and the same lands and premises conveyed by Bob Dumont to James Knapp by his deed dated April 20, 1980 and recorded in Book XX at Page XX of the South Burlington Land Records*
  - *You can't tell what interest was created or purported to be created, so how do you know you are searching the title to the right property?*



# Appearing and Disappearing Parties

- Change in names of individuals
  - Look for explanation in instruments “a/k/a or f/k/a”
- Variations in corporate names
  - Mergers or dissolutions
  - Look for evidence in the records 27 VSA §350
- Survivor’s interest
- Heir’s Deed – Title Standard 13.1

# Encumbrances and Out Conveyances

# Encumbrances Created in the Chain of Title

- Some key things deeds may contain:
  - Easements created or reserved
  - Covenants created
  - Remainder interests (regular and enhanced life estates)
  - Rights of first refusal, options, rights of first offer
- Make notes to transfer to the title report

# Encumbrances (Out Conveyances)

- Running the indexes
- Be sure you understand how the indexes were built
  - All types of instruments, or something less than all
  - Attachments and liens may be kept in separate indexes
  - Maps may be in separate indexes
- Computer based systems
  - Run the search – broad to narrow
  - PRINT the results of the search (if a change is made after you were there, there's no way to prove it)

# Running the Index Continued

- Card Index
  - Run the cards
  - Look 10 cards before and 10 cards after the name (covers mis-files)
  - Abstract information to some system for tracking documents that need follow-up
  - **Decide if you are going to rely on the address on the cards**
- General Index
  - Run the columns
  - Abstract information for follow-up

# Sample Sheet for Running Index

Search:

Date:

Party Name:

Rec Date		Grantor			
Bk					
PG		Grantee			
Inst. Date					
Description					
Notes					

Rec Date		Grantor			
Bk					
PG		Grantee			

# Researching Encumbrances / Outconveyances

- Identify the instruments to review from the index entries
  - Locus vs Non-Locus
- How does the document affect the title?
  - Mortgage deed – is it discharged?
  - Is the discharge valid (or can it be cured)?
  - Foreclosed(?)
  - Utility easement or road easement
    - Location and scope
    - Are there multiple easements

# Running the Out Conveyances

- Private easements
  - Scope, parties, location
- Conservation easements / transfer of development rights
- Covenants
  - Declaration of Covenants – scope, description, application, expiration
- Federal and State Tax Liens
  - Time frame / expiration
  - Party against whom lien is filed
    - Tenancy by the entirety – Federal lien no defense; State lien – may be defense



# Running Out Conveyances

- Mechanic's or Contractor's Liens
  - Timing
  - Perfection
- Attachments and Judgments
- Enrollment in Current Use Program
- And anything else that appears to affect the title to the property

Taxes, Utilities and Super-liens

# Property Taxes

- Collect current grand list entry
  - Is the property being searched a part of a bigger parcel
  - Multiple parcels may be accumulated in a single tax bill
- Collect current tax bill
  - Payments paid and payments due soon
- Look for evidence of current use on tax bill
- Look for evidence that an income sensitivity payment was made

# Delinquent Property Taxes

- How does the municipality handle delinquent taxes?
  - Separate tax collector with separate records (example – Charlotte)
- How long has current owner owned property? Many years, check on current owner. A few years – check current and prior owner

# Why do we care about utility services?

- Municipal utility services
  - Water and sewer –
  - Electric
  - Are liens with priorities similar to property taxes
- Quasi-Public Utilities – Fire Districts
  - May have lien with priority similar to taxes

# Land Use and its Impact on Real Property Titles

A very short and very limited review of the title search process as it relates to land use regulation and title.

# Preliminary Steps

- Determine nature of the property
  - Subdivision or common interest community
  - Improvements located on the property
  - Changes to improvements on the property
  - Connected to municipal water and – or sewer
- Use:
  - Contract for Sale
  - SPIR Disclosure
  - Lister's Card
  - Any other available resource

# Municipal Regulations

- What regulations does the municipality have
  - Zoning or Building Permits
  - Site Plan Approval/Subdivision
  - Curb cut/Road permits
  - Certificate's of Compliance and "Compliance Letters"
- When were the relevant ordinances adopted?



# Municipal Land Use Review

- Look for permits in municipal records
  - May be in the land records or in separate records in a “Zoning” office
- Compare improvements allowed in permits to what is on the property
  - Improvements without permits may be “pre-existing” and may not need a permit
  - Improvements without permits may be potential violations
    - Statute of Limitations

# Permits and Land Use Regulation Based in State Statutes

- Key concept – understand applicable jurisdictional triggers so you are sensitive to issues as you complete the search
- Water Supply and Wastewater Disposal Regulations
  - Environmental Protection Rules
- State Land Use and Development (Act 250)
- Stormwater Regulations

# Water supply and Wastewater Disposal

- Watch for key issues that disclose potential triggers for jurisdiction then locate the relevant permit
  - Subdivision – both pre-1/1/2007 (Clean Slate Date) and post Clean Slate
  - Lister cards, SPIR or other sources suggest changes to the property after Clean Slate Date
  - Suggestions of a change in use (example – car dealership to apartment building – comparison of Transfer Tax Return uses)
  - Boundary adjustments referenced in deed descriptions

# Act 250 Subdivisions

- Watch for elements in search that suggest jurisdiction
  - Act 250 disclosure statements – sometimes helpful
  - Maps or plans showing more than the exempt number of lots (10 in some towns – 6 in other towns)
  - Maps or plans showing development of new roads prior to 2000 – any length touching 5 lots or 800 feet or more touching two lots. Jurisdiction repealed in 2000 but any prior development lacking a permit may be an issue
  - Reference in a deed description to a lot number of 10 or higher. Verify exemptions based on sequence of development (5 years)

# Act 250 Housing Projects

- Housing project
  - 10 or more dwelling units – no subdivision required
  - Need not be contiguous units
- Exemptions for various economic or housing development zones
  - “Priority housing projects”

# Act 250 – Commercial Developments

- Know your town – 1 acre jurisdiction or 10 acre jurisdiction
  - Depends on adoption of permanent zoning and subdivision regulations
- Look for plans (recorded in the land records) or in the zoning and planning files that suggest potential jurisdiction
- Transfer tax returns showing commercial uses, and a lot larger in area than the jurisdictional trigger

# Stormwater Management

- Be aware of the jurisdictional trigger for stormwater permits
- Maps in land records or zoning records indicating developments that trigger stormwater
- Zoning or subdivision approvals may have coverage ratios or coverage descriptions that will alert an examiner to potential storm water regulation
- Be aware when property is in impaired watersheds

# General Rules on Permits

- Once jurisdiction is triggered –
  - Find the permit
  - Review the permit
    - For Act 250 – don't forget the findings of fact and conclusions of law
    - Some town permits have a permit with a related set of findings, review those too.
  - Look for a specific notice of violation
  - Look for factors that might indicate a violation (too many bedrooms, use not described in the permits, too many improvements, too few improvements).



# Special Topics

- Leaseholds
  - Search the fee owner (lessor – landlord)
  - Looking for encumbrances that would affect the lease
- Leaselands
  - Conversion
  - Leaselands to which conversion does not apply

# Create an Abstract

- Organize your notes
- Assemble the chain of title, out conveyances, tax information and land use issues in usable format
- Use assembled data to build the title report
- The title report is a topic for a different program

# QUESTIONS

Thanks for Joining Us