

**Wednesday, October 23, 2024  
2:15 PM – 3:15 PM**

**Seminar 1**

**Title Insurance and Survey: Getting in Gear - How Title and Survey Can Make Your Project Engine Run Smoothly (or Crash and Burn)**

Presented to

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This program is a course on the basics of title insurance and commonly requested endorsements, including a discussion of why and when you need title insurance and the various endorsements. For purposes of this discussion, our focus will primarily be on the title insurance forms published by the American Land Title Association ("ALTA").

## I. The Background of Title Insurance (What Is It? Why Do You Need It?)

### *What is title insurance?*

Title insurance is a policy of indemnity that can be issued in favor of an owner, lessee, lender, or other holder of an estate or interest in real estate. That means that the title insurance company will indemnify or reimburse the insured for actual losses caused by a covered title defect or other covered matter. More practically, a title insurance policy is a contract between an insured (whether an owner or lender) and a title insurance company where the title insurance company, in exchange for the payment of a fee (a premium) by the insured, agrees to pay the insured a sum of money if a certain event or events occur. As will be discussed in more detail below, the title insurance company's obligations are subject to certain exclusions and conditions set forth in the title insurance policy. More specifically, a title insurance policy is an insurance policy that provides coverage to the insured for future claims or future losses that occur due to title defects that were created by a past event. Unlike traditional insurance, which insures against risk of loss arising from events that occur in the future, title insurance insures against risk of loss arising from events that occurred *in the past*. For title insurance purposes, "in the past" means prior to the insured taking title to the subject real property (in the case of an owner's policy of title insurance) or prior to the insured's acceptance of a mortgage or deed of trust from the party who owns the real property (in the case of a loan policy of title insurance).

What is the difference between title insurance and other forms of insurance, such as casualty insurance? There are several primary differences:

1. There is a one-time premium charge for title insurance as opposed to annual premiums for casualty insurance.
2. Coverage under a title insurance policy is effective as long as the insured retains its insured interest in the property, or holds an indebtedness secured by a mortgage given by a mortgagor to the insured, or as long as the insured shall have liability by reason of warranties made by the insured in any transfer or conveyance of the property. Coverage under a casualty insurance policy is effective only for the period premiums are paid.
3. Title insurance insures against *existing defects only*; casualty insurance insures against future occurrences (e.g., storm or fire damage).
4. The title insurance company is obligated to defend any claim covered under the policy for which there is no exception or exclusion, whether or not the claim asserted has any merit. Sometimes this duty to defend can cost more than the duty to indemnify.

### *What does title insurance insure against?*

Title insurance insures against loss or damage suffered by the insured (whether an owner of real property or a party with another interest in the real property) as a result of defects in the title to that real property as of the date of the title insurance policy. In short, title insurance insures the quality of title to *real* property. Generally, there are two (2) types of title insurance policies: (1) an owner's policy of title insurance; and (2) a loan policy of title insurance. An owner's policy insures that an owner of real property has good title to the subject real property subject to those exceptions noted in the policy. A loan policy insures the validity and priority of a lender's security interest in the subject real property. It is important to understand that title insurance insures an interest in *real property* only. Title policies are not abstracts of title, reports, legal opinions, opinions of title, or other representations of title. What constitutes an interest in real property will depend on the laws of the state where the property is located.

Title insurance policies provide coverage against various specified items, including, among other things: (i) title being vested *other than* as stated in the policy; (ii) the existence of title defects, including (a) forgery, fraud, incompetency, and incapacity, (b) lack of authority of a person or entity to authorize a transfer or conveyance, including the granting of a security interest, or (c) improper, or lack of, notarization, witnessing, or execution of a

document; (iii) unmarketable title; and (iv) a lack of a right of access to and from the insured real property. Such matters include other persons claiming an interest in the real property, or liens or other encumbrances affecting the real property that were not otherwise set out as exceptions in the title insurance policy. Lender's coverage (i.e., a loan policy of title insurance) insures the priority and validity of the lender's lien on the property. Some of the items that title insurance covers are known or knowable because they are matters of public record or visible by an inspection of the property (e.g., easements, possessory rights, encroachments, liens, etc.) and others are hidden because they are not shown by the public record (e.g., forgery, incompetency, or incapacity of the parties, etc.) or because they may be hidden from view (e.g., underground utility lines).

### *Why should you get title insurance?*

There are many reasons why an owner or lender should purchase title insurance. In general, title insurance protects the insured's investment in the real property by providing a legal defense to claims against, or defects in title to, the real property; monetary compensation to reimburse the insured for losses sustained as a result of claims against, or defects in title to, the real property; or both a legal defense and monetary compensation. There are numerous specific reasons to purchase title insurance, and benefits in doing so:

- i. The premium for title insurance is paid one (1) time only, unlike other insurance.
- ii. The title insurance policy remains in effect as long as the insured retains an interest in the real property and even after the insured no longer has an interest in the real estate, at least under certain circumstances.
- iii. It protects against "hidden" liens and encumbrances that are not matters of public record, such as forged instruments or fraud.
- iv. Title insurance provides a legal defense to claims against title and pays for attorneys' fees and court costs.
- v. Title insurance makes it easier to sell your property because title to the property has already been reviewed and analyzed for defects.
- vi. Unlike an attorney's opinion of title, title insurance provides coverage regardless of negligence in the search process or analysis.
- vii. If the title insurance company identifies a title defect at the time of the sale of the property, the seller has to resolve the issue. If the seller has an owner's title insurance policy, the seller can file a claim to defend the title. If the seller does not have an owner's title insurance policy, the seller will have to pay out of pocket to resolve the issue. The closing could be delayed and the sale potentially lost.

## II. The Title Commitment (What Do You Get and How Do You Get There? The "Roadmap")

The title commitment is your roadmap to the closing and the final title policy. It sets forth the information for the policy or policies that will be issued, the title underwriter's requirements for the issuance of a final title policy, and the exceptions that the title underwriter will include in the final policy unless those exceptions can be eliminated prior to the closing. By issuing a commitment, the title insurance underwriter is bound to issue a policy if the recipient satisfies all of the Schedule B-I requirements. Along with the title commitment, you should receive copies of the Schedule B-I, Schedule B-II, and vesting documents. Below is a summary of what is included in each section of the title commitment and what should be reviewed, as well as a discussion regarding the removal of standard and specific exceptions shown in the title commitment. See also the attached basic Title Review Checklist for reviewing a title commitment.<sup>1</sup> It is important to understand that matters of title go hand in hand with the survey. As such, a general Survey Review Checklist is also attached for reference to the title matters that should be included on the survey.

- A. Schedule A – Sets forth the information for the types of policies to be issued, the effective date of the title commitment, the amount of insurance, the estate to be insured, the name of the person or entity that holds title to that estate, and the legal description of the subject property (unless the transaction is in a state that includes a separate schedule for the legal description). You should review Schedule A carefully and confirm that the amounts of insurance and proposed insured are listed correctly. Make sure that the owner of the property listed in the commitment is the party with whom you or your client has contracted to purchase, lease, or mortgage the property. Review the legal description of the real property in the commitment to make sure that it matches the contract/lease/loan commitment and the survey.
- B. Schedule B-I – Sets forth the requirements that the parties must satisfy in order for the title insurance company to issue the requested coverage. You should review all requirements to see what you might

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<sup>1</sup> You should provide a copy of the commitment and all supporting documents to your surveyor immediately upon receipt so the surveyor has adequate time to depict the Schedule B-II Exceptions on the survey.

need to obtain in order to clear up title, such as corrective deeds or deeds from parties who are not a part of the transaction, or the release of liens or other encumbrances. Discuss any unusual Schedule B-I requirements with underwriting counsel for the title underwriter.

- C. Schedule B-II – Sets forth the exceptions from coverage under the title insurance policy to be issued – documents that are of record that affect and/or encumber the subject property. You should carefully review each exception to determine how it affects the subject property. Does the exception create an encumbrance that would affect the proposed development or future marketability of the property? Does the exception place obligations/burdens on the owner of the property that you or your client may not want to assume (e.g., maintenance of a lift station or easement area)?

Schedule B-II will contain standard exceptions that are found in all title commitments; however, the wording and numbering may vary slightly from state to state. Also, some states may have other state-specific standard exceptions that you may or may not be able to remove:

1. The gap between the latest search date available for the public records and the recordation of the insured instrument;
2. Rights of parties in possession;
3. Easements not shown in the public records;
4. Encroachments, overlaps, boundary line disputes, and other matters that would be disclosed by a survey;
5. Mechanics' liens not shown in the public records.

Generally, these standard exceptions can often be removed upon receipt of a standard Owner's Affidavit and an ALTA "as-built" survey or a survey meeting the minimum technical standards for the state where the property is located, that has been completed within 90 days before the date of closing. If the survey is older than 90 days prior to closing, coverage may be available with the use of a survey affidavit provided there have been no improvements to the subject property, and no new encumbrances (such as easements) since the date of the survey. However, if the standard survey exception is removed, it should be replaced with any specific survey exceptions shown on the survey (also referred to as a "survey reading").

In situations where there is ongoing construction or construction is complete, but the lien period has not passed, you will need to work with an underwriting attorney for the title underwriter to determine under what circumstances the mechanic's lien exception may be removed or limited. This will involve providing the title underwriter sufficient information to allow the underwriter to quantify the mechanic's lien risk. In order to avoid a delay in closing, the title underwriter should be engaged as early as possible regarding the removal of the mechanic's lien exception.

In some instances, certain specific exceptions may be able to be removed or insured over with affirmative coverage or with the issuance of an endorsement. Often, surveyors are able to identify on the survey the exceptions that are not related to the insured property. Removal of, affirmative coverage for, or the issuance of an endorsement to address a specific exception, will depend on the terms and conditions of the exception document and what coverage is permitted in that particular state. In addition, some matters may be able to be addressed with an affidavit and/or an indemnification from a party with the financial wherewithal to support the risk. As with the mechanic's lien risk, it is important to engage the title underwriter as early as possible if there is a specific exception you would like to see removed from the final policy.

### III. The Title Policy

#### A. Typical Title Policies Issued in Commercial Transactions

1. Owner's Policy, and
2. Loan Policy

Most states use the ALTA Owner's Policy of Title Insurance (7-1-21) and the ALTA Loan Policy of Title Insurance (7-1-21) for commercial transactions. However, there are some states that use modified

versions of the ALTA policy forms. In the past, there were also separate forms for *leasehold owner's* and *leasehold loan policies*. That has changed and a leasehold interest is now addressed with the issuance of a Leasehold Endorsement to the same form of policy referenced above.

### *Components of a Title Policy*

Whether you are purchasing an owner's policy or a loan policy, the basic components of the title insurance policies are the same: (a) a Jacket; (b) Schedule A; (c) Schedule B (called Schedule B, Part I on a loan policy); (d) Schedule B, Part II (only on a loan policy); and (e) any endorsements.

The Jacket contains the boilerplate language of the title insurance policy. This includes "Covered Risks," "Exclusions From Coverage," and "Conditions." Keep in mind, though, that although the basic components of the Jacket are the same in an owner's policy and a loan policy, the language is not identical; rather, the Jackets differ in various material ways, so you must read the Jacket for the applicable title insurance policy to be sure that you understand its terms. The "Covered Risks" describe in detail what matters the title insurance policy covers, subject, of course, to the Exclusions contained in the Jacket and the Exceptions set forth on Schedule B. As noted above in the materials, the Covered Risks include, but are not limited to, the following:

1. Title being vested other than as set forth in Schedule A of the policy.
2. Defects in title, or liens or encumbrances on title, including defects caused by forgery, fraud, incompetency or incapacity; lack of authority to transfer or convey; improper or missing signature, notarization or witnessing; improper filing, recording or indexing; and invalid powers of attorney.
3. Unmarketable title.
4. Lack of access to and from the real property.

Exclusions From Coverage are those items or matters that are – obviously – *excluded* from the coverage of the title insurance policy. The title insurance company will **not** pay for or defend claims or losses arising because of the Exclusions. The Exclusions From Coverage include, in particular, defects, liens, encumbrances and other matters (a) created, suffered, assumed or agreed to by the insured, (b) not known by the title insurance company, not recorded in the public records as of the date of the title insurance policy, **but** known to the insured and not disclosed to the title insurance company in writing prior to the date of the title insurance policy, (c) that do not result in loss or damage to the insured, or (d) attaching or created **after** the date of the title insurance policy.

The Conditions of the title insurance policy contain the majority of the boilerplate language of the contract that is the title insurance policy. The Conditions include the definitions of the terms used in the policy, as well as provisions regarding notice requirements, defense of claims, determination and extent of liability of the title insurance company, the timing of payment of claims, an arbitration clause, and other typical contract clauses. Some provisions of the policy, particularly the Conditions, will vary from state to state, depending on how the forms are approved for use. It is important to note that each state has its own regulations regarding the use of the policy forms (e.g., whether or not the forms must be approved for use in a particular state and to what extent).

Schedule A of a title insurance policy identifies the insuring information. For both an owner's policy and a loan policy, this information includes the policy number, the date of the policy, the name of the insured, the estate or interest in title that is insured (in the case of an owner's policy) or that is encumbered (in the case of a loan policy), in whom title to the real property is vested (i.e., who the owner of the real property is), and a legal description of the real property. In some states, the legal description of the real property may be included as an exhibit to Schedule A or as a separate Schedule C. In addition to these common elements, Schedule A to a loan policy includes a description of the instrument that creates the security interest being insured. This is typically the mortgage or other security instrument, and includes recording information.

Schedule B (in the case of an owner's policy) and Schedule B, Part I (in the case of a loan policy) contain the Exceptions to coverage. The Exceptions, which are different from the Exclusions contained in the Jacket, are comprised of two (2) categories. The first are "standard" Exceptions. Standard Exceptions apply to all title insurance policies and all real property being insured. Standard Exceptions vary slightly between different states, but typically include (1) rights or claims of parties in possession, (2) easements, encroachments, shortages of area, and boundary line issues that an accurate and complete survey would disclose (the so-called "survey exception"), (3) mechanic's liens, (4) real estate

taxes for the current year and which are subsequently assessed against the property and are a lien not yet due and payable, and (5) all roads, public and private, affecting the real property. In some states, such as Pennsylvania, additional standard Exceptions can include coal and related mining rights, subsidence and support rights, and oil, gas and mineral extraction and development rights.

The second category of Exceptions is “specific” Exceptions. Specific Exceptions are those Exceptions that apply specifically to the real property being insured. Specific Exceptions are typically identified during the title search and examination process, but may also arise as the result of a survey of the real property. Specific Exceptions typically include easements and other right-of-way documents affecting the real property, restrictions, covenants or other matters contained in recorded documents affecting the real property, including restrictive covenants and similar documents, and matters shown on recorded subdivision plans or other recorded maps or plans.

A loan policy may also include Schedule B, Part II. Schedule B, Part II identifies matters that are subordinate to the lien of the insured mortgage, and the loan policy insures against loss or damage arising if the Schedule B, Part II items are **not** subordinate to the lien of the insured mortgage. These subordinate items typically include UCC-1 financing statements filed by the lender with respect to fixtures on the real property, subordinate junior mortgages or other liens, and assignments of leases and rents from the borrower in favor of the lender with regard to the insured mortgage.

#### B. ALTA Endorsements In Commercial Transactions

Endorsements are available that allow you to customize the coverage provided by a title insurance policy. These endorsements will amend the coverage provided by the policy or provide affirmative coverage over known risks. Typically endorsements fall into 3 categories:

- a) those that expand coverage to matters otherwise excluded from coverage;
- b) those that address fact-specific issues with respect to the land and its title; and
- c) those that provide affirmative coverage with respect to specific exceptions.

#### C. Availability of ALTA Endorsements

The availability of the ALTA endorsements varies with each state. While some states have adopted the ALTA endorsements in the same format published by ALTA, other states have adopted modified versions of the ALTA endorsements or have their own particular version of the endorsement for that state. In addition, some states have adopted only some of the ALTA endorsements.

#### IV. The ALTA Survey

It is important to understand that matters of title go hand in hand with the survey. You should provide a copy of the title commitment and all supporting documents to your surveyor immediately upon receipt so that the surveyor has adequate time to do the necessary due diligence to plot the Schedule B-II Exceptions on the survey, in addition to any and all other matters that the surveyor identifies.

An ALTA Survey is prepared in accordance with the Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, which were last updated effective as of February 23, 2021. Notwithstanding the national standards, local survey standards and best practices also still apply in the preparation of an ALTA Survey. The intent is to establish common standards that all parties in a commercial transaction understand and expect in the preparation of surveys.

On the one hand, the ALTA Survey will confirm what exceptions set forth in the title commitment affect the property, as well as identify the location of those exceptions on the ground. On the other hand, the ALTA Survey may also identify title issues, such as footpaths, cartpaths, and encroaching improvements that are visible on the ground, but not identified in the title commitment because there are no recorded documents that expressly grant rights with respect to such items. The ALTA Survey will also identify those matters which are non-locus, allowing them to be removed from the title commitment. Therefore, the ALTA Survey and the title commitment work in tandem to clarify matters that affect the status of the title, both those recorded in the public record and those visible only on the ground.

## V. PRACTICAL TIPS

1. Don't set aside the title commitment once the buyer and/or lender requests a proforma policy. A proforma policy is a model of what the final policy is expected to look like, as to the buyer and the lender. Often, once a proforma policy has been requested, the parties will lose sight of the title commitment and start focusing only on changing the proforma policies to reflect what the parties want to see at closing. Look at the title commitment (along with any additional underwriting decisions) as your roadmap, with the proforma policies the destination your roadmap is taking you.
2. Read and understand the endorsements, policy, and jacket, and how they interact. Sometimes, a requested endorsement is redundant because adequate – or even better – coverage is given by another endorsement that is already being provided.
3. At closing, make sure to receive a final proforma policy or a final marked-up title commitment showing what the final policy will look like when it is issued. You want something you can rely upon if a claim were to arise before your final policy is issued, and you want to make sure that you are getting the policy in the form you want and need it to be in.
4. Be informed about the status of construction on the site you are closing and the nature of the loan. Engage the title underwriter early in the process if you will have a lender or tax credit investor looking for mechanic's lien/construction lien coverage from the title company. Depending on the status of ongoing construction or the length of time a construction project has been completed (i.e., whether or not you've passed the lien period), you may need to provide the title underwriter with additional information so that the underwriter can quantify the risk and hopefully get in a position to provide the lender with the coverage that it will be looking for.

Don't just rely on the title agent or title insurance company. Whether you are owner's or lender's counsel, make sure that you closely review the vesting deeds, title exception documents, survey, and legal description. Prior to closing is the time to raise any issues and identify any discrepancies, especially in legal descriptions. It is better to raise an issue and delay a closing to resolve it than it is to wait and have the issue become your client's problem!

## TITLE REVIEW CHECKLIST

### Schedule A:

1. Is the insurance amount correct?
2. Is the proposed insured correct?
3. Is the owner of the property the party with whom the client has contracted to acquire/lease the property?
4. Verify that the legal description in the commitment matches the contract. (Note: in some states the legal description will be on a separate schedule.)
5. Is the commitment signed?

### Schedule B-I:

1. Does the commitment call for the correct instrument of conveyance or memorandum of lease?
2. Does the commitment require any deeds from unrelated third parties?
3. Does the commitment require any corrective instruments? From whom? Are the parties available?
4. Does the commitment require the release of any mortgages or deeds of trust that require a payoff letter from the existing lender?

### Schedule B-II:

1. Do you have copies of all B-II exceptions?
2. Are the exceptions correctly identified in the commitment by recording information?

Have copies of the commitment and exception documents been provided to the surveyor so the surveyor can depict them on the survey?



## **SURVEY REVIEW CHECKLIST**

1. Check legal description in the commitment and vesting deed against the sketch of survey.
2. Does the legal description match the one being used for the closing documents?
3. Check for client's/lender's/investor's form of certification.
4. Is the survey certified to the title company, title agent, lender, buyer and seller?
5. Is the nearest right-of-way shown? Is it adjacent to the subject property?
6. Is access to the right-of-way public or private and labeled as such?
7. Are there encroachments from the property to other parcels?
  - a. Fences
  - b. Buildings
  - c. Building pads
  - d. Utilities
8. Are there encroachments from other parcels onto the property?
9. Are there encroachments of improvements into easements shown on survey?
10. Are all improvements shown? If not, why not?
11. Are all visible easements shown?
12. Are all piers, seawalls, and other structures in the water shown?
13. Are state sovereignty lands or jurisdictional wetlands shown or non-existent? Are any of the lands surveyed submerged lands?
14. Are all matters listed in the title commitment shown on the survey?
  - a. Schedule B-2 exceptions
  - b. Easements
  - c. Mineral reservations
  - d. ROW reservations
  - e. Building restrictions
  - f. Do the survey notes identify the title information used?
  - g. No-fly zones (e.g., view easements, blockage of view easements, etc.)
  - h. Shared easements with other property
  - i. Creeks, canals, rivers, lakes, other possible sovereignty lands
15. Check all the boundaries: are there overlaps with other parcels?
16. If the property is made of more than one parcel, are there any overlaps or hiatuses between the separate parcels?
17. If the insured legal description contains more than one parcel, has the surveyor issued a contiguity certificate?
18. Review the surveyor's notes on the survey: Are there any problems? Are the notes consistent with the title commitment? Are the notes consistent with what you know about the property?
19. Is the survey signed and sealed by the surveyor?
20. Is the surveyor a licensed surveyor in the state where the property is located?
21. Is the survey dated not earlier than 90 days prior to the actual closing date? If not, contact underwriting

regarding use of a survey affidavit.

Has the surveyor been informed in writing of corrections needed?

MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/NSPS LAND TITLE SURVEYS  
(Effective February 23, 2021)

1. Purpose - Members of the American Land Title Association® (ALTA) have specific needs, unique to title insurance matters, when asked to insure title to land without exception as to the many matters which might be discoverable from survey and inspection, and which are not evidenced by the public records.

For a survey of real property, and the plat, map or record of such survey, to be acceptable to a title insurance company for the purpose of insuring title to said real property free and clear of survey matters (except those matters disclosed by the survey and indicated on the plat or map), certain specific and pertinent information must be presented for the distinct and clear understanding between the insured, the client (if different from the insured), the title insurance company (insurer), the lender, and the surveyor professionally responsible for the survey.

In order to meet such needs, clients, insurers, insureds, and lenders are entitled to rely on surveyors to conduct surveys and prepare associated plats or maps that are of a professional quality and appropriately uniform, complete, and accurate. To that end, and in the interests of the general public, the surveying profession, title insurers, and abstracters, the ALTA and the NSPS jointly promulgate the within details and criteria setting forth a minimum standard of performance for ALTA/NSPS Land Title Surveys. A complete 2021 ALTA/NSPS Land Title Survey includes:

- (i) the on-site fieldwork required pursuant to Section 5,
- (ii) the preparation of a plat or map pursuant to Section 6 showing the results of the fieldwork and its relationship to documents provided to or obtained by the surveyor pursuant to Section 4,
- (iii) any information from Table A items requested by the client, and
- (iv) the certification outlined in Section 7.

2. Request for Survey - The client shall request the survey, or arrange for the survey to be requested, and shall provide a written authorization to proceed from the person or entity responsible for paying for the survey. Unless specifically authorized in writing by the insurer, the insurer shall not be responsible for any costs associated with the preparation of the survey. The request must specify that an "ALTA/NSPS LAND TITLE SURVEY" is required and which of the optional items listed in Table A, if any, are to be incorporated. Certain properties or interests in real properties may present issues outside those normally encountered on an ALTA/NSPS Land Title Survey (e.g., marinas, campgrounds, mobile home parks, easements, leases, mineral interests, other non-fee simple interests). The scope of work related to surveys of such properties or interests in real properties should be discussed with the client, lender, and insurer, and agreed upon in writing prior to commencing work on the survey. When required, the client shall secure permission for the surveyor to enter upon the property to be surveyed, adjoining properties, or offsite easements.

3. Surveying Standards and Standards of Care

- A. Effective Date - The 2021 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys are effective February 23, 2021. As of that date, all previous versions of the Minimum Standard Detail Requirements for ALTA/ACSM or ALTA/NSPS Land Title Surveys are superseded by these standards.
- B. Other Requirements and Standards of Practice - Many states and some local jurisdictions have adopted statutes, administrative rules, and/or ordinances that set out standards regulating the practice of surveying within their jurisdictions. In addition to the standards set forth herein, surveyors must also conduct their surveys in accordance with applicable jurisdictional survey requirements and standards of practice. Where conflicts between the standards set forth herein and any such jurisdictional requirements and standards of practice occur, the more stringent must apply.
- C. The Normal Standard of Care - Surveyors should recognize that there may be unwritten local, state, and/or regional standards of care defined by the practice of the "prudent surveyor" in those locales.
- D. Boundary - The boundary lines and corners of any property or interest in real property being surveyed (hereafter, the "surveyed property" or "property to be surveyed") as part of an ALTA/NSPS Land Title Survey must be established and/or retraced in accordance with appropriate boundary law principles governed by the set of facts and evidence found in the course of performing the research and fieldwork.
- E. Measurement Standards - The following measurement standards address Relative Positional Precision for the monuments or witnesses marking the corners of the surveyed property.
  - i. "Relative Positional Precision" means the length of the semi-major axis, expressed in meters or feet, of the error ellipse representing the uncertainty in the position of the monument or witness marking any boundary corner of the surveyed property relative to the position of the monument or

witness marking an immediately adjacent boundary corner of the surveyed property resulting from random errors in the measurements made in determining those positions at the 95 percent confidence level. Relative Positional Precision can be estimated by the results of a correctly weighted least squares adjustment of the survey. Alternatively, Relative Positional Precision can be estimated by the standard deviation of the distance between the monument or witness marking any boundary corner of the surveyed property and the monument or witness marking an immediately adjacent boundary corner of the surveyed property (called local accuracy) that can be computed using the full covariance matrix of the coordinate inverse between any given pair of points, understanding that Relative Positional Precision is based on the 95 percent confidence level, or approximately 2 standard deviations.

- ii. Any boundary lines and corners established or retraced may have uncertainties in location resulting from (1) the availability, condition, history and integrity of reference or controlling monuments, (2) ambiguities in the record descriptions or plats of the surveyed property or its adjoiners, (3) occupation or possession lines as they may differ from the written title lines, or (4) Relative Positional Precision. Of these four sources of uncertainty, only Relative Positional Precision is controllable, although, due to the inherent errors in any measurement, it cannot be eliminated. The magnitude of the first three uncertainties can be projected based on evidence; Relative Positional Precision is estimated using statistical means (see Section 3.E.i. above and Section 3.E.v. below).
- iii. The first three of these sources of uncertainty must be weighed as part of the evidence in the determination of where, in the surveyor's opinion, the boundary lines and corners of the surveyed property should be located (see Section 3.D. above). Relative Positional Precision is a measure of how precisely the surveyor is able to monument and report those positions; it is not a substitute for the application of proper boundary law principles. A boundary corner or line may have a small Relative Positional Precision because the survey measurements were precise, yet still be in the wrong position (i.e., inaccurate) if it was established or retraced using faulty or improper application of boundary law principles.
- iv. For any measurement technology or procedure used on an ALTA/NSPS Land Title Survey, the surveyor must (1) use appropriately trained personnel, (2) compensate for systematic errors, including those associated with instrument calibration, and (3) use appropriate error propagation and measurement design theory (selecting the proper instruments, geometric layouts, and field and computational procedures) to control random errors such that the maximum allowable Relative Positional Precision outlined in Section 3.E.v. below is not exceeded.
- v. The maximum allowable Relative Positional Precision for an ALTA/NSPS Land Title Survey is 2 cm (0.07 feet) plus 50 parts per million (based on the direct distance between the two corners being tested). It is recognized that in certain circumstances, the size or configuration of the surveyed property, or the relief, vegetation, or improvements on the surveyed property, will result in survey measurements for which the maximum allowable Relative Positional Precision may be exceeded in which case the reason shall be noted pursuant to Section 6.B.x. below.

4. Records Research - It is recognized that for the performance of an ALTA/NSPS Land Title Survey, the surveyor will be provided with appropriate and, when possible, legible data that can be relied upon in the preparation of the survey. In order to complete an ALTA/NSPS Land Title Survey, the surveyor must be provided with the following:
  - A. The current record description of the real property to be surveyed or, in the case of an original survey prepared for purposes of locating and describing real property that has not been previously separately described in documents conveying an interest in the real property, the current record description of the parent parcel that contains the property to be surveyed;
  - B. Complete copies of the most recent title commitment or, if a title commitment is not available, other title evidence satisfactory to the title insurer;
  - C. The following documents from records established under state statutes for the purpose of imparting constructive notice of matters relating to real property (public records):
    - i. The current record descriptions of any adjoiners to the property to be surveyed, except where such adjoiners are lots in platted, recorded subdivisions;
    - ii. Any recorded easements benefitting the property to be surveyed; and
    - iii. Any recorded easements, servitudes, or covenants burdening the property to be surveyed; and
  - D. If desired by the client, any unrecorded documents affecting the property to be surveyed and containing information to which the survey shall make reference.

Except, however, if the documents outlined in this section are not provided to the surveyor or if non-public or quasi-public documents are otherwise required to complete the survey, the surveyor must conduct that research which is required pursuant to the statutory or administrative requirements of the jurisdiction where the

surveyed property is located and that research (if any) which is negotiated and outlined in the terms of the contract between the surveyor and the client.

5. Fieldwork - The survey must be performed on the ground (except as may be otherwise negotiated pursuant to Table A, Item 15 below). Except as related to the precision of the boundary, which is addressed in Section 3.E. above, features located during the fieldwork shall be located to what is, in the surveyor's professional opinion, the appropriate degree of precision based on (a) the planned use of the surveyed property, if reported in writing to the surveyor by the client, lender, or insurer, or (b) the existing use, if the planned use is not so reported. The fieldwork shall include the following:

A. Monuments

- i. The location, size, character, and type of any monuments found during the fieldwork.
- ii. The location, size, character, and type of any monuments set during the fieldwork, if item 1 of Table A was selected or if otherwise required by applicable jurisdictional requirements and/or standards of practice.
- iii. The location, description, and character of any lines that control the boundaries of the surveyed property.

B. Rights of Way and Access

- i. The distance from the appropriate corner or corners of the surveyed property to the nearest right of way line, if the surveyed property does not abut a right of way.
- ii. The name of any street, highway, or other public or private way abutting the surveyed property, together with the width of the travelled way and the location of each edge of the travelled way including on divided streets and highways. If the documents provided to or obtained by the surveyor pursuant to Section 4 indicate no access from the surveyed property to the abutting street or highway, the width and location of the travelled way need not be located.
- iii. Visible evidence of physical access (e.g., curb cuts, driveways) to any abutting streets, highways, or other public or private ways.
- iv. The location and character of vehicular, pedestrian, or other forms of access by other than the apparent occupants of the surveyed property to or across the surveyed property observed in the process of conducting the fieldwork (e.g., driveways, alleys, private roads, railroads, railroad sidings and spurs, sidewalks, footpaths).
- v. Without expressing a legal opinion as to ownership or nature, the location and extent of any potentially encroaching driveways, alleys, and other ways of access from adjoining properties onto the surveyed property observed in the process of conducting the fieldwork.
- vi. Where documentation of the location of any street, road, or highway right of way abutting, on, or crossing the surveyed property was not disclosed in documents provided to or obtained by the surveyor, or was not otherwise available from the controlling jurisdiction (see Section 6.C.iv. below), the evidence and location of parcel corners on the same side of the street as the surveyed property recovered in the process of conducting the fieldwork which may indicate the location of such right of way lines (e.g., lines of occupation, survey monuments).
- vii. Evidence of access to and from waters adjoining the surveyed property observed in the process of conducting the fieldwork (e.g., paths, boat slips, launches, piers, docks).

C. Lines of Possession and Improvements along the Boundaries

- i. The character and location of evidence of possession or occupation along the perimeter of the surveyed property, both by the occupants of the surveyed property and by adjoining, observed in the process of conducting the fieldwork.
- ii. Unless physical access is restricted, the character and location of all walls, buildings, fences, and other improvements within five feet of each side of the boundary lines observed in the process of conducting the fieldwork (see Section 5.E.iv. regarding utility poles). Trees, bushes, shrubs, and other vegetation need not be located other than as specified in the contract, unless they are deemed by the surveyor to be evidence of possession or occupation pursuant to Section 5.C.i.
- iii. Without expressing a legal opinion as to the ownership or nature of the potential encroachment, the evidence, location, and extent of potentially encroaching structural appurtenances and projections observed in the process of conducting the fieldwork (e.g., fire escapes, bay windows, windows and doors that open out, flue pipes, stoops, eaves, cornices, areaways, steps, trim) by or onto adjoining property, or onto rights of way, easements, or setback lines disclosed in documents provided to or obtained by the surveyor.

D. Buildings

The location of buildings on the surveyed property observed in the process of conducting the fieldwork.

E. Easements and Servitudes

- i. Evidence of any easements or servitudes burdening the surveyed property as disclosed in the documents provided to or obtained by the surveyor pursuant to Section 4 and observed in the

process of conducting the fieldwork.

- ii. Evidence of easements, servitudes, or other uses by other than the apparent occupants of the surveyed property not disclosed in the documents provided to or obtained by the surveyor pursuant to Section 4, but observed in the process of conducting the fieldwork if they are on or across the surveyed property (e.g., roads, drives, sidewalks, paths and other ways of access, utility service lines, utility locate markings (including the source of the markings, with a note if unknown), water courses, ditches, drains, telephone lines, fiber optic lines, electric lines, water lines, sewer lines, oil pipelines, gas pipelines).
- iii. Surface indications of underground easements or servitudes on or across the surveyed property observed in the process of conducting the fieldwork (e.g., utility cuts, vent pipes, filler pipes, utility locate markings (including the source of the markings, with a note if unknown)).
- iv. Evidence on or above the surface of the surveyed property observed in the process of conducting the fieldwork, which evidence may indicate utilities located on, over, or beneath the surveyed property. Examples of such evidence include pipeline markers, utility locate markings (including the source of the markings, with a note if unknown), manholes, valves, meters, transformers, pedestals, clean-outs, overhead lines, guy wires, and utility poles on or within ten feet of the surveyed property. Without expressing a legal opinion as to the ownership or nature of the potential encroachment, the extent of all encroaching utility pole crossmembers or overhangs.

F. Cemeteries

As accurately as the evidence permits, the perimeter of cemeteries and burial grounds, and the location of isolated gravesites not within a cemetery or burial ground, (i) disclosed in the documents provided to or obtained by the surveyor, or (ii) observed in the process of conducting the fieldwork.

G. Water Features

- i. The location of springs, ponds, lakes, streams, rivers, canals, ditches, marshes, and swamps on, running through, or outside, but within five feet of, the perimeter boundary of the surveyed property and observed during the process of conducting the fieldwork.
- ii. The location of any water feature forming a boundary of the surveyed property. The attribute(s) of the water feature located (e.g., top of bank, edge of water, high water mark) should be congruent with the boundary as described in the record description or, in the case of an original survey, in the new description (see Section 6.B.vi. below).

6. Plat or Map - A plat or map of an ALTA/NSPS Land Title Survey shall show the following information. Where dimensioning is appropriate, dimensions shall be annotated to what is, in the surveyor's professional opinion, the appropriate degree of precision based on (a) the planned use of the surveyed property, if reported in writing to the surveyor by the client, lender, or insurer, or (b) existing use, if the planned use is not so reported.

- A. Field Locations. The evidence and locations gathered, and the monuments and lines located during the fieldwork pursuant to Section 5 above, with accompanying notes if deemed necessary by the surveyor or as otherwise required as specified below.
- B. Boundary, Descriptions, Dimensions, and Closures
  - i. (a) The current record description of the surveyed property, or  
(b) In the case of an original survey, the current record document number of the parent tract that contains the surveyed property.
  - ii. Any new description of the surveyed property that was prepared in conjunction with the survey, including a statement explaining why the new description was prepared. Except in the case of an original survey, preparation of a new description should be avoided unless deemed necessary or appropriate by the surveyor and insurer. Preparation of a new description should also generally be avoided when the record description is a lot or block in a platted, recorded subdivision. Except in the case of an original survey, if a new description is prepared, a note must be provided stating (a) that the new description describes the same real estate as the record description or, (b) if it does not, how the new description differs from the record description.
  - iii. The point of beginning, the remote point of beginning or point of commencement (if applicable) and all distances and directions identified in the record description of the surveyed property (and in the new description, if one was prepared). Where a measured or calculated dimension differs from the record by an amount deemed significant by the surveyor, such dimension must be shown in addition to, and differentiated from, the corresponding record dimension. All dimensions shown on the survey and contained in any new description must be horizontal ground dimensions unless otherwise noted.
  - iv. The direction, distance, and curve data necessary to compute a mathematical closure of the surveyed boundary. A note if the record description does not mathematically close. The basis of bearings and, where it differs from the record basis, the difference.
  - v. The remainder of any recorded lot or existing parcel, when the surveyed property is composed of

only a portion of such lot or parcel, shall be graphically depicted. Such remainder need not be included as part of the actual survey, except to the extent necessary to locate the lines and corners of the surveyed property, and it need not be fully dimensioned or drawn at the same scale as the surveyed property.

- vi. When the surveyed property includes a title line defined by a water boundary, a note on the face of the plat or map noting the date the boundary was measured, which attribute(s) of the water feature was/were located, and the caveat that the boundary is subject to change due to natural causes and that it may or may not represent the actual location of the limit of title. When the surveyor is aware of natural or artificial realignments or changes in such boundaries, the extent of those changes and facts shall be shown or explained.
  - vii. The relationship of the boundaries of the surveyed property to its adjoiners (e.g., contiguity, gaps, overlaps) where ascertainable from documents provided to or obtained by the surveyor pursuant to Section 4 and/or from field evidence gathered during the process of conducting the fieldwork. If the surveyed property is composed of multiple parcels, the extent of any gaps or overlaps between those parcels must be identified. Where gaps or overlaps are identified, the surveyor must, prior to or upon delivery of the final plat or map, disclose this to the insurer and client.
  - viii. When, in the opinion of the surveyor, the results of the survey differ significantly from the record, or if a fundamental decision related to the boundary resolution is not clearly reflected on the plat or map, the surveyor must explain this information with notes on the face of the plat or map.
  - ix. The location of buildings on the surveyed property dimensioned perpendicular to those perimeter boundary lines that the surveyor deems appropriate (i.e., where potentially impacted by a setback line) and/or as requested by the client, lender or insurer.
  - x. A note on the face of the plat or map explaining the site conditions that resulted in a Relative Positional Precision that exceeds the maximum allowed pursuant to Section 3.E.v.
  - xi. A note on the face of the plat or map identifying areas, if any, on the boundaries of the surveyed property, to which physical access within five feet was restricted (see Section 5.C.ii.).
  - xii. A note on the face of the plat or map identifying the source of the title commitment or other title evidence provided pursuant to Section 4, and the effective date and the name of the insurer of same.
- C. Easements, Servitudes, Rights of Way, Access, and Documents
- i. The location, width, and recording information of all plottable rights of way, easements, and servitudes burdening and benefitting the surveyed property, as evidenced by documents provided to or obtained by the surveyor pursuant to Section 4.
  - ii. A summary of all rights of way, easements, and other survey-related matters burdening the surveyed property and identified in the title evidence provided to or obtained by the surveyor pursuant to Section 4. Such summary must include the record information of each such right of way, easement, or other survey-related matter, a statement indicating whether it lies within or crosses the surveyed property, and a related note if:
    - (a) its location is shown;
    - (b) its location cannot be determined from the record document;
    - (c) there was no observed evidence at the time of the fieldwork;
    - (d) it is a blanket easement;
    - (e) it is not on, does not touch, and/or – based on the description contained in the record document – does not affect, the surveyed property;
    - (f) it limits access to an otherwise abutting right of way;
    - (g) the documents are illegible; or
    - (h) the surveyor has information indicating that it may have been released or otherwise terminated. In cases where the surveyed property is composed of multiple parcels, indicate which of such parcels the various rights of way, easements, and other survey-related matters cross or touch.
  - iii. A note if no physical access to an abutting street, highway, or other public or private way was observed in the process of conducting the fieldwork.
  - iv. The locations and widths of rights of way abutting or crossing the surveyed property and the source of such information (a) where available from the controlling jurisdiction, or (b) where disclosed in documents provided to or obtained by the surveyor pursuant to Section 4.
  - v. The identifying titles of all recorded plats, filed maps, right of way maps, or similar documents that the survey represents, wholly or in part, with their recording or filing data.
  - vi. For non-platted adjoining land, recording data and, where available, tax parcel number, identifying adjoining tracts according to current public records. For platted adjoining land, the recording data of the subdivision plat.

- vii. Platted setback or building restriction lines that appear on recorded subdivision plats or that were disclosed in documents provided to, or obtained by, the surveyor.
- viii. If in the process of preparing the survey the surveyor becomes aware of a recorded easement not otherwise listed in the title evidence provided, the surveyor must advise the insurer prior to delivery of the plat or map and, unless the insurer provides evidence of a release of that easement, show or otherwise explain it on the face of the plat or map, with a note that the insurer has been advised.

D. Presentation

- i. The plat or map must be drawn on a sheet of not less than 8 ½ by 11 inches in size at a legible, standard engineering scale, with that scale clearly indicated in words or numbers and with a graphic scale.
- ii. The plat or map must include:
  - (a) The boundary of the surveyed property drawn in a manner that distinguishes it from other lines on the plat or map.
  - (b) If no buildings were observed on the surveyed property in the process of conducting the fieldwork, a note stating *"No buildings observed."*
  - (c) A north arrow (with north to the top of the drawing when practicable).
  - (d) A legend of symbols and abbreviations.
  - (e) A vicinity map showing the surveyed property in reference to nearby highway(s) or major street intersection(s).
  - (f) Supplementary or detail diagrams when necessary.
  - (g) Notes explaining any modifications to Table A items and the nature of any additional Table A items (e.g., 20(a), 20(b), 20(c)) that were negotiated between the surveyor and client.
  - (h) The surveyor's project number (if any), and the name, registration or license number, signature, seal, street address, telephone number, company website, and email address (if any) of the surveyor who performed the survey.
  - (i) The date(s) of any revisions made by the surveyor who performed the survey.
  - (j) Sheet numbers where the plat or map is composed of more than one sheet.
  - (k) The caption "ALTA/NSPS Land Title Survey."
- iii. When recordation or filing of a plat or map is required by state statutes or local ordinances, such plat or map shall be produced in the required form.

7. Certification - The plat or map of an ALTA/NSPS Land Title Survey must bear only the following unaltered certification except as may be required pursuant to Section 3.B. above:

To (name of insured, if known), (name of lender, if known), (name of insurer, if known), (names of others as negotiated with the client):

This is to certify that this map or plat and the survey on which it is based were made in accordance with the 2021 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes Items\_\_\_\_\_ of Table A thereof. The fieldwork was completed on\_\_\_\_\_ [date].

*Date of Plat or Map:\_\_\_\_\_ (Surveyor's signature, printed name and seal with Registration/License Number)*

8. Deliverables - The surveyor shall furnish copies of the plat or map of survey to the insurer and client and as otherwise negotiated with the client. Hard copies shall be on durable and dimensionally stable material of a quality standard acceptable to the insurer. A digital image of the plat or map may be provided in addition to, or in lieu of, hard copies pursuant to the terms of the contract. If the surveyor is required to record or file a plat or map pursuant to state statute or local ordinance it shall be so recorded or filed.



## **TABLE A**

### OPTIONAL SURVEY RESPONSIBILITIES AND SPECIFICATIONS

*NOTE: Whether any of the nineteen (19) items of Table A are to be selected, and the exact wording of and fee for any selected item, may be negotiated between the surveyor and client. Any additional items negotiated between the surveyor and client must be identified as 20(a), 20(b), etc. Any additional items negotiated between the surveyor and client, and any negotiated changes to the wording of a Table A item, must be explained pursuant to Section 6.D.ii.(g). Notwithstanding Table A Items 5 and 11, if an engineering design survey is desired as part of an ALTA/NSPS Land Title Survey, such services should be negotiated under Table A, Item 20.*

*If checked, the following optional items are to be included in the ALTA/NSPS LAND TITLE SURVEY, except as otherwise qualified (see note above):*

1. ☐ Monuments placed (or a reference monument or witness to the corner) at all major corners of the boundary of the surveyed property, unless already marked or referenced by existing monuments or witnesses in close proximity to the corner.
2. ☐ Address(es) of the surveyed property if disclosed in documents provided to or obtained by the surveyor, or observed while conducting the fieldwork.
3. ☐ Flood zone classification (with proper annotation based on federal Flood Insurance Rate Maps or the state or local equivalent) depicted by scaled map location and graphic plotting only.
4. ☐ Gross land area (and other areas if specified by the client).
5. ☐ Vertical relief with the source of information (e.g., ground survey, aerial map), contour interval, datum, with originating benchmark, when appropriate.
6. ☐ (a) If the current zoning classification, setback requirements, the height and floor space area restrictions, and parking requirements specific to the surveyed property are set forth in a zoning report or letter provided to the surveyor by the client or the client's designated representative, list the above items on the plat or map and identify the date and source of the report or letter.  
☐ (b) If the zoning setback requirements specific to the surveyed property are set forth in a zoning report or letter provided to the surveyor by the client or the client's designated representative, and if those requirements do not require an interpretation by the surveyor, graphically depict those requirements on the plat or map and identify the date and source of the report or letter.
7. ☐ (a) Exterior dimensions of all buildings at ground level.  
☐ (b) Square footage of:  
☐ (1) exterior footprint of all buildings at ground level.  
☐ (2) other areas as specified by the client.  
☐ (c) Measured height of all buildings above grade at a location specified by the client. If no location is specified, the point of measurement shall be identified.
8. ☐ Substantial features observed in the process of conducting the fieldwork (in addition to the improvements and features required pursuant to Section 5 above) (e.g., parking lots, billboards, signs, swimming pools, landscaped areas, substantial areas of refuse).
9. ☐ Number and type (e.g., disabled, motorcycle, regular, and other marked specialized types) of clearly identifiable parking spaces on surface parking areas, lots, and in parking structures. Striping of clearly identifiable parking spaces on surface parking areas and lots.
10. ☐ As designated by the client, a determination of the relationship and location of certain division or party walls with respect to adjoining properties.
11. ☐ Evidence of underground utilities existing on or serving the surveyed property (in addition to the observed evidence of utilities required pursuant to Section 5.E.iv.) as determined by:  
☐ (a) plans and/or reports provided by client (with reference as to the sources of information)  
☐ (b) markings coordinated by the surveyor pursuant to a private utility locate request.

*Note to the client, insurer, and lender – With regard to Table A, item 11, information from the sources checked above will be combined with observed evidence of utilities pursuant to Section 5.E.iv. to develop a*

view of the underground utilities. However, lacking excavation, the exact location of underground features cannot be accurately, completely, and reliably depicted. In addition, in some jurisdictions, 811 or other similar utility locate requests from surveyors may be ignored or result in an incomplete response, in which case the surveyor shall note on the plat or map how this affected the surveyor's assessment of the location of the utilities. Where additional or more detailed information is required, the client is advised that excavation may be necessary.

12. \_\_\_\_ As specified by the client, Governmental Agency survey-related requirements (e.g., HUD surveys, surveys for leases on Bureau of Land Management managed lands). The relevant survey requirements are to be provided by the client or client's designated representative.

13. \_\_\_\_ Names of adjoining owners according to current tax records. If more than one owner, identify the first owner's name listed in the tax records followed by "et al."

14. \_\_\_\_ As specified by the client, distance to the nearest intersecting street.

15. \_\_\_\_ Rectified orthophotography, photogrammetric mapping, remote sensing, airborne/mobile laser scanning and other similar products, tools or technologies as the basis for showing the location of certain features (excluding boundaries) where ground measurements are not otherwise necessary to locate those features to an appropriate and acceptable accuracy relative to a nearby boundary. The surveyor must (a) discuss the ramifications of such methodologies (e.g., the potential precision and completeness of the data gathered thereby) with the insurer, lender, and client prior to the performance of the survey, and (b) place a note on the face of the survey explaining the source, date, precision, and other relevant qualifications of any such data.

16. \_\_\_\_ Evidence of recent earth moving work, building construction, or building additions observed in the process of conducting the fieldwork.

17. \_\_\_\_ Proposed changes in street right of way lines, if such information is made available to the surveyor by the controlling jurisdiction. Evidence of recent street or sidewalk construction or repairs observed in the process of conducting the fieldwork.

18. \_\_\_\_ Pursuant to Sections 5 and 6 (and applicable selected Table A items, excluding Table A item 1), include as part of the survey any plottable offsite (i.e., appurtenant) easements disclosed in documents provided to or obtained by the surveyor.

19. \_\_\_\_ Professional liability insurance policy obtained by the surveyor in the minimum amount of \$ \_\_\_\_ to be in effect throughout the contract term. Certificate of insurance to be furnished upon request, but this item shall not be addressed on the face of the plat or map.

20. \_\_\_\_\_