

Frequently Asked Questions and other guidance on the 2021 ALTA/NSPS Standards

Transition period leading up to February 23, 2021

During the transition period, surveyors may encounter situations whereby they have entered into a contract to perform an ALTA/NSPS Land Title Survey prior to the effective date of the 2021 Standards (February 23, 2021), but the survey is not anticipated to be completed until after February 23, 2021. In such cases, the surveyor may discuss this with the client, title company and lender and include an appropriate clause in the contract, viz., *“This survey will be prepared using the 2016 Minimum Standard Detail Requirements for Land Title Surveys as established by ALTA and NSPS since said standards are still currently in effect at the time of this contract. It is understood and accepted by all parties involved that said standards may no longer be current upon completion of the survey, but will still be used for the purpose of this survey.”*

Providing professional guidance to the client

When deemed appropriate, surveyors might want to consider suggesting to their clients that the advice of a wetlands, flood plain, environmental, archeological or other appropriate expert might be beneficial.

Section 4 - research

Surveyors may encounter situations whereby the title company is unable or unwilling to provide the documents otherwise required pursuant to Section 4. Surveyors must perform their research pursuant to their state’s requirements and if their state has no standards in that regard, it is advised that they be familiar with the normal standard of care regarding research.

Section 5.B.ii. - sidewalks and trails along the street/road

It is not unusual that streets and roads are found to have sidewalks or trails running adjacent to them or with a grass strip between the two. Likewise, walking/biking trails are sometimes found adjacent to the street/road - even as part of the paved way. Section 5.B.ii. calls for locating the “travelled way” to be located and, of course, shown on the survey. The question of whether such sidewalks/trails should also be located and shown is answered by Section 5.B.iv. which requires that *“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)”* be located and shown.

Section 5.E. - utility locate markings

For those surveyors concerned about locating and showing what may or may not be actual utility locate markings because they do not have any information regarding the locate request or source of the markings, they might consider developing an appropriate note such as *“Paint markings found on the ground and shown hereon as evidence of possible (or probable) underground utilities are consistent with typical utility markings. However, no utility report was provided to authenticate these markings - their source is unknown. The user of this plat/map should rely upon such markings at their own risk.”*

Section 6.B.i.a. - record description

This section requires that on a survey of an existing parcel, the record description of the parcel being surveyed shall appear on the face of the plat/map. The description of the real property being insured (contained in Schedule A of the title commitment) is typically (and ideally) identical to the record description. In cases where the two descriptions differ, the surveyor may wish to inquire of the title company as to the origin of the Schedule A description. In cases where the title company insists that it will be insuring the description in Schedule A even though it does not match the record, the surveyor may consider showing both descriptions on the face of the plat/map. It is most assured that the parties will require the description to be insured appear on the face of the plat/map, and this section requires that the record description be shown. At a minimum, the surveyor should consider providing a note explaining how the two descriptions differ.

Section 6.B.vi. - water boundaries and caveat

This section calls for a caveat to be noted regarding the nature of water boundaries. Surveyors might consider developing their own such note, but it could be formulated on the order of, *“Where the property being surveyed includes a water boundary, the parties relying on the survey should be aware that, (1) laws regarding the delineation between the ownership of the bed of navigable waters and the upland owner differ from state to state, (2) water boundaries are typically subject to change due to natural causes, and (3) as a result, the boundary shown hereon may or may not represent the actual location of the limit of title. The [e.g., bank, edge of water, high-water mark, ordinary high-water mark, low-water mark, ordinary low-water mark, center of stream] shown hereon [was/were] located on [Date].”*

Section 6.B.vii. - contiguity, gaps and overlaps

This section requires that the surveyor disclose any gaps or overlaps with adjoining or between interior parcels where the property being surveyed is comprised of multiple parcels. This can be done not only with notes on the graphic portion of the plat/map, but also with textual notes drawing attention to the condition(s). Such information is critically important to the title company so that such issues can be disclosed to the parties and appropriate exceptions to coverage can be written. Where no gaps or overlaps exist, surveyors might consider assuring that the parties understand this fact by providing an affirmative statement to that effect. Section 6.C.i. - easements

Offsite easements that benefit the surveyed property (i.e., appurtenant easements) are typically identified as insured parcels in Schedule A of the title commitment. Easements that burden the surveyed property are identified as exceptions to title insurance coverage in Schedule B2 of the title commitment. It is also possible that an easement could both benefit and burden a property. Sometimes a title company may inadvertently list a beneficial easement in Schedule B2 as an *exception* to coverage, rather than identifying it in Schedule A as one that *benefits* the surveyed property - or vice versa. Surveyors should communicate with the title company when they believe there is a discrepancy between their opinion as to the effect of an easement and how the title commitment reports it.

Section 6.C.ii. - title commitment

Often in the course of the surveyor preparing the survey and often even after the plat/map has been completed and delivered, there will be revisions made to the title commitment that the surveyor will need to address. Surveyors should assure that they are appropriately compensated for any work that they believe represents additional services. This could be accomplished by carefully spelling out in the contract how many lender/client/title company comment letters will be addressed, how many client/lender/title company-driven revisions will be made to the survey, and over what period of time.

Section 6.C.viii. - easements found, but not listed in title commitment

“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.”

Such a note might be formatted similar to:

The 20 foot gas-line easement recorded as Instrument number 64-12345 and shown hereon is not listed in the title commitment; however, no evidence of a release, vacation or abandonment has been provided. The title company has been advised.

Section 7 - certification

Surveyors are often told they need to certify to multiple parties above and beyond the client, lender and insurer as identified in Section 7 and they need to recognize that more certified parties may equate to more liability. They may wish to consider specifically listing in the contract those parties that they will certify to and that *“additional parties may be certified to for an additional fee.”* If the specific parties are not yet known, they could specify that they will certify to the lender, client and insurer.

Often a request is made or direction given to certify to “ATIMA” and/or “ISAOA.” These are acronyms that mean *“as their interests may appear”* and *“its successors and/or assigns.”* The loan policy defines “insured” in a way that should remove the need for such wording, but if the

lender demands that the title company put those in the policy, the title company will likely want to surveyor to certify to the same. Surveyors should seek guidance from their attorneys on the desirability of certifying in this matter; however, in any event, generally they probably want to avoid certifying to successors and assigns of the client/buyer.

Table A - introductory paragraph and in general

The introductory paragraph to Table A has been modified to make it clear - as was always intended - that not only is the very selection of a Table A item negotiable, but the exact wording of the item is also negotiable, as is - of course - the fee. It is permissible for the surveyor and client/lender to negotiate a modification to the wording of any item. Any such modification, however, must be explained in a note placed on the face of the plat/map pursuant to Section 6.D.ii.g. Of course, surveyors need to decide for themselves what fee to attach to any given Table A item.

Table A, item 11 - utility locate markings

For those surveyors concerned about locating and showing what may or may not be actual utility locate markings because they do not have any information regarding the locate request or source of the markings, they might consider developing an appropriate note such as *“Paint markings found on the ground and shown hereon as evidence of possible (or probable) underground utility locations are consistent with typical utility markings. However, no utility report was provided to authenticate these markings. The user of this plat/map should rely upon such markings at their own risk.”*