

Adjusting to the 2016 ALTA/NSPS Survey Standards

By James C. Wine, Neal A. Coleman, and Rachel N. Parker

The American Land Title Association (ALTA) and the National Society of Professional Surveyors (NSPS) jointly adopted revised *Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys*, which become effective on February 23, 2016 (the “2016 Standards”). Lenders and property owners will need to adjust their survey practices to adapt to the 2016 Standards. The 2016 Standards will completely supersede the existing *Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys* that have been used in preparing ALTA surveys since 2011 (the “2011 Standards”). This article will summarize a few of the key changes made in the 2016 Standards.

Table A Requirements

Zoning; Table A, Item 6: Item 6(a) in the 2016 Standards, which relates to zoning, has been revised to combine Items 6(a) and 6(b) from the 2011 Standards and to condition the surveyor’s setting forth the zoning classification, setback requirements, and height and floor space area restrictions upon the client providing a zoning report or zoning letter from the applicable government jurisdiction to the surveyor. Additionally, parking requirements set forth in the zoning report or letter are now expressly required to be set forth on the survey. The surveyor is also required to

identify the date and source of the zoning report or zoning letter. Item 6(b) in the 2016 Standards states that if the zoning setback requirements are provided in the zoning report or zoning letter, and if such requirements do not require interpretation by the surveyor, then such setback requirements should be graphically depicted on the plat/map. The bottom line is that the surveyors should now only include zoning information that is provided to them by the client. This may cause lenders to require zoning reports more frequently. All too often, a zoning letter will only recite the permitted use and perhaps the absence of zoning violations of record, but not the setback, parking, and density requirements.

Substantial Features; Table A, Item 8: This item, which requires depiction on the plat/map of substantial features observed by the surveyor while conducting the fieldwork, has been revised to specifically require depiction of “substantial areas of refuse.”

Parking Spaces; Table A, Item 9: This Item, which relates to parking, has been revised to clarify that striping needs to be shown on the plat/map with respect to surface parking areas and lots but is not required to be shown with respect to parking structures. The number and type of

spaces within parking structures, however, still needs to be set forth on the survey.

Utilities; Table A, Item 11: The old distinction between requiring aboveground or underground utilities pursuant to 11(a) or 11(b) in the 2011 Standards has been eliminated. Section 5.E.iv of the 2016 Standards now makes mandatory the depiction of surface indications of aboveground or underground utilities (e.g., pipeline markers, manholes, valves, meters, transformers, pedestals, cleanouts, utility poles, overhead lines, and guy wires). In accordance with this revision, Items 11(a) and 11(b) in the 2011 Standards have been combined in the 2016 Standards into a single Item 11 that requires the surveyor to depict the following on the plat/map:

Location of utilities existing on or serving the surveyed property as determined by:

- observed evidence collected pursuant to Section 5.E.iv.
- evidence from plan requested by the surveyor and obtained from utility companies, or provided by client (with reference as to the sources of information), and
- markings requested by the surveyor pursuant to an 811 utility locate or similar request.

The 2016 Standards also add language to this item noting that requests from surveyors to locate utilities often go unanswered, or incomplete responses may be given, and in such instances the surveyor shall note on the survey how this affected the surveyor's assessment of the location of the utilities.

Names of Adjoining Landowners; Table A, Item 13: This item, which relates to names of adjoining landowners, has been revised to provide that names of all adjoining landowners should be shown on the plat/map, regardless of whether or not such lands are platted. The 2016 Standards also clarify that the names of adjoining landowners should be determined according to the tax records. Section 5.C.vi of the 2016 Standards removes as a mandatory requirement the surveyor having to include the names of adjoining landowners on the plat/map. Therefore, such information is only available if this optional Table A item is requested.

Solid Waste Dumps, Landfills; Table A, Item 18 (2011 Standards): Item 18 in the 2011 Standards, which required the surveyor to note observed evidence of the subject property being used as a solid waste dump, sump, or sanitary landfill, has been deleted in its entirety. The 2016 Standards, however, still require "substantial areas of refuse" to be noted or depicted on the survey pursuant to the revised Item 8.

Wetlands; Table A, Item 18 (2016 Standards; Item 19 in 2011 Standards): Item 19 in the 2011 Standards relating to wetlands has been renumbered from Item 19 under the

2011 Standards to Item 18 under the 2016 Standards. The 2016 Standards clarify that the surveyor is required to depict on the plat/map the location of any delineation markers observed at the subject property in the event a field delineation of wetlands has been conducted by a qualified specialist hired by the client. If no such markers are observed by the surveyor, then such fact should be stated on the survey.

Offsite Easements and Servitudes; Table A, Item 19 (2016 Standards; Item 20 in 2011 Standards): This item, which relates to offsite easements or servitudes, has been renumbered from Item 20(a) under the 2011 Standards to Item 19 under the 2016 Standards. Item 20(b) in the 2011 Standards, which required the placement of monuments at the corners of offsite easements or servitudes, has been deleted in its entirety.

Professional Liability Insurance; Table A, Item 20 (2016 Standards; Item 21 in 2011 Standards): The item relating to professional liability insurance has been renumbered from Item 21 under the 2011 Standards to Item 20 under the 2016 Standards, and has been supplemented to state that the amount of professional liability insurance should not be addressed on the face of the survey.

Survey Certifications

The new form of surveyor certification required under the 2016 Standards, marked against the version required under the 2011 Standards, is as follows:

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 2016 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)

As shown in this redline, the only changes to the surveyor certification are to: (i) refer to the 2016 Standards rather than the 2011 Standards, and (ii) reflect the fact that NSPS is the successor to the American Congress of Surveying and Mapping (ACSM).

Additional Changes

- *Legal Descriptions.* Section 6.B.ii of the 2016 Standards maintains the principle that preparing a new description of the subject property should be avoided unless it is deemed necessary or appropriate by the title insurer or the surveyor. However, if a new description is prepared, the 2016 Standards require the surveyor to include a note stating (a) that the new description describes the same real estate as the record description or, if it does not, (b) how the new description differs from the record description.

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decades earlier. Just like it was after the *Hudbay* decision was released, the Canadian business community, which is dominated by internationally operating extractive industries, is again reeling with concern over the apparent fragility of Canadian corporate veil.

Lisa A. Rickard, president of the U.S. Chamber Institute for Legal Reform, writing in a Canadian mainstream business newspaper right after the release of the Supreme Court decision in *Chevron*, coins the phrase “tort tourism” to describe how:

Plaintiffs’ lawyers are increasingly filing tort lawsuits abroad to secure large awards against multinational companies in weak or corrupt foreign courts. The lawyers then seek to collect those judgments around the world under liberal rules favoring recognition of foreign judgments. As a result of last week’s decision, Canadian courts are now open to such suits even when the defendant has no presence or assets in Canada.

Although just addressing *Chevron*, Ms Rickard’s reference to “tort tourism” seems equally apt in describing the *Hudbay* situation where plaintiffs are not securing judgments abroad and then enforcing those judgments in Canada, but rather coming to Canada *ab initio* as a convenient forum to seek judgment in Canada for events that happened outside of Canada’s borders and in respect of which such plaintiffs would not likely have achieved any success in their native domestic jurisdictions. By either definition, it seems Canada has become a tort tourism destination of choice!

Of course, readers of *The Abstract* should understand that the *Hudbay* and *Chevron* cases were both just interlocutory motions. In both cases, the corporate defendants were bringing motions to summarily dismiss the respective plaintiffs’ actions in Canada. The fact that both *Chevron* and *Hudbay* lost such initial procedural motions does not in any way mean ultimate liability in Canada for either defendant company. As the Blue Jays have painfully discovered, while getting into the MLB playoffs is, well, better than not getting into the playoffs, it is still a long way to the pennant and a longer way still to a World Series ring! Likewise, in both the *Hudbay* and *Chevron* cases, the plaintiffs still have the long and arguably arduous task of proving their respective cases for liability in Canada. While these early procedural victories have certainly been disconcerting to the Canadian business community (especially, but not limited to the extractive industries) and to the American business community with both subsidiaries and direct assets in Canada, the Canadian legal sky has not yet quite fallen, and we have not yet witnessed mass corporate exodus from Canada as a result thereof!

But stay tuned—the Blue Jays will win it all this season, and if we are drawing analogies, well... ♦

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- *Measured Distances.* Pursuant to sections 5.D and 6.B.ix of the 2016 Standards, the surveyor is now required to show the measured distance from the building(s) on the subject property to only those perimeter boundary lines that the surveyor deems appropriate (e.g., when potentially impacted by a setback line) and/or as requested by the client, insurer, or lender.
- *Title Document References.* Section 6.D.ii of the 2016 Standards requires the surveyor to include in the summary of each exception set forth in Schedule B—Section I of the title commitment a statement indicating whether or not it is shown on the drawing. Additionally, the surveyor is also required to include a related note if the underlying document is illegible or the surveyor has information indicating the relevant document may have been released or otherwise terminated.

Conclusion

Lenders, purchasers, and other commercial property owners will need to review their existing survey requirements and adapt them to the 2016 Standards. Certain modifications to the standards, such as the change with respect to how zoning information is shown, may cause clients to reconsider what zoning due diligence will be required. ♦

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