

June 2016



ALTA Surveys

Legal Descriptions New and Recorded

The sophistication of modern survey equipment has allowed for greater levels of precision in the field than was possible in the past and can result in differences in the surveyor's measurements, observations or calculations from that of the record description. It is often stated and sometimes dictated by state statutes for the practice of land surveying that when these differences occur the surveyor may deem it necessary to present their findings in a new description. With the recent adoption of the 2016 Minimum Standard Detail Requirements, the surveyor has additional responsibility when the presented survey contains a **NEW** description along with a **RECORD** description of the property.

Per the 2011 Minimum Requirements, when two descriptions were presented, the surveyor was required to provide a note of explanation as to why the new description was created. This responsibility has carried over to the 2016 Requirements in Section 6.B.ii. of the Minimum Standards with more specific instructions. The additional responsibility now requires the surveyor make a correlation statement relating the newly prepared description to the record description. The surveyor should state that (a) 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. Furthermore, the surveyor should include the recording reference (Instrument Number or Deed Volume and Page reference) for the record description. In many transactions, the title company may be asked to issue a "Same As Survey" Endorsement to their title policy. In having the surveyor provide this statement on the survey, the title company can achieve a comfort level regarding their decision to offer the endorsement.

Phase I ESA Reporting

Vapor Encroachment Screening



Guide



ASTM recently released updates to the E2600-15: *Standard Guide for Vapor Encroachment Screening on Property Involved in Real Estate Transactions*. The background and update to E2600 are summarized here.

Background: It is universally understood in the Commercial Real Estate Industry that contamination found on a property can result in a decrease in property value, use limitation, risk for human exposure and potential third party liability. In recent years attention has turned to vapor migration/vapor encroachment and the specific chemicals in soil and groundwater which release vapors into the subsurface (vadose zone). These vapors (resulting from contamination on the target property or as the result of contamination located near the property) can migrate into structures and expose tenant/occupants to potential harm. The Phase I ESA standard requires the consideration of vapor migration when identifying Recognized Environmental Conditions (RECs) and cites the ASTM E2600 Guide as a method of evaluating the issue.

Update: The most notable change to the new E2600-15 Standard revision is to the Conclusion Language. Prior versions of the Guide **required the environmental professional to draw one of the four following conclusions** as a result of their assessment:

Prior standards conclusion statements:

- a Vapor Encroachment Condition (VEC) exists
- a VEC is likely to exist
- a VEC cannot be ruled out
- a VEC can be ruled out

The revised E2600-15 Standard simplifies the conclusions to only include two options:

- a VEC exists
- a VEC does not exist

The simplification removes ambiguity which resulted when the “likely to exist” or “cannot be ruled out” language was utilized. It should be noted, that the determination of a VEC does not automatically result in there being an REC to the property as this determination involves additional considerations evaluated as part of the Phase I ESA.

Bock & Clark News and Upcoming Events

- The new *Bock & Clark Handbook for Commercial Real Estate Due Diligence*, including a complete guide to the 2016 ALTA/NSPS Land Title Survey Minimum Standards, is now available. Contact Laura Hengle at lhengle@bockandclark.com to request a hard copy or view it on our website www.bockandclark.com.
- Jim Brown, Director, will be presenting on the topic of the new ALTA Survey Standards to the [Montgomery County Bar Association in Potomac, Md. on June 14.](#)
- Director of Marketing, Laura Hengle, will be attending the upcoming [CREW Network Leadership Summit to be held at the Renaissance](#)

[Center in Detroit, Mich. on June 16-17](#). Ms. Hengle serves as a Champion Director for CREW Foundation, the philanthropic arm of the national CREW Network.

- Bock & Clark is sponsoring the upcoming [Bisnow Houston State of the Market to be held on June 16](#). Stop by to meet Director of Sales, Nathan VonGunten, and enter our drawing.
- Visit our booth on [July 20 at the Bisnow BMAC event taking place in Los Angeles](#). Jim Brown and Tim Kidd will be on hand to say “hello” and swap industry stories.

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