

Survey, with a side of Title

- Western Mortgagee Advisory Council
- 2022 Conference
- September 14, 2022

Survey, with a side of Title

- Topics to be covered:
 - Basic Requirements of HUD-Compliant ALTA Survey
 - Access
 - Easements
 - Encroachments
 - Unique Features
 - Key Takeaways
 - Questions and Answers

Survey, with a side of Title

- Moderator: **Forty Semadeni**, SVP, NorthMarq
- Panelist: **Bob Fradley**, Acting Chief, Technical Specialist Branch, San Francisco
- Panelist: **Lesley Meyer**, HUD Office of Counsel, Denver
- Panelist: **David Barsky**, Partner, Krooth & Altman LLP

Basic Requirements

❖ Resources

- See MAP Guide 19.4.7.6 (page 19-41)
- Surveyor's Report/Instructions – HUD 91073M (as revised June 11, 2021)

https://www.hud.gov/sites/dfiles/Housing/documents/Interim_Revised_Form_91073M_ALTA_standards.docx email/notice from MF - 11 issue

Basic Requirements

- ❖ **All ALTA Surveys must abide by the 2021 Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys** (hereafter “Standard”). This mandates the elements that the survey must cover at a minimum; it also lists optional items that may be included at the client’s request, known as the **“Table A Optional Items.”**

Basic Requirements

HUD Survey Instructions and Surveyor's Report

U.S. Department of Housing and Urban Development
Office of Housing

OMB Approval No. 2502-0598
(Exp. 9/30/2021)

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Warning: Federal law provides that anyone who knowingly or willfully submits (or causes to submit) a document containing any false, fictitious, misleading, or fraudulent statement/certification or entry may be criminally prosecuted and may incur civil administrative liability. Penalties upon conviction can include a fine and imprisonment, as provided pursuant to applicable law, which includes, but is not limited to, 18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802; 24 C.F.R. Parts 25, 28 and 30, and 2 C.F.R. Parts 180 and 2424.

Standards of Performance: for all surveys contracted for or updated after February 23, 2021. In every instance the survey and survey plat(s) and/or map(s) must be made in accordance with the requirements for an "ALTA/NSPS Land Title Survey" and in compliance with the:

Section Break (Continuous)

A. 20162021 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, jointly established and adapted by the American Land Title Association and the National Society of Professional Surveyors.

B. Table A, Optional Survey Responsibilities and Specifications, thereof, items 1, 2, 3, 4, 6a, 6b, 7a, 8, 9, 10a, 10b, 11, 11a, 11b, 12, 13, 16, 17, 18, and 19.

C. And the following requirements as applicable:

1. Wetland Delineation Involved: Optional Item 20 of Table A must be amended as follows: "If there has been a field delineation of wetlands conducted by a qualified specialist hired by the client, the surveyor must locate any delineation markers observed in the process of conducting the fieldwork and show them on the face of the plat or map. If no markers were observed, the surveyor must so state."

2. Site Grading Involved: Comply with table A, item 5. Contours may not exceed 1-foot vertical intervals, except that 2-foot and 5-foot vertical intervals may be used where the mean site gradient exceeds 5 percent and 10 percent respectively. Where curbs and/or gutters exist, show top of curb and flow line elevations.

3. Plot Plan Design/Redesign Involved: Comply with Table A, Item 6.

4. Condominium/Air rights Involved: The surveyor must provide a survey made in accordance with any Property Jurisdiction requirements or, in the absence of such requirements, professionally recognized standards.

5. Flood Hazard Involved: Where any portion of the site is subject to flood hazard, show the 100-year return frequency flood hazard elevation and flood zone for all projects plus the 500-year return frequency flood hazard elevation and flood zone for Section 811 housing program. For existing projects show the site elevation at the building entrances, lowest habitable finished floor, and basement for each primary building, and the vehicular parking area that serves each primary building. Take return frequency flood hazard elevations from the applicable Federal Flood Insurance Rate Map. Where such is not available, take the elevations from available state or local equivalent data, or when not available, work in conjunction with owner's engineer.

6. Blanket Easement Involved: Show on the map/plat the location of any facility that is located within or traverses the property under provisions of a blanket easement.

Section Break (Continuous)

Additional Owner Requirements: The following requirements are not intended to void any other part of this instruction.

Section Break (Continuous)

Certification: The survey map/plat must bear the ALTA/NSPS Certification:

"To (name of insured, if known), (name of lender, if known), (name of title insurer, if known), Department of Housing and Urban Development ("HUD"), (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 20162021 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)

Survey Instructions and Surveyor's Report, HUD 91073M

- Survey Instructions – reference 2021 Minimum Standards and Table A items. These are technical requirements that surveyor must follow.

- https://www.hud.gov/program_offices/housing/mfh/map/maphome



Basic Requirements

Certification: The survey map/plat must bear the ALTA/NSPS Certification:¶

“To (name of insured, if known), (name of lender, if known), (name of title insurer, if known), Department of Housing and Urban Development (“HUD”), (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~~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)¶

- Survey Instructions and Surveyor’s Report, HUD 91073M
 - Bottom of Surveyor's Instructions has certification that must be on Survey



Basic Requirements

HUD Surveyor's Report

The included survey plat and/or map is to be used in a multifamily housing loan transaction submitted to HUD.

Its uses will include:

- Land title recordation (all cases).
 Site grading plan preparation (item 1 above).
 Plot plan design/redesign (item 2 above).

Special Project Features:

- Condominium/Air-rights, and/or
 Other: (e.g. accessibility features) _____

Owner's Representative/Contact:

Name & Phone No: _____

Address: _____

I certify that, on [Insert date of survey] _____, I made a survey of the premises standing in the name of [Insert name of owner at time of survey] _____ situated in [Insert city, county, state] _____ known as street numbers _____ and shown on the accompanying survey plat and/or map entitled _____; and made a careful inspection of said premises and of the building(s) located thereon.

I certify that on [Insert date of last site inspection or N/A] _____, I again made a careful inspection of said premises and of the building(s) located thereon, and found said premises to be standing in the name of: _____.

In my professional opinion, the following information reflects the conditions observed on the date of the last site inspection, or disclosed in the process of researching title to the premises, and I further certify that such conditions(s) are shown on the survey map/plat dated: [Insert date of latest revision] _____.

For Items 1 through 10, please provide a detailed answer or state "none," if inapplicable.

1. Rights of way, old highways or abandoned roads, lanes or driveways, drains, sewer or water pipes over and across said premises:

2. Springs, streams, rivers, ponds or lakes located, bordering on or running through said premises:

3. Cemeteries or family burying grounds located on said premises:

4. Electricity, or electromagnetic/communications signal, towers, antenna, lines, or line supports located on, overhanging or crossing said premises:

5. Disputed boundaries or encroachments. (If the buildings, projections or cornices thereof or signs affixed thereto, fences or other indications of occupancy encroach upon adjoining properties or the like encroach upon surveyed premises, specify all such):

Previous editions are obsolete

Survey Instructions and Surveyor's Report

HUD-91073M (6/18)

- Surveyor's Report, HUD 91073M
 - Ensure all questions are answered on Surveyor's Report and that the questions match what is shown on the survey.
 - Ensure that if there is an answer to any of questions 1-10, that the Surveyor provides a detailed response, not "See Survey", and a response of "None" is preferred to "None Observed".

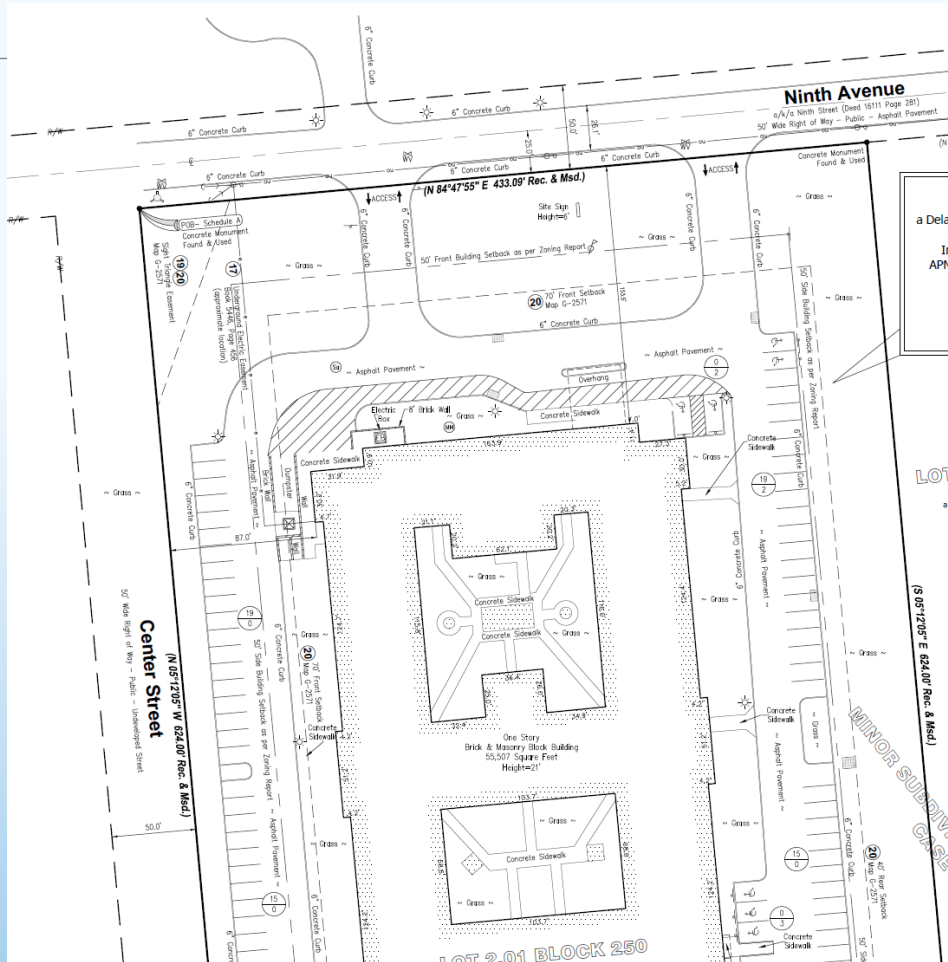


Basic Requirements - Issues/Pitfalls

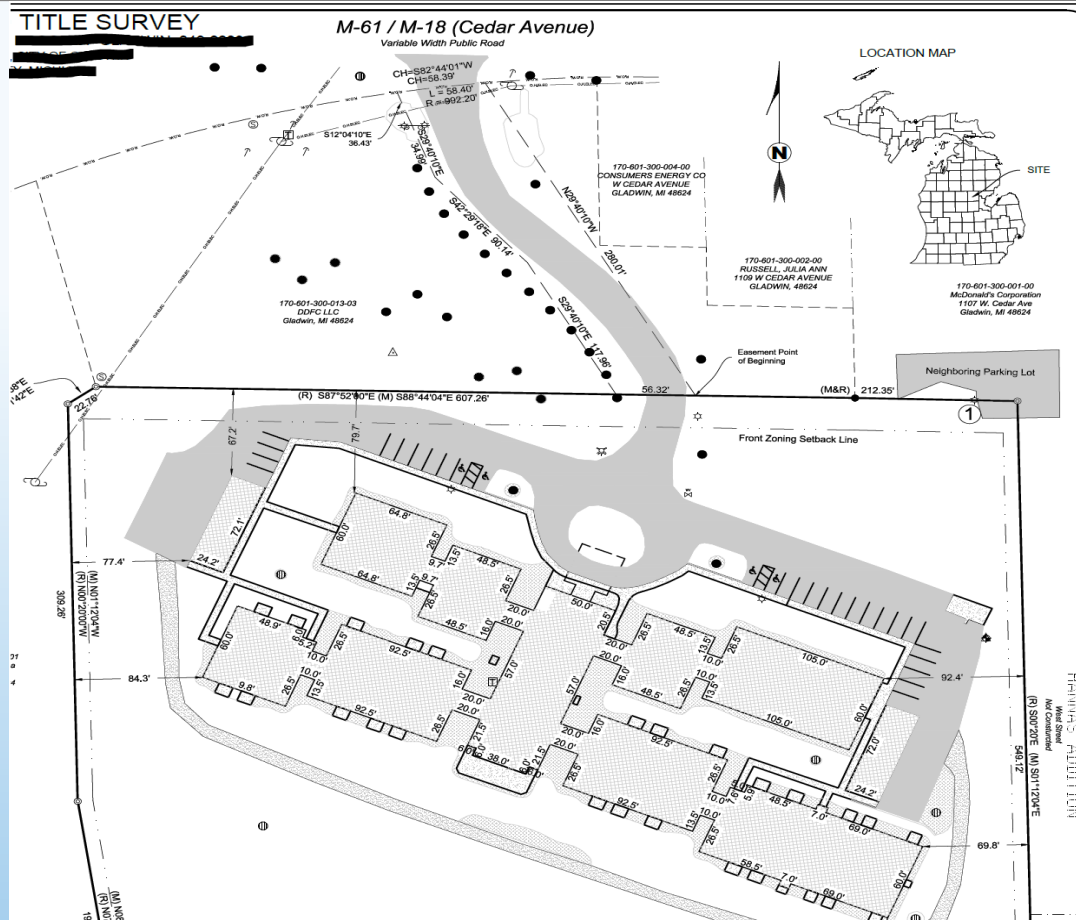
- Dates – Stale. HUD will allow an out of date survey with completed Survey affidavit in certain circumstances. An out of date survey is any survey with a site inspection/field work date of more than 180 days prior to closing, or 120 days for an as-built survey required for final closing.
- Title and survey disagree about encumbrances on property, or Survey does not show all encumbrances that are listed in title (whether plottable or non-plottable).
- Legal description does not match between Survey and Title – it **MUST MATCH** – get Surveyor or Title Company to agree on which legal to use in both. In some instances, title and survey will agree to use a record (or historical) legal description followed by the current “AS SURVEYED” legal description. In title, the recorded/historical legal description will be shown first, followed by “ALSO DESCRIBED AS:”, or similar language, and the Surveyor’s legal description. In this case, both firm and title and survey must recite both legal descriptions.

Access

- Ensure the Project has access to a public road.
- The Map Guide requires that all access roads are labelled as public or private; you must ensure there is access to the Project via a public road, or that there is a recorded ingress/egress easement across an adjacent parcel that is included as part of your legal description.
- You must obtain an “Access and Entry Easement” Endorsement (ALTA 17-06) in the lender's title policy that ensures the mortgaged parcel has access to a Public Right of Way. But don't rely on the endorsement – rely on your review/follow-up questions.
- We occasionally see a “landlocked” parcel where access to it is through a recorded easement. If so, you must ensure that the access easement is recorded, is perpetual, and that the access easement is included in the title policy's insured legal description. In this case, you must obtain an "Indirect Access and Entry" Endorsement (ALTA 17.1-06) in the lender's title policy.



- This parcel has direct access to Public Right of Way.

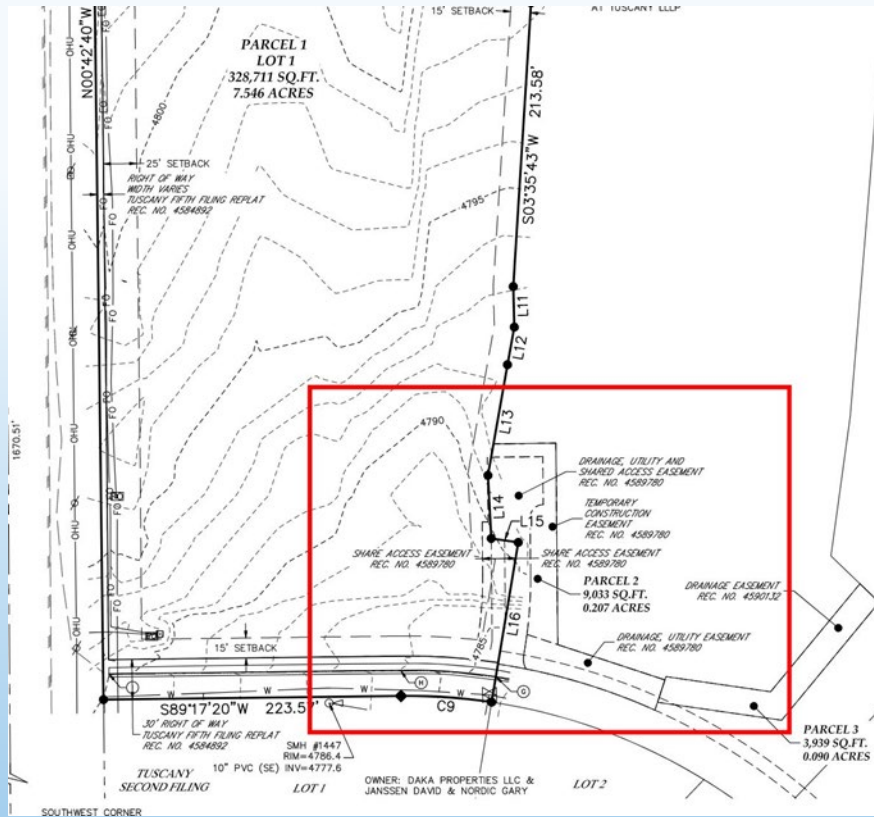


The parcel has access to the public road only through a recorded easement over an adjacent parcel. An Access or Ingress/Egress easement must be recorded and must be part of the property's insured legal description in the lender's title policy.

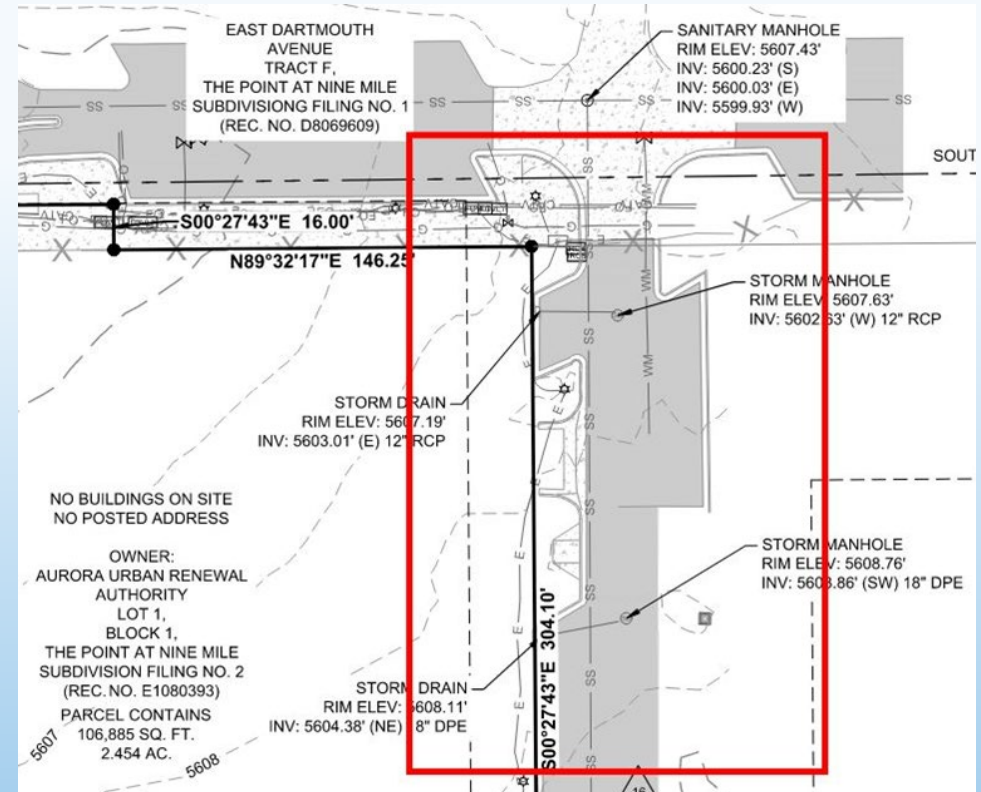


Shared Access

Shared Access Easement - Identified



Shared Access Easement – Not Identified



Easements and Other Encumbrances from Title

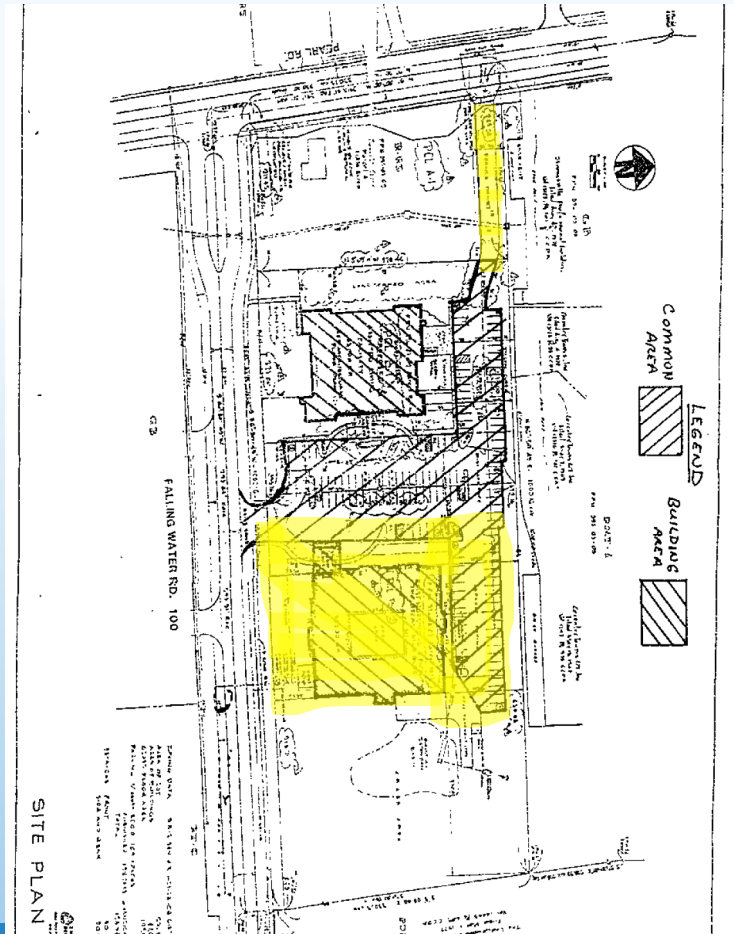
- The surveyor will rely on a Title Commitment, not a Pro forma Title Policy, in preparing the survey. A Title Commitment, like the survey, is prepared as a snapshot in time.
- B-1 and B-2 exceptions from the title policy are the recorded documents that impact the physical project.
- All recorded documents shown in the title policy must also be listed on the survey. When it is possible that an item can be physically depicted, it must be shown. If it is NOT possible to physically depict the item, a note to that extent should be made. Existing or previous financing documents (mortgages, deeds of trust, UCCs, etc. that will appear in the title commitment but have been or will be satisfied and/or terminated in connection with the HUD closing should not be listed on the survey).
- Note that covenant instruments that will remain of record following the HUD closing that are shown in title are noted as title exceptions on the face of the Survey, but with a notation that they are either not plottable, not a matter of survey, etc.



Utilities (may or may not be an easement)

- Pay Special Attention to Utilities
- Sometimes utilities are established via an easement; sometimes they are not
 - Do you have a utility line crossing neighboring/private property? Confirm whether it is or isn't serving this Project. If it is serving this Project and necessary for operation, either ensure you already have an easement for it, or require the owner to obtain one.
 - A Utility Access Endorsement (ALTA 17.2-06) is helpful, but don't rely on it.

Utilities



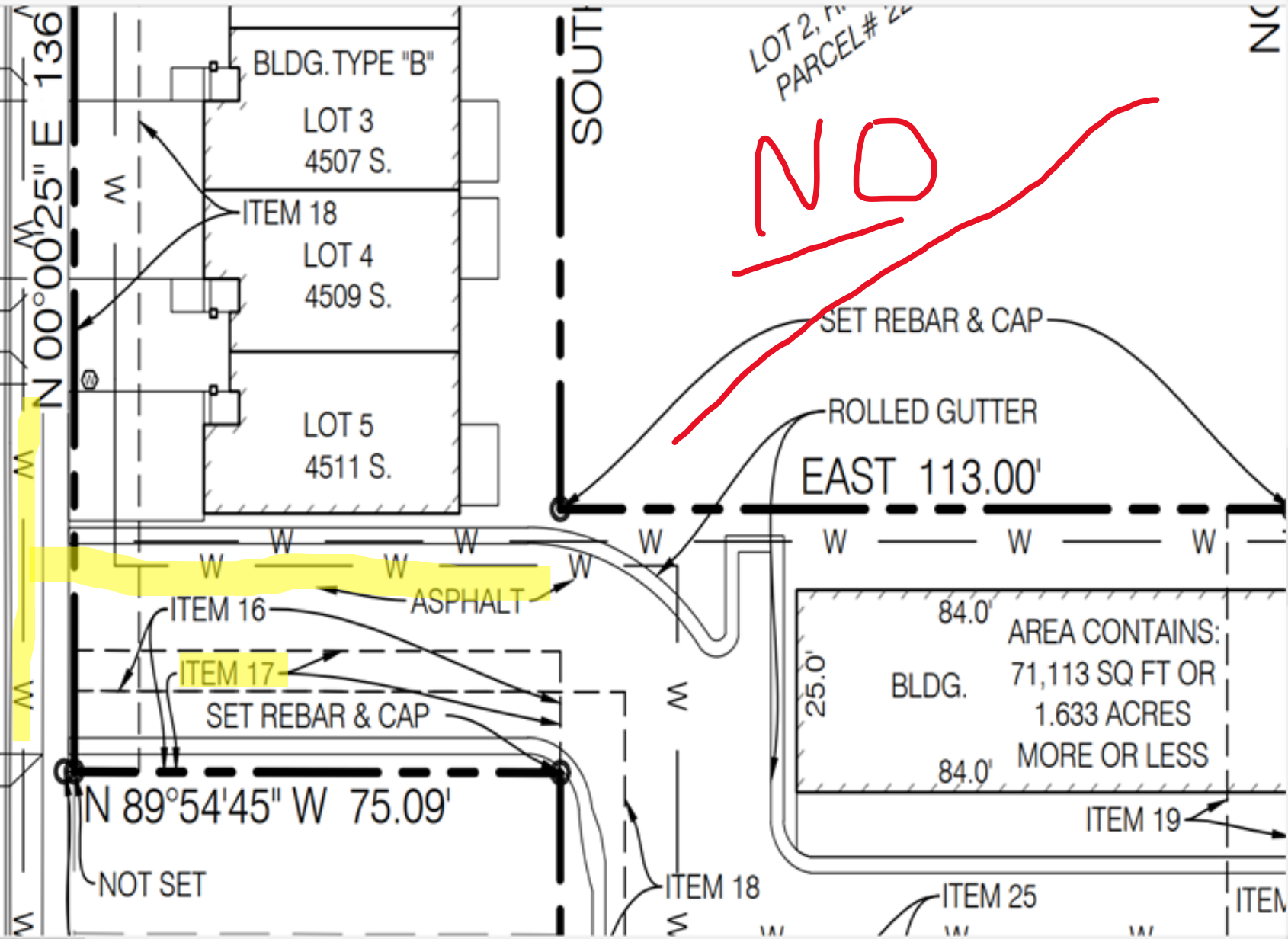
Utilities must enter the Project either through a Public Right of Way or through an easement granted by an adjacent property holder or holders. If through an adjacent property holder or holders, check to ensure that the easement or easements tie all the way back to the Public Right of Way.



Yes

1200 EAST
(PUBLIC ROAD)

.05' (MEASURED)



LOT 2, PARCEL # 22

SOUTH

NC

SET REBAR & CAP
ROLLED GUTTER
EAST 113.00'

84.0'
25.0'
84.0'
AREA CONTAINS:
BLDG. 71,113 SQ FT OR
1.633 ACRES
MORE OR LESS

N 89°54'45" W 75.09'

NOT SET



DOWN HEREON.

ITEM 15 RIGHT OF WAY AND EASEMENT GRANT, IN FAVOR OF MCOUNTAIN FUEL SUPPLY COMPANY, TO LAY, MAINTAIN, OPERATE, REPAIR, INSPECT, PROTECT, REMOVE AND REPLACE PIPE LINES, VALVES, VALVE BOXES, AND OTHER GAS TRANSMISSION AND DISTRIBUTION FACILITIES, THROUGH AND ACROSS A PORTION OF THE SUBJECT LAND. SAID RIGHT OF WAY AND EASEMENT GRANT RECORDED DECEMBER 14, 1958, AS ENTRY NO. 1354282, IN BOOK 1053, AT PAGE 290.
(SURVEY FINDINGS: AFFECTS THE SUBJECT PROPERTY, AS SHOWN)

ITEM 16 A UTILITY RIGHT-OF-WAY EASEMENT AS CONTAINED IN THAT CERTAIN QUIT-CLAIM DEED, DATED DECEMBER 8, 2004 AND RECORDED DECEMBER 9, 2004 AS ENTRY NO. 9244427 IN BOOK 9070 AT PAGE 7045.
(SURVEY FINDINGS: AS SHOWN)

ITEM 17 A UTILITY RIGHT-OF-WAY EASEMENT AS CONTAINED IN THAT CERTAIN QUIT-CLAIM DEED, DATED FEBRUARY 7, 2005 AND RECORDED FEBRUARY 8, 2005 AS ENTRY NO. 9294393 IN BOOK 9092 AT PAGE 2960.
(SURVEY FINDINGS: AS SHOWN)

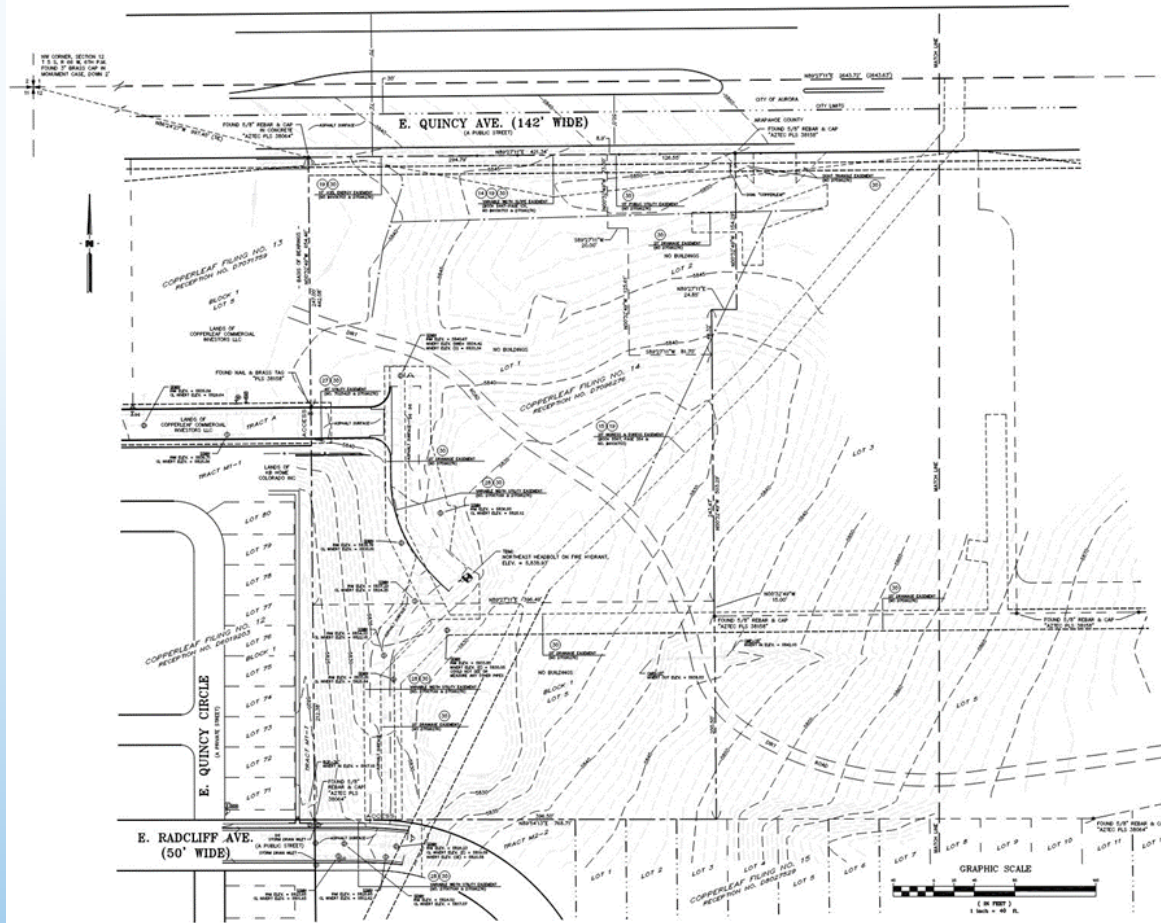
ITEM 18 EASEMENTS, NOTES AND RESTRICTIONS AS SHOWN ON THE RECORDED PLAT FOR 45 TWELVE TOWNHOMES, RECORDED JUNE 3, 2019 AS ENTRY NO. 13001372 IN BOOK 2019P AT PAGE 172.
(SURVEY FINDINGS: AFFECTS THE SUBJECT PROPERTY, SHOWN HEREON)

SS
SD

BENCHMARK ENGINEERING

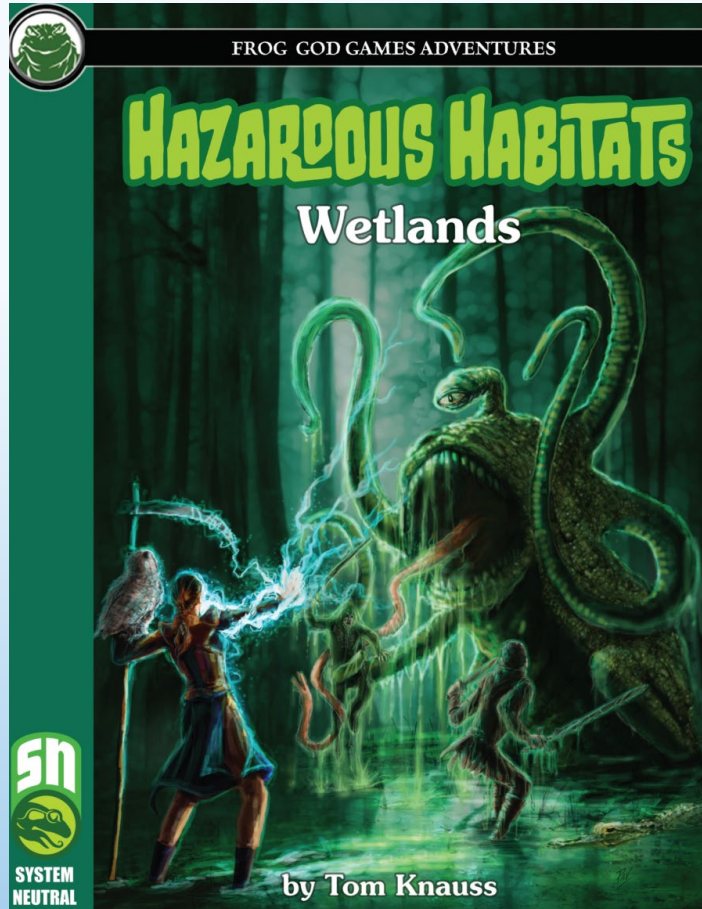


Easements – Existing / Vacated



Existing easements (Access, Utility, Drainage, etc.) that conflict with the proposed building footprint must be vacated prior to Initial Closing.

Look for Environmental Issues

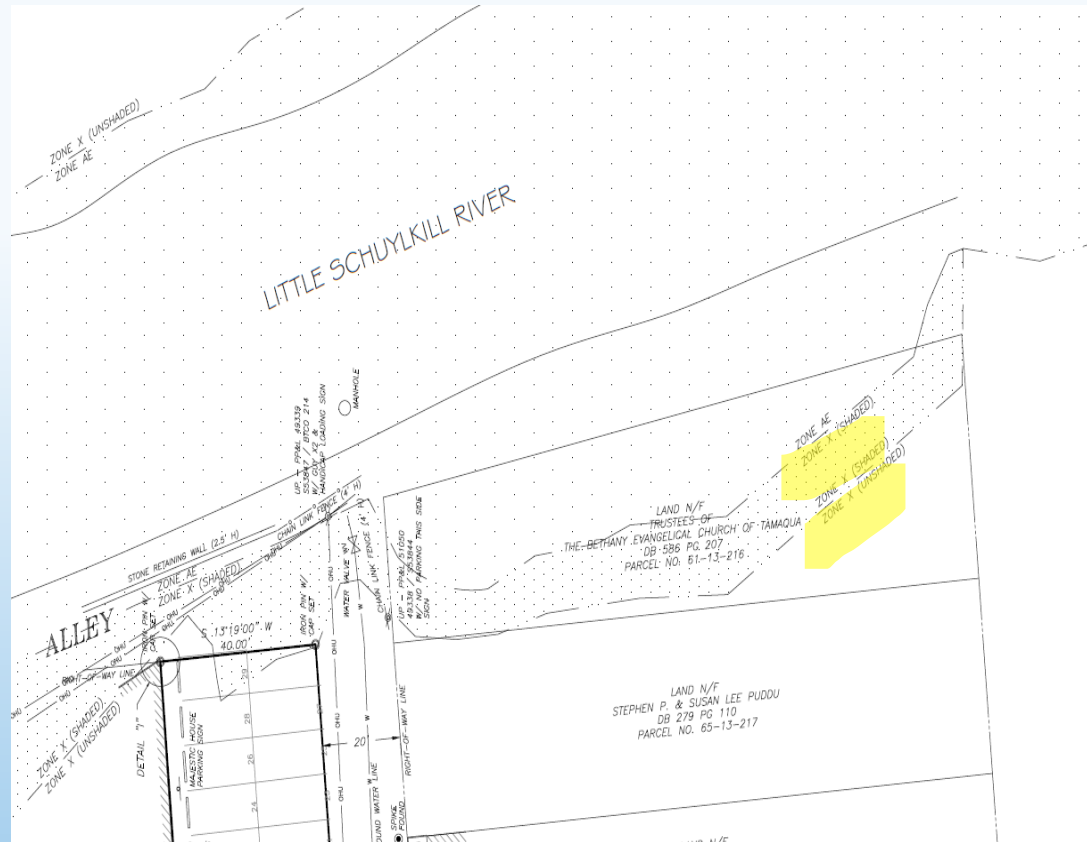


- Environmental Issues:
 - Wetlands, Floodplain, Coastal Floodway, High Pressure Gasoline, Pipelines, Petroleum issues, buried tanks/drums, notification of failed environmental reports, etc.
 - If you see something graphically depicted or a note that indicates there is a special environmental issue on the project, seek additional information from client and/or parties.

Environmental Issues

- FLOOD ZONES:
- HUD Flood Zone Requirement from Survey Requirements:
- “Flood Hazard Involved: Where any portion of the site is subject to flood hazard, show the 100-year return frequency flood hazard elevation and flood zone for all projects plus the 500 year return frequency flood hazard elevation and flood zone for Section 811 housing program. For existing projects show the site elevation at the building entrances, lowest habitable finished floor, and basement for each primary building, and the vehicular parking area that serves each primary building. Take return frequency flood hazard elevations from the applicable Federal Flood Insurance Rate Map. Where such is not available, take the elevations from available state or local equivalent data, or when not available, work in conjunction with owner's engineer.”

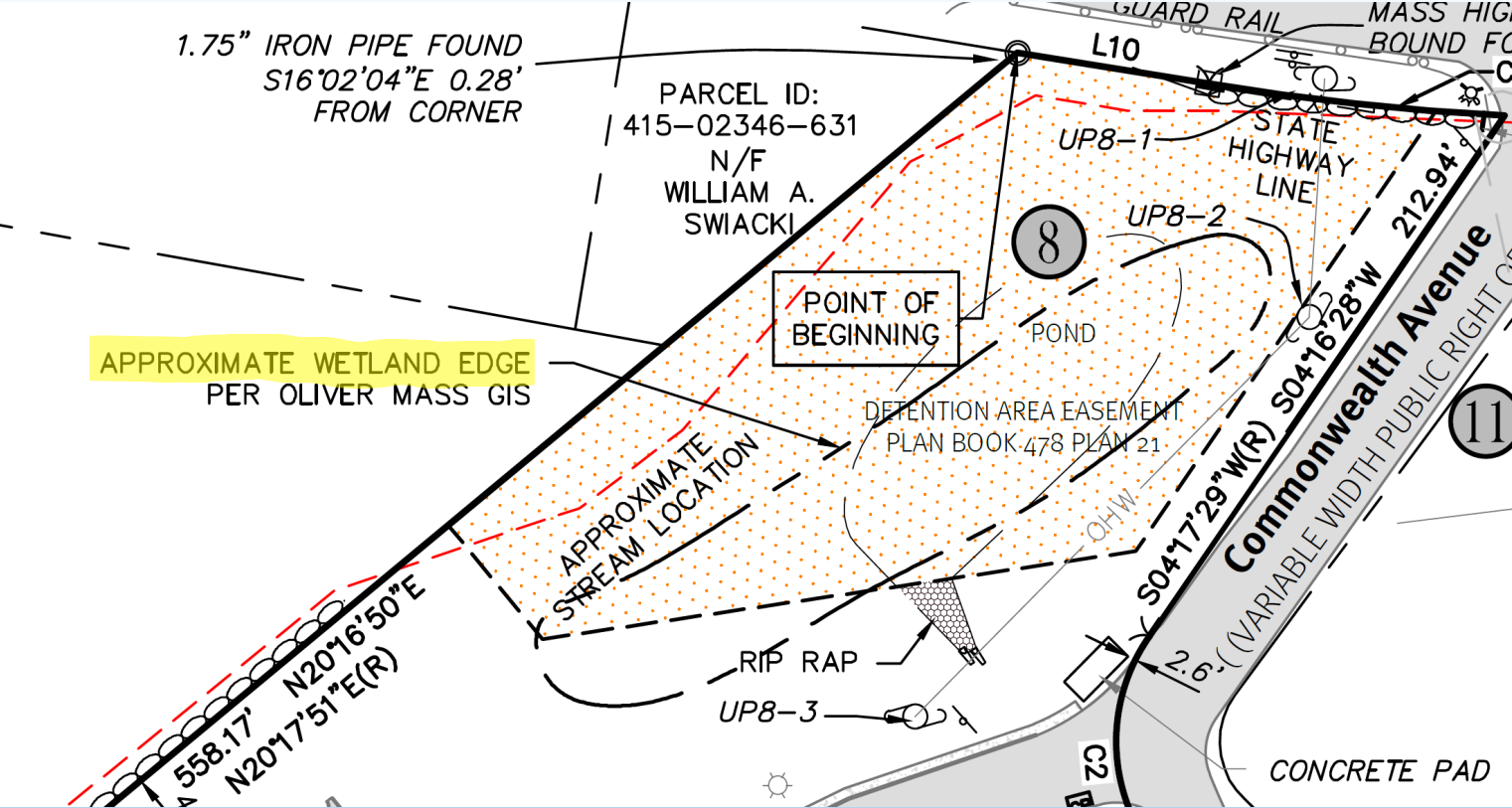
Flood Zones



- The Survey must delineate the portion or portions of the parcel that are subject to the applicable Flood Zone and identify which Flood Zone is applicable.
- The Survey must include a note on its face that identifies the FEMA Flood Map from which the flood map information is taken and its date.
- From Chapter 9 of the MAP Guide: An application for mortgage insurance shall not be approved for a property located in: (a) a floodway; (b) a coastal high hazard area; or (c) a FEMA identified special flood hazard area in which the community has been suspended from or does not participate in the National Flood Insurance Program. If a stream coursing through a proposed site is designated as being in the 100-year floodplain according to FEMA's best available data, but there is no designated floodway area, development will be prohibited in the channel of the stream.
- You may use the following FEMA website to confirm the FEMA Community Panel No. and effective date shown on the survey. This is a good practice, especially when reviewing an update of an older survey. This website allows you to search by the project address:
- <https://msc.fema.gov/portal/search>



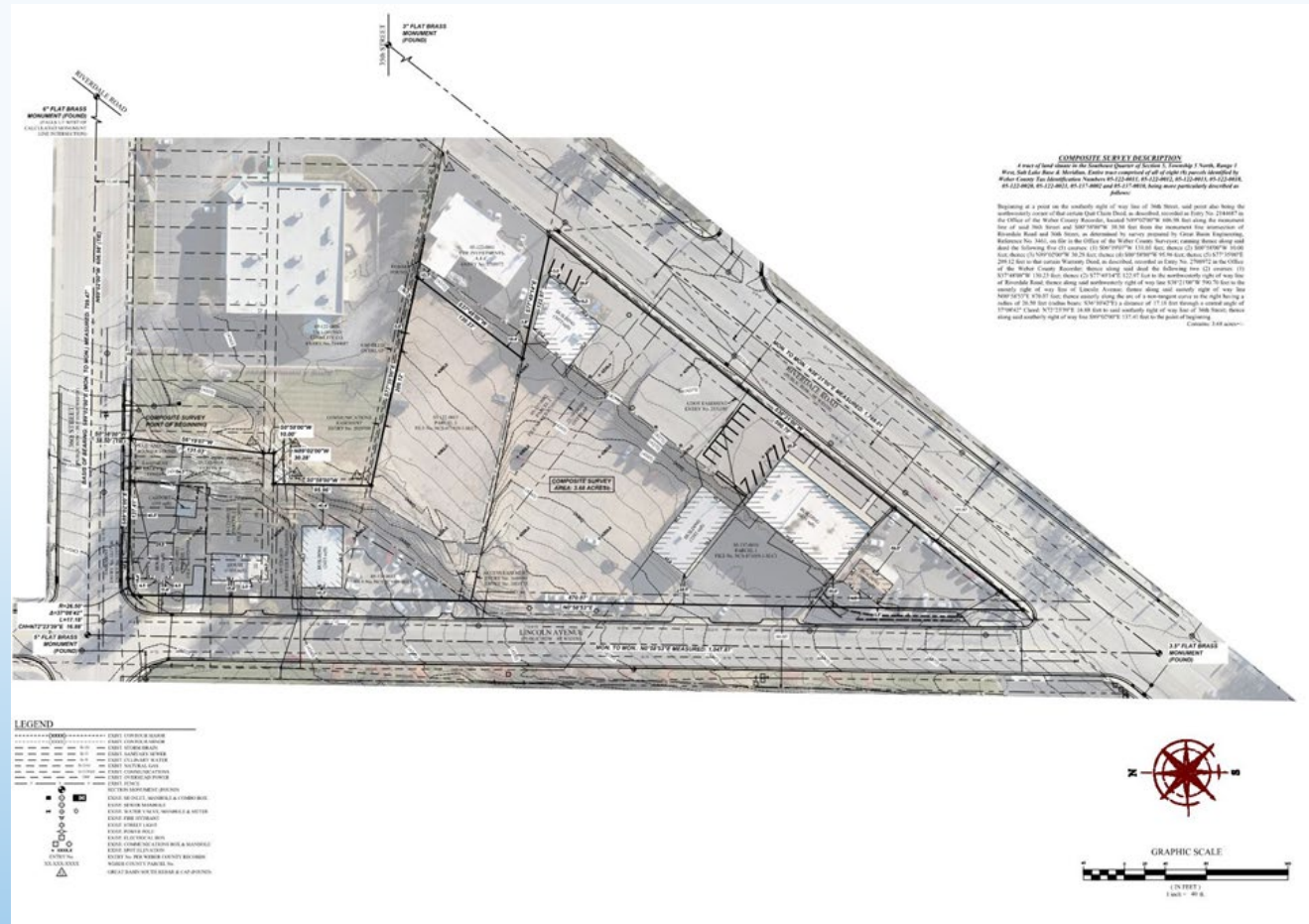
Wetlands



- From HUD Survey Instructions: “Wetland Delineation Involved: Optional Item 20 of Table A must be amended as follows: “If there has been a field delineation of wetlands conducted by a qualified specialist hired by the client, the surveyor must locate any delineation markers observed in the process of conducting the fieldwork and show them on the face of the plat or map. If no markers were observed, the surveyor must so state.”
- Delineation of Wetlands is determined based on the National Wetlands Inventory, and determined by environmental expert who must be retained.
- HUD usually requires a “Wetlands Covenant” when Wetlands exist on the mortgaged parcel which run with the land in perpetuity (not just for life of HUD loan).
- The following National Wetlands Inventory (“NWI”) website may be used to cross-check the location or applicability of Wetlands on a property. Select the “Find Location” in the upper right-hand corner of the NWI Mapper feature to search for the subject property:
- <https://fwsprimary.wim.usgs.gov/wetlands/apps/wetlands-mapper/>



Composite Survey



A Composite Survey is an ALTA Survey with an aerial map underlay. This version of the ALTA Survey is unacceptable to HUD as it impacts the legibility of the survey data.



Key Takeaways

- Let's discuss!

Questions and Answers

- Any unanswered questions will be addressed and distributed at a later date.