Legal Description Workshop

Presented By:

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Writing Legal Descriptions
Gurdon H. Wattles

Advanced Land Descriptions
Paul Cuomo and Roy Minick
“Legal in legal description pertains to the fact that the description must be able to withstand attack under law”
“Parol or extrinsic evidence may not be admitted to add to or vary a description that is definite and certain. Nor may it be used to explain an apparent ambiguity in the conveyance”
“Your legal description should be clear and concise”

“Your slogan should be Concise Clarity Without Ambiguity”
What are your goals with today’s Seminar?
What is a Legal Description?

- A legal description identifies a unique piece of land with only one location...
  - Preamble (describing the use or intent with a general location)
  - Body (describing the finite location of the land or right)
  - Basis of Bearing (explicitly states what was used to establish the courses)
  - Basis of Bearing (not explicitly writing it) within the description (see 4.5 and 4.6 wattles)
  - Sign, Seal and Date (Board Rules 411)
What is our Legal Description trying to accomplish?

• Based upon what it is we are trying to accomplish it would dictate what should control in the legal description......
Are we describing an Easement?

• Over an existing use such as utility line or paved road/driveway
• Over a proposed route of a utility or road/driveway
• Should we, the Land Surveyor encumber the easement with rights?
• Will our description be a part of a legal document?
  o If so, make sure we are consistent with the document
  o Review practicing LAW! See attachment (Olsan)
Are we describing something unique?

• Completely understand the ultimate goals/desires before writing

Is there something that we want to make sure doesn’t happen with the description?
P.O.B, T.P.O.B, Commencing

• You Commence and then go to a P.O.B, or you can Begin and then go to a T.P.O.B...

• Remember that order could be confusing to be at a P.O.B and then go to the REAL P.O.B (surprise!).....use commencing, then we KNOW that's not the P.O.B
How to Define a Basis of Bearing

- Either incorporated into the legal description or by direct recital at the end of the description.
  - B.O.B is a reference, a relationship.
  - Those who follow you will be able to follow your description.
  - Helps discover errors.
Free Calls vs. Qualifying Calls

• Free Call
  o Just a bearing and distance
  o No controls or monuments
  o End point is where it is...may or may not be where it should be
Free Calls vs. Qualifying Calls Cont.

• Qualifying Call
  o To a physical object, pipe, tree, street, river, axle etc.
  o Describe them just as you would any other monument
  o Bearing and distance are only informational...to get you to the object
  o Qualifying object holds
Double Qualification Calls

• Can introduce an error or ambiguity into what was a clear description. Pick the most permanent monument and use it.

• VERY clearly describe the monument.

• Size of pipe, tag, etc.

• Tree size, species, and unusual characteristics (bifurcated, bent, etc.)

• Calling to two monuments can cause conflict later. Too easy to move or change. If one gets moved or changed, which do you use?
To a Point

• Not 'to a point' in a free call
• To a point in.......  
  o A line  
  o A fence  
  o Or to a named point to be referred to later in the description "...200 feet to point 'A',...."
Along a Line, To a Line

- Clearly describe the line
- Property, right of way, fence, centerline
- State the direction of travel
- State when you leave that line
- Call to a street means to the center unless qualified
- River/creek ....center? Or thalwag?
Parallel With NOT Parallel To (really?)

- Adjective; parallel (of straight lines) going in the same direction and always staying the same distance apart
- The road is parallel to/with the river
- In the Same Direction But Always The Same Distance Away
- A Line Parallel to Another... Draw a Parallel to This Line
Which Bears and From Which

• Define the point or reference
• Clearly state the bearing and distance from the monument or point of reference
• Do not double call
To a Point of Cusp/Curvature

• **Tangent**
  
  o Curve to the right/left or concave to the north/south....
  
  o Radius, distance, delta... need at least two of these

• **Non-tangent**
  
  o Same as tangent, need radial bearing for the beginning of the curve
• Quote on 5.4 about Extrinsic or Parol evidence within a deed that is clear and without ambiguity

“So in writing descriptions, use words and phrases that clearly convey the intent of the parties concerned without creating any need to resort to extrinsic evidence for clarification”
Conflicts between your description and the attached Plat... What to do?

- Review earlier copies of the deed
- Speak to the surveyor who did the map
- Bring out your 'Magic 8 Ball'......
Suggestions for Legal Description Drafting

- Preamble should clearly identify the source of title, by location as well as vesting
- Description preamble should also clearly identify it’s purpose
- Exhibit plats
- Keep it simple and straightforward
- Proof your work
Document Preparation and Review

- Title Company or other third-party prepared documents
- In-house prepared documents
- Make sure your title data is up to date
Five Types of Descriptions

- Lot and Block
- Sectionalized (aliquot descriptions) SE ¼ of SE ¼ ...
- Bounded by... on all sides
- Strip Description
- Metes and Bounds
Lot and Block Descriptions

• Provide sufficient data to locate the map
• The map is part of the description
• If granting rights shown on the map, then say so
• Provide more than enough information to properly locate the document
• Be careful of Quasi Public or unrecorded documents
Aliquot Descriptions

- **Transfer from Gov. to Private is a Patent**
- **A lot like Lot and Block Descriptions**
- **Know what holds (Federal Rule or State Law)**
  - CA. holds exact area when in private hands
- **Without a survey the client should understand potential locations**
- **Treaty of Guadalupe –Hidalgo (1.4 Wattles)**
  - Signed May 30 1848 (Mexico and US)
  - Recognized Rancho Lands (Senior to Public Lands)
**Bounded By Description**

- You become the most junior of deeds/parcels
- Verify your parcel is in fact junior
- Research the adjoiners
- A chain of title may be necessary
Strip Descriptions

• Use “each” not “either”
• If not equal distant on each side, define clearly
  o 10’ on westerly and 15’ on easterly side of described line
• Sidelines to be shortened or extended to meet ......
• Last sentence .... Herein ending said described line or something alike
Metes and Bounds Descriptions

- Metes means bearings and distances
- Bounds means monuments (physical and legal)
- Establish a clear Basis of Bearing
- Make sure your Preamble and Body are not in conflict
- Double check Quadrants for your direction
- Establish how to qualify or create controlling elements before you start the description.
Metes and Bounds Descriptions Cont.

- Make sure your calls are clear (call to a road...CL?)
- Make sure you don’t create conflicting calls (to a point)
- If you refer to other documents, make sure they are available
  - Do not qualify to a plat, map or document that is unrecorded or hard to get