

# PUBLICATION

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## ALTA Considers New Energy Project Endorsement

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**The American Land Title Association (ALTA) is considering approval of a new Energy Project Endorsement for owner's and loan policies at its spring session. The endorsement (proposed as the ALTA 36.9) Energy Project – Minerals and Other Subsurface Substances – Land Under Development, will provide mineral coverage specific to title insurance for energy projects to replace reliance on the current ALTA 35-06 endorsement and the ALTA 31-06 Severable Improvements endorsement.**

For coverage under the proposed 36.9, the development must be an electricity-generating facility as defined in the endorsement. Coverage will comprise of insurance against:

"...loss or damage sustained by the Insured by reason of the enforced removal or alteration of an Electricity Facility or a Severable Improvement, resulting from the future exercise of any right existing at Date of Policy to use the surface of the Land for the extraction or development of minerals or any other subsurface substances excepted from the description of the Land or excepted in Schedule B."

The standard limitations will apply to the coverage of "damage." Damage will not include: 1) contamination, explosion, fire, flooding, vibration, fracturing, earthquake, or subsidence; 2) negligence by a person or an Entity exercising a right to extract or develop minerals or other subsurface substances; or 3) any item specifically added in the drafting and preparation of the endorsement.

Because this is also a "Land Under Development" Endorsement, plans (as defined in the endorsement) may be submitted to provide coverage in advance of construction of the Energy Project.

As noted in the insuring provision, the coverage will extend to the Severable Improvements on the insured land, which are affixed to the insured land but normally considered personal property under the law. This will resolve the need to obtain both the Severable Improvements Endorsement and the ALTA 35-06. In rate-filed states, this could potentially save the project some development costs on the title insurance. However, the endorsement does not ensure that the Severable Improvements are part of the "Land," and that the definition is not changed by the endorsement.

The proposed endorsement, if adopted, will greatly assist in real estate project development and add to the arsenal of already adopted Land Under Development endorsements from ALTA. It will allow the issuance of one endorsement in place of having to use two endorsements to attempt to cover the same set of title insurance risks.

If you have questions or concerns regarding this alert, please contact [Andrew Novak](#) or any member of Baker Donelson's [Real Estate](#) team