



COUNCIL REPORT

December 10, 2009

The Council of the Alberta Land Surveyors' Association met on December 10, 2009 by web-based conference call as a cost-savings measure. Here is a summary of their discussions.

FROM THE REGISTRAR

Council welcomed **Mila de Regt** as an associate member. She works for McElhanney in Fort McMurray. Ms. de Regt is also a member of the Alberta Geomatics Group and the American Society for Photogrammetry & Remote Sensing.

Council exempted **Dave Elliott** from the provisions of the mandatory professional liability insurance bylaw as he is not engaging in the practice of surveying in Alberta. Mr. Elliott is the first British Columbia Land Surveyor to pass the TILMA jurisdictional exam.

Council approved **Morrison Hershfield Geomatics Ltd.** as a surveyor's corporation subject to receipt of additional information. **Arlin Amundrud** will be the Alberta Land Surveyor responsible for the supervision direction and control of the practice.

Council approved **Foothills Surveys (2009) Ltd.** as a surveyor's corporation. **Ben Giesbrecht** will be the Alberta Land Surveyor

responsible for the supervision direction and control of the practice.

Council approved a corporate name change from **Foothills Surveys Ltd.** to **327786 Alberta Ltd.** **Dave Armstrong** remains the Alberta Land Surveyor responsible for the permit. This change enables Mr. Armstrong to complete all work in progress.

Council directed the Registrar to issue a 30-day notice to **Barlow Surveying Inc.** to close their High Prairie office and make the LaCrete office their head office as there is only one Alberta Land Surveyor employed by the firm.

COUNCIL ACCEPTS DIRECTOR OF SURVEYS POLICIES

The Council of the Alberta Land Surveyors' Association passed a motion to accept the Director of Surveys policies concerning dual plan registration and the new affidavit for public land surveys.

Council spent a great deal of time meeting with the Director of Surveys office and deliberating in Council meetings (including two special sessions) since May 2009 concerning the Director's dual plan registration policy and the new public lands affidavit and policy.

Council's decision to accept the policies is outlined in a separate communiqué to the membership.

CONTINGENCY PLAN UPDATE

Through the end of November, post sales picked up but continued to lag behind monthly budget forecasts.

Post sales are 85% of budget through the end of November. Council feels that no further budget cuts need to be implemented at this time. The financial statements projected to the end of the fiscal year show a small loss.

Council approved reimbursing the travel expenses for the members of the Continuing Competency

Working Group for one face-to-face meeting; funds to come from the existing miscellaneous committee budget. It was felt that what this working group is doing in developing a new program is important enough that a face-to-face meeting is needed.

ESTABLISHMENT OF MONUMENTS FOR WELLSITE CONTROL PLANS

Council approved sending a recommendation from the Standards Committee to revise Part D, Section 5.4 - 5.12 of the Manual of Standard Practice to the 2010 AGM for consideration by the membership.

During the rewrite of the Manual of Standard Practice a conflict was identified between sections with reference to when an establishment of monuments plans should be registered; one section indicated this to be within 180 days, while another section referred to this being within two years.

This recommendation recognizes the need to register these monuments within the two different time frames, by distinguishing between the two types of plans. For monuments placed for wellsite control, a monument plan would be

submitted to the Land Titles Office for registration as an “Establishment of Monuments for Wellsite Control” plan.

Part D, Section 5.4.4 would be revised to read:
Show this information on a Wellsite Control Plan and submit it to the Land Titles Office for registration as an Establishment of Monuments for Wellsite Control Plan within 180 days of completing the survey.

Part D, Section 5.5 would be revised to read:
Refer to Part C, Section ~~3.9 (Establishment of Monuments Plan)~~ **3.10 (Wellsites and Related Facilities)** on page 19.

Part D, Section 5.8 would be deleted and the following sections renumbered.

DEFINITION OF WELL

Council approved adding “investigate revising the definition of ‘well’ within the Manual of Standard Practice to include the definition stated within the Oil Sands Conservation Regulation and make recommendations to Council” to the Standards Committee’s terms of reference.

DEFINITION OF REFERENCE MONUMENT

Council approved forwarding the proposed revisions to the definition of reference monument to the 2010 AGM for consideration by the membership.

During the plain language rewrite of the Manual of Standard Practice, the Standards Committee flagged the lack of clear definitions for two different types of “reference monument” as an item of concern. Like several other items requiring content change to the Manual, this item was held over to this year.

In Part C, Sections 7.4.2, 7.4.3, 7.5.1, Part D, Section 2.2.1, and the glossary in Part E, “reference monument” would change to “reference control marker”, then reference monument will be redefined appropriately.

DIRECTOR OF SURVEYS UPDATE

Council replied to the Director of Surveys concerning the application of Section 92 of the *Land Titles Act*.

Council replied to the Director of Surveys concerning the proper re-establishment of boundaries

to survey adjacent subdivisions.

The Director of Surveys indicated that he met with the Alberta Law Reform Institute concerning the Association's 2005 proposal to amend the *Surveys Act* to give governing status to Part 3 monuments at non-monumented Part 2 positions. A report is expected from them in the new year.

Geo-referencing requirements come into effect January 1, 2010. The Director of Surveys is looking into a grandfathering provision. The Director is planning to publish a frequently asked questions document concerning geo-referencing.

The Director of Surveys addressed the question about what to do with construction plans at Public Lands. Are they finished when they have a construction plan at SRD and do they need to send any more plans in? Alberta Sustainable Resource Development expects that disposition holders will submit final plans which must be certified by an Alberta Land Surveyor. The Director of Surveys has asked for more discussion with Council on this issue as it relates to dormant plans.

BURIED FACILITIES

Council received a letter from a practitioner advising the Association that he used iron bars when posting a subdivision instead of statutory iron posts. The practitioner was concerned about the safety of his staff and hitting an underground facility.

Council has indicated to the practitioner that using shortened iron posts and noting it on the plan would be preferred to placing iron bars.

The Association's Buried Facilities Working Group has asked practitioners to take the opportunity to "re-read" the ALSA position paper published and shown on the ALSA web site. The Buried Facilities Working Group would like to make sure all land surveyors are aware of their business responsibility when it comes to digging for or planting evidence and locating buried facilities prior to doing so.

CHANGE TO THE LAND SURVEYORS ACT

Council was advised that the Government of Alberta will amend the *Land Surveyors Act*. The amendment will require that for consistency, all professional legislation under the authority of the

Minister of Employment & Immigration include a provision similar to other professional legislation. The amendment would read:

"Before the Council approves or removes the approval from a program of study or an education course (academic qualifications or training requirements), the Council must consult with the Minister of Employment & Immigration and the Minister of Advanced Education & Technology and must consider the comments received from those Ministers."

This amendment is not expected to affect the Alberta Land Surveyors' Association.

PEOPLE CHANGES

Council accepted, with regret, Troy Motz's resignation from the ALSA-ASSMT MOU Implementation Committee. Michael Stewart was appointed as the ALSA Registration Committee representative on the committee. One more ALSA representative is needed. If you are interested in serving on this committee, please contact ALSA Executive Director Brian Munday (munday@alsa.ab.ca).

SHORT CUTS

Council received the foreign credential recognition report from its consultant and tabled making a decision on the recommendations in the report until the next meeting.

Council reiterated its position from last year that the Association is prepared to make a presentation to government if the *Condominium Act* is opened up for review.

Council reviewed a proposal from Alberta Land Titles that would streamline the monitoring of Section 47 delayed posting plans easier. It was decided to wait until the economy improves before working with Land Titles to enhance their computer systems.

ALSA Office Closure
During the Holiday Season

Christmas Eve – Closed at Noon
Christmas Day – Closed
December 28th to January 1st – Closed
January 4th – Reopen at 8:30 am





Alberta Land Surveyors' Association

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Memo

To: The Membership
From: Council
Date: December 18, 2009
Re: Dual Plan Registration and the New Crown Lands Affidavit

Dual Plan Registration

The dual registration of survey plans at Land Titles and Sustainable Resource Development has been a difficult issue for Council and the entire membership for an extended period of time.

Legal opinions from the Government of Alberta and the Association's own legal counsel raised the same issues but reached different conclusions. In April 2008, Association solicitor David Jardine said, "I have noted that the existing legislation does not expressly address the question. ... Despite this ambiguity, it is my opinion that the best interpretation of the existing legislation is that the *Surveys Act* requires that where a statutory monument is placed by a land surveyor, it must be registered at the Land Titles Office. This applies to any statutory monument whether or not it is a statutory iron post."

In April 2009, the Government of Alberta issued its legal opinion that "the intent of the *Surveys Act* is to have survey plans be of public record. The Director of Surveys has the authority from the *Surveys Act* to determine how best to accomplish this. ... Except where it is specifically stated in the *Surveys Act* that a survey plan must be registered at the LTO, the Director has the authority to determine that the plan can be registered elsewhere."

Council was then left with the difficult task of trying to reconcile the two opinions. Which one should we follow? Council members spent plenty of time over several Council meetings trying to deal with these questions and searching for the right answers and a clear solution.

Council considered several alternatives to try to get clarity on this matter. Some alternatives included getting a court decision and approaching the Minister of Sustainable Resource Development. Involving the court for a declaratory judgement was eventually ruled out because of the significant expense and it is a technical issue in a specialized area that the court will not be familiar with, thusly there is a general tendency of the courts to defer to administrative policy in technical areas. An approach to the Minister was also eventually ruled out as it is a technical issue and ministers will generally defer to the experts in their department on technical issues unless there is a major political element involved. In this case, the Director of Surveys and Alberta Justice are the ones who would be asked for their input by the minister and their opinions were already available.

In the end, Council decided not to contest the Government of Alberta on the issue. It was apparent that the *Surveys Act* was not clear on this question and that the membership had differing interpretations of the Act and the intent of the Act. Possibly these could not be easily resolved even by amending the Act.

If Alberta Land Surveyors wish to continue to register plans at both Sustainable Resource Development and Land Titles, they may do so. However, Council is of the opinion that should you only file with Alberta Sustainable Resource Development, it will be deemed that you have met your legal obligations under the Act, as explained in the Government of Alberta opinion.

New Crown Lands Affidavit

Council then dealt with concerns arising from the original proposed affidavit in which an Alberta Land Surveyor would certify that "...the survey represented by this plan is true and correct to the best of my knowledge, has been carried out in accordance with the *Surveys Act* and the Alberta Land Surveyors' Association Manual of Standard Practice...."

A significant number of members who work in this area wrote to Council indicating that they believed they would knowingly be signing a false affidavit if they signed that proposed affidavit because of concerns over how sections 10, 44, 45 and 46 of the *Surveys Act* applies or does not apply to wellsite surveys.

Council has made it clear that it does not condone any Alberta Land Surveyor signing a false affidavit.

Council representatives met with the Director of Surveys and his staff on several occasions to try to change the affidavit and understand the Director's rationale for his position. During these discussions between Council and the Director of Surveys, the Director agreed that the November 1, 2009 mandatory date for showing SRD's new

affidavit on Public Land disposition surveys would be postponed and, in the interim, surveys will not be rejected.

The Director of Surveys has stated that all public land surveys must use the following affidavit effective February 1, 2010.

Alberta Land Surveyor's Affidavit

I, (name of surveyor), of the (place of residence), Alberta Land Surveyor, make oath and say:

1 that the survey represented by this plan was made under my personal supervision,

2 that the survey was made in accordance with good surveying practices and in accordance with the provisions of the Surveys Act, and

3 that the survey was performed between the dates of _____ and _____, _____, and that this plan is true and correct, and is prepared in accordance with the provisions of the Public Lands Act.

SWORN before me at

_____ of _____
in the _____ of _____
this ___ day of _____, _____

Alberta Land Surveyor

*A Commissioner for Oaths
in and for the Province of Alberta
Commission expires on _____, _____*

Council accepts the Director of Surveys policy dated December 18, 2009 and the use of this affidavit (“...in accordance with the provisions of the Surveys Act..”) with the understanding that statutory iron posts (Section 10(3) of the Surveys Act) do not need to be placed and that Sections 44(3), 45 and 46(3) of the Act do not apply to disposition surveys that are currently not monumented with statutory iron posts.(ie. wellsite surveys). Monumentation for disposition plans is as outlined in the Disposition Plan Requirements issued by Sustainable Resource Development.

What is Council’s rationale for this position?

Section 2 of the *Surveys Act* states, “This Act applies to surveys of any land within Alberta that is within the legislative competence of the Legislature.” Council believes that Section 2 of the *Surveys Act* was meant to include all surveys including wellsites. This is supported by PRB Bulletin 3/4-1999 which states, “the Practice Review Board

interprets this section [Part C, Section 1.5 of the Manual of Standard Practice] as requiring these surveys to be done in accordance with the Surveys Act but with a reduction in accuracy.” The PRB Interpretation is online at www.alsa.ab.ca/uploads/files/PDF/4interpretation1999.pdf

Section 10(1) of the *Surveys Act* states, “all surveys made under this Act shall be made... (c) in accordance with this Act.”

How can Council state that sections of the Act do not apply?

The Surveys Act only deals with certain types of surveys. Part 2 deals with township surveys. Part 3 deals with surveys that were intended to be registered at Land Titles or the Metis Settlements Land Registry as those sections (sections 39-48) consistently refer to surveys of land in municipalities and plans which are required to be registered at Land Titles. Wellsite surveys, real property reports and other types of legal surveys are not referenced within the Act but Council still believes that those surveys are done in accordance with the Act.

The Association’s solicitor indicated in his April 2008 opinion, “In the 1988 Act, surveys in unsurveyed territory and well location surveys were seen as something other than a Part 3 survey. They appeared in Part 4 and sections 45 and 47 of the 1988 Act authorized regulations that would set requirements for these surveys. Thus, these surveys were seen as different from the surveys conducted under the other parts of the Act.” Council believes there was no intent to incorporate wellsite surveys and surveys in unsurveyed territory under Part 3 of the Act when the Survey Regulation was repealed and the requirements were incorporated into the Manual of Standard Practice.

Council recognizes that the legislation is not clear and that this interpretation is a significant shift in the traditional way that the Surveys Act has been viewed. However, Council has spent a great deal of time and effort researching and analyzing different sections and different interpretations of the Act. It feels that this interpretation and the rationale for it is reasonable and, based on that, acquiesces and accepts the use of the affidavit and policy as put forward by the Director of Surveys.

Conclusion

Council supports initiatives that work to improve survey standards for disposition surveys and continue to improve upon protecting the public’s interests. Effective May 1, 2011, this will mean the use of statutory iron posts on all disposition surveys and potentially changes to other standards which will strengthen and improve the overall requirements and better protect the public’s interests and the interests of rights holders. The Alberta Land Surveyors’ Association is committed to working with the Director of Surveys to develop these standards as well as other related standards such as those regarding georeferencing and integrated surveys.

December 18, 2009

**DIRECTOR OF SURVEYS
POLICY**

SURVEYS ACT

1. The *Surveys Act* applies to all surveys performed by Alberta Land Surveyors that determine the positions of boundaries that govern the extent of interests in land.
2. Public land surveys completed on or after February 1, 2010 must be signed as follows.

Alberta Land Surveyor's Affidavit

I, (name of surveyor), of the (place of residence), Alberta Land Surveyor, make oath and say:

1. *that the survey represented by this plan was made under my personal supervision,*
2. *that the survey was made in accordance with good surveying practices and in accordance with the provisions of the Surveys Act, and*
3. *that the survey was performed between the dates of _____ and _____, _____, and that this plan is true and correct, and is prepared in accordance with the provisions of the Public Lands Act.*

*SWORN before me at the
_____ of _____
in the _____ of _____
this ____ day of _____, _____*

Alberta Land Surveyor

*A Commissioner for Oaths
in and for the Province of Alberta
Commission expires on _____, _____*

Frequently Asked Questions (FAQ)

1) What rationale was used to develop this policy?

The Director of Surveys Office has always understood that the *Surveys Act* applies to all surveys performed by Alberta Land Surveyors that determine the positions of boundaries that govern the extent of interests in land. Section 2 states the Act applies to surveys of any land within Alberta that is within the legislated competence of the Legislature. This includes, for example, public and private land (disposition) surveys, real property reports, and fence line surveys.

Application of Act

2(1) This Act applies to surveys of any land within Alberta that is within the legislative competence of the Legislature.

This understanding is acknowledged in the last paragraph on page eight of the Association's April 16, 2008 *Opinion Regarding Statutory Iron Posts Placed on Public Land Disposition Surveys*. The paragraph reads as follows:

Based on the review of various court cases, dictionary definitions, and other statutory provisions dealing with land surveying and cadastral surveying, I believe that the general meaning of the term "surveys of land" is quite broad. Any survey conducted to determine or establish boundaries of a parcel of land or to determine the boundaries of any right of interest in land or any survey conducted to determine the location of anything relative to a boundary for the purpose of certifying the location of the thing would fall within this term. Therefore, in general terms, the *Surveys Act* applies to most surveys of land conducted by Alberta land surveyors.

The Practice Review Board has also acknowledged this understanding for public land surveys. In their 4-1999 interpretive bulletin, *Wellsite Surveys and Public Land Dispositions*, the first paragraph on page three reads as follows:

GENERAL

The Practice Review Board interprets this section as requiring these surveys to be done in accordance with the *Surveys Act*, but with a reduction in accuracy (ref: Part C, Section 1.5 MSP).

The 1988 *Surveys Act* contemplates that public land surveys (surveys in un-surveyed territory and well location surveys) were surveyed in accordance with the provisions of the *Surveys Act*. Sections 45 and 47, Part 4, authorized regulations that set the requirements for surveys in un-surveyed territory and well location surveys.

The requirements under these regulations were significantly different than the current requirements under the Act. For example, there was no requirement to place statutory iron posts (section 10), there was no requirement to establish or re-establish Part 2 survey monuments (section 44), there was no requirement to intersect surveyed parcel boundaries (section 45), and there was no requirement to re-establish Part 3 survey monuments (section 46).

Under the 1999 regulatory reform initiative, the regulations were repealed and the requirements moved to the MSP. Moving the public land survey standards to the MSP did not change the application of section 2 of the Act. It still applies to surveys of any land within Alberta including public land surveys. Also, the standards for public land surveys have not significantly changed from those that were found in the 1988 *Surveys Act* regulations with those found in the current MSP. Thus, the intent is clear that all surveys, including those on public lands, are done in accordance with the *Surveys Act*

- 2) Am I signing a false affidavit if I have not completed all of the requirements of sections 10, 44, 45, and 46?

No, surveyors are not signing false affidavits. The current *Surveys Act* contemplates other surveys, arguably public land surveys, but concentrates on surveys to be registered at the Land Titles Office and the Metis Settlements Land Registry. The Act is generally silent on public land surveys, however section 2 contemplates that the Act applies to public land surveys. Further, the 1988 *Surveys Act* regulations allowed for a lesser standard than what is required in the current sections 10, 44, 45, and 46. The MSP also allows this lesser standard. Thus, it is reasonable to conclude that Alberta Land Surveyors have always carried out their public land surveys in accordance with the provisions of the *Surveys Act* and continue to do so.

The *Surveys Act* applies to public land surveys, following the existing standards, and surveyors are **not** contravening the Act when they sign the new affidavit.

- 3) What are the new standards going to be for public land surveys in 2011?

The Director of Surveys will continue to work with the Association to define new standards for public land surveys. One of the key requirements will be to monument all public land surveys with statutory iron posts and marker posts. Other issues to define include determining the extent of intersections and re-establishments required for public land surveys.

- 4) Will the *Surveys Act* or the MSP be updated?

The Director of Surveys is recommending the Minister not amend the *Surveys Act*. The Director of Surveys recommends that the MSP be updated once all of the issues have been addressed.

p. michael michaud

P.M. (Mike) Michaud, ALS, CLS
Director of Surveys



August 1, 2009

DIRECTOR OF SURVEYS
POLICY

DUAL REGISTRATION OF PUBLIC LAND SURVEYS

Further to the April 21, 2009 legal opinion from Alberta Justice regarding Dual Registration of Public Land Surveys, the Director of Surveys Dual Registration Of Public Land Surveys policy is as follows.

- 1) The intent of the *Surveys Act*, with respect to registration of plans of survey, is met with registration of public land surveys at Sustainable Resource Development, and duplicate registration is not required at the Land Titles Office.

- 2) The intent of the *Surveys Act*, with respect to Sections 44(3) and 46(3), is met with the registration of the public land surveys at Sustainable Resource Development, and duplicate registration is not required at the Land Titles Office.

p. michael michaud

P.M. (Mike) Michaud, ALS, CLS
Director of Surveys

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SUBJECT: Dual Registration of Public Land Surveys

Introduction

I have been asked to provide a legal opinion on the following question:

Does the *Surveys Act* (RSA 2000, Chapter S-26) require disposition survey plans to be registered at the Land Titles Office (LTO) when statutory iron posts are placed?

Background Facts

The policy of the Director of Surveys of the Province of Alberta has been for decades that a survey plan for a public lands disposition did not require registration at the LTO. This policy has been maintained by successive Directors for several reasons:

1. All disposition survey plans are registered with Sustainable Resource Development and adequate public access is provided. To require additional registration at the LTO would result in unnecessary duplication.

2. By not registering disposition survey plans the surveyor's client is saved additional registration expense.

3. There is no legal requirement to register public lands disposition survey plans with the LTO.

The Alberta Land Surveyors' Association (ALSA) has recently informed their membership that they are required under the *Surveys Act* to register disposition survey plans with the LTO when statutory iron posts are used as monuments. This is despite the fact that the Director of Surveys' position is clear that such registration is not required.

Analysis

Legislation

The relevant legislation on the question of registration of public disposition surveys is the *Surveys Act*.

Section 1(p) of the *Surveys Act* defines monument as follows:

- (p) "monument" means a brass tablet, iron post, wooden post, mound, pit or trench, or anything else used by a surveyor to mark a boundary, corner or line;

This is a broad definition that encompasses anything used to mark a boundary, corner or line.

The use of iron posts as monuments does not give that survey any specific significance.

Section 44(3) of the *Surveys Act* reads:

- (3) A surveyor who establishes a corner of a section, quarter section or legal subdivision that was not previously marked by a monument, or re-establishes the position of a monument in accordance with subsection (1) or (2),
- (a) shall mark the position with a new monument, and
 - (b) shall, within 90 days after completion of the survey, prepare and submit to the Registrar a plan of survey showing the method by which the position was re-established.

This section deals mainly with the re-establishment of a Part 2 survey monument. Section 46(3)

of the Act deals mainly with the re-establishment of a Part 3 survey monument. It reads:

- (3) A surveyor who re-establishes the position of a monument in accordance with subsection (1) or (2), or establishes a corner that was not previously marked by any monument in a survey made pursuant to this Part,
- (a) shall mark the position with a new monument, and
 - (b) shall prepare and within 90 days after the completion of the survey submit to the Registrar a plan of survey showing the method by which the position was re-established and shall certify that the survey was made in accordance with this Act.

These sections require surveyors to register surveys with the LTO or the Métis Settlements Land Registry whenever a survey re-establishes a Part 2 or Part 3 monument.

Interpretation of legislation

Statutory iron posts are not defined in the *Surveys Act* or elsewhere in legislation. There is no special status bestowed upon statutory iron posts. The use of a statutory iron post as a monument does not automatically require registration at the LTO of that survey plan.

Survey plans of public lands dispositions are not specifically required by the Act to be registered at the LTO, unless they meet the criteria listed in sections 44(3) and 46(3). Sections 44(3) and 46(3), as they relate to Part 2 or Part 3 monuments, require registration with the LTO when a survey establishes or re-establishes a relevant monument. Such occurrences on public lands are rare.

Examples where surveys are not registered

Not all survey plans must be registered at the LTO. There are several types of plans that are registered elsewhere. These include:

- Well site control traverse plans prior to December 1, 1997, were registered with the Director of Surveys Office. These plans used statutory iron posts as monuments.
- Métis surveys, also monumented with statutory iron posts, have been registered at the Métis settlement Land Registry since 1991.

- Federal land surveys, of boundaries common with Provincial lands, monumented with statutory iron posts are registered with Natural Resources Canada.
- Disposition surveys monumented with iron bars or spikes are registered with Sustainable Resource Development.

There is therefore, precedent for excluding public lands disposition survey plans from being registered at the LTO.

Results of ALSA's opinion

The ALSA's opinion of registering all survey plans at the LTO which use statutory iron posts would have some very negative consequences. If all surveys monumented with statutory iron posts must be registered at the LTO, then all surveys using iron bars and spikes must also be registered at the LTO. The *Surveys Act* does not distinguish between statutory iron posts and iron bars. They are all listed as "monuments".

The result of this opinion would be that tens of thousands of disposition surveys annually would be registered at the LTO, yet the Land Titles Act would have no effect upon these dispositions. These surveys would be simply duplicates of plans already registered with Sustainable Resource Development. Such waste and duplication is not the intent of the *Surveys Act*.

Conclusion

The intent of the *Surveys Act* is to have survey plans be of public record. The Director of Surveys has the authority from the *Surveys Act* to determine how best to accomplish this. The Director's duties include:

- 5 (a) co-ordinate the establishment, maintenance and preservation of the land survey system for the purpose of determining the positions of boundaries that govern the extent of interests in land,
- (c) co-ordinate the establishment and maintenance of a mapping system for Alberta,
- (d) co-ordinate the development and maintenance of a land-related information systems network for Alberta,

Except where it is specifically stated in the *Surveys Act* that a survey plan must be registered at the LTO, the Director has the authority to determine that the plan can be registered elsewhere.

There is no requirement that survey plans for public lands dispositions must be registered at the LTO except where a monument is established or re-established in accordance with sections 44(3) and 46(3). Therefore, the ALSA requirement that all public lands dispositions that use a statutory iron post as a monument must be registered at the LTO does not have any legitimate basis in legislation and is contrary to the policy of the Government of Alberta.

Recommendations

There are two options available to the Director to clarify the practice for surveyors with regards to public land disposition registration.

1. If the Director determines that the number of plans re-establishing or establishing monuments on public land dispositions is low, then those plans can continue to be registered at the LTO. Other surveys on public lands dispositions do not have to be registered at the LTO as they are already registered with Sustainable Resource Development. The ALSA's Manual of Standard Practice should be amended to clearly indicate that the *Surveys Act* does not require duplicate plans to be registered at the LTO.
2. If the Director determines that the intent of the *Surveys Act* is met with the registration of the public lands disposition survey plans at Sustainable Resource Development, then duplicate registration is not required at the LTO. The ALSA's Manual of Standard Practice should be amended to give surveyors the option to register at the LTO.



Andrew Bachelder
Barrister and Solicitor

August 1, 2009

DIRECTOR OF SURVEYS POLICY

DUAL REGISTRATION OF PUBLIC LAND SURVEYS

The August 1, 2009 Dual Registration of Public Land Surveys policy applies to public land surveys marked with statutory iron posts and provides for not registering these surveys at the Land Titles Office (LTO). The process for submitting these surveys to Sustainable Resource Development (SRD) is outlined below.

Surveys completed prior to August 1, 2009

- 1) Review the current survey plan on file with SRD and determine if it reflects the boundary and survey information of your plan (latest version, final version, etc.).
- 2) If the boundary and survey information are identical, no action is required. There is no requirement to register this plan at LTO.
- 3) If the boundary or survey information are different, the updated plan should be submitted to SRD, who will accept one of the following.
 - a. Certified survey/construction plan meeting SRD submission and plan standards, see Frequently Asked Question (FAQ) 1 below for additional information, or
 - b. Plan prepared for registration at LTO.
 - i. If the plan is registered, a pdf of the registered plan and a corresponding drawing file meeting SRD submission standards. These plans will not have to be updated to show topographic or adjacent disposition information.
 - ii. If the plan is not registered, a pdf of the plan and a corresponding drawing file meeting SRD submission and plan standards. These plans will not have to be updated to show topographic or adjacent disposition information, however, these plans will have to be certified by the land surveyor, see FAQ 1 below for additional information.

Surveys completed on or after August 1, 2009

- 1) SRD will only accept certified survey/construction plans meeting SRD submission and plan standards. These plans will have to show topographic and adjacent disposition information. These plans will have to be certified by the land surveyor, see FAQ 1 below for additional information.

Frequently Asked Questions

- 1) What affidavit is to be used? For example, “Certified Correct” or “Surveyed in accordance with the Surveys Act...”?

The following new affidavit, which refers to the *Surveys Act* and the Manual of Standard Practice, must be used when submitting public land surveys to SRD.

I, _____, Alberta Land Surveyor, of the _____, Alberta, certify that the survey represented by this plan is true and correct to the best of my knowledge, has been carried out in accordance with the *Surveys Act* and the Alberta Land Surveyors' Association Manual of Standard Practice, and the field survey was performed between the _____ day of _____, 20__ and the _____ day of _____, 20__.

Alberta Land Surveyor

Date Signed

Witness (name of witness)

- 2) Has the option of submitting sketch plans been eliminated?

No, the option of submitting sketch plans is still available. Sketch plans do not require affidavits or signatures. The “Disposition Plan Types / Formats” document outlines when sketch plans will be accepted;
http://srd.alberta.ca/lands/formspublications/usingpublicland/pdf/Disposition_Plan_Types_Formats_July_2_2009.pdf

- 3) Is it necessary to update Pipeline Agreement (PLA) plans?

No, PLA plans surveyed prior to August 1, 2009 will not have to be updated to show topographic and adjacent disposition information.

- 4) What is the process for surveyors who still feel that the plan has to be registered at LTO?

For several reasons, surveyors are strongly discouraged from registering public land surveys at LTO.

- a. Survey plans registered at LTO are usually different from corresponding survey plans registered with SRD. SRD only authorizes survey plans on file, therefore client's rights and interests in the land may not be protected.
- b. LTO staff spend considerable time processing these plans, when the Land Titles Act has no effect upon these plans.
- c. SRD staff spend considerable time processing unnecessary amendments, to accept the final plans.
- d. Surveyors and clients spend considerable time tracking these plans.

- e. Important topographic and adjacent disposition information are not shown on plans registered at LTO.
- f. Alberta Justice has stated there is no legal requirement to register public land survey plans at LTO.
- g. Survey plans registered at SRD are public records and access to these plans is adequately provided.
- h. For surveys completed on or after August 1, 2009, SRD will only accept certified survey/construction plans meeting SRD submission and plan standards. These plans will have to be updated to show topographic and adjacent disposition information and will have to be certified by the land surveyor.

5) How are surveys that cross from crown to freehold/private land to be dealt with?

When a survey plan extends across crown and freehold/private lands, the plan must be registered at both SRD and LTO.

6) Does the Manual of Standard Practice (MSP) need to be updated?

SRD recommends that the MSP be updated after the issues with the new process have been worked out.

7) The Pipeline Regulation (AR 84/2009), Section 4(1), says “surveyed in accordance with the *Surveys Act*”. If Part 2 or 3 monuments are established/re-established, the *Surveys Act* still says a plan has to be registered at LTO.

The Director of Surveys’ Dual Registration of Public Land Surveys policy provides that the intent of the *Surveys Act* is met if public land surveys that establish or re-establish Part 2 or Part 3 monuments are submitted to SRD.

8) April 1, 2011 will be the implementation date for surveying and monumenting all dispositions. Would one need to monument the Licence of Occupation (LOC) access road and if so, is this then a boundary that needs to be intersected on other surveys?

On April 1, 2011, with implementation of the requirement to monument all surveyed disposition boundaries (including LOC access roads) with statutory iron posts, surveyors will be required to intersect other surveyed boundaries in accordance with section 45(1)(a)(ii) of the *Surveys Act*. The words ‘other surveyed boundaries’ here refers to other surveyed boundaries monumented with statutory iron posts.

The requirement to intersect and monument other surveyed boundaries on disposition surveys is consistent with plans of survey registered at LTO, improves the accuracy of disposition mapping, allows for survey quality control, and supports the preservation and maintenance of the provincial land survey system.

9) What are the fees for submitting a final PLA to SRD.

PLA amendment fees are \$25 for the first quarter section and \$5 for each additional quarter section affected. A \$50 mapping fee would also be required.

10) Will the cost of disposition plans be reduced?

Yes, the cost to purchase disposition plans will be reduced. Work is proceeding for distribution of all disposition plans via SPIN 2. Subject to budget constraints, implementation is scheduled for the fall of 2011.

11) How are monument plans going to be dealt with?

Work is proceeding for the Electronic Disposition System (EDS) to accept monument plans and Well Site Control plans that are not directly related to a disposition. Subject to budget constraints, implementation is scheduled for the fall of 2011.

In the interim, surveyors are required to register monument plans at LTO in accordance with Part C, Section 3.9 and Part D, Section 5.4 of the MSP.

12) Will colour plans be acceptable in the future?

SRD is open to working with surveyors to develop and implement standards for accepting colour plans.

13) Can PLAs be cancelled?

Yes, PLAs can be cancelled, but they are subject to SRD's reclamation requirements. Cancelled sketch and survey disposition plans dating back to 1995 are available from the department's service provider, IHS Canada Ltd.

14) Are there any consequences for geo-referencing to ATS 4.1

The requirement to provide geo-referenced drawing files will not be affected by the Dual Registration of Public Land Surveys policy.

Work is proceeding on enhancing the geo-referencing requirements for submission to SRD and LTO. Enhanced standards for geo-referencing will be communicated in the fall of 2009.

15) Are government departments working together to share information more effectively?

Yes, government departments are working together on the GeoDiscover Alberta Project; a cross-ministry partnership between the three natural resource and environmental management departments of Energy, Environment and Sustainable Resource Development to ensure information is interoperable and can be shared more effectively. In the process, they will establish a new way of working together through the establishment of shared governance, strategies and practices. A portal has been developed to provide a one window, integrated access point for all shared spatial data information.

16) How does Special Areas fit into the updated process?

Work is proceeding between SRD, Spatial Data Warehouse Ltd. and Special Areas to develop a disposition mapping program. Initially, only Mineral Surface Leases (MSL) and LOCs will be mapped. SRD's digital plan submission standards and current mapping fees will be applied and these dispositions will be mapped in the Digital Integrated Dispositions (DIDs) mapping program. Details and implementation timelines are pending.

Surveyors should continue registering their Special Areas PLA plans at LTO.

17) Does SRD have an enforcement strategy for receiving final or "as-built" survey plans?

SRD is evaluating this issue and discussions with the Canadian Association of Petroleum Producers Resource Access committee are planned for the fall of 2009.

18) What additional information should be included on public land survey plans submitted to SRD?

Surveyors should show all the usual survey information that would have been included on the plan submitted to LTO. For example, ties to survey control, re-establishments, assumed bearings, etc.

P. Michael Michaud

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