

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*

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P.M. (Mike) Michaud, ALS, CLS  
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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](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.

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