The ALBERTA LAND SURVEYORS’ ASSOCIATION and DORMANT PLANS
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Executive Summary

Dormant plans – plans that have not been registered within required timelines – are a source of frustration for Alberta Land Surveyors that goes back at least 15 years. While the number of dormant plans reached 20,000 in the past, the number sits around 3,500-4,000 today. The Alberta Land Surveyors’ Association has made substantial progress through advocating for fewer dormant plans and educating stakeholders, but the past solutions have lost momentum and no longer work to solve the problem.

To better understand the reason(s) why plans are becoming dormant, we gathered data from ten stakeholder segments to understand the value gap created by dormant plans. Except for Alberta Land Surveyors themselves, most stakeholders experience very little ill effects from dormant plans. This means most stakeholders are not motivated to solve the problem on behalf of land surveyors.

Several key findings, combined with business environmental conditions, also helped frame the problem of dormant plans better:
- Dormant plans are primarily an oil & gas right-of-way problem on freehold & Metis Settlements land
- A small number of Alberta Land Surveyors are responsible for most dormant plans
- The statutory declaration alternative to consent forms signed by interest so far fails to change the trajectory of the problem, although it removes a key barrier
- Right-of-way plans are not relied upon for public safety around buried facilities
- The remaining barriers to plan completion lie with the land surveyors themselves, and they are the ones most likely to care about eliminating dormant plans

The root cause of the problem distills down to the Alberta Land Surveyors’ Association failing to uphold existing rules around the registration of dormant plans. To properly and permanently solve the problem, the ALSA must affirm a clear and unambiguous stance on the issue and from that execute its statutory mandate to govern professionals on the issue.
Background

Dormant plans are a subset of surveys that for one of several reasons have not been deposited in a Land Titles Office, Metis Settlements Land Registry, or with Alberta Environment & Parks (“Public Lands”) within statutory timeframes. While no consistent definition is used by all stakeholders, this paper refers to dormant plans as those who have not been registered or deposited within the timeframes required by the ALSA Manual of Standard Practice and the Surveys Act. This definition encompasses the largest possible number of plans within the term “dormant.”

The issue of dormant plans is not new. Annual General Meeting minutes of the Alberta Land Surveyors’ Association (ALSA) and its publication ALS News mention dormant plans at least as far back as 15 years. Alberta Land Surveyors (ALSs) are widely aware of what are dormant plans, and they generally agree that dormant plan numbers should be reduced as close as possible to zero. Based on self-reported tallies from the membership, the ALSA estimates the number of dormant plans may have been as high as 20,000. Today, various informational/educational initiatives have reduced that estimate to between 3,500 and 4,000. While that is substantial progress, the direction from its membership at recent annual general meetings is to solve the problem(s) completely and eliminate dormant plans.

To better understand the problems, we look at a high-level diagram of the process to register a plan at the Land Titles Office in Alberta:

1. Survey and plan preparation
2. Plan is signed by the ALS
3. Consent form is signed by interest holder
4. Plan is deposited at the Land Titles Office

Dormant plans result when Step 1, 2 or 3 shown above is not completed. Steps 1 and 2 are fully within the control of the Alberta Land Surveyor contracted to perform the work, and until recently many plans were held up at Step 3 by interest holders failing to sign the consent forms. Once a plan is tendered for registration at the Land Titles Office, it is examined and registered within a few days to a few weeks.

Plans deposited at the Metis Settlements Land Registry for statutory rights of way do not require the consent form shown in Step 3; instead, the name of the person who requested the plan is shown on the plan. In this case, dormant plans can only result from the inability of the Alberta Land Surveyor to complete the survey and plan within the required timeframes. Surveys for roads or similar significant tenure changes can be held up by consents and Council approvals; however these are rare situations. In any event, an Alberta Land Surveyor does have the option of recording the monuments on a monument plan for deposit with the Registrar.

In the case of public lands, no consent from the interest holder is required for the plan. Instead, administrative policy for many long-term tenure renewals requires that the interest holder submit only a plan of survey. This policy ensures most long-term uses of public land are recorded on a suitable plan prepared by an Alberta Land Surveyor.
Stakeholder Consultations

To better understand the context, causes, and effects of dormant plans, Cogitact consulted with potential stakeholders who appear to have an interest in dormant plans. These discussions focused on:

- Realizing value that stakeholders receive from completed surveys
- Understanding if this is a universal problem for all tenure holders
- Uncovering barriers to completing plans on time
- Soliciting potential solutions from stakeholders

Identified and consulted stakeholders include:

- Alberta Land Surveyors working in several practice specialties
- Local municipal governments
- Representatives from the Land Titles Offices in Calgary and Edmonton
- ALSA staff, including the Executive Director and Director of Practice Review
- The ALSA Future Committee, whose terms of reference include dormant plans
- Staff at the Director of Surveys office
- AltaLIS & Alberta Data Partnerships
- Land Agents at companies who own buried utilities
- Buried facility locating companies
- Landowners

These stakeholders’ opinions, combined with documentation research on dormant plans, lead to the findings of this report.

Business and Political Environment

Several factors combine for the context of dormant plans:

1. Since the Alberta Land Surveyors’ Association is a creation of Alberta provincial statute and its members’ exclusive jurisdiction is within provincial land registration systems, it is unnecessary to consider the scope of the problems and solutions beyond Alberta. It is, however, useful to consider nearby jurisdictions such as British Columbia and Saskatchewan; both experience a mix of resource-based activity and growth-based land development. As well, all western provinces share a similar Torrens style of land titles system, making comparisons between BC, Alberta, and Saskatchewan useful.

Very recently, the Professional Governance Act in BC boldly sets out how governments will deal with self-governing professions that do not adequately regulate their membership – the government takes away the privilege of self-governance. Self-governing professions that do the most to uphold public interest without advocating for their members’ interests are the least likely to draw negative attention.
from legislators. Governments and the public expect professions to self-police and quickly deal with non-compliance by any member.

2. Drilling and production activity related to the upstream, midstream, and transmission of oil, natural gas, and related products drives a tremendous amount of utility construction in Alberta. Most often for buried pipelines, statutory rights-of-way are one of the most common kinds of tenure that require a plan prepared by an Alberta Land Surveyor. The level of activity in this industry has declined substantially since 2015 due to a combination of market factors, which makes the industry sensitive to any cost that does not lead to improved cash flow for their business.

3. The change in government in Alberta from long-running conservative policy to more social democratic policy has brought increased scrutiny to statutes and government policy created under former governments. Specifically, the current stance of the government is less favorable to policies that may offer protection to a business group or a self-governing association.

4. Many clients of land surveyors see the cost of land surveys as a preventive measure, not a revenue-generating investment, for a historically low level of risk. The level of risk, ironically, is so low due to decades of careful work by land surveyors and the registration systems. Consequently, clients seek to reduce this kind of cost as much as possible but tolerate it as a bureaucratic cost of doing business. The suggestion of any increase to this cost is not viewed favorably unless it is bringing some tangible value to their business.

5. The safety of buried utilities is a much higher priority topic for landowners and the public than the security of rights in land for those same buried utilities.

6. Any change to legislation that has little public priority takes years and may not result in the changes that the proponents intend.

This context provides the lens through which we better understand the problem and the feasibility of potential solutions.

Solutions to Date
The Alberta Land Surveyors’ Association has engaged in several activities in the past 15 years aimed at reducing the numbers of dormant plans, with significant success:

Membership and Stakeholder Outreach
The ALSA has invested time into educating members on the dormant plans issue, thus raising their awareness. Some of this outreach included:
- Incorporating questions and discussion about dormant plans into Practice Reviews of the membership
- ALSA publications
- Discussions at annual general meetings

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There are two primary effects of this kind of outreach: one, many individual practitioners have decided on their own to reduce or eliminate dormant plans in their practice. They align with the Association's view that dormant plans are not good for the public and take steps to get them registered.

Two, land surveying businesses and their potential acquirers began to recognize dormant plans as a significant liability, both in a financial sense and in the context of professional liability. The belief is, firms with significant numbers of dormant plans could be held accountable for them, leading to potential costs for the business. These costs affected valuations of land surveying business and drove the push to get as many dormant plans as possible cleaned up.

The ALSA has liaised with other stakeholders to the dormant plans issue, such as the Director of Surveys office and land agents. This increased awareness has helped to drive some regulatory actions, such as the public lands policy for surveys to be completed before a long-term tenure renewal is granted. In addition, it increased knowledge of the role client consent plays in the land title office registrations.

**Practice Review**
The Systematic Practice Review program spent significant time gathering data on numbers of dormant plans, providing a measurement of the extent of the problem. This data provided the early indications that Alberta had approximately 20,000 dormant plans. That number began to drop as ALS knowledge of the problem grew and they spent more time dealing with older plans.

In recent years the current Practice Review Board has curtailed detailed tracking and follow-up due to resource constraints, but review questions about numbers of dormant plans still result in a total count of 3,500-4,000. Since this is based on self-reported figures, the total estimate is likely low, but within the correct order of magnitude.

**Alternatives to Interest Holder Consent**
In December 2018 the ALSA and Land Titles announced a change in the registration process that works around Step 3 of the registration process. If an interest holder has not signed the consent form for registration of a plan despite efforts by the Alberta Land Surveyor, the ALS may sign a statutory declaration attesting to their effort. Land Titles did review this process with government counsel and state it satisfies the requirements of the *Land Titles Act*.

The statutory declaration spells out that the ALS has been unable to obtain the consent of the person who originally requested the plan, and therefore the ALS acts as an agent for the purpose of consenting to the registration of the plan. A plain language interpretation of the declaration means the ALS has made at least one legitimate attempt to obtain the client’s signature without success. Land Titles does not question the legitimacy of the ALS’s declaration since a false declaration would be subject to professional and criminal sanctions.

With this statutory declaration, Land Titles proceeds with the registration of the plan without a signed consent form from the interest holder. This effectively removes the consent form as a barrier to registration, leaving only the Alberta Land Surveyor responsible for getting the plan done.
Solutions Have Stalled
The decline rate of dormant plans has stalled in the last five years or so, as the past solutions have lost effectiveness and fail to influence the registration of more dormant plans. This creates a secondary problem: as survey and plan standards evolve, older dormant plans may no longer comply with applicable standards and rules for registration. For example, newer plans must be georeferenced as part of the survey, which may not have been included for surveys more than five years old.

Significant Findings

Consultations with stakeholders and examinations of the data quickly yielded several trends around the problem of dormant plans.

Two Primary Causes
Dormant plans almost always result from a failure of an Alberta Land Surveyor to complete the survey and plan within required timelines, or the failure of the interest holder to sign the consent form. The first failure is entirely within the control of the ALS; excuses raised include record-keeping failures or too few resources to handle all the work. Similarly, a lack of resources often hangs up the consent form—these forms are handled as low priority matters by many interest holders since they do not directly generate revenue. As mentioned in the previous section, it is now possible to work around the problem of missing client consent forms.

It’s an Oil & Gas Problem
The research and data are clear—dormant plans are exceptionally rare occurrences, outside of oil & gas related rights-of-way on freehold and Metis Settlements lands. The policies in place over public lands mean long-term tenures will not get granted without a deposited plan. This strongly motivates interest holders to get their surveys done. Similarly, municipal development and approval processes, and the interests of the developer, all combine to ensure no unnecessary blanket caveats or unregistered plans can carry forward.

Oil & gas work is different. The Pipeline Act says a survey must be done before construction, but there is no enforcement of this provision. Oil & gas companies are satisfied when their new pipeline is operating and transporting product. With little follow-up and the industry culture of “go-go-go until breakup,” surveys are falling through cracks and/or land surveyors are bowing to the pressure to work on getting new pipelines producing as opposed to dealing with registering the older ones.

Some dormant plans happened when an oil & gas related survey on public lands was not advanced to the application stage. Without an application, a plan is not deposited into any registry. Rare now due to the widespread practice of using sketch plans at the application stage, there may be a small number of dormant plans remaining over public lands. In those cases, an ALS can solve the problem by registering a monument plan at a Land Titles Office.

The 80:20 Rule
Like many phenomena, the data indicate dormant plans follow the 80:20 Rule. About 80% of the dormant plans come from about 20% of the Alberta Land Surveyors. A relatively small group is responsible for the major extent of the issue.
Buried Facilities are Not the Reason
An argument frequently held up by ALSs is that registration creates a public record of buried facilities, thus improving public safety. The data do not support this assertion in several ways:
1. Not all buried facilities require a plan prepared by an ALS, for example, buried telecommunication cables within a road
2. Buried facility locating experts do not universally use registered plans as research sources. In fact, most do not. Instead, they turn to industry-specific data sources such as AER pipeline license records for research.
3. Dormant plans themselves are not resulting in significant amounts of buried facility damage. Facility owners report that digging without conducting a proper notification and search is the leading cause.

A Blanket Charge or Temporary Tenure is Good Enough
A facility owner’s primary interest is in the continuous and safe operation of their asset, through an agreement that gives them specific rights to build, operate, and maintain, while it is attached to the land. A “blanket” caveat (one that is not restricted to a portion of the parcel) on the title, or a temporary tenure from Public Lands, is enough for an interest holder to build their asset and start making money from it. If nothing threatens the ability of the asset to continue operating, the interest holder remains satisfied. In the case of public land, the interest holder might need to get a plan of survey prepared, but that is a problem for a few years later. In the case of freehold land, a blanket charge on title can exist indefinitely and is often acceptable to the landowner until they wish to further develop or construct on the land.

Alberta Land Surveyors Care the Most
Dormant plans affect the work of Alberta Land Surveyors most directly. They may find evidence of buried utilities through their research or their fieldwork, and then work to track down the dormant plan. They often determine which other ALS performed the field survey and then directly approach that practitioner to get an unregistered copy of the plan or other information that indicates the intended boundaries.

The dormant plan is not an insurmountable obstacle to further work by the ALS. Most land surveyors will give the unregistered boundaries essentially the same status as registered ones and continue with their work. They will note the plan as “unregistered” on their plan without further ill effect. This means the dormant plan represents an annoying obstacle and cost to overcome as part of a new survey; it does not cause immediate damage to the cadastre or undermine the work of the next surveyor.

Alberta Land Surveyors usually take the position that a dormant plan negatively affects the cadastre, but when pressed on whether this should become a professional disciplinary matter most ALSs interviewed backed down from holding their peers accountable. Yet, most ALSs would answer yes to the question: “Is it unprofessional for a land surveyor to knowingly disregard a provision in a provincial act?” There is a gap between the ethics around dormant plans and the ethics of land surveyors overall.

The Statutory Declaration is Not Yet Helping
Collaboration between the Land Titles Offices and the Alberta Land Surveyors’ Association resulted in the acceptance of a statutory declaration from the ALS when an interest holder fails to sign the consent form. On the surface, this should be a huge step forward for completing the registration of many plans. After all, one of the key barriers is removed.
The truth is: less than ten plans with statutory declarations have been submitted to Land Titles in the first two months of this new program. This low number versus the thousands of plans outstanding indicates few ALSs are taking the opportunity to clean up the problem of dormant plans. Other factors are holding up the plans, and unfortunately no one other than Alberta Land Surveyors bear the responsibility.

**Stakeholder Value Gaps**

The following table outlines the identified stakeholders' interests as they are affected by dormant plans:

<table>
<thead>
<tr>
<th>Stakeholder Group</th>
<th>Priorities</th>
<th>Issues Caused by Dormant Plans</th>
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<tbody>
<tr>
<td>R/W Owners / Interest Holders</td>
<td>• Protection of the asset associated with the R/W&lt;br&gt;• Interest runs with the land, not with the landowner&lt;br&gt;• Guarantees right to operate and access</td>
<td>• None, until the landowner requires the R/W be defined on the ground for construction or development purposes</td>
</tr>
<tr>
<td>Land Titles and AltaLIS/ADP</td>
<td>• Correctness of registered interests on title&lt;br&gt;• Plans meet requirements for registration and mapping</td>
<td>• Few, since an unregistered plan is outside their scope&lt;br&gt;• AltaLIS desires a complete mapping data set, but has little ability to force the registration of plans</td>
</tr>
<tr>
<td>Buried Facilities Locators</td>
<td>• Reliable background information from which to research buried facilities</td>
<td>• None. Few locators use R/W plans for research, and all rely on pipeline licenses or similar industry records as their primary data source</td>
</tr>
<tr>
<td>Alberta Land Surveyors</td>
<td>• Certainty when determining boundaries&lt;br&gt;• Research of boundary and evidence data yields reliable information</td>
<td>• ALSs must do extra work to track down unregistered plans from other surveyors&lt;br&gt;• Few boundary uncertainties, since an ALS typically respects an unregistered boundary as though it were registered</td>
</tr>
<tr>
<td>The Crown, as the trustee of public land</td>
<td>• An orderly and accurate administration system of rights over Crown Land under provincial control</td>
<td>• None, since public land tenure policies require a survey be filed before tenure can be renewed for long-term</td>
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</tbody>
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Freehold Landowners and Metis Settlements

- The system grants only the rights they have agreed to transfer to the Interest Holder
- Free to otherwise enjoy and use their land
- Infrequently, undefined rights on the ground can cause extra work during construction planning or development activities

Developers

- As simple a process as possible to complete their projects
- Land is unencumbered by unnecessary charges
- A dormant plan and blanket charge occasionally cause delays and extra steps for their work

The perception of value puts constraints on solutions that can address the dormant plan problem. In short, if there is value to a stakeholder group to fix a problem, then there is a potential motivation to make it happen.

In the case of dormant plans, they rarely affect anyone other than Alberta Land Surveyors. Oil & gas companies have enough security to operate and will not likely tolerate additional costs to reinforce their tenure – they already have it. Land Titles has no knowledge or control over unregistered interests, so they must let others solve the problems. Landowners are largely insulated from the problem unless they are about to develop or construct on their land while a dormant plan exists. It happens, but it is rare. So, Alberta Land Surveyors need to drive the solution(s) to eliminate dormant plans.

Root Cause and Segments

The “Whys”

Now, with a better scope of the facts around dormant plans, we can dig through to uncover the root causes:

- Why are plans becoming dormant?
  - An ALS is failing to complete the survey on time, or
  - An interest holder is failing to sign the consent form (but this barrier is now eliminated)
  - No one aside from Alberta Land Surveyors seems to care

- So, why is an ALS failing to complete the survey on time?
  - They forgot about it (too busy, lost records, and similar)
  - They didn't think it mattered to get it done
  - No one held them accountable for it
  - They stopped practicing

- So, why doesn't the ALS complete the survey now?
  - It will cost them time/money to do it
  - No one is holding them accountable for it
- So, why is no one holding the ALS accountable for doing the survey?
  - Few people, besides the ALS, know the plan is dormant
  - Others, including other ALSs, are ignoring the fact the plan is dormant
  - There no defined penalty mechanism in the Pipeline Act
  - The ALSA is choosing to not enforce this provision of the Manual of Standard Practice

- So, why isn’t the ALSA enforcing this provision of the Manual of Standard Practice?
  - Good question. We’ve come to our root cause – lack of direction & leadership from the ALSA on enforcing rules around land surveying

**Dormant Plan Problem Segments**

The data on dormant plans indicate they fall into four broad categories, based on the degree of effort it should take to complete them:

A. Plans that were held up waiting for a consent form signature, yet are still acceptable to Land Titles
B. Plans that an ALS has not yet completed
C. Plans that were held up waiting for a consent form signature, but do not meet current standards at Land Titles. The ALS is still a practicing member.
D. Plans that were held up waiting for a consent form signature, but do not meet current standards at Land Titles. The ALS is no longer a practicing member.

**Recommended Solutions**

First, let’s look at the simplest three segments of the dormant plan problem to solve:

A. Plans that were held up waiting for a consent form signature, yet are still acceptable to Land Titles
B. Plans that an ALS has not yet completed
C. Plans that were held up waiting for a consent form signature, but do not meet current standards at Land Titles. The ALS is still a practicing member.

In these instances, we address the root cause we identified earlier, that the ALSA is not enforcing its own standards around plans.

Before we jump ahead and assume this means we lodge formal complaints against all offenders, the ALSA needs to get honest with itself as a regulator of the profession. An unambiguous, enforceable position from the ALSA is critical to the success of any effort to deal with dormant plans:

- Are the rules setting timelines for plans still appropriate and do they truly protect the public?

If not, then change the rules and tolerate dormant plans. This means advocating for a change to the Surveys Act and the Pipeline Act, plus removing the timeline from the Manual of Standard Practice. This will take time and may result in the government strongly questioning the role of surveys in general, not only surveys for pipelines. Let us keep in mind, advocating for rule changes to remove the requirements for surveys seems at odds with the mandate of the ALSA.
If the rules are appropriate, then:

1. Engage the membership and set an abundantly clear direction on the Association's stance on dormant plans. By this point, the Association should be stating that dormant plans are *intolerable*.
2. Set out the Association’s expectations to ALSs who have dormant plans as to when they must be registered. This timeline should be so short that no one doubts the direction established in point 1 above. Think 2-3 months, not 2-3 years.
3. Map out what happens to ALSs who don’t want to align with the Association’s direction. Do this for clarity and accountability, not simply as a threat.
4. Follow up, measure progress, and let the membership know how much progress is happening.

The remaining segment of dormant plans is somewhat tougher to handle but can still get solved:

D. Plans that were held up waiting for a consent form signature, but do not meet current standards at Land Titles. The ALS is no longer a practicing member.

Assuming the ALSA adopts the same position as above, that the rules around plan registration timelines are appropriate and protect the public, then there are two additional actions:

5. If the ALS had practiced under a corporate permit that still exists today, then inform and hold accountable the surveyor’s corporation to get the dormant plan revised and registered.
6. If the ALS did not practice under a corporate permit, or their corporate permit no longer exists, then the ALSA must contract another ALS to take responsibility for completing and registering the survey and plan.

This question is likely to come up: why should the ALSA bear the cost of getting a dormant plan registered? In this case, the ALSA has allowed an Alberta Land Surveyor to disregard practice rules for so long that it now must bear some of the responsibility. As a member-funded organization, this does mean dues or other fees could increase to cover the costs of completing these surveys.

Actions 1 through 6 above have two key effects that will do more to solve the problem of dormant plans. First, these actions remove any ambiguity around the requirements and expectations for completing these plans. Practitioners who chose to disregard the rules in the past are served with a clear message that the future expectation is compliance. In addition, as the ALSA membership realizes dormant plans are a problem that collectively costs them money and time, they become less tolerant of dormant plans by other practitioners and take action to motivate them, including advancing disciplinary complaints against their peers when appropriate. The actions lead to new cultural behaviors within the profession that drive the complete solution to the problem.

While the ALSA can continue to informally monitor levels of dormant plans as an initiative success measure, it need not engage in detailed tracking of each member’s plans; that is for each individual member or firm to maintain. Through practice review, the ALSA can ensure firms and ALSs have proper systems in place for monitoring. In this way, the ALSA does not assume responsibility for compliance by practitioners; instead, the membership holds itself responsible for compliance, while the ALSA delivers only on its regulatory role. The ALSA avoids dragging itself into the operational issues of dormant plan tracking and focuses on its regulatory mandate related to those plans.
Wrap-Up

Firm direction and action from the ALSA are required to set the environment for Alberta Land Surveyors to clean up dormant plans. Land Titles has done all it can by assisting with the statutory declaration process, and most other stakeholders have low levels of concern with dormant plans. For the problem to go away, Alberta Land Surveyors themselves need to step up and solve it.

The ALSA has the statutory mandate and powers to make it happen, now it must show the required leadership.