

**BEFORE THE PROFESSIONAL ENGINEERING COMMITTEE OF
THE NEW MEXICO BOARD OF LICENSURE FOR PROFESSIONAL
ENGINEERS AND PROFESSIONAL SURVEYORS**

IN THE MATTER OF:

**David Soule
License No. 14522**

CASE NO.: 1-PE-01-25-2021

Respondent.

**PRE-NOTICE OF CONTEMPLATED
ACTION SETTLEMENT AGREEMENT**

WHEREAS, the New Mexico Board of Licensure for Professional Engineers and Professional Surveyors' Professional Engineering Committee ("Committee") reviewed records and investigation files demonstrating violations of the Engineering and Surveying Practice Act, NMSA 1978, Sections 61-23-1 through 61-23-36 and the New Mexico Board of Licensure for Professional Engineers and Professional Surveyors ("Board") rules, New Mexico Administrative Code ("NMAC") Title 16, Chapter 39, Parts 1 through 8, and on September 16, 2022, the Board voted to issue a Notice of Contemplated Action ("NCA") in this matter to the Respondent, David Soule, professional engineer, license number 14522; and

WHEREAS, Respondent and the Committee are willing to resolve this matter amicably without the issuance of an NCA as required under the Uniform Licensing Act ("ULA"), NMSA Sections 61-1-1 et seq., and the Engineering and Surveying Practice Act, NMSA 1978, Sections 61-23-1 et seq., without a hearing; and

WHEREAS, Respondent and the Committee believes that this Pre-NCA Settlement Agreement is appropriate and in the best interests of both the Committee and Respondent;

IT IS AGREED AS FOLLOWS:

1. Jurisdiction

The Committee has jurisdiction over Respondent and the subject matter. Respondent is licensed by the Board or otherwise subject to the Engineering and Surveying Practice

Act, and falls under the jurisdiction of the Board and its Professional Engineering Committee.

2. Violations

Section 61-23-24 NMSA 1978, Engineering; violations; disciplinary action; penalties; reissuance of licenses.

Section 16.39.3.11 NMAC Practice of Engineering

Section 16.39.7.9 NMAC Violations

Section 16.39.8.9 NMAC Rules of Professional Conduct

3. Action

A. Respondent will remit a total fine of \$500.00 payable to NMBLPEPS to be paid no later than thirty (30) days from the date this Agreement is accepted by the Committee.

4. Waiver

A. Respondent enters into this Pre-NCA Settlement Agreement voluntarily and waives Respondent's right to a full hearing before the Board's Committee and all relevant time limitations pursuant to the provisions of the ULA, including but not limited to NMSA 1978, Sections 61-1-4(F) and 61-1-8.

B. By signing this Pre-NCA Settlement Agreement, Respondent understands agrees that Respondent waives excusal of any Board member on the grounds of bias or improper motive as a result of Respondent's review of this Pre-NCA Settlement Agreement.

C. Respondent's waiver of any rights herein is made knowingly, intentionally and voluntarily.

D. Respondent has the right to seek the advice of an attorney regarding this Pre-NCA Settlement Agreement.

E. This Pre-NCA Settlement Agreement constitutes disciplinary action by the Board.

5. Failure to comply with the terms and conditions of this Pre-NCA Settlement Agreement shall be separate and independent grounds for disciplinary action by the Board. In the event the Respondent fails to comply with the provisions hereof, the Board shall have the right to take such action against Respondent as it deems appropriate under the circumstances, including revoking Respondent's license.

6. This Pre-NCA Settlement Agreement is a settlement of Board Case Number 1-PE-01-25-2021 and only the specific facts therein. No costs have been incurred in this matter. The

Board reserves the right to initiate proceedings for any other violation of the Engineering and Surveying Practice Act or Board Rules adopted pursuant to that Act.

7. Any Ethics Hours completed outside Respondent's reporting cycle are in addition and shall not count towards Respondent's current and future ethics hours requirements.
8. The Board agrees that this Pre-NCA Settlement Agreement will restrict Respondent's license as stated in numbered paragraph 3B.

9. Reportable Discipline

- A. This Agreement, if accepted, constitutes formal disciplinary action by the Committee and must be reported to the National Council Examiners for Engineering and Surveying (NCEES) Enforcement database. It is noted that other jurisdictions where Respondent possesses an engineer's license might require Respondent to report this disciplinary action. This statement is a reminder that Respondent may have a duty to report this disciplinary action in another jurisdiction. The disciplinary action may need to be reported Respondent acknowledges the following discipline will be reported:
 - B. Respondent's professional engineer's license number 14522, expired on December 31, 2020, and entered expired status on January 1, 2021.
 - C. Respondent submitted a penalty license renewal form and an explanation letter of the type of engineering work performed during the time his license was expired.
 - D. Respondent admitted to the Board's investigator, Mr. Joe B. Barela, PE, CFM, that Respondent practiced engineering with an expired license.
 - E. Respondent prepared and/or stamped and signed a new grading plan for a residential lot located in the Village of Corrales, New Mexico, and stamped, signed, and certified two (2) grading certifications for sites located in Albuquerque, New Mexico, which were reported in the Respondent's explanation letter.

10. Non-Compliance

Respondent agrees that any violation of this Agreement may result in further disciplinary action. A violation will result in the immediate filing of an Order to Show Cause by the Board's Executive Director as to why the Committee should not find Respondent in violation of the Agreement and impose lawful sanctions or penalties and/or take any other disciplinary action. Upon filing an Order to Show Cause, the matter shall be set for

the next regular meeting of the Committee, at which time the Committee shall hear from the Executive Director regarding the alleged non-compliance and any evidence offered by Respondent. Any presentation regarding the Order to Show Cause shall be limited to evidence surrounding Respondent's alleged failure to comply with the Agreement or defense thereof. If the Committee finds that a violation has occurred, the Committee may impose any discipline against Respondent considered in the Order to Show Cause.

11. Compliance

If Respondent fully complies with the terms and conditions of this Agreement the matter will be concluded. Respondent agrees to otherwise comply with the Engineering and Surveying Practice Act, and acknowledges that any separate violation of the Act or its rules may result in separate disciplinary charges and action by the Committee.

12. Contact Information

Respondent shall notify the Board's office within ten (10) calendar days if there is a change in employment or home address while this Agreement is in effect.

13. This Pre-NCA Settlement Agreement is a public record subject to inspection under the Inspection of Public Records Act, NMSA 1978, Sections 14-2-1 et seq.

1/23/23

DATE

RESPONDENT

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing ***Pre-NCA Settlement Agreement for case 1-PE-01-25-2021*** was mailed to the Respondent on January 25, 2023, via certified mail, return receipt requested, to Respondent's last address of record:

David Soule
9916 Greene Avenue NE
Albuquerque, NM 87114

Perry Valdez, Executive Director
New Mexico Board of Licensure for
Professional Engineers and Professional Surveyors
P.O. Box 1967
Santa Fe, New Mexico 87504

Certified Mail Number: 9171 9690 0935 0155 2469 23

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