

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

IN THE MATTER OF:

**Christopher S. Benson
License No. 14401**

CASE NO.: 3-PS-02-08-2021

Respondent.

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

WHEREAS, the New Mexico Board of Licensure for Professional Engineers and Professional Surveyors' Professional Surveying Committee ("Board") 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 Board Rules adopted pursuant to that Act, and on November 3, 2022, the Board's Professional Surveying Committee voted to issue a Notice of Contemplated Action ("NCA") in this matter to the Respondent, Christopher S. Benson, professional surveyor, license number 14401; and

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

IT IS AGREED AS FOLLOWS:

1. Jurisdiction

The Board 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 Surveying Committee.

2. Violations

Respondent conducted professional surveying services while their license was suspended/lapsed. Which states in Section 61-23-27.15 of the Engineering and Surveying Practice Act.

-Section 61-23-27.15 A. NMSA

(A) "The board may investigate and initiate a hearing on a complaint against a person who does not have a license, who is not exempt from the Engineering and Surveying Practice Act [61-23-1 NMSA 1978] and who acts in the capacity of a professional surveyor within the meaning of the Engineering and Surveying Practice Act. A valid license is required for a person to act as a professional surveyor or to solicit or purport to perform work involving the practice of surveying".

Respondent performed two surveys that did not meet the Minimum Standards of Surveying in New Mexico which states in Section 12.8.9 NMAC (2016) "Boundary Surveying: When performing a boundary survey, the surveyor shall be responsible for all the all the following:

-Section 12.8.9 J. NMAC (2016): Prepare a plat of the survey, unless the survey is only the re-monumentation of corners of a tract, shown on a recorded plat, where some of the existing corners of the tract are recovered, whose measured dimensions on the ground are reasonably close to the record dimensions. A plat of survey must be recorded only if it is a survey of a parcel for which no previously recorded plat exists or, in the case of re-monumentation, the surveyor finds that field measurements are significantly different from record dimensions. The plat may contain as many sheets as required, which meet the size and material requirements of the state statute and shall contain at least the following:

(6) the basis of bearings used in the survey which shall be based upon:

(a) New Mexico (NM) state plane coordinates with specifics to elevation, vertical datum, horizontal datum, zone, mapping angle, ground to grid factor used if using a modified ground system;

(b) a specific line between two points either found or re-established set points as shown on an existing filed plat;

(c) measured and published geodetic control values based upon an online position user service (OPUS) solution or geodetic control stations;

(d) a longitudinal line is acceptable based off GPS observation or other means for determining the longitude of a basis of bearings as long as the longitudinal value is published on the survey with the method used in determining the longitude; "GPS North" or similar notations without explanation as described above is unacceptable; "assumed bearings" are prohibited.

(11) the location and description of all easements known or disclosed to the surveyor which cross, adjoin or serve a surveyed tract together with the recording data for the document that created the easement and the location and description of any visible structures which encroach upon said easement;

3. Action

- A. Respondent will remit a total fine of \$3,000 payable to NMBLPEPS to be paid no later than sixty (60) days from the date this agreement is accepted by the Committee.
- B. Respondent will provide a copy of the corrected amended plat to the Board within sixty (60) days from the date this Agreement is accepted by the Board. Once approved, file the amended plat and a provide a copy to the Board Office within thirty (30) days.

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 Board 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 and 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 Case Number 3-PS-02-08-2021 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. Reportable Discipline

A. This Agreement, if accepted, constitutes formal disciplinary action by the Board 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 a surveyor'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. Respondent acknowledges the following discipline will be reported:

The Board found, and the Respondent conducted professional surveying services while their license was suspended/lapsed. Which states in Section 61-23-27.15 A. of the Engineering and Surveying Practice Act.

Respondent performed two surveys that failed to meet the Minimum Standards of Surveying in New Mexico which states in Section 12.8.9 NMAC (2016) "Boundary Surveying: When performing a boundary survey, the surveyor shall be responsible for all the all the following: due to the following (¶2, Violations for more information):

- i. The Houlihan Ltd. plat dated June 16, 2021, failed to demonstrate the basis of bearings requirements. The plat failed to clearly disclose the status/origin of the access and utility easements crossing the subject tracts (Tract A and B). Further, the plat identified a "Granting or Re-granted Access and Utility Easement" on adjoining property that is not a part of the platting action." Section 12.8.2.9 (J)(11) NMAC (2016);
- ii. The Gallegos plat dated November 20, 2020 failed to demonstrate the basis of bearings requirements. The plat failed to annotate the utility easement and the private access and utility easement that are both being granted by the platting action.

8. 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 Board 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 Board, at which time the Board 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 Board finds that a violation has occurred, the Board may impose any discipline against Respondent considered in the Order to Show Cause.

9. 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 Board Rules adopted to that Act, which may result in separate disciplinary charges and action by the Board.

10. 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.

11. The Board agrees that nothing in this Pre-NCA Settlement Agreement represents a restriction on the Respondent's license.

12. 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.

Feb. 6, 2023

DATE

RESPONDENT

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

IN THE MATTER OF:

Christopher S. Benson
License No. 14401

CASE NO.: 3-PS-02-08-2021

Respondent.

ORDER

This proposed settlement comes before the Committee Chair, by and through authority provided by the Committee during a public meeting, this Agreement is:

ACCEPTED REJECTED

FEB. 8, 2023
DATE

Robert Gromatzky
CHAIRPERSON
NEW MEXICO PROFESSIONAL
SURVEYING COMMITTEE

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing *Pre-NCA Settlement Agreement for case 3-PS-02-08-2021* was mailed to the Respondent on February 13, 2023, via certified mail, return receipt requested, to Respondent's last address of record:

Christopher S. Benson
PO Box 1976-200 Central S.E.
Moriarty, NM 87035

Angelica Urioste, Compliance Officer
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 30

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