

**NEW MEXICO BOARD OF LICENSURE FOR
PROFESSIONAL ENGINEERS & PROFESSIONAL SURVEYORS**

**ADVISORY OPINIONS PURSUANT TO THE MINIMUM STANDARDS FOR SURVEYING
12.8.2.17 F, NMAC**

ADVISORY OPINIONS **Revised June 2017** - Pursuant To The Minimum Standards For Surveying [Title 12, Chapter 8, Part 2, of the New Mexico Administrative Code] recorded below are the advisory opinions issued by the Professional Surveying Committee of the Board of Licensure with the most recently issued advisory opinions listed first.

Advisory Opinion Nineteen (19) – Requirements for surveying the larger parcel when subdividing property.

While not specifically stated in the Minimum Standards, it should be clear that any division of land in New Mexico for conveyance prepared by a licensed surveyor is a boundary survey and the Minimum Standards for Surveying in New Mexico, Effective May 1, 2007 apply. When a surveyor divides a tract of land, the surveyor must follow applicable subdivision regulations (state, county, municipal) and comply with the Minimum Standards for Surveys in New Mexico. A land division requires all of the elements contained in the definition of boundary surveying [Section 12.8.2.7.A.(1)].

There is some confusion, however, regarding land divisions that are exempt from subdivision regulations specifically as delineated in Section 47-6-2.-J. of the New Mexico Subdivision Act. This section specifies which types of land divisions are not considered to be subject to said Act. Although these land divisions are exempt from the New Mexico Subdivision Act they are not exempt from the Minimum Standards and a plat must be recorded.

This type of plat is to be considered a boundary survey plat and Section 12.8.2.9.J. of the Minimum Standards applies. (i.e. the boundaries of the new tracts do not exist on a recorded plat and all required signatures are obtained, including a “free consent” statement.) [***Referring to Advisory Opinion No. 12***]

If the surveyor decides to not survey the larger parcel, then they must decide if they are going to be in compliance with the minimum standards for Boundary Surveys.

Referring to Section 12.8.2.9.J, “...A plat of survey must be recorded only if it is a survey of a parcel for which no previously recorded plat exists...” If the parent parcel is not of record you must survey the parent parcel in addition to the property division. An original public land (PLSS or BLM/GLO) township, section division or small holding claim instrument is not considered a recorded plat for this application unless it has been re-filed with the county clerk as a resurvey.

The Professional Surveyor cannot accept the larger parcel boundary as a true representation of the boundary if they did not survey the parent parcel, hence, they cannot say it meets the Minimum Standards.

If the parent parcel is delineated on a recorded survey and the Surveyor decides not to survey the parent parcel, it must be made clear that the remainder of the parent parcel was not surveyed and is being shown for informational purposes only so the public is informed and protected. The surveyor must extend their due diligence regarding the record information and do adequate research to ascertain their reliance on the researched and provided information.

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It is advised to show on the required plat (that is then filed for record) all disclosed and discovered information from the parent parcel's record. It should also include any purported evidence (if not surveyed for the portion), any disparities, known conflicts or omissions in the chain of prior surveys (whether or not used in the property division survey) and list prior surveyors known to be precedent to your survey and their registration number.

You are cautioned that you may inherit any professional and civil liabilities flowing from your decision not to survey the parent parcel completely.

This is effected by the requirements in the Definition of Boundary Surveying: "Boundary Surveying is...where ascertainable from record documents or from field evidence gathered during the process of conducting the survey of the property being surveyed". You cannot survey the boundary of only a portion unless the parent tract is from a record document or you collect field evidence and do a complete survey.

[Approved June 1, 2017]

Advisory Opinion Eighteen (18) – Recordation of Survey without Owner’s Permission and Permissible Delays in Recordation beyond the 60 day Recordation Requirement.

[12.8.2.9. NMAC - Rp, 12.8.2.9 NMAC, 5/01/2007 (Boundary Surveys), 12.8.2.12 (Easement Surveying) and 12.8.2.15 (Unclassified Surveying):] requires that the surveyor “Record the plat prepared under Subsection J of 12.8.2.9, [and 12.8.2.9.13 and 12.8.2.15] NMAC with the county clerk of the county or counties in which the survey is located. 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 remonumentation, the surveyor finds that field measurements are significantly different from record dimensions”...

A. Recordation without Owner’s consent

If the original surveyor is instructed by the owner or owner’s legal agent NOT to record the instrument with a County Clerk (prior to completion but after the original surveyor is satisfied with the procedures, accuracies, determination of evidence and apparent conflicts exhibited on the Survey Plat) the surveyor may:

1. Complete the survey and deliver the instrument to a bona-fide unit of government for recordation by them with explanation of the obligation to record with the County Clerk (as may be the case with a sovereign Indian tribal government),
2. Withdraw from completing the survey and remove all monuments set in anticipation of completing the survey or,

If the surveyor is professionally convinced or advised by a legal opinion that the recordation will further the public interests of, for example, the determination of land ownership, the apparent resolve of conflicting deeds or other discovered records, the resolve of questions for apparent easements or title encumbrances or any similar matters whereby the public interests in survey records will be furthered by the Survey Plat;

3. Complete and record the survey as required by Sec. 12.8.2.9.K. N.M.A.C.

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Note: If the owner or their agent tenders a civil action whereby the surveyor is purportedly barred from completion, monumentation and/or recordation of the surveyor product, the surveyor may suspend the time requirements for completion, recordation or monumentation until such legal action, mediation, arbitration is resolved or dismissed. Thereafter, the surveyor or his/her successor must complete their obligations or remove any monumentation set as the surveyor of record.

B. Recordation and monumentation delays, permissible exceptions

If the original surveyor has convincing circumstances whereby the Survey Plat cannot be recorded or new monuments set within the prescribed time limit (recorded within 60 days from completion) specifically:

- If the owner or their agent tenders a civil action whereby the surveyor is purportedly barred from completion, monumentation and/or recordation of the surveyor product, the surveyor may suspend the time requirements for completion, recordation or monumentation until such legal action, mediation, arbitration is resolved or dismissed. In which case, the Surveyor shall complete the recordation requirement as soon as possible thereafter (or dispose of in the manner prescribed by the court, mediator or arbitrator).
- If the survey borders the common land of a land grant whereby pursuant to Ch. 49, Art. 6,7, 8 or 10 NMSA 1978 the surveyor is required to give written notice by certified mail to the land grant prior to recording, the surveyor may suspend the recording time requirement for an additional thirty days (90 total days after completion) to allow for the mailings, responses and notification process to be evaluated.
- If the survey cannot be monumented and recorded because of the safety or practicality for surveying in inclement terrain/weather, fire hazard or exposure to personnel risks, the requirement for monumentation and / or recording may be suspended until such hazards cease. In which case the completion, monumentation and recording shall be immediately completed.

Note: An example would be the need to prepare a plat of survey in mountainous terrain, whereby all field work, except for new monuments, have been completed. The land is covered in deep snow and snow shadows whereby the surveyor's personnel are at risk for completing the monumentation (yet the plat is recorded or proposed to be recorded sooner for unusual circumstances, such as a court or governmental order).

[Approved 1/14/16]

Advisory Opinion Seventeen (17) - When a Control Survey Report is Required.

Whenever a professional surveyor undertakes control surveying as defined in 12.8.2.7 NMAC where the coordinates and elevations of the control points established by the survey may be relied upon by professionals other than the original surveyor for future phases of the work, the licensee shall prepare a Control Survey report and shall provide the report to the prime client.

[Approved 1/10/08]

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Advisory Opinion Sixteen (16) - Unlicensed Practice of Professional Surveying by Licensed Engineers not Specifically Licensed to Practice Surveying in New Mexico

All activities constituting the practice of Professional Surveying in New Mexico that impacts the public in any way are allowed and exclusive to Professional Surveyors licensed by the Board of Licensure of the State of New Mexico.

Providing or offering to provide Professional Surveying as outlined in the "Engineering and Surveying Practice Act" Sections 61-23-1 through 61-23-32 NMSA 1978 of July 1, 2005, by licensed Engineers (not specifically licensed as Professional Surveyors) is in violation of the "Act".

The only exception provided for by the "Act" are Section 61-23-27.10, Surveying Exemptions, "An employee of a firm, association or corporation who performs only the surveying services involved in the operation of the employer's business shall be exempt from the provisions of the Engineering and Surveying Practice Act, provided that neither the employee nor the employer offers surveying services to the public, and provided that the surveying services performed do not include any determination, description, portraying, measuring or monumentation of the boundaries of a tract of land."; and as defined in Section 61-23-3.S, Definitions, "supplemental surveying work" means surveying work performed in order to densify, augment and enhance previously performed survey work or site information but excludes the surveying of real property for the establishment of land boundaries, rights of way, easements and the dependent or independent surveys or resurveys of the public land system. The board shall recognize that there may be occasions when engineers need to obtain supplemental survey information for the planning and design of an engineering project. A licensed professional engineer who has primary engineering responsibility and control of an engineering project may perform supplemental surveying work in obtaining data incidental to that project. Supplemental surveying work may be performed by a licensed professional engineer only on a project for which the engineer is providing engineering design services."

Topographic surveys used in the design and construction of engineering and architectural projects are considered surveying services offered to the public.

Specific definitions of Professional Surveying activities are also found in the current rule titled Minimum Standards for Surveying in New Mexico, Title 12, Chapter 8, Part 2, New Mexico Administrative Code, October 1, 2000 and as periodically revised.

All practitioners in the Engineering and Surveying disciplines are reminded that it is their personal responsibility to keep current with any Statute(s) or Rule(s) change(s) which impact their area of practice. [Adopted 1/4/06]

Advisory Opinion Fifteen (15) - Setting of Monuments for Boundary Surveys.

The Professional Surveying Committee has examined Sections 12.8.2.9, 12.8.2.16 and other sections of the Minimum Standards for Surveying and advises that monuments shall be set at any time within the perimeter of the existing rules and laws, but before recording the plat. [Adopted 6/9/05]

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Advisory Opinion Fourteen (14) - Mandatory Disclosure of Professional Liability Insurance

Section 61-23-27.9 NMSA 1978 (2005 law) requires all licensed professional surveyors to advise clients **in writing** when entering into any written or verbal contracts or agreement whether or not they carry professional liability insurance. If a licensee does carry this insurance, the minimum terms and conditions, including limits and exceptions should be stated.

It is the opinion of the Board that the statutory language together with this advisory opinion is clear; and it is incumbent on professional surveyors to comply with this new law and provide this information in the best written manner to their prospective clients.

When the licensee carries professional liability insurance, the licensee may, as an example, provide an insurance certificate from the insurance carrier to the client to meet the requirements of 61-23-27.9 (1).

The following are a few examples of written statements a licensee may use to meet the requirements of 61-23-27.9D (2) [when the licensee does not carry professional liability insurance]:

On a Proposal : Pursuant to mandatory reporting requirements of Section 61-23-27.9 D, NMSA 1978 (2005 Pamphlet), the survey to be prepared under this proposal will NOT be covered by errors and omissions (professional liability) insurance.

On an Agreement : Pursuant to mandatory reporting requirements of Section 61-23-27.9 D, NMSA 1978 (2005 Pamphlet), the survey to be performed under this agreement/contract will NOT be covered by professional liability insurance.

[Adopted 8/4/05]

Advisory Opinion Thirteen (13) - Monuments

Sections 12.8.2.9, 12.8.2.16 and other sections of the Minimum Standards for Surveying indicate that monuments should be set at any time within the perimeter of the existing rules and laws, but prior to recording the plat. [Adopted 6/9/05]

Advisory Opinion Twelve (12) - Minimum Standards for Surveying in New Mexico & Subdivision Regulations

While not specifically stated in the Minimum Standards, it should be clear that any division of land in New Mexico for conveyance prepared by a licensed surveyor is a boundary survey and the Minimum Standards for Surveying in New Mexico, Effective October 1, 2000 apply. When a surveyor divides a tract of land, the surveyor must follow applicable subdivision regulations (state, county, municipal) and comply with the Minimum Standards for Surveys in New Mexico. A land division requires all of the elements contained in the definition of boundary surveying [Section 12.8.2.7.A.(1)].

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There is some confusion, however, regarding land divisions that are exempt from subdivision regulations specifically as delineated in Section 47-6-2.-J. of the New Mexico Subdivision Act. This section specifies which types of land divisions are not considered to be subject to said Act. Although these land divisions are exempt from the New Mexico Subdivision Act they are not exempt from the Minimum Standards and a plat must be recorded. This plat is to be considered a boundary survey plat and Section 12.8.2.9.J. of the Minimum Standards applies. (The boundaries of the new tracts do not exist on a recorded plat.) Besides the requirements of the above section, the plat must be signed by the property owner(s) or appropriate agents indicating that the land division shown thereon is with their free consent and in accordance with their wishes and desires.

As required by the Minimum Standards, the boundary survey plat must be recorded in the Office of the County Clerk of the appropriate county. Because the boundary survey plat looks like a subdivision, County Clerks and their Deputies are reluctant to record them without the myriad approvals common to a subdivision plat. The surveyor must certify that the survey is not a land division or subdivision as defined in the New Mexico Subdivision Act [Section 12.8.2.9.J.(2)] and can further alleviate the burden of the County Clerk by prominently placing a note on the plat indicating the specific sub-section of Section 47-6-2.-J. of in the New Mexico Subdivision Act that qualifies the land division for said exemption. This indicates to the County Clerk that the surveyor is taking full responsibility for complying with the law. If there later proves to be a problem, it is the surveyor's problem and not the County Clerk's.

Since the survey plat of the exempt land division is not considered to be a subdivision under the laws of the State of New Mexico it is clear that the review of said plat by various regulatory agencies is not required. However, if utility easements are created they must be approved by the appropriate utility authority. Likewise, the dedication or granting of any type of easement or right-of-way cannot be made without the approval of affected parties.

Nothing contained herein is intended to limit the authority of county or local subdivision regulations which may or may not impose additional statutory requirements.

Approved PSC - February 7, 2002 [Opinion was distributed in Feb. to all County Clerks, County Managers & County Attorneys. The Board will be reviewing feedback from attorneys regarding local requirements that may be in place for claims of exemptions to the subdivision statutes, including minimum zoning standards.]

MOST OF THE FOLLOWING OPINIONS WERE INCORPORATED INTO THE 2000 MINIMUM STANDARDS FOR SURVEYING 12.82.1 THROUGH 12.8.2.17 NMAC. THE NEW CITATIONS IN THE 2000 MINIMUM STANDARDS HAVE BEEN ADDED TO FACILITATE COMPARISON.

Advisory Opinion Eleven (11) - Easement Surveying 12.8.2.7 & 12.8.2.12 NMAC new citations.

An Easement Survey is a type of surveying as defined by Rule 500.6, Minimum Standards for Surveying in New Mexico. Easement Surveying that does not run parallel to a boundary of the tract in which it is located may require field-surveying procedures as the basis for determination

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of the easement corridor and must in any case result in the preparation of a plat that conforms to items 1-6, Paragraph J of Rule 500.3. These field procedures and subsequent plat preparation must be conducted under the responsible charge of a professional surveyor.

Advisory Opinion Ten (10) - Certifications.

Professional surveyors should be prepared to certify to those things required in the execution of their duties and mandated by law. They should be cautious, however, in certifying only to conditions and facts falling within their areas of competency. Certification language that goes beyond the obligations prescribed by law and the responsibilities assumed by the surveyor in the normal course of property boundary surveying should be carefully considered by the surveyor before signing and sealing any document. [Adopted 9/18/98]

Advisory Opinion Nine (9) - 12.8.2.7 A(2) & 12.8.2.10 Improvement Location Report NMAC superseding Surveyor's Inspection Report.

The Surveyor's Inspection Report (SIR) or Inspection Report Surveying is a type of survey as defined by Chapter 61, Article 23 NMSA 1978 (New Mexico Engineering and Surveying Practice Act). As such, the act further requires that this surveying activity and resulting document can be performed and prepared only by registered surveyors, under their signature and seal. Any other individual or legal entity performing this surveying activity, or altering an existing surveying document for their own purposes, regardless of what it is called, does so in violation of the Act.

The Board of Registration was established and is empowered in order to protect public life, health and property and to promote public welfare. The board primarily accomplishes this important obligation to New Mexico citizens by ensuring only qualified persons be permitted to engage in the practices of engineering and surveying as regulated by the State.

To that end, Minimum Standards for Land Surveying were promulgated by the Board of Registration. These minimum standards were reviewed and amended effective February 2, 1994 to ensure compliance with the recently amended Engineering and Surveying Practice Act effective July 1, 1993. In the 1989 and subsequent standards, Inspection Report Surveying has been defined as a surveying activity in reference to the provisions of the Engineering and Surveying Practice Act.

Of particular import in establishing SIRs as a type of survey, is 61-23-3. Paragraph L which states that " 'surveying' or 'practice of surveying' means any service or work, the substantial performance of which involves the application of the principles of mathematics and the related physical and applied sciences for... (5) the preparation and perpetuation of maps, records, plats, field notes and property descriptions."

These descriptive elements of a survey are found in the SIR narrative and the optional sketch which usually accompanies the narrative as an exhibit. By definition, a plat is "a diagram drawn to scale showing all essential data pertaining to the boundaries and subdivision of a tract of land, as determined by survey or protraction. A plat should show all data required for a complete and accurate description of the land which it delineates, including the bearings (or azimuths) and the lengths of the boundaries of each subdivision." (ACSM Definition of

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Surveying and Associated Terms, 1978) The SIR sketch meets the requirements of this definition.

Clearly, Inspection Report Surveying or Surveyor's Inspection Report is a surveying activity and has been recognized as such by the Minimum Standards since November 1989.

A further examination of 61-23-1, (N) defines who may prepare SIRs. The Act states that: "surveyor' or 'professional surveyor' means a person who is qualified to practice surveying by reason of his intensive preparation and knowledge in the use of mathematics, physical and applied sciences and surveying including the principles and methods of surveying acquired by education and experience and who is registered by the Board to practice surveying."

Additionally, 61-23-27.9, (B) state that "All plats, drawings and reports that are involved in the practice, issued by or for the practice, shall bear the seal and signature of a professional surveyor in responsible charge of and directly responsible for the work issued."

From the above it can be seen that SIRs are by definition a type of survey. Since they are a type of survey they must be prepared, signed and sealed by a licensed surveyor. Any similar instrument prepared by others deemed to fall under the above definition would be in violation of the act.

The legitimacy of the above position can be additionally substantiated by an examination of the provisions of Rule 500 which acts to confirm SIRs as a type of survey.

500.1. Requirements mandate that the surveyor first determine what type of survey he is doing so that he may conform with the requirements set forth in subsequent rules for that type of surveying. The next portion of the Minimum Standards (500.2) then offers the surveyor a listing of the types of surveying.

Rule 500.2 Type of Surveying (B) states "Inspection Report Surveying is the preparation of a report which complies with all of the requirements and limitations of a Surveyor's Inspection Report as set forth in Rule 500.4, and which is issued to a title, abstract or escrow company or lending institution for their exclusive use in determining such things as insurability or value of a tract of land."

This logically leads to 500.4. (A) "Inspection Report Surveying is the preparation of a Surveyor's Inspection Report which is a narrative report, which may be accompanied by a sketch, and which issued only to a title, abstract or escrow company or lending institution for their exclusive use in determining such things as insurability or value of a tract of land. It shall not be represented by the surveyor as being a property boundary survey."

Of particular concern to the Board of Registration are organizations who may be offering, services, pursuant to the definition of surveying (Section 61-23-3), to the public without meeting the stringent requirements of the Act and the minimum standards outlined above. Regulations and Rules of Procedure 400.3 Practice of Surveying, (A) establishes that "An individual or any organization shall not advertise or offer to practice surveying work unless that individual or

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member of the organization is registered by the board and is legally able to bind that organization by contract."

The Board of Registration views any individual or organization, not registered by the Board, which through its actions offers any surveying related activity or modifies for any purpose a surveying document previously prepared by a registered surveyor, as attempting to circumvent this regulation and rule.

In conclusion, the Board of Registration maintains that while SIRs are not considered property boundary surveys, they are defined as a type of survey. It follows from the definition of surveying that anyone doing this work is performing a surveying function. Unless specifically exempted under the New Mexico Engineering and Surveying Practice Act, all surveying activities must be under the responsible charge of a licensed surveyor, with their signature and seal affixed to any document prepared as a result of that surveying activity. Any deviation from these requirements is a violation of the Act.

While it is understood that anyone may do a visual inspection of a property, once an inspection includes tasks pursuant to Section 61-23-3, or reference to "survey" or "surveying" in a report or an offer to perform an inspection, the law is clear in precluding its preparation by anyone other than a licensed, professional land surveyor. [Adopted 9/18/98]

Advisory Opinion Eight (8) - Recordation of ALTA/ACSM Surveys superseded by 12.8.2.7A(8) .

An ALTA/ACSM Survey is a boundary survey. Therefore, 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 remonumentation, the surveyor finds that field measurements are significantly different from record dimensions. The filed survey can be a separate plat and need not include all the detail of the ALTA/ACSM Survey but only the improvements affecting the boundary. (See Minimum Standards for Surveying in New Mexico, February 2, 1994, Rule 500.3, Section J). [Adopted 4/3/98]

Advisory Opinion Seven (7) - 12.8.2.16 D NMAC superseding Rule 500.10.D Monuments .

Paragraph D permits interior subdivision staking to be delayed for up to a year to avoid conflicts with the installation of infrastructure. It places the responsibility for final staking upon the surveyor certifying the plat.

It is the intention of the Board to insure the eventual staking of the subdivision by a professional surveyor, and it therefore places this responsibility on the original surveyor. But the staking may be done by any professional surveyor. The requirements of this section are met if any professional surveyor stakes the subdivision and assumes the entire responsibility for the subdivision by recording an affidavit to that effect with the county clerk. [Adopted 3/13/97]

Rationale: The public [property owner] is harmed when s/he is unable to sell lots because the surveyor who completed the subdivision plat is unavailable to complete the interior staking due to numerous reasons such as illness, death, etc.

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Advisory Opinion Six (6) - 12.8.2.9 J (5) superseding Rule 500.3.J.5 Description of Found Monuments .

The description of monuments required by Rule 500.3.J.5 must include the size of the monument and its material and all information stamped or printed on any cap or tag attached to the monument. [Adopted 2/29/96]

Advisory Opinion Five (5) - 12.8.2.9 J NMAC superseding citation Rule 500.3.J Preparation of a Plat of Survey .

If a surveyor issues a plat bearing his signature and seal, and the plat was not required by the Minimum Standards, the plat shall nevertheless comply with the requirements in Rule 500.3.J, but the plat need not be recorded. [Adopted 2/29/96]

Advisory Opinion Four (4) - Model Certificate of Survey superseded by 12.8.2.9 J(2) NMAC.

"I, (surveyor's name) , New Mexico Professional Surveyor, hereby certify that this Boundary Survey Plat was prepared from an actual ground survey performed by me or under my supervision, that I am responsible for this survey, that this survey is true and correct to the best of my knowledge and belief, that this Boundary Survey Plat and the field survey upon which it is based meet the Minimum Standards for Surveying in New Mexico, and that this survey is not a land division or subdivision as defined in the New Mexico Subdivision Act. This is a Boundary Survey Plat of an existing tract or tracts.

(Surveyor's name) P.S. #

Date

[Affix Seal, Signature of one surveyor, and Date] [Adopted 3/95; Rev. 1, 5/8/97 Rev. 2, 6/19/97]

Advisory Opinion Three (3) - Financial Liability

Language limiting financial liability is, in the opinion of the board, contractual language and, if used, should be in a contract and not on a plat of survey.

The Board does not typically get involved in fee disputes; and the limiting of financial liability is a legal matter beyond the jurisdiction of the Board. [Adopted 12/8/94]

Advisory Opinion Two (2) - 12.8.2.15 Superseding Citation Rule 500.9 Accuracy.

The Minimum Standards do not require a closed traverse. Rule 500.9 states the accuracy standards as an unadjusted closure error. The objective is to guide the surveyor in his choice

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of equipment and procedures. The surveyor shall use his professional judgment in choosing methods which achieve the accuracies indicated by this rule. [Adopted 12/9/93]

Advisory Opinion One (1) - 12.8.2.9 J(4) NMAC on Graphic Scale Superseding Citation Rule 500.3.J.4.

The rule requires a graphic scale on a plat. This applies only to the main drawing. A graphic scale is not required for such things as a location map or a detail drawing. [Adopted 12/9/93]