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7
8 **BEFORE THE**
BUREAU OF REAL ESTATE APPRAISERS
DEPARTMENT OF CONSUMER AFFAIRS
9 **STATE OF CALIFORNIA**

10
11 In the Matter of the Accusation Against:

Case Nos. 20130911-04 and C20140127-01

12 **FRANK O. MAY**
2815 Chanticleer Avenue
13 Santa Cruz, CA 95065

ACCUSATION

14 **Real Estate Appraiser License No. 002051**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Elizabeth Seaters, acting on behalf of the Bureau of Real Estate Appraisers
20 (Complainant), Department of Consumer Affairs, brings this Accusation solely in her official
21 capacity as Chief of Enforcement for Complainant.

22 2. On or about December 10, 1991, the Bureau of Real Estate Appraisers (formerly
23 Office of Real Estate Appraisers) issued Real Estate Appraiser License Number 002051 to Frank
24 O. May (Respondent). The Real Estate Appraiser License was in full force and effect at all times
25 relevant to the charges brought herein and will expire on June 2, 2016, unless renewed.

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JURISDICTION

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2 3. This Accusation is brought before the Bureau of Real Estate Appraisers (Bureau) for
3 the Department of Consumer Affairs, under the authority of the following laws. All section
4 references are to the Business and Professions Code unless otherwise indicated.

5 4. Business and Professions Code section 11313 states:

6 "The bureau is under the supervision and control of the Director of Consumer Affairs. The
7 duty of enforcing and administering this part is vested in the chief, and he or she is responsible to
8 the Director of Consumer Affairs therefor. The chief shall adopt and enforce rules and
9 regulations as are determined reasonably necessary to carry out the purposes of this part. Those
10 rules and regulations shall be adopted pursuant to Chapter 3.5 (commencing with Section 11340)
11 of Part 1 of Division 3 of Title 2 of the Government Code. Regulations adopted by the former
12 Director of the Office of Real Estate Appraisers shall continue to apply to the bureau and its
13 licensees."

14 5. Business and Professions Code section 11315.3 states:

15 "The suspension, expiration, or forfeiture by operation of law of a license or certificate of
16 registration issued by the office, or its suspension, forfeiture, or cancellation by order of the office
17 or by order of a court of law, or its surrender without the written consent of the office, shall not,
18 during any period in which it may be renewed, restored, reissued, or reinstated, deprive the office
19 of its authority to institute or continue a disciplinary proceeding against the licensee or registrant
20 upon any ground provided by law or to enter an order suspending or revoking the license or
21 certificate of registration, or otherwise taking disciplinary action against the licensee or registrant
22 on any such ground."

23 6. Business and Professions Code section 11301 states:

24 "(a) There is hereby created within the Department of Consumer Affairs a Bureau of Real
25 Estate Appraisers to administer and enforce this part.

26 "(b) Whenever the term "Office of Real Estate Appraisers" appears in any other law, it
27 means the "Bureau of Real Estate Appraisers."

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1 STATUTORY AND REGULATORY PROVISIONS

2 7. Business and Professions Code section 11316, subdivision (a) states:

3 "(a) The director may assess a fine against a licensee, applicant for licensure, person who
4 acts in a capacity that requires a license under this part, course provider, applicant for course
5 provider accreditation, or a person who, or entity that, acts in a capacity that requires course
6 provider accreditation for violation of this part or any regulations adopted to carry out its
7 purposes."

8 8. Business and Professions Code section 11319 states:

9 "Notwithstanding any other provision of this code, the Uniform Standards of Professional
10 Appraisal Practice constitute the minimum standard of conduct and performance for a licensee in
11 any work or service performed that is addressed by those standards. If a licensee also is certified
12 by the Board of Equalization, he or she shall follow the standards established by the Board of
13 Equalization when fulfilling his or her responsibilities for assessment purposes."

14 9. California Code of Regulations, title 10, section 3701 states:

15 "Every holder of a license under this part shall conform to and observe the Uniform
16 Standards of Professional Appraisal Practice (USPAP) and any subsequent amendments thereto as
17 promulgated by the Appraisal Standards Board of The Appraisal Foundation which standards are
18 herein incorporated into these regulations by reference as if fully set forth herein."

19 10. California Code of Regulations, title 10, section 3702(a) states:

20 "(a) The Director finds and declares as follows:

21 "(1) That the profession of real estate appraisal is vested with a fiduciary relationship of
22 trust and confidence as to clients, lending institutions, and both public and private guarantors or
23 insurers of funds in federally-related real estate transactions and that the qualifications of honesty,
24 candor, integrity, and trustworthiness are directly and substantially related to and indispensable to
25 the practice of the appraisal profession;

26 "(2) That registered Appraisal Management Companies are vested with a relationship of
27 trust and confidence as to their clients, lending institutions, and both public and private guarantors
28 or insurers of funds in federally-related real estate transactions and that the qualifications of

1 honesty, candor, integrity, and trustworthiness are directly and substantially related to and
2 indispensable to their business operations; and

3 "(3) Every holder of a license to practice real estate appraisal, Registrant, Controlling
4 Person of an Appraisal Management Company, or person or entity acting in a capacity requiring a
5 license or Certificate of Registration shall be required to demonstrate by his or her conduct that he
6 or she possesses the qualifications of honesty, candor, integrity, and trustworthiness. "

7 11. California Code of Regulations, title 10, section 3721 states:

8 "(a) The Director may issue a citation, order of abatement, assess a fine or private or public
9 reproof, suspend or revoke any license or Certificate of Registration, and/or may deny the
10 issuance or renewal of a license or Certificate of Registration of any person or entity acting in a
11 capacity requiring a license or Certificate of Registration who has:

12 ...

13 "(6) Violated any provision of USPAP;

14 "(7) Violated any provision of the Real Estate Appraisers' Licensing and Certification Law,
15 Part 3 (commencing with Section 11300) of Division 4 of the Business and Professions Code, or
16 regulations promulgated pursuant thereto; or any provision of the Business and Professions Code
17 applicable to applicants for or holders of licenses authorizing appraisals;

18 ...

19 "(b) Before issuing any private or public reproof or denying, suspending, or revoking any
20 license or Certificate of Registration issued or issuable under the provisions of the Real Estate
21 Appraisers Licensing and Certification Law or these regulations, the Office shall proceed as
22 prescribed by Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of
23 the Government Code (the Administrative Procedure Act) and the Office shall have all the powers
24 granted therein.

25 "(c) Any person issued a citation containing a fine or order of abatement may contest the
26 citation by filing a written notice with the Office within 30 calendar days that states with
27 specificity the basis of the appeal. Upon receipt of such notice, the Office shall proceed as
28 prescribed by Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of

1 the Government Code (the Administrative Procedure Act) and the Office shall have all the powers
2 granted therein."

3 12. Business and Professions Code section 11328 states, in pertinent part:

4 "To substantiate documentation of appraisal experience, or to facilitate the investigation of
5 illegal or unethical activities by a licensee, applicant, or other person acting in a capacity that
6 requires a license, that licensee, applicant, or person shall, upon the request of the director, submit
7 copies of appraisals, or any work product which is addressed by the Uniform Standards of
8 Professional Appraisal Practice, and all supporting documentation and data to the OREA."

9 COST RECOVERY

10 13. Business and Professions Code section 11409, subdivision (a) states:

11 "Except as otherwise provided by law, any order issued in resolution of a disciplinary
12 proceeding may direct a licensee, applicant for licensure, person who acts in a capacity that
13 requires a license under this part, registrant, applicant for a certificate of registration, course
14 provider, applicant for course provider accreditation, or a person who, or entity that, acts in a
15 capacity that requires course provider accreditation found to have committed a violation or
16 violations of statutes or regulations relating to real estate appraiser practice to pay a sum not to
17 exceed the reasonable costs of investigation, enforcement, and prosecution of the case."

18 2010-2011 USPAP¹ (Uniform Standards of Professional Appraisal Practice)

19 14. USPAP Standards Rule 1 states:

20 In developing a real property appraisal, an appraiser must identify the problem to be solved,
21 determine the scope of work necessary to solve the problem, and correctly complete research and
22 analyses necessary to produce a credible appraisal.

23 15. USPAP Standards Rule 1-1, states:

24 In developing a real property appraisal, an appraiser must:

25 (a) be aware of, understand, and correctly employ those recognized methods and
26 techniques that are necessary to produce a credible appraisal;

27 ¹ 2010-2011 USPAP applies to appraisals performed between January 1, 2010 and
28 December 31, 2011, and applies to the second and third causes for discipline below.

1 (b) not commit a substantial error of omission or commission that significantly affects
2 an appraisal;

3 and

4 (c) not render appraisal services in a careless or negligent manner, such as by making
5 a series of errors that, although individually might not significantly affect the results of an
6 appraisal, in the aggregate affects the credibility of those results.

7 16. USPAP Standards Rule 1-2, states:

8 In developing a real property appraisal, an appraiser must:

9 (a) identify the client and other intended users; [footnote omitted]

10 (b) identify the intended use of the appraiser's opinions and conclusions; [footnote
11 omitted]

12 (c) identify the type and definition of value, and, if the value opinion to be developed
13 is market value, ascertain whether the value is to be the most probable price:

14 (i) in terms of cash; or

15 (ii) in terms of financial arrangements equivalent to cash; or

16 (iii) in other precisely defined terms; and

17 (iv) if the opinion of value is to be based on non-market financing or financing with
18 unusual conditions or incentives, the terms of such financing must be clearly identified and the
19 appraiser's opinion of their contributions to or negative influence on value must be developed by
20 analysis of relevant market data;

21 (d) identify the effective date of the appraiser's opinions and conclusions; [footnote
22 omitted]

23 (e) identify the characteristics of the property that are relevant to the type and
24 definition of value and intended use of the appraisal, [footnote omitted] including:

25 (i) its location and physical, legal, and economic attributes;

26 (ii) the real property interest to be valued;

27 (iii) any personal property, trade fixtures, or intangible items that are not real property
28 but are included in the appraisal;

- 1 (iv) any known easements, restrictions, encumbrances, leases, reservations, covenants,
2 contracts, declarations, special assessments, ordinances, or other items of a similar nature; and
3 (v) whether the subject property is a fractional interest, physical segment, or partial
4 holding;
5 (f) identify any extraordinary assumptions necessary in the assignment;
6 (g) identify any hypothetical conditions necessary in the assignment; and
7 (h) determine the scope of work necessary to produce credible assignment results in
8 accordance with the SCOPE OF WORK RULE. [footnote omitted]

9 17. USPAP Standards Rule 1-4 states:

10 In developing a real property appraisal, an appraiser must collect, verify, and analyze all
11 information necessary for credible assignment results.

12 (a) When a sales comparison approach is necessary for credible assignment results, an
13 appraiser must analyze such comparable sales data as are available to indicate a value conclusion.

14 (b) When a cost approach is necessary for credible assignment results, an appraiser
15 must:

16 (i) develop an opinion of site value by an appropriate appraisal method or technique;

17 (ii) analyze such comparable cost data as are available to estimate the cost new of the
18 improvements (if any); and

19 (iii) analyze such comparable data as are available to estimate the difference between
20 the cost new and the present worth of the improvements (accrued depreciation).

21 (c) When an income approach is necessary for credible assignment results, an
22 appraiser must:

23 (i) analyze such comparable rental data as are available and/or the potential earnings
24 capacity of the property to estimate the gross income potential of the property;

25 (ii) analyze such comparable operating expense data as are available to estimate
26 the operating expenses of the property;

27 (iii) analyze such comparable data as are available to estimate rates of capitalization
28 and/or rates of discount; and

1 (iv) base projections of future rent and/or income potential and expenses on reasonably
2 clear and appropriate evidence. [footnote omitted]

3 (d) When developing an opinion of the value of a leased fee estate or a leasehold
4 estate, an appraiser must analyze the effect on value, if any, of the terms and conditions of the
5 lease(s).

6 (e) When analyzing the assemblage of the various estates or component parts of a
7 property, an appraiser must analyze the effect on value, if any, of the assemblage. An appraiser
8 must refrain from valuing the whole solely by adding together the individual values of the various
9 estates or component parts.

10 (f) When analyzing anticipated public or private improvements, located on or off the
11 site, an appraiser must analyze the effect on value, if any, of such anticipated improvements to the
12 extent they are reflected in market actions.

13 (g) When personal property, trade fixtures, or intangible items are included in the
14 appraisal, the appraiser must analyze the effect on value of such non-real property items.

15 18. USPAP Standards Rule 2, states:

16 In reporting the results of a real property appraisal, an appraiser must communicate each
17 analysis, opinion, and conclusion in a manner that is not misleading. [footnote omitted]

18 19. USPAP Standards Rule 2-1, states:

19 Each written or oral real property appraisal report must:

20 (a) clearly and accurately set forth the appraisal in a manner that will not be
21 misleading;

22 (b) contain sufficient information to enable the intended users of the appraisal to
23 understand the report properly; and

24 (c) clearly and accurately disclose all assumptions, extraordinary assumptions,
25 hypothetical conditions, and limiting conditions used in the assignment.

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1 20. USPAP Standards Rule 2-2 states:

2 Each written real property appraisal report must be prepared under one of the following
3 three options and prominently state which option is used: Self-Contained Appraisal Report,
4 Summary Appraisal Report, or Restricted Use Appraisal Report. [footnote omitted]

5
6 (b) The content of a Summary Appraisal Report must be consistent with the intended
7 use of the appraisal and, at a minimum:

8 (i) state the identity of the client and any intended users, by name or type; [footnote
9 omitted]

10 (ii) state the intended use of the appraisal; [footnote omitted]

11 (iii) summarize information sufficient to identify the real estate involved in the
12 appraisal, including the physical and economic property characteristics relevant to the
13 assignment; [footnote omitted]

14 (iv) state the real property interest appraised;

15 (v) state the type and definition of value and cite the source of the definition;

16 (vi) state the effective date of the appraisal and the date of the report; [footnote
17 omitted]

18 (vii) summarize the scope of work used to develop the appraisal; [footnote omitted]

19 (viii) summarize the information analyzed, the appraisal methods and techniques
20 employed, and the reasoning that supports the analyses, opinions, and conclusions; exclusion of
21 the sales comparison approach, cost approach, or income approach must be explained;

22 (ix) state the use of the real estate existing as of the date of value and the use of the real
23 estate reflected in the appraisal; and, when an opinion of highest and best use was developed by
24 the appraiser, summarize the support and rationale for that opinion;

25 (x) clearly and conspicuously:

26 state all extraordinary assumptions and hypothetical conditions; and

27 state that their use might have affected the assignment results; and

28 (xi) include a signed certification in accordance with Standards Rule 2-3.

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21. USPAP Standard 3 states:

In developing an appraisal review assignment, an appraiser acting as a reviewer must identify the problem to be solved, determine the scope of work necessary to solve the problem, and correctly complete research and analyses necessary to produce a credible appraisal review. In reporting the results of an appraisal review assignment, an appraiser acting as a reviewer must communicate each analysis, opinion, and conclusion in a manner that is not misleading.

22. USPAP Standards Rule 3-1 states:

In developing an appraisal review, the reviewer must:

- (a) be aware of, understand, and correctly employ those methods and techniques that are necessary to produce a credible appraisal review;
- (b) not commit a substantial error of omission or commission that significantly affects an appraisal review; and
- (c) not render appraisal review services in a careless or negligent manner, such as making a series of errors that, although individually might not significantly affect the results of an appraisal review, in the aggregate affects the credibility of those results.

23. USPAP Standards Rule 3-2 states:

In developing an appraisal review, the reviewer must:

- (a) identify the client and other intended users;
- (b) identify the intended use of the reviewer's opinions and conclusions;
- (c) identify the purpose of the appraisal review, including whether the assignment includes the development of the reviewer's own opinion of value, review opinion or real property appraisal consulting conclusion related to the work under review;
- (d) identify the work under review and the characteristics of that work which are relevant to the intended use and purpose of the appraisal review, including:
 - (i) any ownership interest in the property that is the subject of the work under review;
 - (ii) the date of the work under review and the effective date of the opinions or conclusions in the work under review;

1 (iii) the appraiser(s) who completed the work under review, unless the identity is withheld
2 by the client; and

3 (iv) the physical, legal, and economic characteristics of the property, properties, property
4 type(s), or market area in the work under review.

5 (e) identify the effective date of the reviewer's opinions and conclusions;

6 (f) identify any extraordinary assumptions necessary in the review assignment;

7 (g) identify any hypothetical conditions necessary in the review assignment; and

8 (h) determine the scope of work necessary to produce credible assignment results in
9 accordance with the SCOPE OF WORK RULE.

10 24. USPAP Standards Rule 3-3 states:

11 In developing an appraisal review, a reviewer must apply the appraisal review methods and
12 techniques that are necessary for credible assignment results.

13 (a) When necessary for credible assignment results in the review of analyses, opinions, and
14 conclusions, the reviewer must:

15 (i) develop an opinion as to whether the analyses are appropriate within the context of the
16 requirements applicable to that work;

17 (ii) develop an opinion as to whether the opinions and conclusions are credible within the
18 context of the requirements applicable to that work; and

19 (iii) develop the reasons for any disagreement.

20 (b) When necessary for credible assignment results in the review of a report, the reviewer
21 must:

22 (i) develop an opinion as to whether the report is appropriate and not misleading within the
23 context of the requirements applicable to that work; and

24 (ii) develop the reasons for any disagreement.

25 (c) When the scope of work includes the reviewer developing his or her own opinion of
26 value, review opinion, or real property appraisal consulting conclusion, the reviewer must comply
27 with the Standard applicable to the development of that opinion.

28 (i) The requirements of STANDARDS 1, 6, 7, and/or 9 apply to the reviewer's opinion of

1 value for the property that is the subject of the appraisal review assignment.

2 (ii) The requirements of STANDARD 3 apply to the reviewer's opinion of quality for the
3 work that is the subject of the appraisal review assignment.

4 (iii) The requirements of STANDARD 4 apply to the reviewer's analysis, recommendation,
5 or opinion for the consulting problem that is the subject of the appraisal consulting assignment.

6 25. USPAP Standards Rule 3-4 states:

7 Each written or oral Appraisal Review Report must be separate from the work under review
8 and must:

9 (a) clearly and accurately set forth the appraisal review in a manner that will not be
10 misleading;

11 (b) contain sufficient information to enable the intended users of the appraisal review to
12 understand the report properly; and

13 (c) clearly and accurately disclose all assumptions, extraordinary assumptions, hypothetical
14 conditions, and limiting conditions used in the assignment.

15 26. USPAP Standards Rule 3-5 states:

16 The content of an Appraisal Review Report must be consistent with the intended use of the
17 appraisal review and, at a minimum:

18 (a) state the identity of the client and any intended users, by name or type;

19 (b) state the intended use of the appraisal review;

20 (c) state the purpose of the appraisal review;

21 (d) state information sufficient to identify:

22 (i) the work under review, including any ownership interest in the property that is the
23 subject of the work under review;

24 (ii) the date of the work under review;

25 (iii) the effective date of the opinions or conclusions in the work under review; and

26 (iv) the appraiser(s) who completed the work under review, unless the identity is withheld
27 by the client.

28 (e) state the effective date of the appraisal review;

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(f) clearly and conspicuously:

- state all extraordinary assumptions and hypothetical conditions; and
- state that their use might have affected the assignment results.

(g) state the scope of work used to develop the appraisal review;

(h) state the reviewer’s opinions and conclusions about the work under review, including the reasons for any disagreement;

(i) when the scope of work includes the reviewer’s development of an opinion of value, review opinion, or real property appraisal consulting conclusion related to the work under review, the reviewer must:

(i) state which information, analyses, opinions, and conclusions in the work under review that the reviewer accepted as credible and used in developing the reviewer’s opinion and conclusions;

(ii) at a minimum, summarize any additional information relied on and the reasoning for the reviewer’s opinion of value, review opinion, or real property appraisal consulting conclusion related to the work under review;

(iii) clearly and conspicuously:

- state all extraordinary assumptions and hypothetical conditions connected with the reviewer’s opinion of value, review opinion, or real property appraisal consulting conclusion related to the work under review; and
- state that their use might have affected the assignment results.

27. USPAP Standards Rule 3-6 states:

Each written Appraisal Review Report must contain a signed certification that is similar in content to the following form:

I certify that, to the best of my knowledge and belief:

— the statements of fact contained in this report are true and correct.

— the reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.

1 — I have no (or the specified) present or prospective interest in the property that is the
2 subject of the work under review and no (or the specified) personal interest with respect to the
3 parties involved.

4 — I have no bias with respect to the property that is the subject of the work under review or
5 to the parties involved with this assignment.

6 — my engagement in this assignment was not contingent upon developing or reporting
7 predetermined results.

8 — my compensation is not contingent on an action or event resulting from the analyses,
9 opinions, or conclusions in this review or from its use.

10 — my compensation for completing this assignment is not contingent upon the
11 development or reporting of predetermined assignment results or assignment results that favors
12 the cause of the client, the attainment of a stipulated result, or the occurrence of a subsequent
13 event directly related to the intended use of this appraisal review.

14 — my analyses, opinions, and conclusions were developed and this review report was
15 prepared in conformity with the Uniform Standards of Professional Appraisal Practice.

16 — I have (or have not) made a personal inspection of the subject of the work under review.
17 (If more than one person signs this certification, the certification must clearly specify which
18 individuals did and which individuals did not make a personal inspection of the subject of the
19 work under review.) (For reviews of a business or intangible asset appraisal assignment, the
20 inspection portion of the certification is not applicable.)

21 — no one provided significant appraisal, appraisal review, or appraisal consulting
22 assistance to the person signing this certification. (If there are exceptions, the name of each
23 individual(s) providing appraisal, appraisal review, or appraisal consulting assistance must be
24 stated.)

25 28. USPAP Standards Rule 3-7 states:

26 To the extent that it is both possible and appropriate, an oral Appraisal Review Report must
27 address the substantive matters set forth in Standards Rule 3-5.

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1 29. USPAP Ethics Rule, states:

2 An appraiser must promote and preserve the public trust inherent in appraisal practice by
3 observing the highest standards of professional ethics.

4 An appraiser must comply with USPAP when obligated by law or regulation, or by
5 agreement with the client or intended users. In addition to these requirements, an individual
6 should comply any time that individual represents that he or she is performing the service as an
7 appraiser.

8 Conduct:

9 An appraiser must perform assignments with impartiality, objectivity, and
10 independence, and without accommodation of personal interests.

11 An appraiser:

- 12 • must not perform an assignment with bias;
- 13 • must not advocate the cause or interest of any party or issue;
- 14 • must not accept an assignment that includes the reporting of predetermined
15 opinions and conclusions;
- 16 • must not misrepresent his or her role when providing valuation services that are
17 outside of appraisal practice;
- 18 • must not communicate assignment results with the intent to mislead or to defraud;
- 19 • must not use or communicate a report that is known by the appraiser to be
20 misleading or fraudulent;
- 21 • must not knowingly permit an employee or other person to communicate a
22 misleading or fraudulent report;
- 23 • must not use or rely on unsupported conclusions relating to characteristics such
24 as race, color, religion, national origin, gender, marital status, familial status, age,
25 receipt of public assistance income, handicap, or an unsupported conclusion that
26 homogeneity of such characteristics is necessary to maximize value;
- 27 • must not engage in criminal conduct; and
- 28 • must not perform an assignment in a grossly negligent manner.

1 If known prior to accepting an assignment, and/or if discovered at any time during the
2 assignment, an appraiser must disclose to the client, and in the subsequent report certification:

- 3 • any current or prospective interest in the subject property or parties involved; and
- 4 • any services regarding the subject property performed by the appraiser within
5 the three year period immediately preceding acceptance of the assignment, as an
6 appraiser or in any other capacity.

7 Management:

8 An appraiser must disclose that he or she paid a fee or commission, or gave a thing of
9 value in connection with the procurement of an assignment.

10 An appraiser must not accept an assignment, or have a compensation arrangement
11 for an assignment, that is contingent on any of the following:

- 12 1. the reporting of a predetermined result (e.g., opinion of value);
- 13 2. a direction in assignment results that favors the cause of the client;
- 14 3. the amount of a value opinion;
- 15 4. the attainment of a stipulated result (e.g., that the loan closes, or taxes are reduced);

16 or

17 5. the occurrence of a subsequent event directly related to the appraiser's opinions
18 and specific to the assignment's purpose.

19 An appraiser must not advertise for or solicit assignments in a manner that is false,
20 misleading, or exaggerated.

21 An appraiser must affix, or authorize the use of, his or her signature to certify recognition
22 and acceptance of his or her USPAP responsibilities in an appraisal, appraisal review, or
23 appraisal consulting assignment (see Standards Rules 2-3, 3-6, 5-3, 6-9, 8-3, and 10-3). An
24 appraiser may authorize the use of his or her signature only on an assignment-by-assignment basis.

25 An appraiser must not affix the signature of another appraiser without his or her consent.

26 Confidentiality:

27 An appraiser must protect the confidential nature of the appraiser-client relationship.
28

1 An appraiser must act in good faith with regard to the legitimate interests of the client in
2 the use of confidential information and in the communication of assignment results.

3 An appraiser must be aware of, and comply with, all confidentiality and privacy laws and
4 regulations applicable in an assignment.

5 An appraiser must not disclose: (1) confidential information; or (2) assignment results to
6 anyone other than:

- 7 • the client;
- 8 • persons specifically authorized by the client;
- 9 • state appraiser regulatory agencies;
- 10 • third parties as may be authorized by due process of law; or
- 11 • a duly authorized professional peer review committee except when such
12 disclosure to a committee would violate applicable law or regulation.

13 A member of a duly authorized professional peer review committee must not disclose
14 confidential information presented to the committee.

15 **Record Keeping:**

16 An appraiser must prepare a workfile for each appraisal, appraisal review, or appraisal
17 consulting assignment. A workfile must be in existence prior to the issuance of a written or
18 oral report. A written summary of an oral report must be added to the workfile within a
19 reasonable time after the issuance of the oral report.

20 The workfile must include:

- 21 • the name of the client and the identity, by name or type, of any other intended users;
- 22 • true copies of any written reports, documented on any type of media (A true copy is
23 a replica of the report transmitted to the client. A photocopy or an electronic copy of
24 the entire signed report transmitted to the client satisfies the requirement of a true
25 copy.);
- 26 • summaries of any oral reports or testimony, or a transcript of testimony,
27 including the appraiser's signed and dated certification; and
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- all other data, information, and documentation necessary to support the appraiser's opinions and conclusions and to show compliance with USPAP, or references to the location(s) of such other documentation.

An appraiser must retain the workfile for a period of at least five years after preparation or at least two years after final disposition of any judicial proceeding in which the appraiser provided testimony related to the assignment, whichever period expires last.

An appraiser must have custody of his or her workfile, or make appropriate workfile retention, access, and retrieval arrangements with the party having custody of the workfile.

An appraiser having custody of a workfile must allow other appraisers with workfile obligations related to an assignment appropriate access and retrieval for the purpose of:

- submission to state appraiser regulatory agencies;
- compliance with due process of law;
- submission to a duly authorized professional peer review committee; or
- compliance with retrieval arrangements.

2012-2013 USPAP²

30. USPAP Standards Rule 1, states:

In developing a real property appraisal, an appraiser must identify the problem to be solved, determine the scope of work necessary to solve the problem, and correctly complete research and analyses necessary to produce a credible appraisal.

31. USPAP Standards Rule 1-1, states:

In developing a real property appraisal, an appraiser must:

- (a) be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal;
- (b) not commit a substantial error of omission or commission that significantly affects an appraisal;

and

² 2012-2013 USPAP applies to appraisals performed between January 1, 2012 and December 31, 2013, and applies to the first, fourth and fifth causes for discipline below.

1 (c) not render appraisal services in a careless or negligent manner, such as by making
2 a series of errors that, although individually might not significantly affect the results of an
3 appraisal, in the aggregate affects the credibility of those results.

4 32. USPAP Standards Rule 1-2, states:

5 In developing a real property appraisal, an appraiser must:

6 (a) identify the client and other intended users;
7 (b) identify the intended use of the appraiser's opinions and conclusions;
8 (c) identify the type and definition of value, and, if the value opinion to be developed
9 is market value, ascertain whether the value is to be the most probable price:

10 (i) in terms of cash; or
11 (ii) in terms of financial arrangements equivalent to cash; or
12 (iii) in other precisely defined terms; and
13 (iv) if the opinion of value is to be based on non-market financing or financing with
14 unusual conditions or incentives, the terms of such financing must be clearly identified and the
15 appraiser's opinion of their contributions to or negative influence on value must be developed by
16 analysis of relevant market data;

17 (d) identify the effective date of the appraiser's opinions and conclusions;
18 (e) identify the characteristics of the property that are relevant to the type and
19 definition of value and intended use of the appraisal, including:

20 (i) its location and physical, legal, and economic attributes;
21 (ii) the real property interest to be valued;
22 (iii) any personal property, trade fixtures, or intangible items that are not real property
23 but are included in the appraisal;

24 (iv) any known easements, restrictions, encumbrances, leases, reservations, covenants,
25 contracts, declarations, special assessments, ordinances, or other items of a similar nature; and

26 (v) whether the subject property is a fractional interest, physical segment, or partial
27 holding;

28 (f) identify any extraordinary assumptions necessary in the assignment;

- 1 (g) identify any hypothetical conditions necessary in the assignment; and
2 (h) determine the scope of work necessary to produce credible assignment results in
3 accordance with the SCOPE OF WORK RULE.

4 33. USPAP Standards Rule 1-3, states:

5 When necessary for credible assignment results in developing a market value opinion, an
6 appraiser must:

7 (a) identify and analyze the effect on use and value of existing land use regulations,
8 reasonable probable modifications of such land use regulations, economic supply and demand, the
9 physical adaptability of the real estate, and market area trends; and

10 (b) develop an opinion of the highest and best use of the real estate.

11 34. USPAP Standards Rule 1-4, states:

12 In developing a real property appraisal, an appraiser must collect, verify, and analyze all
13 information necessary for credible assignment results.

14 (a) When a sales comparison approach is necessary for credible assignment results, an
15 appraiser must analyze such comparable sales data as are available to indicate a value conclusion.

16 (b) When a cost approach is necessary for credible assignment results, an appraiser
17 must:

18 (i) develop an opinion of site value by an appropriate appraisal method or technique;

19 (ii) analyze such comparable cost data as are available to estimate the cost new of the
20 improvements (if any); and

21 (iii) analyze such comparable data as are available to estimate the difference between
22 the cost new and the present worth of the improvements (accrued depreciation).

23 (c) When an income approach is necessary for credible assignment results, an
24 appraiser must:

25 (i) analyze such comparable rental data as are available and/or the potential earnings
26 capacity of the property to estimate the gross income potential of the property;

27 (ii) analyze such comparable operating expense data as are available to estimate the
28 operating expenses of the property;

1 (iii) analyze such comparable data as are available to estimate rates of capitalization
2 and/or rates of discount; and

3 (iv) base projections of future rent and/or income potential and expenses on reasonably
4 clear and appropriate evidence.

5 (d) When developing an opinion of the value of a leased fee estate or a leasehold
6 estate, an appraiser

7 must analyze the effect on value, if any, of the terms and conditions of the lease(s).

8 (e) When analyzing the assemblage of the various estates of component parts of a
9 property, an appraiser must analyze the effect on value, if any, of the assemblage. An appraiser
10 must refrain from valuing the whole solely by adding together the individual values of the various
11 estates or component parts.

12 (f) When analyzing anticipated public or private improvements, located on or off the
13 site, an appraiser must analyze the effect on value, if any, of such anticipated improvements to the
14 extent they are reflected in market actions.

15 (g) When personal property, trade fixtures, or intangible items are included in the
16 appraisal, the appraiser must analyze the effect on value of such non-real property items.

17 35. USPAP Standards Rule 1-6, states:

18 In developing a real property appraisal, an appraiser must:

19 (a) reconcile the quality and quantity of data available and analyzed within the
20 approaches used;

21 and

22 (b) reconcile the applicability and relevance of the approaches, methods and
23 techniques used to arrive at the value conclusion(s).

24 36. USPAP Standards Rule 2, states:

25 In reporting the results of a real property appraisal, an appraiser must communicate each
26 analysis, opinion, and conclusion in a manner that is not misleading.

27 37. USPAP Standards Rule 2-1, states:

28 Each written or oral real property appraisal report must:

1 (a) clearly and accurately set forth the appraisal in a manner that will not be
2 misleading;

3 (b) contain sufficient information to enable the intended users of the appraisal to
4 understand the report properly; and

5 (c) clearly and accurately disclose all assumptions, extraordinary assumptions,
6 hypothetical conditions, and limiting conditions used in the assignment.

7 38. USPAP Standards Rule 2-2, states:

8 Each written real property appraisal report must be prepared under one of the following
9 three options and prominently state which option is used: Self-Contained Appraisal Report,
10 Summary Appraisal Report, or Restricted Use Appraisal report.

11 ...

12 (b) The content of a Summary Appraisal Report must be consistent with the intended
13 use of the appraisal and, at a minimum:

14 (i) state the identity of the client and any intended users, by name or type;

15 (ii) state the intended use of the appraisal;

16 (iii) summarize information sufficient to identify the real estate involved in the
17 appraisal, including the physical and economic property characteristics relevant to the assignment;

18 (iv) state the real property interest appraised;

19 (v) state the type and definition of value and cite the source of the definition;

20 (vi) state the effective date of the appraisal and the date of the report;

21 (vii) summarize the scope of work used to develop the appraisal;

22 (viii) summarize the information analyzed, state the appraisal methods and techniques
23 employed, and the reasoning that supports the analyses, opinions, and conclusions; exclusion of
24 the sales comparison approach, cost approach, or income approach must be explained.

25 (ix) state the use of the real estate existing as of the date of value and the use of the real
26 estate reflected in the appraisal; and, when an opinion of highest and best use was developed by
27 the appraiser, summarize the support and rationale for that opinion;

28 (x) clearly and conspicuously:

- 1 • state all extraordinary assumptions and hypothetical conditions; and
- 2 • state that their use might have affected the assignment results; and
- 3 (xi) include a signed certification in accordance with Standards Rule 2-3.

4
5 39. USPAP Ethics Rule, states:

6 An appraiser must promote and preserve the public trust inherent in appraisal practice by
7 observing the highest standards of professional ethics.

8 An appraiser must comply with USPAP when obligated by law or regulation, or by
9 agreement with the client or intended users. In addition to these requirements, an individual
10 should comply any time that individual represents that he or she is performing the service as an
11 appraiser.

12 Conduct:

13 An appraiser must perform assignments with impartiality, objectivity, and independence,
14 and without accommodation of personal interests.

15 An appraiser:

- 16 • must not perform an assignment with bias;
- 17 • must not advocate the cause or interest of any party or issue;
- 18 • must not accept an assignment that includes the reporting of predetermined opinions and
19 conclusions;
- 20 • must not misrepresent his or her role when providing valuation services that are outside of
21 appraisal practice;
- 22 • must not communicate assignment results with the intent to mislead or to defraud;
- 23 • must not use or communicate a report that is known by the appraiser to be misleading or
24 fraudulent;
- 25 • must not knowingly permit an employee or other person to communicate a misleading or
26 fraudulent report;
- 27 • must not use or rely on unsupported conclusions relating to characteristics such as race,
28 color, religion, national origin, gender, marital status, familial status, age, receipt of public

1 assistance income, handicap, or an unsupported conclusion that homogeneity of such
2 characteristics is necessary to maximize value;

3 • must not engage in criminal conduct;

4 • must not willfully or knowingly violate the requirements of the RECORD KEEPING
5 RULE; and

6 • must not perform an assignment in a grossly negligent manner.

7 If known prior to accepting an assignment, and/or if discovered at any time during the
8 assignment, an appraiser must disclose to the client, and in the subsequent report certification:

9 • any current or prospective interest in the subject property or parties involved; and

10 • any services regarding the subject property performed by the appraiser within the three
11 year period immediately preceding acceptance of the assignment, as an appraiser or in any other
12 capacity.

13 Management:

14 An appraiser must disclose that he or she paid a fee or commission, or gave a thing of value
15 in connection with the procurement of an assignment.

16 An appraiser must not accept an assignment, or have a compensation arrangement for an
17 assignment, that is contingent on any of the following:

18 1. The reporting of a predetermined result (e.g., opinion of value);

19 2. a direction in assignment results that favors the cause of the client;

20 3. the amount of a value opinion;

21 4. the attainment of a stipulated result (e.g., that the loan closes, or taxes are
22 reduced); or

23 5. the occurrence of a subsequent event directly related to the appraiser's opinions
24 and specific to the assignment's purpose.

25 An appraiser must not advertise for or solicit assignments in a manner that is false,
26 misleading, or exaggerated.

27 An appraiser must affix, or authorize the use of, his or her signature to certify recognition
28 and acceptance of his or her USPAP responsibilities in an appraisal, appraisal review, or appraisal

1 consulting assignment (see Standards Rules 2-3, 3-6, 5-3, 6-9, 8-3, and 10-3). An appraiser may
2 authorize the use of his or her signature only on an assignment-by-assignment basis.

3 An appraiser must not affix the signature of another appraiser without his or her consent.

4 Confidentiality:

5 An appraiser must protect the confidential nature of the appraiser-client relationship.

6 An appraiser must act in good faith with regard to the legitimate interests of the client in the
7 use of confidential information and in the communication of assignment results.

8 An appraiser must be aware of, and comply with, all confidentiality and privacy laws and
9 regulations applicable in an assignment.

10 An appraiser must not disclose: (1) confidential information; or (2) assignment results to
11 anyone other than:

- 12 • the client;
- 13 • persons specifically authorized by the client;
- 14 • state appraiser regulatory agencies;
- 15 • third parties as may be authorized by due process of law; or
- 16 • a duly authorized professional peer review committee except when such disclosure to a

17 committee would violate applicable law or regulation.

18 A member of a duly authorized professional peer review committee must not disclose
19 confidential information presented to the committee

20 FIRST CAUSE FOR DISCIPLINE

21 (24587 Guadalupe Street, Carmel, CA)

22 40. On June 28, 2013, Respondent completed a real estate appraisal report for property
23 described as 24587 Guadalupe Street, Carmel, California. Respondent is subject to disciplinary
24 action under Regulation section 3721, subdivisions (a)(6) and (a)(7), by and through his violations
25 of Regulation sections 3701, 3702 subdivisions (a)(1) and (a)(3), and the following USPAP
26 violations:

27 a. Respondent misreported the subject's specific zoning classification, zoning
28 description, and zoning compliance. He reported the zoning classification as Residential, when it

1 was actually Medium Density Residential, two dwelling units per acre, and located in a Coastal
2 Zone, in violation of Standard Rule (SR) 1-2(e)(i) and SR 2-2(b)(iii).

3 b. Respondent developed and reported a Sales Comparison Approach that was not
4 credible, in violation of SR 1-4(a) and SR 2-2(b)(viii), as follows:

- 5 1. Misrepresented the quality and condition of Comparable Sale One;
- 6 2. Misrepresented the quality of Comparable Sales Two and Three;
- 7 3. Failed to report and analyze external influences for Comparable Sales One and
8 Two;
- 9 4. Failed to utilize sales that were more similar in location, condition and quality;
10 and
- 11 5. Failed to support and or apply adjustment amounts for differences between the
12 subject and the comparable sales.

13 c. Respondent developed and reported a Cost Approach that was not credible, in
14 violation of SR 1-4(b)(i) and SR 2-2(b)(viii), as follows:

- 15 1. Failed to independently develop the Cost Approach when, by his own
16 admission, he subtracted the depreciated cost new from the opined Sales Comparison Approach to
17 value, and reported the resulting sum as the opinion of site value; and
- 18 2. Failed to support the opinion of site value (\$675,000.00), which was reported as
19 being developed using abstraction. Two MLS (Multiple Listing Service) listed sales of improved
20 parcels of similar size as the subject parcel, located within .10 miles from the subject, sold for
21 \$718,000.00 and \$625,000.00.

22 d. As alleged in the charges listed in paragraphs 40.a. through 40.c. above, Respondent
23 failed to correctly employ those recognized methods and techniques that are necessary to produce
24 a credible appraisal, in violation of SR 1-1(a).

25 e. As alleged in the charges listed in paragraphs 40.a. through 40.c. above, Respondent
26 committed substantial errors of omission or commission that significantly affected the appraisal,
27 in violation of SR 1-2(b).

28

1 f. As alleged in the charges listed in paragraphs 40.a. through 40.c. above, Respondent
2 failed to clearly and accurately set forth the appraisal in a manner that would not be misleading, in
3 violation of SR 2-1(a).

4 g. As alleged in the charges listed in paragraphs 40.a. through 40.c. above, Respondent
5 failed to provide sufficient information to enable the intended user of the report to understand it
6 properly, in violation of SR 2-1(b).

7 h. As alleged in the charges listed in paragraphs 40.a. through 40.c. above, Respondent
8 communicated a misleading appraisal report and performed the appraisal assignment in a grossly
9 negligent manner, in violation of the Conduct section of the Ethics Rule.

10 **SECOND CAUSE FOR DISCIPLINE**

11 (17121 Tarpey Road, Royal Oaks, CA – May 6, 2010)

12 41. On May 6, 2010, Respondent completed the first of four real estate appraisal reports
13 for property described as 17121 Tarpey Road, Royal Oaks, California, for the California Coastal
14 Rural Development Corporation (identified in the appraisal report as “Cal Coastal”) and the Farm
15 Service Agency. The property was a ten acre parcel that contained a manufactured home, garage,
16 eight greenhouses, crops and two PG&E transmission towers. Respondent is subject to
17 disciplinary action under Regulation section 3721, subdivisions (a)(6) and (a)(7), by and through
18 his violations of Regulation sections 3701, 3702 subdivisions (a)(1) and (a)(3), and the following
19 USPAP violations:

20 a. Respondent failed to accurately report physical and economic characteristics of the
21 subject property when he failed to accurately report the real property improvements of the subject
22 property, in violation of SR 1-2(e)(i) and SR 2-2(b)(iii).

23 b. Respondent failed to accurately report the subject’s locational characteristics when he
24 reported that there was no noticeable agricultural production in the immediate area of the subject.
25 As agricultural producing sites were located directly to the north, east and south of the subject
26 property, Respondent violated SR 1-2(e)(i) and SR 2-2(b)(iii).

27 c. Respondent reported no known easements for the subject site, when the plat map in
28 the appraisal documented a utility easement, and even Respondent’s appraisal report included

1 photographic documentation of the utility towers located on the subject site, in violation of SR 1-
2 2(e)(iv) and SR 2-2(b)(iii).

3 d. Respondent reported that the appraisal was not subject to any extraordinary
4 assumptions. However, he utilized an unstated extraordinary assumption when he reported “that
5 all necessary utilities are available to the site in sufficient quantity and capacity to support its
6 current use.” Respondent violated SR 1-2(f) and SR 2-2(b)(x).

7 e. Respondent failed to support the reported market conditions when he reported that
8 property values were still declining, despite published market trend data demonstrating stable
9 median sales prices in the subject’s market area, in violation of SR 1-3(a) and SR 2-2(b)(iii).

10 f. Respondent developed and reported a Sales Comparison Approach that was
11 misleading and not credible, in violation of SR 1-4(a) and SR 2-2(b)(viii), as follows:

- 12 1. Failed to analyze and report the difference between all of the comparable sales’
13 open market transactions compared to the liquidation valuation of the subject;
- 14 2. Failed to analyze and report the differences between the real property
15 improvements located on Comparable Sale Two and the subject’s real property improvements;
- 16 3. Failed to report and analyze a fire that occurred at Comparable Sale Two, which
17 occurred two months prior to the sale date;
- 18 4. Falsely reported that Comparable Sale Three was improved with a single family
19 residence, when it was a vacant site;
- 20 5. Falsely reported that Comparable Sales Two and Three had existing crops as of
21 their respective sale transaction dates; and
- 22 6. Failed to support any of the opined adjustment amounts made for differences
23 between the subject and the comparable sales.

24 g. Respondent developed and reported an Income Approach to value that was
25 misleading and not credible, in violation of SR 1-4(c)(i) and SR 2-2(b)(viii), as follows:

- 26 1. Falsely reported that he had access to lease information for Rental Comparable
27 One, when he did not;
- 28 2. Falsely reported the contract rent for Rental Comparable One;

1 3. Falsely reported the contract rent for Rental Comparable Two as if it included
2 three parcels, when he only had lease information for two parcels;

3 4. Falsely reported the contract rent amount for Rental Comparable Two when the
4 amount reported was inconsistent with the lease information cited;

5 5. Failed to report to the intended user that the lease information he was relying on
6 for Rental Comparable Two was a three year lease that had expired over 1.5 years prior to the
7 subject's appraisal date;

8 6. Failed to report to the intended user that the lease terms for Rental Comparable
9 Three had ended on November 30, 2008, but instead reported that this lease included an option to
10 extend; and

11 7. Falsely depicted that the contract rent amount for Rental Comparable Three was
12 credible when the lease had expired over 1.5 years prior to the subject's appraisal date.

13 h. Respondent failed to adequately reconcile the quality and quantity of data available
14 within the Income Approach to value when he failed to report to the intended user of the report
15 that the resulting opined value via this developed approach was a Market Value for the subject.
16 The value opinion for the appraisal assignment was Liquidation Value. Respondent violated SR
17 1-6(b) and SR 2-2(b)(viii).

18 i. Respondent failed to adequately reconcile the relevance of the approaches used to
19 arrive at his value conclusion when he failed to reconcile why an opinion of Market Value as
20 reported within the "Projected Gross Income Approach" Income Approach was lower than the
21 Liquidation Value opined within the "Price per Acre" Sales Comparison Approach; Respondent
22 also failed to adequately explain the exclusion of the Cost Approach to value, in violation of SR
23 1-6(b) and SR 2-2(b)(viii).

24 j. As alleged in the charges listed in paragraphs 41.a. through 41.i. above, Respondent
25 failed to correctly employ those recognized methods and techniques that are necessary to produce
26 a credible appraisal, in violation of SR 1-1(a).

27
28

1 k. As alleged in the charges listed in paragraphs 41.a. through 41.i. above, Respondent
2 committed substantial errors of omission or commission that significantly affected the appraisal,
3 in violation of SR 1-2(b).

4 l. As alleged in the charges listed in paragraphs 41.a. through 41.i. above, Respondent
5 failed to clearly and accurately set forth the appraisal in a manner that would not be misleading, in
6 violation of SR 2-1(a).

7 m. As alleged in the charges listed in paragraphs 41.a. through 41.i. above, Respondent
8 failed to provide sufficient information to enable the intended user of the report to understand it
9 properly, in violation of SR 2-1(b).

10 n. As alleged in the charges listed in paragraphs 41.a. through 41.i. above, Respondent
11 knowingly communicated a misleading appraisal report and performed the appraisal assignment
12 in a grossly negligent manner, in violation of the Conduct section of the Ethics Rule.

13 THIRD CAUSE FOR DISCIPLINE

14 (17121 Tarpay Road, Royal Oaks, CA – July 29, 2011)

15 42. On July 29, 2011, Respondent completed the second of four real estate appraisal
16 reports for property described as 17121 Tarpey Road, Royal Oaks, California, for the California
17 Coastal Rural Development Corporation (identified in the appraisal report as “Cal Coastal”) and
18 the Farm Service Agency. The property was a ten acre parcel that contained a manufactured
19 home, garage, eight greenhouses, crops and two PG&E transmission towers. Respondent is
20 subject to disciplinary action under Regulation section 3721, subdivisions (a)(6) and (a)(7), by
21 and through his violations of Regulation sections 3701, 3702 subdivisions (a)(1) and (a)(3), and
22 the following USPAP violations:

23 a. Respondent failed to accurately report physical and economic characteristics of the
24 subject property when he failed to accurately report the real property improvements of the subject
25 property. Specifically, he reported the garage area as if it was the single-family residence and
26 reported that the manufactured home was personal property, whereas the manufactured home was
27 the legally established single-family residence, in violation of SR 1-2(e)(i) and SR 2-2(b)(iii).

28

1 b. Respondent failed to accurately report the subject's locational characteristics when he
2 reported that there was no noticeable agricultural production in the immediate area of the subject,
3 whereas agricultural producing sites were located directly to the north, east and south of the
4 subject property, in violation of SR 1-2(e)(i) and SR 2-2(b)(iii).

5 c. Respondent reported no known easements for the subject site when the plat map in
6 the appraisal documented a utility easement; additionally, Respondent's appraisal report included
7 photographic documentation of transmission towers located on the subject site. Respondent
8 violated SR 1-2(e)(iv) and SR 2-2(b)(iii).

9 d. Respondent developed and reported a Sales Comparison Approach that was
10 misleading and not credible, in violation of SR 1-4(a) and SR 2-2(b)(iii), as follows:

11 1. Falsely depicted that the comparable sales had the same potential agricultural
12 use as the subject by opining cultivation acreage figures for every comparable sale. He also failed
13 to report to the intended user that none of the reported comparable sales had a primarily
14 agricultural use, or potential of agricultural use;

15 2. Failed to analyze and report that Comparable Sale One had two scenic
16 easements and failed to report that access to the road was via an easement across an adjacent
17 parcel;

18 3. Falsely reported that Comparable Sale Two was only improved with one single
19 family residence when there were three single family residences on the site;

20 4. Falsely reported that Comparable Sale Three was for the transfer of one parcel
21 when the transfer included two parcels;

22 5. Failed to report that the single family residential improvements for Comparable
23 Sale Four were just under four times larger than the subject;

24 6. Failed to report that Comparable Sale Four was located in a gated residential
25 community; and

26 7. Failed to support any of the opined adjustment amounts made for differences
27 between the subject and the comparable sales.
28

1 e. Respondent failed to adequately reconcile the quality and quantity of data available
2 within the Sales Comparison Approach to value when he failed to report to the intended user of
3 the report that none of the comparable sales had the same highest and best use as the subject
4 property, in violation of SR 1-6(a) and SR 2-2(b)(viii).

5 f. As alleged in the charges listed in paragraphs 42.a. through 42.e. above, Respondent
6 failed to correctly employ those recognized methods and techniques that are necessary to produce
7 a credible appraisal, in violation of SR 1-1(a).

8 g. As alleged in the charges listed in paragraphs 42.a. through 42.e. above, Respondent
9 committed substantial errors of omission or commission that significantly affected the appraisal,
10 and reported an opinion of exposure time for the subject when his opinion was a Liquidation
11 Value, in violation of SR 1-2(b).

12 h. As alleged in the charges listed in paragraphs 42.a. through 42.e. above, Respondent
13 failed to clearly and accurately set forth the appraisal in a manner that would not be misleading, in
14 violation of SR 2-1(a).

15 i. As alleged in the charges listed in paragraphs 42.a. through 42.e. above, Respondent
16 failed to provide sufficient information to enable the intended user of the report to understand it
17 properly, in violation of SR 2-1(b).

18 j. As alleged in the charges listed in paragraphs 42.a. through 42.e. above, Respondent
19 knowingly communicated a misleading appraisal report and performed the appraisal assignment
20 in a grossly negligent manner, in violation of the Conduct section of the Ethics Rule.

21 FOURTH CAUSE FOR DISCIPLINE

22 (17121 Tarpay Road, Royal Oaks, CA – June 21, 2012)

23 43. On June 21, 2011, Respondent completed a review appraisal,³ the third of four real
24 estate appraisal reports for property described as 17121 Tarpey Road, Royal Oaks, California, for
25 the California Coastal Rural Development Corporation (identified in the appraisal report as “Cal
26 Coastal”) and the Farm Service Agency. The property was a ten acre parcel that contained a

27 _____
28 ³ Respondent entitled his review appraisal as a “Rebuttal and Supplement.”

1 manufactured home, garage, eight greenhouses, crops and two PG&E transmission towers.
2 Respondent is subject to disciplinary action under Regulation section 3721, subdivisions (a)(6)
3 and (a)(7), by and through his violations of Regulation sections 3701, 3702 subdivisions (a)(1)
4 and (a)(3), and the following violations:

5 a. Respondent failed to comply with the minimum standards of conduct and
6 performance as a licensed real estate appraiser when he failed to perform an appraisal review in
7 compliance with USPAP, in violation of Business and Professions Code section 11319.

8 b. Respondent did not conform to and observe the USPAP, which is required by every
9 holder of a real estate appraisal license.

10 c. Respondent accepted an assignment to review the work of another appraiser, and then
11 communicated opinions about the quality of another appraiser's work as a direct result of this
12 assignment. By his own admission, Respondent tried to avoid his minimum requirements of a
13 review appraisal by calling this written communication a "rebuttal and supplement" in violation
14 of SR 3 and the Conduct section of the Ethics Rule.

15 FIFTH CAUSE FOR DISCIPLINE

16 (17121 Tarpay Road, Royal Oaks, CA – December 24, 2013)

17 44. On December 24, 2013, Respondent completed the fourth of four real estate appraisal
18 reports for property described as 17121 Tarpey Road, Royal Oaks, California, at the request of the
19 California Coastal Rural Development Corporation (but with a listed intended user identified as
20 Anastassiou & Associates). The property was a ten acre parcel that contained a manufactured
21 home, garage, eight greenhouses, crops and two PG&E transmission towers. Respondent is
22 subject to disciplinary action under Regulation section 3721, subdivisions (a)(6) and (a)(7), by
23 and through his violations of Regulation sections 3701, 3702 subdivisions (a)(1) and (a)(3), and
24 the following USPAP violations:

25 a. Respondent failed to accurately report physical and economic characteristics of the
26 subject property when he failed to accurately report the real property improvements of the subject
27 property, in violation of SR 1-2(e)(i) and SR 2-2(b)(iii).

28

1 b. Respondent failed to accurately report the subject's locational characteristics when he
2 reported that there was no noticeable agricultural production in the immediate area of the subject,
3 whereas agricultural producing sites were located directly to the north, east and south of the
4 subject property, in violation of SR 1-2(e)(i) and SR 2-2(b)(iii).

5 c. Respondent reported no known easements for the subject site when the plat map in
6 the appraisal documented a utility easement, and Respondent performed a personal inspection of
7 the subject site and acknowledged that he saw the transmission towers on the site, in violation of
8 SR 1-2(e)(iv) and SR 2-2(b)(iii).

9 d. Respondent developed and reported a Sales Comparison Approach that was
10 misleading and not credible, in violation of SR 1-4(a) and SR 2-2(b)(viii), as follows:

11 1. Failed to verify the terms of Comparable Sale One's sale when he relied upon
12 unverified information that his transaction was not an arm's length transaction and then applied
13 an unsupported 50% positive adjustment as a result of his reliance upon this unverified
14 information;

15 2. Failed to report that Comparable Sale Two's transfer included a previously
16 established contractual agreement to sell apples from this established orchard to a national cider
17 manufacturer, which by Respondent's own admission may have added value to the property;

18 3. Reported two distinctly different properties as Comparable Sale Three. Within
19 the narrative reporting of Comparable Sale Three, he reported one property address, but then
20 reported different property within the sales comparison grid;

21 4. Misreported the site size for Comparable Sale Three in the sales comparison
22 grid, which resulted in an unsupported site size adjustment;

23 5. Reported a 50% positive unsupported adjustment to Comparable Sale Four for
24 market conditions when by Respondent's own admission the property had been listed too low,
25 had appropriate market exposure, and sold for significantly higher;

26 6. Reported a 30% positive unsupported adjustment to Comparable Sale Four
27 because the improvements were below average condition, while also having reported that the
28 subject's improvements were below average condition; and

1 7. Failed to report support for any of the other opined adjustment amounts made
2 for differences between the subject and the comparable sales.

3 e. As alleged in the charges listed in paragraphs 44.a. through 44.d. above, Respondent
4 failed to correctly employ those recognized methods and techniques that are necessary to produce
5 a credible appraisal, in violation of SR 1-1(a).

6 f. As alleged in the charges listed in paragraphs 44.a. through 44.d. above, Respondent
7 committed substantial errors of omission or commission that significantly affected the appraisal,
8 in violation of SR 1-2(b).

9 g. As alleged in the charges listed in paragraphs 44.a. through 44.d. above, Respondent
10 failed to clearly and accurately set forth the appraisal in a manner that would not be misleading, in
11 violation of SR 2-1(a).

12 h. As alleged in the charges listed in paragraphs 44.a. through 44.d. above, Respondent
13 failed to provide sufficient information to enable the intended user of the report to understand it
14 properly, in violation of SR 2-1(b).

15 i. As alleged in the charges listed in paragraphs 44.a. through 44.d. above, Respondent
16 failed to maintain a workfile that included data, information, and documentation necessary to
17 support the appraiser's opinions and conclusions and to show compliance with USPAP, or
18 references to the location(s) of such other documentation, in violation of the Record Keeping Rule
19 and the Conduct Section of the Ethics Rule.

20
21 PRAYER

22 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
23 and that following the hearing, the Chief of the Bureau of Real Estate Appraisers issue a decision:

24 1. Revoking or suspending Real Estate Appraiser License Number 002051, issued to
25 Frank O. May;

26 2. Ordering Frank O. May to pay the Bureau of Real Estate Appraisers the reasonable
27 costs of the investigation and enforcement of this case, pursuant to Business and Professions Code
28 section 11409;

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3. Ordering Frank O. May to pay the Bureau of Real Estate Appraisers a fine pursuant to Business and Professions Code section 11316; and

4. Taking such other and further action as deemed necessary and proper.

DATED: 5/7/2015

Original Signed
E
ELIZABETH SEATERS
Chief of Enforcement
Bureau of Real Estate Appraisers
Department of Consumer Affairs
State of California
Complainant

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