BEFORE THE
BUREAU OF REAL ESTATE APPRAISERS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the First Amended Accusation Against: **RICHARD P. MONTGOMERY** **1601 North Sepulveda Blvd, Ste. 560** **Manhattan Beach, CA 90266** **Real Estate Appraiser License No. AG022371** Respondent.	Case Nos. C090605-03, C20130115-01 OAH No. 2012020418

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the Bureau Chief, Bureau of Real Estate Appraisers, Department of Consumer Affairs as the Decision and Order in the above entitled matter.

This Decision shall become effective on 10-7-13.

It is so ORDERED 9-6-13.

Original Signed
FOR THE BUREAU OF REAL ESTATE APPRAISERS
DEPARTMENT OF CONSUMER AFFAIRS

KAMALA D. HARRIS
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MARC D. GREENBAUM
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BEFORE THE
BUREAU OF REAL ESTATE APPRAISERS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the First Amended Accusation Against: **RICHARD P. MONTGOMERY** **1601 North Sepulveda Blvd, Ste. 560** **Manhattan Beach, CA 90266** **Real Estate Appraiser License No. AG022371** Respondent.	Case Nos. C090605-03, C20130115-01 OAH No. 2012020418 **STIPULATED SURRENDER OF LICENSE AND ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties in this proceeding that the following matters are true:

PARTIES

1. Elizabeth Seaters is the Chief of Enforcement, Bureau of Real Estate Appraisers, Department of Consumer Affairs (Complainant). She brought this action solely in her official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Gillian E. Friedman, Deputy Attorney General.

2. Richard P. Montgomery (Respondent) is represented in this proceeding by attorney, Scott J. Harris, Esq. whose address is S J Harris Law, 8383 Wilshire Boulevard, Suite 830, Beverly Hills, California 90211.

3. On or about January 1, 1994, the Bureau of Real Estate Appraisers, formerly known as the Office of Real Estate Appraisers issued Real Estate Appraiser License No. AG022371 to Respondent. The Real Estate Appraiser License was in full force and effect at all times relevant to the charges brought in First Amended Accusation Case Numbers C090605-03, C20130115-01and will expire on March 6, 2015, unless renewed.

JURISDICTION

4. First Amended Accusation Case Numbers C090605-03, C20130115-01 was filed before the Bureau Chief, Bureau of Real Estate Appraisers, Department of Consumer Affairs (Bureau Chief) and is currently pending against Respondent. The First Amended Accusation and all other statutorily required documents were properly served on Respondent on July 18, 2013. Respondent timely filed his Notice of Defense contesting the First Amended Accusation. A copy of First Amended Accusation Case Numbers C090605-03, C20130115-01 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in First Amended Accusation Case Numbers C090605-03, C20130115-01. Respondent also has carefully read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of License and Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the First Amended Accusation; the right to be represented by counsel, at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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CULPABILITY

8. Respondent understands that the charges and allegations in First Amended Accusation Case Numbers C090605-03, C20130115-01, if proven at a hearing, constitutes cause for imposing discipline upon his Real Estate Appraiser License.

9. For the purpose of resolving the First Amended Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the First Amended Accusation and that those charges constitute cause for discipline. Respondent hereby gives up his right to contest that cause for discipline exists based on those charges.

10. Respondent understands that by signing this stipulation he enables the Bureau Chief to issue an order accepting the surrender of his Real Estate Appraiser License without further process.

RESERVATION

11. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Bureau Chief or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

12. This stipulation shall be subject to approval by the Bureau Chief or the Bureau Chief's designee. Respondent understands and agrees that counsel for Complainant and the staff of the Bureau of Real Estate Appraisers may communicate directly with the Bureau Chief and staff regarding this stipulation and surrender, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Bureau Chief considers and acts upon it. If the Bureau Chief fails to adopt this stipulation as the Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Bureau Chief shall not be disqualified from further action by having considered this matter.

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13. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Surrender of License and Order, including Portable Document Format (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

14. This Stipulated Surrender of License and Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

15. In consideration of the foregoing admissions and stipulations, the parties agree that the Bureau Chief may, without further notice or formal proceeding, issue and enter the following Order:

ORDER

IT IS HEREBY ORDERED that Real Estate Appraiser License No. AG022371, issued to Respondent Richard P. Montgomery, is surrendered and accepted by the Bureau Chief, Bureau of Real Estate Appraisers, Department of Consumer Affairs.

1. The surrender of Respondent's Real Estate Appraiser License and the acceptance of the surrendered license by the Bureau Chief shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Bureau of Real Estate Appraisers.

2. Respondent shall lose all rights and privileges as a Real Estate Appraiser in California as of the effective date of the Bureau Chief's Decision and Order.

3. Respondent shall cause to be delivered to the Bureau his license certificate on or before the effective date of the Decision and Order.

4. If Respondent ever applies for licensure or petitions for reinstatement in the State of California, the Bureau shall treat it as a new application for licensure. Respondent must comply with all the laws, regulations and procedures for licensure in effect at the time the application or petition is filed, and all of the charges and allegations contained in First Amended Accusation

Case Numbers C090605-03, C20130115-01 shall be deemed to be true, correct and admitted by Respondent when the Bureau Chief determines whether to grant or deny the application or petition.

5. Respondent shall pay the agency its costs of investigation and enforcement in the amount of $15,000.00 and a fine in the sum of $5,000.00 prior to the issuance of a new or reinstated license.

ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with my attorney, Scott J. Harris, Esq., S J Harris Law. I understand the stipulation and the effect it will have on my Real Estate Appraiser License. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Bureau Chief of Consumer Affairs.

DATED: 8/21/13 **Original Signed**

RICHARD P. MONTGOMERY
Respondent

I have read and fully discussed with Respondent Richard P. Montgomery the terms and conditions and other matters contained in the above Stipulated Surrender of License and Order. I approve its form and content.

DATED: 8/21/13 **Original Signed**

SCOTT J. HARRIS, ESQ.
S J HARRIS LAW
Attorney for Respondent

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ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Bureau Chief of Consumer Affairs.

Dated: 8/21/13

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
MARC D. GREENBAUM
Supervising Deputy Attorney General

Original Signed

GILLIAN E. FRIEDMAN
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

First Amended Accusation Case Numbers C090605-03, C20130115-01

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BEFORE THE
DIRECTOR OF THE OFFICE OF REAL ESTATE APPRAISERS
STATE OF CALIFORNIA

In the Matter of the First Amended Accusation Against: **RICHARD P. MONTGOMERY** **1601 North Sepulveda Blvd, Ste. 560** **Manhattan Beach, CA 90266** **Certified General Appraiser License No. AG022371** Respondent.	Case No. C090605-03, C20130115-01 **FIRST AMENDED ACCUSATION**

Complainant alleges:

PARTIES

1. Elizabeth Seaters, acting on behalf of the Office of Real Estate Appraisers (Complainant), brings this Accusation solely in her official capacity as Chief of Enforcement for Complainant.

2. On or about January 10, 1994, the Office of Real Estate Appraisers issued Certified General Appraiser License Number AG022371 to Richard P. Montgomery (Respondent). The Certified General Appraiser License was in full force and effect at all times relevant to the charges brought herein and will expire on March 6, 2015, unless renewed.

JURISDICTION

3. This Accusation is brought before the Director of the OREA (Director), under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

STATUTORY PROVISIONS

4. Code section 11313 states, in pertinent part:

The office [Office of Real Estate Appraisers] is under the supervision and control of the secretary [secretary of the Business, Transportation and Housing Agency]. The duty of enforcing and administering this part is vested in the director [director of the Office of Real Estate Appraisers] and he or she is responsible to the secretary therefor. The director shall adopt and enforce rules and regulations as are determined reasonably necessary to carry out the purposes of this part.

5. Code section 11314 states, in pertinent part:

The office is required to include in its regulations requirements for licensure and discipline of real estate appraisers that ensure protection of the public interest.

6. Code section 11319 states:

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

7. Code section 11328 states, in pertinent part:

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

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REGULATORY PROVISIONS

8. California Code of Regulations, title 10, (Regulation) section 3701 states:

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

9. Regulation section 3705 provides in pertinent part that every appraisal report subject to the Uniform Standards of Professional Appraisal Practice upon final completion shall bear the signature and license number of the appraiser and of the supervising appraiser, if appropriate. The affixing of such signature and number constitute the acceptance by the appraiser and supervising appraiser of full and personal responsibility for the accuracy, content, and integrity of the appraisal under Standards Rules 1 and 2 of USPAP.

10. Regulation, section 3721 states:

(a) The Director may issue a citation, order of abatement, assess a fine or private or public reproval, suspend or revoke any license, and/or may deny the issuance or renewal of a license of any person who has:

. . . .

(6) Violated any provision of USPAP [Uniform Standards of Professional Appraisal Practice];

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

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UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE

11. USPAP Rule 1 states:

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

12. 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

. . . .

13. USPAP Standards Rule 1-2 states:

In developing a real property appraisal, an appraiser must:

. . . .

(d) identify the effective date of the appraiser's opinions and conclusions;

(e) identify the characteristics of the property that are relevant to the purpose and intended use of the appraisal, including:

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

. . . .

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

14. USPAP Standards Rule 1- 3 states in pertinent part:

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

. . . .

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

. . . .

15. USPAP Standards Rule 1- 4 states in pertinent part:

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

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

. . . .

16. USPAP Standards Rule 1- 5 states in pertinent part:

. . . .

(b) analyze all sales of the subject property that occurred with the three (3) years prior to the effective date of the appraisal.

17. USPAP Standards Rule 1- 6 states in pertinent part:

In developing a real property appraisal, the appraiser must:

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

. . . .

18. USPAP Standards Rule 2-1 states, in pertinent part:

Each written or oral real property appraisal report must:

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

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

19. USPAP Standards Rule 2-2 states, in pertinent part:

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

. . . .

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

. . . .

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

. . . .

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

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

. . . .

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

(x) clearly and conspicuously:

state all extraordinary assumptions and hypothetical conditions; and

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

. . .

20. The Conduct section of the Ethics Rule of USPAP states, in pertinent part:

ETHICS RULE

To promote and preserve the public trust inherent in professional appraisal practice, an appraiser must observe the highest standards of professional ethics. This ETHICS RULE is divided into four sections: Conduct, Management, Confidentiality, and Record Keeping....

Compliance with USPAP is required when either the service or the appraiser is obligated by law or regulation, or by agreement with the client or intended users, to comply....

Conduct:

An appraiser must perform assignments ethically and competently in accordance with USPAP.

An appraiser must not engage in criminal conduct.

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

An appraiser must not advocate the cause or interest of any party or issue.

An appraiser must not accept an assignment that includes the reporting of predetermined opinions and conclusions.

An appraiser must not communicate results in a misleading or fraudulent manner. An appraiser must not use or communicate a misleading or fraudulent report or knowingly permit an employee or other person to communicate a misleading or fraudulent report.

An appraiser must not use or rely on unsupported conclusions relating to characteristics such as race, color, religion, national origin, gender, marital status, familial status, age, receipt of public assistance income, handicap, or an unsupported conclusion that homogeneity of such characteristics is necessary to maximize value.

21. USPAP Scope of Work Rule, states:

For each appraisal, appraisal review, and appraisal consulting assignment, an appraiser must:

1. identify the problem to be solved;

2. determine and perform the scope of work necessary to develop credible assignment results; and

3. disclose the scope of work in the report.

An appraiser must properly identify the problem to be solved in order to determine the appropriate scope of work. The appraiser must be prepared to demonstrate that the scope of work is sufficient to produce credible assignment results.

Problem Identification

An appraiser must gather and analyze information about those assignment elements that are necessary to properly identify the appraisal, appraisal review or appraisal consulting problem to be solved.

Scope of Work Acceptability

The scope of work must include the research and analyses that are necessary to develop credible assignment results.

An appraiser must not allow assignment conditions to limit the scope of work to such a degree that the assignment results are not credible in the context of the intended use.

An appraiser must not allow the intended use of an assignment or a client's objectives to cause the assignment results to be biased.

Disclosure Obligations

The report must contain sufficient information to allow intended users to understand the scope of work performed.

22. The USPAP Competency Rule states:

Prior to accepting an assignment or entering into an agreement to perform any assignment, an appraiser must properly identify the problem to be addressed and have the knowledge and experience to complete the assignment competently; or alternatively, must:

1. disclose the lack of knowledge and/or experience to the client before accepting the assignment;

2. take all steps necessary or appropriate to complete the assignment competently; and

3. describe the lack of knowledge and/or experience and the steps taken to complete the assignment competently in the report.

COST RECOVERY AND FINES

23. Code section 11409, subdivision (a), states:

Except as otherwise provided by law, any order issued in resolution of a disciplinary proceeding may direct a licensee, applicant for licensure, person who acts in a capacity that requires a license under this part, course provider, applicant for course provider accreditation, or a person who, or entity that, acts in a capacity that requires course provider accreditation found to have committed a violation or violations of statutes or regulations relating to Certified General Appraiser practice to pay a sum not to exceed the reasonable costs of investigation, enforcement, and prosecution of the case.

24. Code section 11316, subdivision (a) states:

(a) The director may assess a fine against a licensee, applicant for licensure, person who acts in a capacity that requires a license under this part, course provider, applicant for course provider accreditation, or a person who, or entity that, acts in a capacity that requires course

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provider accreditation for violation of this part or any regulations adopted to carry out its purposes.

FIRST CAUSE FOR DISCIPLINE

(Misleading and Inaccurate Appraisal Reports-

Vacant 19-Acre Property, Robin Hood Road and Snow Drop Road)

25. Respondent is subject to disciplinary action under Business and Professions Code sections 11313 and 11319, in conjunction with California Code of Regulations, title 10, section 3701, for violating Regulation, sections 3705 and 3721, subdivisions (a)(6) and (a)(7) in that on or about September 22, 2006 and May 2, 2008, Respondent completed real estate appraisal reports for a vacant 19-acre property located north of Rancho Cucamonga, California commonly known as Robin Hood Road and Snow Drop Road (APN: 0201-043-31). The reports contained errors or omissions, in violation of the provisions of the Uniform Standards of Professional Appraisal Practice (USPAP), as follows:

(a) Respondent failed to state the scope of work that he performed to complete his appraisal reports. Respondent wrote a general description of the process without stating what was specifically done for these assignments. The reports leave out information about how the boundaries of the subject property were determined, what research was conducted regarding the easement, and what research was done regarding how the subject property could be developed. (S.R.1-2(h), 2-2(b)(vii) and Scope of Work rule);

(b) Respondent failed to describe the subject neighborhood correctly and instead included an abundance of misleading information. Respondent's appraisal reports include an excessive amount of information regarding other areas and insufficient information regarding the neighborhood the subject property is located in. The appraisal reports fail to discuss the high fire hazard problem, and the complex multi-jurisdictional regulation of the area. Respondent falsely reported that the subject property is located in the city of Rancho Cucamonga (S.R. 1-1(a), 1-1(b), 1-2(e)(i), 2-1(b), 2-2(b)(iii) and Conduct Section of the Ethics Rule);

(c) Respondent reported that the subject property is not located in an Alquist-Priolo Special Studies Zone when it is (S.R. 1-2(e)(i), and 2-2(b)(iii));

(d) Respondent falsely described the topography of the subject property as level. The property is not level (S.R. 1-2(e)(i), 2-1(a), 2-2(b)(iii) and Conduct Section of the Ethics Rule);

(e) Respondent failed to adequately describe and analyze the four acre easement across the property and consider it in his highest and best use analysis. The reports fail to state who holds the easement and what it is used for. They fail to discuss how it will impact development of the subject property (S.R. 1-1(a), 1-1(b), 1-2(e)(i), 2-1(b), 2-2(b)(iii) and Conduct Section of the Ethics Rule);

(f) Respondent failed to discuss the access to the subject property and whether it was suitable for development of the subject property as determined in the highest and best use analysis. The reports fail to state how many units could be developed on the subject site and how many units the existing access would accomodate (S.R. 1-2(e)(i) and 2-2(b)(iii));

(g) Respondent falsely reported the zoning for the subject property. Respondent failed to state that the property is within the sphere of influence of the city of Rancho Cucamonga. Respondent failed to discuss Rancho Cucamonga's General Plan and what ramifications that would have on development of the subject property (S.R. 1-1(b), 1-2(e)(i), 2-2(b)(iii) and Conduct Section of the Ethics Rule);

(h) Respondent failed to research and report any progress made since the September 22, 2006 appraisal development of the subject property. Respondent failed to report in the absence on any such progress, any attempts to develop the property. Respondent failed to consider in the May 2, 2008 appraisal why there were no attempts if none had been made (S.R. 1-2(e)(i), 2-2(b)(iii) and Conduct Section of the Ethics Rule);

(i) Respondent failed to discuss deed restrictions, or the absence of deed restrictions, in his highest and best use analysis (S.R. 1-2(e)(i), 1-3(b), 2-2(b)(iii), 2-2(b)(ix));

(j) Respondent failed to state in his appraisal reports the amount of development allowed by the existing zoning of the subject property in his highest and best use analysis of the subject property. The reports fail to discuss the density allowed by zoning (S.R. 1-2(e)(i), 1-3(b), 2-2(b)(iii), 2-2(b)(ix));

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(k) Respondent failed to discuss the General Plans for Rancho Cucamonga and San Bernardino County in his highest and best use analysis and how they would impact development of the subject property. (S.R. 1-2(e)(i), 1-3(b), 2-2(b)(iii), 2-2(b)(x));

(l) Respondent failed to analyze the physical constraints on the development of the site, including the terrain, its location, access, and the easement on the property (S.R. 1-2(e)(i), 2-2(b)(iii), 2-2(b)(x));

(m) Respondent failed to discuss the financial feasibility of developing the subject property (S.R. 1-2(e)(i), 2-2(b)(iii), 2-2(b)(x));

(n) Respondent failed to reach an appropriate highest and best use conclusion. The 2008 report concludes that development of the property should be withheld until the economy improves. The report fails to state what the interim use of the property would be until that time would come and fails to project when it would happen. The conclusion is based on false information regarding the subject property physical characteristics and zoning (S.R. 1-2(e)(i), 2-2(b)(iii), 2-2(b)(x));

(o) Respondent failed to employ adequate data sources for valuing the subject property. The sales used in his appraisal reports do not reference primary data sources necessary to gather sufficient factual information for proper analysis (S.R. 1-1(a), 1-1(b), 1-4(a), and 2-1(b));

(p) Respondent failed to describe the sales used as comparables in his reports adequately. The reports lack plat maps that show clearly where the sale parcels are located (S.R. 1-1(a), 1-1(b), 1-4(a), and 2-1(b));

(q) Respondent failed to state the potential use for each sale in his reports (S.R. 1-1(a), 1-1(b), 1-4(a), and 2-1(b));

(r) Respondent failed to analyze the data in his reports in a credible manner. The analysis does not reflect the huge difference in terrain and other factors between the property appraised and the data used to value it. For example, each sale is down on the flat lands, while the subject is in the hills where there are restrictions on development. Respondent's contention that the sales used as comparables have similar development potential as the subject property is misleading (S.R. 1-1(a), 1-1(b), 1-4(a), and 2-1(b));

(s) Respondent used inappropriate sales and listings to value the subject property. The sales used as comparables sold in better market conditions, which Respondent failed to analyze properly. Moreover, Respondent failed to state and analyze the data relating to the sales. Respondent grossly over valued the subject property (S.R. 1-1(a), 1-1(b), 1-4(a), 2-1(a), 2-1(b) and Conduct Section of the Ethics Rule);

(t) Respondent failed to analyze the prior sale of the subject property and reconcile it with his value conclusion, which was much higher. Respondent's appraisals mention the prior sale and price, but do not discuss the transfer as far as how long it was on the market, the asking price, and what exactly transferred (development plans, etc.) (S.R. 1-1(b) and Conduct Section of the Ethics Rule);

(u) Respondent rendered appraisal services in an unprofessional manner by omitting relevant information from his reports and replacing it with false information. Respondent failed to retain a copy of his 2006 appraisal report and submit it to the Office of Real Estate Appraisers (Record Keeping or California Business and Professions Code Section 11328, and Conduct Section of the Ethics Rule).

SECOND CAUSE FOR DISCIPLINE

(Misleading and Inaccurate Appraisal Reports-

Vacant 36-Acre Property, N/E Haven Avenue and Snow Drop Road)

26. Respondent is subject to disciplinary action under Business and Professions Code sections 11313 and 11319, in conjunction with California Code of Regulations, title 10, section 3701, for violating Regulation, sections 3705 and 3721, subdivisions (a)(6) and (a)(7) in that on or about September 22, 2006, and April 21, 2008, Respondent completed real estate appraisal reports for a vacant 36-acre property (APN: 0201-033-33) located north of Rancho Cucamonga, California commonly known as north east of Haven Avenue and Snow Drop Road. The reports contained errors or omissions, in violation of the provisions of the Uniform Standards of Professional Appraisal Practice (USPAP), listed as follows:

(a) Respondent failed to describe the scope of work he completed (S.R.1-2(h), 2-2(b)(vii) and Scope of Work rule);

(b) Respondent failed to describe the subject neighborhood correctly and instead included an abundance of misleading information. Respondent's appraisal reports include an excessive amount of information regarding other areas and insufficient information regarding the neighborhood the subject property is located in. They fail to discuss the earthquake fault zone, the high fire hazard problem and the complex multi-jurisdictional regulation of the area. Respondent falsely reported that the subject property is located in the city of Rancho Cucamonga (S.R. 1-1(a), 1-1(b), 1-2(e)(i), 2-1(b), 2-2(b)(iii) and Conduct Section of the Ethics Rule);

(c) Respondent failed to describe the topography of the subject property, which includes steep terrain. Respondent failed to discuss the parcels under different ownership encompassed within the perimeter of the subject property (S.R. 1-1(a), 1-1(b), 1-2(e)(i), 2-1(b), 2-2(b)(iii) and Conduct Section of the Ethics Rule);

(d) Respondent falsely reported the zoning for the subject property. Respondent failed to state that the property is within the sphere of influence of the city of Rancho Cucamonga. Respondent failed to discuss Rancho Cucamonga's General Plan and what ramifications that would have on development of the subject property (S.R. 1-1(b), 1-2(e)(i), 2-2(b)(iii) and Conduct Section of the Ethics Rule);

(e) Respondent failed to determine the highest and best use of the subject property correctly by failing to analyze the physical characteristics of the subject property. Respondent failed to analyze the physical constraints on the development of the site, including the terrain, its location, the parcels it surrounds and access (S.R. 1-1(a), 1-1(b), 1-3(b), 2-1(a), 2-1(b), 2-2(b)(ix) and Conduct Section of the Ethics Rule);

(f) Respondent failed to analyze the legal constraints on the property, which include the fact that it is within the jurisdiction of San Bernardino County and the city of Rancho Cucamonga neither of which allow for high density development as the subject property was valued. Respondent failed to consider the impact of the parcels that it included within its boundaries (S.R. 1-1(a), 1-1(b), 1-3(b), 2-1(a), 2-1(b), 2-2(b)(ix) and Conduct Section of the Ethics Rule);

(g) Respondent failed to discuss the financial feasibility of developing the subject property. In the 2008 report, Respondent concludes that development of the property should be

withheld until the economy improves. The report fails to state what the interim use of the property would be until that time would come and fails to project when development would happen (S.R. 1-1(a), 1-1(b), 1-3(b), 2-1(a), 2-1(b), 2-2(b)(ix) and Conduct Section of the Ethics Rule);

(h) Respondent failed to arrive at an appropriate highest and best use conclusion in both of his appraisal reports as they both fail to specify how many potential residential units can be developed on the property. This failure allowed Respondent to compare the subject property to those with higher development potential (S.R. 1-2(e)(i), 2-2(b)(iii), 2-2(b)(ix));

(i) Respondent failed to describe the sales used as comparable sales and listings in his reports properly. The data sources listed in the reports do not include primary data sources necessary to value the subject property. The sales used as comparable sold in better market conditions, which Respondent failed to analyze properly. Respondent failed to state and analyze the fact that the sales were closer to development than the subject property. Respondent grossly over valued the subject property (S.R. 1-1(a), 1-1(b), 1-4(a), 2-1(a), 2-1(b) and Conduct Section of the Ethics Rule);

(j) Respondent failed to report the prior sale of the subject property correctly. The reports state the sale price, but does not state the terms of the sale, days on the market, asking price and the buyer's intended use of the property. Respondent failed to reconcile the prior sale price with his value conclusion, which was much higher. This error was compounded in the 2008 appraisal report where Respondent acknowledged that the market was in decline (S.R. 1-1(b), 1-5(b), 1-6(a), 2-2 and Conduct Section of the Ethics Rule); and

(k) Respondent rendered appraisal services in a grossly unprofessional manner when he duplicated his mistakes in his 2008 appraisal report instead of correcting them. Respondent falsely described the subject location, the physical and legal characteristics of the property and then failed to correct his errors when his client brought them to his attention. Respondent failed to retain a copy of his 2006 appraisal report and submit it to the Office of Real Estate Appraisers (Record Keeping or California Business and Professions Code, Section 11328, and Conduct Section of the Ethics Rule).

THIRD CAUSE FOR DISCIPLINE

(Misleading and Inaccurate Appraisal Reports-
Vacant 150-Acre Property, W Lytle Creek Road
and N Coyote Canyon Road, Fontana, California)

27. Respondent is subject to disciplinary action under Business and Professions Code sections 11313 and 11319, in conjunction with California Code of Regulations, title 10, section 3701, for violating Regulation, sections 3705 and 3721, subdivisions (a)(6) and (a)(7) in that on or about January 15, 2007 and again on March 20, 2008, Respondent completed real estate appraisal reports for an vacant 150-acre property (APN: 0226-074-03, 0226-074-04, 0226-074-06, 0226-074-10, 0226-075-01, and 0226-075-12) commonly known as West of Lytle Creek Road and North of Coyote Canyon Road, north of Fontana, California. The reports contained errors or omissions, in violation of the provisions of the Uniform Standards of Professional Appraisal Practice (USPAP), listed as follows:

(a) Respondent failed to describe the subject neighborhood in an appropriate manner and failed to discuss the market for the subject property in an appropriate manner (S.R. 1-1(a), 1-1(b), 1-2(e)(i), 2-1(a), 2-2(b)(iii) and Conduct Section of the Ethics Rule);

(b) Respondent produced a second appraisal report of the subject property dated March 20, 2008 that failed to report changes in the market which resulted in a different value conclusion (S.R. 1-2(e)(i), 2-2(b)(iii), and 2-2(b)(ix));

(c) Respondent failed to describe the subject property correctly. Respondent failed to adequately describe the terrain on the site. The comment in the reports that the site appears to be gently rolling is misleading. Respondent failed to determine the amount of useable terrain on the site. Respondent failed to describe the access to the site and failed to determine that it was adequate for the highest and best use conclusion in his reports (S.R. 1-1(a), 1-1(b), 1-2(e)(i), 2-1(b), 2-2(b)(iii)and Conduct Section of the Ethics Rule);

(d) Respondent failed to analyze the impact of the subject property being within the sphere of influence of Fontana (S.R. 1-1(b), 1-2(e)(i), and 2-2(b)(iii));

(e) Respondent failed to analyze the highest and best use of the subject property properly. The reports value the subject parcels as assembled without discussing why they are being analyzed and valued together (S.R. 1-2(e)(i), 2-2(b)(iii), 2-2(b)(ix));

(f) Respondent failed to analyze all of the legal factors in determining the highest and best use of the subject property. Respondent failed to report Fontana's land use designation for the subject property and how that would impact the development of the property. Respondent failed to report San Bernardino's General Plan designation for the subject property and how that would impact development of the subject property (S.R. 1-2(e)(i), 2-2(b)(iii), 2-2(b)(ix));

(g) Respondent failed to report that the subject property consisted of steep terrain and how that would impact development of the subject property. Respondent failed to describe access to the (landlocked) subject property or report that there was no known vehicle access. As noted in the title report, the property does not abut a road and there is no recorded access agreement (S.R. 1-2(e)(i), 2-2(b)(iii), 2-2(b)(ix));

(h) Respondent failed to analyze the highest and best use of the subject property. The stated conclusion in the first report is too vague for valuing the subject property as it only specifies a general land use classification – residential. It does not discuss the intensity of the development – the approximate number of residential units that would be allowed on the property (S.R. 1-1(a), 1-1(b), 1-2(e)(i),1-3(b), 2-1(b) and 2-2(b)(ix));

(i) Respondent reported in his 2008 appraisal report that the highest and best use of the subject property was to hold it for development at a later time after the economy improved. The report fails to state an approximate time frame for that holding period and fails to state the interim highest and best use of the subject property (S.R. 1-2(e)(i), 1-3(b), 2-2(b)(iii), and 2-2(b)(ix));

(j) Respondent failed to research and report any progress made since the earlier appraisal development of the subject property. Respondent failed to report in the absence on any such progress, any attempts to develop the property. Respondent failed to consider in the second appraisal report why there were no attempts if none had been made (S.R. 1-2(e)(i), 2-2(b)(iii) and Conduct Section of the Ethics Rule);

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(k) Respondent failed to use appropriate sales as comparables in his reports and failed to describe them correctly. Respondent analyzed the inappropriate sales in a grossly misleading manner resulting in gross over valuation of the subject property (S.R. 1-1(a), 1-1(b), 1-4(a), 2-1(a), 2-2(b)(viii) and Competency Rule);

(l) Respondent failed to include a second value of the landlocked subject property predicated on what is known about the subject property (i.e. an "As-Is" estimate of value). The reports include only one value estimate, which was based on an erroneous assumption that there was access to the subject property suitable for development of the subject property. The reports fail to state where the access was located and what it allowed. They fail to describe the physical nature of the access. Instead, Respondent predicated his valuation on an inappropriate assumption buried deep in his report (Conduct Section of the Ethics Rule);

(m) Respondent accepted an assignment for which he had no known means of completing in a legitimate manner. Respondent did not report how he got on the subject property without trespassing (Scope of Work Rule and Conduct Section of the Ethics Rule);

(n) Respondent failed to recognize and correct mistakes in his January 15, 2007 appraisal when engaged to appraise the property a second time on March 20, 2008. Instead, Respondent reproduced a misleading appraisal report with numerous flaws establishing that the cause of the errors is a severely flawed appraisal practice. Respondent made numerous references to multiple parties preparing the appraisal reports, but signed a certification that stated no significant assistance was involved. Respondent failed to submit a copy of his 2006 appraisal report to the Office of Real Estate Appraisers (California Business and Professions Code Section 11328 or Record Keeping and Conduct Section of the Ethics Rule).

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Director of the Office of Real Estate Appraisers issue a decision:

1. Revoking or suspending Certified General Appraiser License Number AG022371, issued to Richard P. Montgomery

2. Ordering Richard P. Montgomery to pay the Director of the Office of Real Estate Appraisers the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 11409;

3. Ordering Richard P. Montgomery to pay the Director of the Office 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: 5/28/13

Original Signed

ELIZABETH SEATERS
Chief of Enforcement
Office of Real Estate Appraisers
State of California
Complainant

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