

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

In the Matter of the First Amended Accusation
Against:

**RAYMOND DOZIER
73-350 El Paseo, Suite 206
Palm Desert, CA 92260**

Real Estate Appraiser License No. 004590

Respondent.

Case No. C090109-03
C 080904-04
C 20131104-03

OAH No. 2013120632

DECISION AND ORDER AFTER RECONSIDERATION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Chief of the 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 7-22-15.

It is so ORDERED 6-22-15.

Original Signed

FOR THE CHIEF OF THE BUREAU OF REAL
ESTATE APPRAISERS
DEPARTMENT OF CONSUMER AFFAIRS

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**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

18
19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
20 entitled proceedings that the following matters are true:

21 PARTIES

22 1. Elizabeth Seaters, acting on behalf of the Bureau of Real Estate Appraisers
23 ("Complainant"), Department of Consumer Affairs, brought this action solely in her capacity as
24 the Chief of Enforcement for Complainant, and is represented in this matter by Kamala D. Harris,
25 Attorney General of the State of California, by Marichelle S. Tahimic, Deputy Attorney General.

26 2. Respondent Raymond Dozier ("Respondent") is represented in this proceeding by
27 attorney Michael Kaiser, whose address is: 801 E. Tahquitz Canyon Way, Suite 101,
28 Palm Springs, CA 92262.

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Chief of the Bureau of Real Estate Appraisers, Department of Consumer Affairs.

Dated: *June 17, 2015*

Respectfully submitted,
KAMALA D. HARRIS
Attorney General of California
JAMES M. LEDAKIS
Supervising Deputy Attorney General

Original Signed

MARICHELLE S. TAHIMIC
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

First Amended Accusation No. C090109-03, C080904-04, C20131104-03

Exhibit B

**Decision and Order Dated May 11, 2015
Case No. C090109-03, C080904-04, C20131104-03**

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

In the Matter of the First Amended Accusation
Against:

RAYMOND DOZIER

Real Estate Appraiser License
No. AG004590

Respondent.

Case Nos. C 090109-03
C 080904-04
C 20131104-03

OAH No. 2013120632

DECISION

The Proposed Decision of James Ahler, Administrative Law Judge, dated April 23, 2015, is attached hereto. The Proposed Decision is hereby amended, pursuant to Government Code section 11517(c)(2)(C) to correct technical or other minor changes that do not affect the factual or legal basis of the Proposed Decision. The Proposed Decision is amended as follows:

1. On page 76, under paragraph one of the "ORDER" section, the word "Residential" is stricken and replaced with "General". This change corrects Respondent's license type to a Certified General Real Estate Appraiser as shown in evidence marked as exhibit 2 and other references in the Proposed Decision. (See page two of the Proposed Decision).

The Proposed Decision as amended is hereby adopted by the Bureau of Real Estate Appraisers as its Decision in the above-entitled matter.

This decision shall become effective on June 10, 2015.

IT IS SO ORDERED this 11th day of May, 2015.

Original Signed

JAMES S. MARTIN, CHIEF
BUREAU OF REAL ESTATE APPRAISERS

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

In the Matter of the First Amended
Accusation Against:

RAYMOND DOZIER

Real Estate Appraiser License
No. AG004590

Respondent.

Case Nos. C 090109-03
C 080904-04
C 20131104-03

OAH No. 2013120632

PROPOSED DECISION

James Ahler, Administrative Law Judge, Office of Administrative Hearings, heard this matter in San Diego, California, on March 2-4, 9-12, 16-18, and 23, 2015.

Marichelle S. Tahimic, Deputy Attorney General, Department of Justice, represented complainant, Elizabeth Seaters, Chief of Enforcement, Bureau of Real Estate Appraisers.

Raymond Dozier, respondent, represented himself.

The matter was submitted on March 23, 2015.

SUMMARY

In connection with nine real property appraisals prepared between November 2005 and September 2009, respondent violated numerous provisions of the Uniform Standards of Professional Appraisal Practice (USPAP). Some violations were minor and technical, but others were substantial, misleading, and posed a risk of injury to intended users. USPAP violations significantly affected the credibility of each appraisal.

Respondent has been a real estate appraiser for many years. Notwithstanding his education, training and experience, and despite clear and convincing evidence of USPAP violations, respondent vigorously defended each appraisal. He admitted no wrongdoing, even when violations were obvious. He offered little evidence in mitigation and no evidence in rehabilitation.

Only the outright revocation of respondent's license will protect the public.

FACTUAL FINDINGS

Respondent's Background, Education, Training, and Experience

1. Respondent received a bachelor's degree in Business Administration and Economics from the University of Kentucky in 1974. He has attended Saratoga University School of Law, an unaccredited distance-learning law school, after that. In his curriculum vitae, respondent described himself as a "JD Candidate."

From 1972 through 1980, while living in Kentucky, respondent was employed as an appraiser by R. W. Crabtree, MAI. In 1980, he came to California and founded Dozier Appraisal Company. He currently maintains offices in Palm Desert.

Respondent holds California Certified General Real Estate Appraiser License No. AG004590, Washington Certified General Real Estate Appraiser License No. 1102002, Arizona Certified General Real Estate Appraiser License No. 31701, and California Real Estate Broker License No. 01173680.

Respondent is a Member of the Appraisal Institute and holds a member designation of MAI. He has served on the Appraisal Institute's Experience Review Committee. He is a member of the International Council of Shopping Centers, National Association of Realtors, and California Association of Realtors.

Respondent has testified as an expert witness in California superior courts, federal district courts, and federal bankruptcy courts for many years. He provides individuals, banks, financial institutions, law firms, accounting firms, government agencies and entities, and others with real property appraisal and consulting services.

Respondent recently founded Valuexpose, Inc., an entity that offers on-line residential and commercial valuation tools to subscribers.

License History

2. On April 21, 1992, the Bureau of Real Estate Appraisers issued Real Estate Appraiser License No. AG004590 to respondent.

Respondent holds license level "AG," which means respondent is Certified General Appraiser. An individual who holds an AG real estate appraisal license may appraise real estate without regard to a transaction's value or complexity. The AG level is the highest license level issued by the Bureau.

Respondent's real estate appraiser's license was in full force and effect at all times relevant to this matter. There is no history of any prior discipline having been imposed against respondent's real estate appraiser's license.

Real Estate Appraisers

3. Real estate is one of the basic sources of wealth. Those who own, manage, sell, purchase, invest in, or lend money secured by real estate must have access to services of individuals who provide unbiased, credible opinions of value, as well as sound information, analyses and advice on a wide range of real estate issues. Reliable services of real estate appraisers are vital to the well-being of our society and the economy.

The standards, practices and qualifications of persons acting as real estate appraisers were not regulated in California before 1990. Industry standards and practices developed without direct legal mandates and without governmental licensing and regulation. This lack of oversight was one of several factors contributing to the failure of numerous savings and loan associations in the late 1980s and early 1990s.

The lack of regulation and oversight over real estate appraisal practices ended in the wake of the savings and loan crisis. As a result of that calamity, the federal government enacted the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). That federal legislation sought to protect federal financial and public policy interests in real property transactions by requiring real estate appraisers to have minimum qualifications and adhere to uniform practice standards. Among other matters, FIRREA mandated the creation of a nonprofit appraisal practices and standards organization known as the Appraisal Foundation.¹

4. In California, real estate appraisers must be licensed. A licensed real estate appraiser is a fiduciary. Qualifications of honesty, candor, integrity, and trustworthiness are indispensable in the practice of real estate appraisal. The holder of a real estate appraisal license must demonstrate by his or her conduct that he or she possesses those necessary qualities. (Cal. Code Regs., tit. 10, § 3702.)

5. In California, USPAP, the standards of appraisal practice established by the Appraisal Foundation, constitute the minimum standard of conduct and performance required

¹ The Appraisal Foundation is a non-profit organization whose stated purpose is to advance professional valuation. The Appraisal Foundation is overseen by the Appraisal Subcommittee (ASC), a subcommittee of the Federal Financial Institutions Examination Council.

While the federal government does not regulate a state's appraiser qualifications or practices directly, it does so indirectly. If the ASC finds that a state's appraiser certification or regulatory program is inadequate, all appraisers in that state become ineligible to conduct appraisals for federally chartered banks.

of a California licensee in any work or service addressed by those standards. (Bus. & Prof. Code, § 11319.) A licensed California real estate appraiser must comply with USPAP. (Bus. & Prof. Code, § 11319; Cal. Code Regs., tit. 10, § 3701.) Compliance with USPAP is the minimum standard of care for a licensed real estate appraiser.

6. The Bureau for Real Estate Appraisers (BREA) licenses and regulates real estate appraisers in California. The BREA is under the supervision and control of the Director of Consumer Affairs. The BREA's Chief enforces and administers statutes and regulations related to the certification, licensing and discipline of real estate appraisers. (Bus. & Prof. Code, § 11310.)

Disciplinary action may be taken against a California real estate appraiser's license for acts involving dishonesty, fraud or deceit, violations of the Real Estate Appraisers' Licensing and Certification Law or regulations, and for any violation of the Business and Professions Code that applies to licensed real estate appraisers. (Bus. & Prof. Code, §§ 11314-11315.3, 11319; Cal. Code Regs., tit. 10, § 3721.)

Protection of the public is the BREA's highest priority in exercising its licensing, regulatory, and disciplinary functions. Whenever protection of the public is inconsistent with other interests sought to be promoted, protection of the public is paramount. (Bus. & Prof. Code, § 11310.1.)

Uniform Standards of Professional Appraisal Practice (USPAP)

7. In 1989, the Appraisal Foundation first published the compilation of best appraisal practices that have become known as USPAP. These standards were revised, promulgated and published annually until 2006. Since 2006, the Appraisal Foundation has promulgated and updated USPAP in two year cycles that commenced on January 1 of even-numbered years.

USPAP contains generally accepted standards for professional appraisal practice in North America. USPAP contains standards for all types of appraisal services, including real estate, personal property, business, and mass appraisal.

Issues To Be Resolved in this Proceeding

8. The market values of the four properties that are the subject of respondent's appraisal reports – the La Quinta Property, Porcupine Creek, Desert Shores, and Bombay Beach – are not at issue in this proceeding. The validity of the several complaints giving rise to the BREA's investigation is not at issue in this proceeding.

What is at issue in this proceeding is respondent's compliance with USPAP in reaching the value opinions set forth in his nine appraisals and whether any of respondent's appraisals were misleading or contained unsupported opinions.

USPAP Standards Do Not Apply to BREIA Investigative Reports

9. BREIA investigators investigated complaints related to respondent's appraisals of the La Quinta Property, Porcupine Creek, Desert Shores, and Bombay Beach. During the investigations, BREIA investigators prepared reports as mandated by California Code of Regulations, title 10, section 3728. That regulation states in part:

(a) Each complaint shall result in a confidential investigative report showing a summary of the acts and/or omissions alleged, and a summary of the supporting evidence together with a recommendation for appropriate enforcement action, if any. . . .

California Code of Regulations, title 10, section 3728, does not require an investigative report to set forth an opinion of value. For public policy reasons, it would be unwise to require state-government investigative reports to contain a value conclusion.

Nevertheless, respondent claimed that BREIA's investigators were required to reach value conclusions for each of the real properties at issue. He asserted that absent such opinions, the investigators' work product and conclusions were inadmissible because the investigative reports did not comply with USPAP Standards Rule 3, which, among other matters, requires a reviewer to ascertain the value of the property for which a real estate appraisal review is being performed.

The term "appraisal" is defined by Business and Professions Code section 113402 as "a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion in a federally related transaction as to the market value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information." This definition is consistent with USPAP's definition of "appraisal," which states: "APPRAISAL: (noun) the act or process of developing an opinion of value, an opinion of value (adjective) of or pertaining to appraising and related functions such as appraisal practice or appraisal services."

By regulation, a BREIA investigative report does not require an appraisal. In their reports and testimony in this matter, the BREIA investigators were careful to state that they were not providing any opinion of the market value of any property that respondent had appraised. Instead, their reports and testimony related to whether respondent's written appraisals complied with USPAP Standards.

UPAP Standards

10. Relevant USPAP Standards will be specifically identified throughout this decision by identification of the rule(s) found to have been violated.

Several fundamental matters should be noted. First, California Code of Regulations, title 10 section 3705, subdivision (a), requires every appraisal report subject to USPAP to

contain the appraiser's signature and license number on completion. Signing a certification constitutes the appraiser's acceptance of full and personal responsibility for the accuracy, content and integrity of the appraisal under USPAP Standards Rules 1 and 2. Second, USPAP Standards Rule 1 is directed towards the development of a real property appraisal. Third, USPAP Standards Rule 2 focuses on the essential information that must be reported in an appraisal.

RESPONDENT'S APPRAISAL OF THE LA QUINTA PROPERTY

11. On August 5, 2005, JM purchased a single family residence at 56065 Riviera, La Quinta (the La Quinta property) for \$850,000. The La Quinta property was located in a master-planned community known as PGA West.

On November 2, 2008, respondent completed and signed a real estate appraisal report (LQ-1) for the La Quinta property. Respondent prepared LQ-1 for JM, the current property owner. LQ-1 had a retrospective effective date of value of August 5, 2005, the date JM purchased the La Quinta property from MD.² LQ-1 was two and one-half pages in length. A signed certification was attached to LQ-1.

LQ-1's stated purpose was to estimate retrospective "before" and "after" market values to determine whether there was any diminution in value of the La Quinta property as a result of construction defects (subsidence) that existed at the time of sale. LQ-1's intended use was "for possible litigation regarding disclosure issues of existing construction defects as of the retrospective date of August 5, 2005." LQ-1 did not describe any construction defect other than to refer to it as "subsidence."

LQ-1 set forth two estimates of value: it stated the unimpaired value of the La Quinta property on August 5, 2005, was \$830,000; it stated the impaired value of the property on August 5, 2005, was \$635,000. The \$195,000 difference in value represented the diminution in market that respondent attributed if the buyer had discovered construction defects that respondent described as a "detrimental condition."

After JM received LQ-1, he sued MD and MD's real estate agents for fraud, breach of a statutory duty to disclose information concerning the property, negligence, and breach of contract. JM's alleged damages were based on the diminution of value set forth in LQ-1.

12. LQ-1 did not state which reporting option respondent had used in preparing LQ-1 (i.e., whether LQ-1 was a restricted report, a summary report, or a self-contained report). There was nothing in LQ-1 or in respondent's work file concerning the purported detrimental condition other than respondent's use of the terms "construction defect" and "subsidence," terms that do not necessarily mean the same thing. There was no information concerning any repair of the property as a result of the detrimental condition.

² Exhibit 77, the 2008 edition of USPAP, applies to LQ-1.

LQ-1 did not contain a description of the site. For example, LQ-1 did not mention that the home was on a golf course. LQ-1 did not describe any improvements to the property, including the type of roofing, heating, cooling, floor coverings, cabinetry, wall coverings, foundation, counter tops, or windows. LQ-1 did not mention the existence of a swimming pool on the property, even though respondent claimed the swimming pool was tilting in a letter he sent to BREA well after he issued LQ-1.

LQ-1 did not describe the PGA West neighborhood or the market in which the property was located. Respondent's work file did not contain any documentation describing the neighborhood, the site, or improvements to the La Quinta property.

LQ-1 did not state whether other homes in PGA West experienced subsidence problems, even though respondent represented in his testimony that everyone knew of "PGA West's dirty little secret" in that regard.

LQ-1 lacked most descriptive components contained in a credible appraisal report, e.g., photographs, diagrams and maps. LQ-1 did not contain data to support respondent's analysis of value by using either a sales comparison approach or cost approach, although there was such data in his work file. LQ-1 did not discuss MD's sale of the La Quinta property to JM. LQ-1 did not report or analyze any listing, expired listing, withdrawn listing, or sale of comparable properties in PGA West having the same detrimental condition as purportedly existed at the La Quinta property.

LQ-1 did not describe the detrimental condition, other than to refer to it as "construction defect" or "subsidence." No portion of LQ-1 referred to a "hypothetical condition" or an "extraordinary assumption" that further defined or explained the detrimental condition. LQ-1 did not contain factual information to support the existence of a detrimental condition. LQ-1 did not address the cause of the purported detrimental condition, indicate whether there was any damage resulting from the detrimental condition, when any damage occurred, or whether such damage was repaired or resolved.

Respondent's work file did not contain any documentation to substantiate the existence of any construction defect or soil subsidence problem at the La Quinta property on the effective date of the report, which was August 5, 2005.

LQ-1 did not include a definition of "value" as required by USPAP. LQ-1 included only the calculations that respondent used to compute the purported loss in value; LQ-1 did not contain any factual support for those values.

Respondent's work file did not contain a Real Estate Transfer Disclosure Statement, a Purchase Agreement, or a home inspection report. Respondent's work file did not contain any notes documenting his conversation with the seller, the buyer, the home inspector, or the real estate brokers involved in the sale transaction.

In the certification attached to LQ-1, respondent certified that his “analyses, opinions and conclusions were developed, and this report has been prepared in conformity with the Uniform Standards of Professional Appraisal Practice.”

Complainant’s Evidence Regarding LQ-1

13. John Schmidt has been employed as a real estate appraiser since 1977. He has been licensed in California as a real estate appraiser since 1991. He was employed as a real estate appraiser by several major financial institutions for many years, the Nevada County Assessor’s Office for two years, and the BREa for the past 15 years. He does not hold MAI status. He is currently a BREa Senior Property Appraiser Investigator.

Investigator Schmidt holds California Certified General Real Estate Appraiser License No. AG002312. He was very familiar with residential appraisals and with USPAP standards and their application to residential transactions.

14. Investigator Schmidt was assigned to investigate the complaint. He obtained and reviewed LQ-1; respondent’s work file; respondent’s letters to BREa; respondent’s deposition transcript taken in connection with JM’s lawsuit; two emails from respondent; and respondent’s letter to the Appraisal Institute. Investigator Schmidt interviewed respondent on December 10, 2013. He spoke with the listing broker, the selling broker, and employees of PGA West’s homeowner’s association who knew about a construction defect lawsuit that was settled several years before JM purchased the La Quinta property.

15. When Investigator Schmidt spoke with respondent on December 10, 2013, respondent represented that he had reviewed the Real Estate Transfer Disclosure Statement, the Purchase Agreement, and the home inspection report; he claimed those documents were in his work file. Investigator Schmidt informed respondent that the documents were not in the work file; he requested that respondent provide those documents to the BREa. He also asked respondent to provide all documentation that supported his diminution in value conclusion and the costs set forth in respondent’s table of “DC Stages and Value Issues.” Respondent did not provide such documentation to BREa.

During the same interview, respondent told Investigator Schmidt that he contracted with JM to develop an appraisal; that he verbally reported the results of his appraisal to JM; and that he told JM that JM could abort the appraisal process and cancel the preparation of a written report if JM wanted to do so. Respondent said he did not hear from JM for a couple of years after that conversation. When Investigator Schmidt reminded respondent that the written appraisal report was dated November 8, 2008, respondent referred to the appraisal as a “letter” to JM and asserted that it was not a formal appraisal. After Investigator Schmidt told respondent that a certification was attached to the “letter” and that the letter represented itself to be an appraisal, respondent stated the document was a restricted report.

Whatever it was, the document did not set forth the reporting option required by USPAP.³

16. USPAP Standards Rule 1 required respondent to identify the problem to be solved and to perform the scope of work necessary to solve that problem. Rule 1 required respondent to complete the research and analysis necessary to produce a credible appraisal. According to Investigator Schmidt, a real estate appraiser must exercise due diligence before issuing an appraisal report; a real estate appraiser may not simply rely on what he or she is told by a property owner when preparing an appraisal.

17. When Investigator Schmidt spoke with the listing and selling brokers, he was told that when the La Quinta property was sold to JM, it was subject to minor repairs that were completed after escrow closed. Those repairs involved the replacement of barely observable cracked tiles around the pool. LQ-1 did not mention this was a condition of sale or that repair work was performed.

18. Investigator Schmidt observed that respondent's work file did not contain a home inspection report, which would have disclosed the existence of a construction defect. Nor did respondent's work file contain a transfer disclosure statement. LQ-1 contained no information or documentation to support the existence of a "construction defect" or "subsidence." Respondent's work file did not mention when JM said he first found out about the detrimental condition or any information about the cost to repair or remediate that condition. Respondent's work file contained no information to support the existence of a construction defect or the presence of soil subsidence at the time of valuation.

19. Investigator Schmidt observed that LQ-1 did not contain many elements required by USPAP; despite these fundamental omissions, he believed that the major problem with LQ-1 was respondent's failure to investigate and describe a "detrimental condition" that resulted in a purported \$195,000 diminution in market value. In the absence of actual evidence of a construction defect or subsidence, LQ-1 had to clearly set forth a hypothetical condition or an extraordinary assumption that described such a detrimental condition. LQ-1 did not clearly identify any hypothetical condition or extraordinary assumption upon which respondent could have concluded there was a diminution in value.⁴

³ At all times relevant to the preparation of LQ-1, USPAP Standards Rule 2-2 stated:

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

⁴ USPAP Standard 2 required that all written reports – whether self-contained, summary, or restricted – clearly and conspicuously state all extraordinary assumptions and hypothetical conditions used in reaching value conclusions.

20. Respondent sent a letter to BREA on December 12, 2013. In that letter, he claimed that his opinion concerning diminution in value of the La Quinta property was based on hypotheticals that did not require him to determine whether there was actually “damage to the vertical structure . . . caused by ‘fill and soil slippage problems.’” The letter stated that the resolution of that issue was supposed to be determined by the judge who heard JM’s lawsuit. The letter stated that the trial judge’s ultimate decision in favor of the defense was “disappointing for my clients. . . .” Respondent claimed that the appraiser who served as an expert witness for the defense was a “hired gun” who “perjured himself” and violated USPAP.

21. In the same letter, respondent stated that he interviewed several realtors to determine whether the disclosure of a detrimental condition would have had a significant impact on the market value of the La Quinta property. According to the letter, “I cannot find any notes I took of the Realtor interviews.”⁵

22. Investigator Schmidt testified that respondent’s oral report to JM’s attorney concerning his value opinions, his deposition testimony, and his trial testimony did not cure any technical or substantive USPAP violations. Any information that respondent may have obtained concerning soil subsidence problems at PGA West after he issued LQ-1 did not establish respondent’s due diligence in the preparation of LQ-1.

Respondent’s Testimony Regarding LQ-1

23. Respondent first had contact with JM on September 8, 2008. He and JM entered into an agreement whereby respondent agreed to provide JM with a retrospective appraisal of the La Quinta property in an unimpaired condition and in an impaired condition for \$4,700. JM had the option of aborting the appraisal process to prevent the issuance of an unfavorable written report; if JM chose to abort the process, he would only pay 70 percent of the \$4,700 fee. Respondent testified that after he gathered and analyzed relevant data, he provided JM with an “oral report” and JM directed him to prepare LQ-1. JM provided respondent with the only information respondent possessed concerning the alleged detrimental condition of the La Quinta property on the date of valuation.

In his deposition testimony, respondent said he spent 13 hours investigating and preparing LQ-1. In his testimony in this matter, respondent said he spent 80 hours investigating and preparing LQ-1. He explained that the 13 hours he previously testified about “was just an estimate.”⁶

⁵ Respondent contradicted this representation and testified that he had not spoken with any realtors during his deposition taken on October 6, 2013. This inconsistency related to a material fact and was significant in assessing respondent’s credibility.

⁶ This inconsistency was also significant in assessing respondent’s credibility.

Respondent testified that he spent about an hour composing LQ-1 on a word processor. Many months after he issued LQ-1, respondent said he provided an oral report to JM's attorney, after which he gave deposition and trial testimony. Respondent testified his deposition testimony and trial testimony were "oral reports" under USPAP.

In this proceeding, respondent claimed that any technical deficiencies or omissions that may have existed in LQ-1 were cured by the information he subsequently provided in his oral reports, deposition testimony, and trial testimony. He testified that LQ-1 was not a "whole report." He testified that LQ-1 complied with all USPAP Standards when considered in its entirety.

Respondent did not provide any legal authority to support this claim other than to make reference to the "oral report" sections of USPAP.

24. Concerning the diminution in value that he calculated, respondent testified he based his analysis on an article written by Randall Bell, MAI, entitled *The Impact of Detrimental Conditions on Property Values* and "Case Study 10" written by Joseph Haeussler, MAI.

The Bell article established an analytical model that quantified diminution in value of real property impacted by a detrimental condition. In his model, Bell identified soil or geotechnical construction conditions as a Class VII detrimental condition. The article stated, in part, that when calculating the diminution in value of a Class VII condition, it was necessary to review the functional utility of the property, the repairs necessary to prevent a loss, repair costs, engineering costs, disruption to the property, etc. The Bell article stated that with some unusual Class VII conditions, "there may be a residual market resistance remaining even after repairs are made."

"Case Study 10" analyzed the diminution of value of the Krantz House, a 6,716 square foot single family residence in an upper-class Boston neighborhood where there was evidence of subsurface construction defects and expansive soil conditions on the date the Krantz House was sold. The soil problem was not disclosed at the time of sale, even though the existence of soil problems in the area was known. Later, it was determined that poor fill material caused the subsurface failure of one wing of the Krantz house.

To calculate the diminution in value of the Krantz house, Haeussler found four properties in the Boston area that were similar in size to the Krantz house that also had experienced Class VII detrimental conditions that resulted in their diminished values. Haeussler prepared a grid that set forth the undamaged value of each home, the damaged value of each home, the cost of the Class VII remediation, and losses for "project incentive" and "market resistance."

Based on his review of the Bell article and Case Study 10, and based on JM's representation that when the La Quinta property was sold there was some type of soil subsidence, respondent concluded that the value of La Quinta property was negatively

impacted by a Class VII detrimental condition that resulted in its diminution in value in the amount of \$195,000. LQ-1 stated that the diminution in the value consisted of the cost of professional services of a structural engineer of \$5,500; core testing of \$3,500; a partial loss of use of \$12,000; an “uncertainty factor” of \$25,000; a cost of repair of \$150,000; a loss of use for four months amounting to \$24,000; a project incentive (risk) of \$75,000; and market resistance of \$50,000. A \$150,000 credit was given for “insurance reimbursement.”

In his testimony in this proceeding, respondent admitted that he did not obtain any factual support for the cost estimates related to a structural engineer or core testing. He admitted that he did not have any factual support to conclude there would be a \$150,000 cost of repair. Respondent arbitrarily selected the percentage values he used to calculate project incentive (risk) and market resistance; since those values were consistent with the percentage values set forth in Case Study 10, respondent claimed they were valid. Respondent claimed, without any investigation into the facts and circumstances that gave rise to the diminution of value of the four homes identified in Case Study 10, that the data set forth in Case 10 was directly applicable to the La Quinta property.

25. In his deposition testimony, respondent admitted that his only source of information to support the existence of a detrimental condition involving subsidence at the La Quinta property was JM’s comment. He admitted there was nothing in his work file to support repairs, uncertainty, market resistance (risk), or project incentive values.

26. Respondent’s testimony in this proceeding concerning the factual foundation for his calculations made little sense, so he was given the opportunity to provide a written explanation that set forth the evidence and manner in which he arrived at the values related to market resistance, uncertainty, and project incentive, all of which totaled \$150,000.

Respondent’s letter to the administrative law judge, dated March 5, 2015, claimed to set forth a “detailed explanation of the ‘after’ retrospective impaired market value (August 5, 2005) of \$635,000, that was indicated in my 2008 appraisal”

The letter stated that the “after” value included “extraordinary assumptions” but did not specify those assumptions. The letter stated respondent “found” four similar sales with Class VII soils issues, but when he testified about the sales it became clear that the similar sales respondent “found” were simply the sales referred to Case Study 10. The letter stated the four properties had construction defects “as were assumed for my subject property.” The letter then set forth the grid contained in Case Study 10. The letter concluded, “Your honor, you can see all my estimates were well within the ranges of the market evidence.”

The letter clarified nothing.

27. Respondent claimed that Investigator Schmidt’s opinions concerning the failure of LQ-1 to comply with USPAP were the result of confusion, incompetence, and bias. Respondent strongly disagreed with Investigator Schmidt’s opinion that respondent was

required to gather actual information about the detrimental condition, stating, “That is the reason we use hypotheticals and extraordinary assumptions.”

Credibility Determinations

28. Investigator Schmidt lacked MAI status, but there was no question about his expertise in the area of residential real property appraisals and the application of USPAP standards. Investigator Schmidt spent 160 hours investigating the complaint filed with BREA that related to LQ-1. Investigator Schmidt prepared a comprehensive 10-page investigative report that set forth the scope of his investigation, the persons he interviewed, the documents he reviewed, and the information he analyzed to reach the opinions and conclusions set forth in his report. His report included specific findings related to USPAP violations.

Investigator Schmidt testified in a calm and deliberate fashion. He did not offer opinions about the value of the La Quinta property, as that was not his assignment, but his testimony established that LQ-1 failed to comply with USPAP standards and was not a credible appraisal. Investigator Schmidt did not offer testimony to questions that were not asked, and he did not expand on questions asked on cross-examination in an attempt to buttress his credibility. His testimony was responsive. He did not demonstrate bias.

29. Respondent’s presentation was in sharp contrast to Investigator Schmidt’s believable testimony. While respondent was qualified to testify about the valuation of the La Quinta property by reason of his education, training, and experience, and while he possessed personal knowledge about LQ-1’s preparation, his testimony did not render Investigator Schmidt’s testimony about LQ-1’s violations of USPAP uncertain or unpersuasive.

Despite having had many months to review Investigator Schmidt’s investigative report and the first amended accusation, respondent could not explain why LQ-1 did not comply with USPAP other than to assert that LQ-1 was not a “whole report” and that any deficiencies in LQ-1 were cured by subsequent oral reports, deposition testimony, and trial testimony. Respondent’s assertion made no sense; if what he claimed were true, no appraisal report would be final until an oral report was subsequently given or litigation was filed and testimony was taken. This is not the standard expected of a licensed appraiser: the public is entitled to rely on an appraiser’s report as being a final report that complies with USPAP when an appraiser signs the certification attesting to that fact.

Respondent provided complicated, long-winded, jargon-filled explanations for his diminution of value analysis. He offered the Bell article and Case Study 10 to establish the legitimacy of his “after” appraisal, but he had no knowledge of a detrimental condition other than what he may have been told by JM. He claimed that he was under no duty to investigate whether there was a detrimental condition because he made hypothetical and extraordinary assumptions, but no part of LQ-1 clearly and conspicuously identified any hypothetical condition or extraordinary assumption. And, respondent’s claim that Case Study 10’s results

concerning market resistance, uncertainty, and project incentive directly applied to the La Quinta diminution analysis was disingenuous.

Respondent, who represented himself and served as his own expert witness, treated the hearing process as if it were a contest of wits rather than a deliberative fact finding process. He frequently did not respond directly to questions asked on cross-examination, sometimes simply not answering the question or, more often, using a question as an opportunity to present his point of view. Some of respondent's testimony on material matters was inconsistent with his previous statements. Respondent's demeanor and manner while testifying raised significant questions about his credibility.

Respondent demonstrated extraordinary bias. He complained about the competence, ethics, and improper motivation of other professionals who reached conclusions contrary to his own. He offered no evidence to support his vicious personal attacks. His willingness to impugn the integrity of others was troubling.

Respondent offered no expert testimony, other than his own, to establish that LQ-1 complied with USPAP standards. Respondent was not a credible witness.

Conclusions Regarding LQ-1

30. LQ-1 did not identify the report writing option respondent used. LQ-1 did not include a definition of value or describe the scope of work performed. LQ-1 did not contain a meaningful description of the La Quinta property. LQ-1 did not analyze the sale of the La Quinta property or discuss the terms of its sale or the number of offers. LQ-1 did not contain a diagram depicting the property's layout or discuss the property's improvements. LQ-1 did not state whether respondent inspected the La Quinta property. LQ-1 did not discuss the history of any damage to the property, its cause(s), or its repair.

LQ-1 did not describe the PGA West neighborhood. LQ-1 did not mention whether other homes in PGA West experienced soil subsidence problems. LQ-1 did not adequately describe or analyze comparable sales in using the sales comparison approach.

LQ-1 did not provide credible support for the diminution in value opinion set forth in LQ-1. Calculations of loss were not supported by specific factual information in LQ-1, or by any documentation in respondent's work file.

These errors and omissions violated USPAP Standards Rules 1-1(a), 1-1(b), 1-2 (e)(i), 1-4(a), 1-5(b), 2-1(a), 2-1(b), and 2-2 (b)(iii)(v)(vii)(viii).

In connection with these errors and omissions, respondent provided appraisal services in an unprofessional manner and produced an appraisal report that lacked credibility and was misleading. Respondent did not provide supporting information to BREa upon request.

Respondent violated the Conduct Section of the Ethics Rule, the Record Keeping section of the Ethics Rule, and California Business and Professions Code section 11328.

RESPONDENT'S APPRAISALS OF THE PORCUPINE CREEK PROPERTY

31. Respondent prepared four appraisals for the Porcupine Creek property - PC-1, PC-2, PC-3, and PC-4 - each of which is at issue in this proceeding.

The Appraisal of Luxury Estate Properties

32. Porcupine Creek is a unique luxury estate.

33. Potential purchasers of luxury estates similar to Porcupine Creek are among the nation's wealthiest individuals. Unlike most luxury home buyers, individuals who seek to purchase a luxury estate do not restrict themselves to purchasing a property within a single geographic market. Persons interested in purchasing a luxury estate will purchase a luxury estate located almost anywhere in the United States and, perhaps, internationally, so long as it fulfills their distinctive wishes and dreams. In other words, they do not limit their search to the Coachella Valley.

34. Listing and sales information is available for the luxury estate market. While it is extremely difficult to find a "comparable" sale that can be used to develop a highly accurate market value when using the sales comparison approach, luxury estate listings and sales reflect general market trends. Listings and sales of luxury estates tend to set ranges of value.

35. The following example serves as a benchmark. Donald Trump owned a beachfront estate in Palm Beach, Florida, that consisted of six acres, 62,000 square feet of living area, a 48-car garage, and extensive ocean frontage. Trump's Palm Beach estate was listed for sale in May 2007 for \$125,000,000, but in May 2008 the listing was reduced to \$100,000,000. In July 2008, the Palm Beach estate sold for \$95,000,000, which, at the time, represented the highest price ever paid for a luxury estate in the United States.

The Palm Beach example does not permit a direct comparison to the market value of Porcupine Creek because each luxury estate was a unique property, but the listing and sale of the Palm Beach estate indicated a general declining sales trend for luxury estates from May 2007 to May 2008, and the Palm Beach estate's sale in May 2008 represented the highest price ever paid for a luxury estate in the United States.

36. The cost to develop a luxury estate is typically much higher than the listing or sales price of similar luxury estates. Luxury estates are built to reflect the particular tastes, desires and quirks of their individual owners, and if buyers have the money, they prefer not to live in someone else's dream with all its unique and sometimes idiosyncratic features. Potential buyers will not pay what the luxury estate cost to build. This principle is due to a

phenomenon known as “obsolescence.” An analysis of obsolescence must be included in the valuation of a luxury estate when the cost approach is used.

Porcupine Creek

37. Porcupine Creek is a vast, opulent, well-appointed luxury estate in Rancho Mirage in the Coachella Valley. Without doubt, Porcupine Creek became part of the luxury estate market when it was offered for sale. Porcupine Creek is a 230-acre luxury estate in Rancho Mirage with a 19-hole private golf course and four casitas. Porcupine Creek was constructed between 1998 and 2000 under a Development Agreement with the City of Rancho Mirage that imposed specific restrictions. Under the Development Agreement, Porcupine Creek was limited as follows:

. . . a single family residence together with 4 guest houses, an 18 hole golf-course and related amenities are permitted uses of the Property

and

[. . .] no commercial use shall occur . . . no membership to occupy or use the Property or any part thereof including golf memberships or any rights or interests to occupy any residence or any part thereof or play golf shall be sold and or otherwise conveyed, granted or given

38. Rancho Mirage Ordinance Number 735 amended the Development Agreement on June 15, 2000. It included a provision that stated:

[. . .] the unutilized balance of the Property shall remain open space and un-developed.

39. The zoning of Porcupine Creek’s residential areas was “Residential – Very Low Density, 2 dwelling units/acre maximum.” The zoning map for Porcupine Creek’s residential areas included assessor’s parcel numbers that contained a combination of, and sometimes overlapping, zoning classifications.

The Development Agreement and municipal ordinance limited the development of Porcupine Creek that was permitted by the zoning.

The zoning for Porcupine Creek’s golf course was “Open Space Private” (OS-P) and “Open Space Water” (OS-W). OS-W zoning established a 160-foot wide easement on which the East Rancho Mirage Storm Channel was built. A concrete flood channel extended across westerly portions of Porcupine Creek and limited the use of about 12.5 acres of Porcupine Creek. The Coachella Valley Water District used a service road located on an easterly portion of the easement.

An elementary school was located on the northwesterly boundary of Porcupine Creek, in close proximity to one of the golf course greens.

A portion of Indian Trail Road, which was used for ingress and egress to the elementary school, crossed a northerly portion of Porcupine Creek.

Travel to and from Porcupine Creek was via Dunes View Road, a public road that passed through a subdivision of older and smaller homes.

PC-1

40. Respondent prepared PC-1 on November 6, 2007, with an effective date of value of October 17, 2007.⁷ According to PC-1, which was a summary report, Porcupine Creek's appraised "as is" market value was \$207,590,000. That sum represented the combined value of the land, improvements on the land, furnishings, fixtures and equipment existing throughout the estate, together with the value of two homes situated in a neighboring subdivision that were used for storage and security purposes.

Respondent prepared PC-1 for the Palm Desert National Bank as part of a federally-related refinance transaction.

Respondent's Agreement for Services, dated September 25, 2007, described his assignment as valuing the "as is" market value of Porcupine Creek.

The term "MARKET VALUE 'As Is' " was defined in PC-1 as:

. . . an estimate of the market value of a property in conditions observed upon inspection and as it physically and legally exists without hypothetical conditions, assumptions, or qualifications as of the date of inspection. When an "As Is" valuation premise is used, the property is valued as of a specified date, assuming the property is in precisely the condition or status it actually was (is) on the effective date of value. This condition must be accurately described in the appraisal report.

Respondent's Agreement for Services also stated:

The Sales Comparison Approach will attempt to gather sales (national and international) of similar type residences together with private golf courses.⁸

⁷ Exhibit 76, the 2006 edition of USPAP, applies to PC-1.

⁸ The sales comparison approach is a valuation method used in real estate appraisal. The sales comparison approach compares the subject property's characteristics with those of

41. Respondent's transmittal letter for PC-1 stated there were no extraordinary assumptions or hypothetical conditions used in the appraisal. That letter stated:

During the Highest and Best Use analysis of the subject property it was determined that 16 ± acres of the subject property are designated for up to a maximum of one single family residence per acre. However, due to the extent and quality of the current improvements it was determined that the Highest and Best Use of the subject property is for the continued use "as is" as one or two estate homes with a golf course and associated amenities. (Highest & Best Use Conclusion)

The transmittal letter also stated:

In conclusion, considering the strengths and weakness of each approach to value, greatest emphasis is placed on the cost approach⁹ as closely supported by the comparable sales approach. Therefore, it is my opinion that the "as is" market value of the fee simple estate of the subject property, as of October 17, 2007, is reasonably estimated as:

\$207,590,000

Beneath that figure was respondent's allocation of values for the land, improvements, amenities, and furnishings, fixtures and equipment that totaled \$207,590,000.

42. PC-1 did not mention the existence of the Development Agreement or the municipal ordinance. Despite the development limitations set forth in the agreement and municipal ordinance, PC-1 stated that the highest and best use was:

comparable properties that recently sold in similar transactions. The approach uses several techniques to adjust the prices of the comparable transactions upwards or downwards based on the presence, absence, or degree of characteristics that influence property value. The sales comparison approach is based on the laws of supply and demand, as well as the principle of substitution. Supply and demand indicate value through the typical market behavior of both buyers and sellers. Substitution indicates that a purchaser would not purchase an improved property for any value higher than it could be replaced for on a site with equivalent utility, assuming no undue delays in construction.

⁹ The cost approach is a common valuation method. The fundamental premise underlying the cost approach is that a potential user of real estate won't, or shouldn't, pay more for a property than it would cost to build an equivalent property. The cost of construction minus depreciation, plus land, is a limit, or at least a metric, of market value.

Retain the Luxury Estate Home, Luxury Guest Homes, Golf Course and recreational amenities as common area and hold the remainder of the property for potential future development as very exclusive furnished vacant lots of exclusive Luxury Custom homes.

43. PC-1 described the most probable purchaser of the “Luxury Home Site” as an “Individual Home Buyer” and described the most probable purchaser of the “Golf Course, Guest Home & Remaining Land” as a “Developer, Investor.”¹⁰

Identifying two persons as potential purchasers of Porcupine Creek was improper because, according to PC-1, the purpose of the appraisal was to determine the “as is” market value if the property was purchased by one buyer.

44. PC-1 incorrectly described Porcupine Creek’s zoning as “Estate Home Use, Personal Open Space and Mountain Reserve.” PC-1 did not mention that the zoning map related to Porcupine Creek’s residential areas included a combination of overlapping zoning classifications. PC-1 stated there were 16 acres available for residential zoning.

Staff from the City of Ranch Mirage stated that there were three acres available for the main estate home and nine additional acres available for the casitas.

The four acre disagreement over the extent of residential zoning was unimportant because the Development Agreement, which runs with the property, limited residential development to “a single family residence together with 4 guest houses” and trumped the zoning issue.

PC-1 stated that a zoning change was not likely and that the “site would be eligible for development of up to 7 additional estates or single family dwellings, but due to the size, quality and location of the current improvements, space of only one additional estate home is considered to be practical.” In another portion of PC-1, respondent represented that the highest and best use of the site “as if vacant” would be for immediate development as 12 excellent quality luxury estate homes with casitas, guest homes, employee residences and on site recreational amenities.

In the highest and best use “as is” conclusion, PC-1 stated:

[. . .] re-development [of Porcupine Creek] as multiple luxury homes is not considered to be financially feasible. One additional estate home on the excess land south of the existing

¹⁰ Respondent testified that PC-1 through PC-4 described only one purchaser. Respondent testified the appraisals were not misleading because the “individual home buyer” could also be a “developer, investor.” This explanation was not compelling.

home is considered legally conforming,¹¹ financially feasible and physically possible and therefore, continued use as a estate compound and amenities and a finished site for immediate development of one additional estate home is considered the subject's highest and best use "as is."

PC-1 did not mention the Development Agreement or municipal ordinance that limited residential development, limitations that impacted the "as if vacant" and "as if" highest and best uses set forth in PC-1.

45. PC-1 mentioned the "flood easement" and a concrete flood channel, but PC-1 did not describe their negative impact on the use of approximately 12.5 acres of Porcupine Creek property. Instead, PC-1 stated, "This appraisal assumes that the subject property is not impacted by any easements or encroachments which would negatively affect the value."

46. PC-1 did not mention the presence of an adjacent elementary school. PC-1 described Porcupine Creek as being located at the end of a two lane residential side street with "average" accessibility.

47. PC-1 analyzed the market values of luxury homes that had been sold in Rancho Mirage and elsewhere within the Coachella Valley.

PC-1 did not mention that the most expensive residential property in the Coachella Valley sold for approximately \$11,000,000 before Porcupine Creek was put on the market.

PC-1 did not analyze national and international sales of luxury estates.

Nor did PC-1 discuss the unique nature of the luxury estate market, the limited marketability of luxury estates, or the high maintenance costs associated with those estates.

48. Before November 6, 2007, there was data that established the following listings and sale of luxury estates with private golf courses:

¹¹ PC-1 did not explain how one additional estate home would be a legally conforming use under the Development Agreement. Respondent claimed in his testimony that the Development Agreement was not legally binding because the City of Rancho Mirage had not objected to the estate having a 19-hole golf course rather than the 18-hole golf course and because Rancho Mirage permitted Porcupine Creek's new owner, Larry Ellison, to build tennis courts and a clubhouse in an area of Porcupine Creek that had previously been used for storage of golf course and other equipment.

Name of Property	Date	Price	Sale or Listing	GBA ¹² / Year Built	GBA Price	Acres	Holes ¹³
Beaver Dam Farms 3085 Smithonia Rd. Athens, GA	12/03/02	\$10,500,000	<i>Sold</i>	17,810 1981	\$590	499	18
Three Ponds Farm 939 Scuttle Hole Road Bridgehampton, NY	8/23/07 2003	\$68,000,000 Last Listing \$75,000,000 Prior Listing		20,000 1999+/-	\$3,400 \$3,750	60	18
Tranquility 525 Highway 50 Zephyr Cove, NV	5/31/11 9/30/06	\$75,000,000 Reduction \$100,000,000 Orig. Asking		20,000+ 2000	\$3,750 \$5,000	210	2

Respondent did not include the sale and listings in PC-1, even though they were reasonably available and were relevant.

49. The data relating to the luxury estates set forth above should be contrasted with respondent's valuations for Porcupine Creek set forth below:

Name of Property	Date	Respondent's Appraised Values	GBA/ Year Built	GBA Price	Acres	Holes
Porcupine Creek Rancho Mirage, CA	10/17/07	\$207,590,000 <i>Appraised</i>	18,430	\$11,264	230	19
	6/16/08	\$207,590,000 "	2001+/-	\$11,264		
	5/11/09	\$137,070,000 "		\$7,437		
	9/14/09	\$108,500,000 "		\$5,887		
	9/14/09	\$73,500,000 "		\$3,988		

Valuation of the Estate Home Component and Other Improvements

50. In valuing the residential estate component of Porcupine Creek, PC-1 used four sales as comparables. The square footage of the living areas in the four sales PC-1 mentioned were 7,100 square feet, 9,933 square feet, 9,810 square feet and 19,961 square feet. Three of the sales involved properties in the Coachella Valley, while the fourth sale involved a property in Pacific Palisades.

51. In the fourth comparable sale mentioned in PC-1, PC-1 stated that the views from the Pacific Palisades property were "similar" to Porcupine Creek's views. PC-1 did not mention that the Pacific Palisades property was located 120 miles northwest of Porcupine Creek and that it featured premium blue water ocean views. PC-1 failed to analyze the value

¹² "GBA" refers to the property's gross building area. "GBA Price" refers to the price per building area, based on the property's main improvements.

¹³ "Holes" refers to the number of holes on the estate's private golf course.

of the Pacific Palisades property’s ocean views in determining whether it was a comparable sale.

52. The living area of Porcupine Creek’s residential estate was 18,430 square feet. To adjust for the difference between Porcupine Creek’s greater square footage and the three smaller comparables, respondent adjusted the value of Porcupine Creek’s residential estate living area upwards by about \$20 million, which was equivalent to adding about \$2,000 per square foot in the valuation of Porcupine Creek. This upward adjustment was unreasonable and resulted in an overvaluation.

53. PC-1 did not mention or include listings of larger estates in the Coachella Valley that were far more similar in size to Porcupine Creek. Five listings were available when PC-1 was prepared that were more similar in size to Porcupine Creek’s residential component than the comparables mentioned in PC-1. The listings were as follows:

Property:	<u>Listing 1</u>	<u>Listing 2</u>	<u>Listing 3</u>	<u>Listing 4</u>	<u>Listing 5</u>
	Falling Rock Lane Indian Wells	Delgado Drive Indian Wells	Pablo Verde Drive, Indian Wells	Quail Lake, Indian Wells	Hermosa Pl., Palm Springs
Listing Price	\$19,950,000	\$19,000,000	\$13,900,000	\$13,900,000	\$15,950,000
		(Later Reduced)		(Later Reduced)	
Living Area Sq. Ft.	25,924	25,447	19,188	15,389	15,000
Price per Sq. Ft.	\$769.56	\$746.65	\$724.41	\$903.24	\$1,063.33
Listing Date	3/28/07	7/28/06	9/30/07	5/14/07	3/6/08
Off Market Date	7/14/08	6/28/07	7/20/09	7/14/08	7/24/08
Days on Market	598	335	659	431	140

54. These listings were relevant because they contradicted the \$2,000 per square foot size upward adjustment set forth in PC-1. The market difference per square foot price for these larger homes ranged from \$725 to \$1,063 per square foot, inclusive of land and other improvements.

The listings of the larger properties also demonstrated that the market for larger residences in the Coachella Valley was limited and that longer marketing times were required to sell these properties. Even though all of the properties were actively marketed, not all of them sold.

The listings for these larger properties were readily available when respondent prepared PC-1 and should have been included in PC-1.

Personal Property Valuation

55. PC-1 included valuations for personal property, furnishings, fixtures and equipment, excluding golf course equipment. The personal property valuation set forth in PC-1 totaled \$13,092,000.

The subtotal for the personal property in PC-1 exceeded the sales prices of the selected Coachella Valley comparables that were sold as furnished residences.

PC-1 did not contain an inventory of the personal property that respondent claimed had a value of more than \$13 million.

Respondent's work files did not contain any support or breakdown for the personal property valuation set forth in PC-1.

Golf Course Valuation

56. PC-1's valuation of the golf course consisted of two components: the value of the open space land and the cost to construct the golf course and related improvements on that land. PC-1 calculated the value of the golf course as the sum of those components.

The following is a summary of golf course related values set forth in PC-1 through PC-4 based on the cost approach:

Reports:	PC-1 and PC-2	PC-3	PC-4
Effective Date of Value:	6/16/2008	5/11/2009	9/14/2009
Open Space Land 157 Acres	\$69,130,000	\$44,248,000	\$35,995,000
Golf Course	\$27,357,000	\$17,784,000	\$14,934,000
Golf Clubhouse (pro-shop/conference)	\$475,000	\$309,000	\$269,000
Lakes/Reservoirs/Wells/Pumps	\$2,140,000	\$1,392,000	\$1,295,000
Landscape-Hardscape-Water Treatments-Fountains (137 Acres)	\$37,111,000	\$24,490,000	\$20,816,000
Storage Yard Improvements	\$75,000	\$49,000	\$45,000
Perimeter Fence and Entry Gate	\$182,000	\$118,000	\$109,000
Total	\$136,470,000	\$88,390,000	\$73,463,000

57. PC-1 set forth a golf course value of \$136,470,000. When that sum is divided by 19, the number of holes on the golf course, the value of the golf course was \$7,182,631 per hole; when that sum is divided by 157, the number of acres of open space property used for the golf course, the value of the golf course was \$869,232 an acre.

58. In calculating the value of the open space land used for the golf course, respondent utilized land sales with residential development potential as comparables. PC-1 used four sales of vacant properties that were not zoned as open space and were intended for residential development. PC-1 did not address or disclose that information, which was critical because vacant land for residential development is usually far more valuable than vacant land that can only be used as open space. By utilizing the four sales as comparables, PC-1 concluded that the price per square foot for open space was \$10.11. PC-1 applied that square foot value to Porcupine Creek's 157 acres of "Private Open Space." This approach resulted in a valuation of the golf course land in an amount in excess of \$69 million.

59. At all times relevant to this matter, Marshall & Smith published Marshall Valuation Service (service), a publication recognized in the appraisal field as a reliable source of cost data. The service included cost data related to the construction of golf courses. Bureau of Real Estate Investigator Donald B. Fruechtl, who testified in this matter, used the service cost data to analyze respondent's assessment of the probable cost to construct a golf course on Porcupine Creek's 157 acres of private open space.

Marshall Valuation Service described a Class IV golf course, the highest class listed, as a better championship-type golf course situated on good undulating terrain, with fairways and greens bunkered and contoured, with large tees and greens, featuring large transplanted trees, a driving range, and possibly designed by a renowned golf course architect. In 2005, a Class IV championship golf course with extensive features cost \$481,750 to \$751,250 per hole, with costs varying 20 to 25 percent. In 2007, the service indicated the cost of a Class IV golf course was \$531,500 to \$834,000 per hole, plus or minus 20 to 25 percent. In 2009, the service indicated the cost of Class IV golf course was \$547,500 to \$859,000 per hole, plus or minus 20 to 25 percent.

60. Assuming that Porcupine Creek was a Class IV golf course, and assuming that the cost associated with the construction of the Porcupine Creek golf course was constant and was equal to the maximum cost per hole using 2009 costs (\$859,000 per hole plus 25 percent, or \$1,075,000 per hole), the maximum cost of the Porcupine Creek golf course and improvements would be \$20,425,000. Even if an open space land value of \$69,000,000 was added to that figure, the total value of the Porcupine Creek golf course would be at least \$47 million less than PC-1 calculated.

61. PC-1 did not discuss the recent sale of golf courses in the Coachella Valley, which would have been a more appropriate method to value golf course property according to Investigator Fruechtl.

When PC-1 was prepared, recent "per hole" sales of golf courses in the Coachella Valley ranged from \$176,944 to \$344,444 per hole (which included the cost of the open land, the golf course improvement on that land, and related equipment), or a "per acre" price for finished golf courses that ranged from \$18,305 to \$31,000 per acre. Those sales figures may be contrasted with PC-1's value of the Porcupine Creek golf course at \$7,182,632 per hole and \$869,232 per acre.

Respondent's valuation of the Porcupine Golf course was not reasonable.

Complainant's Evidence Regarding PC-1

62. Donald B. Fruechtl has worked as a real estate appraiser since 1977. He has been a California licensed real estate appraiser since 1992. He holds a college equivalency from the American Institute of Real Estate Appraisers, now known as the Appraisal Institute. He was employed by financial institutions in Southern California as a real estate appraiser for many years, self-employed as a real estate appraiser in Southern California for about a

decade, employed as a public lands management specialist by the California State Lands Commission for five years, and most recently by the BREA for the past ten years. He currently serves as a BREA Senior Property Appraiser Investigator.

Investigator Fruechtl holds California Certified General Real Estate Appraiser License No. AG008205. He has been a Member of the Appraisal Institute (MAI) since 1989. He was elected a Fellow in the Royal Institution of Chartered Surveyors in 2013.

Investigator Fruechtl was very familiar with residential appraisals and the appraisal of highly complex properties such as Porcupine Creek, as well as USPAP standards and their application in complex transactions.

63. Investigator Fruechtl reviewed a complaint filed with the BREA concerning respondent's appraisal of Porcupine Creek in January 2011. He obtained and reviewed PC-1, PC-2, PC-3, PC-4, and respondent's work file for those appraisals. He conducted telephone interviews with respondent on April 29 and August 3, 2011. He reviewed the comparables respondent utilized in his appraisal reports; conducted an Internet search to obtain listings and sales of luxury estates with private golf courses; obtained documents from the City of Rancho Mirage and other governmental entities; obtained sales data related to the recent sale of golf courses in the Coachella Valley; reviewed a variety of documents; and conducted numerous interviews. Investigator Fruechtl did not inspect Porcupine Creek. During his investigation, Investigator Fruechtl prepared a 154-page narrative report that he signed on March 28, 2013.

64. In connection with the April 29 and August 3, 2011, telephone interviews, respondent mentioned several times that he was aware of the Development Agreement and should have disclosed it in his appraisal reports; however, he claimed that the existence of the agreement was irrelevant and did not change his opinions of value.

65. Respondent's work file did not contain a copy of the Development Agreement or a copy of Rancho Mirage's municipal ordinances.

66. In his testimony concerning PC-1 through PC-4, Investigator Fruechtl was highly critical of respondent's failure to mention the Development Agreement, which restricted further development of Porcupine Creek. For the same reason, Investigator Fruechtl was highly critical of respondent's failure to mention the municipal ordinance that mandated "the unutilized balance of the Property shall remain open space and undeveloped." According to Investigator Fruechtl, respondent's failure to include and analyze this information involved USPAP violations and made the appraisal reports misleading. The suggestion in respondent's appraisals that there could be further residential development of Porcupine Creek was simply untrue – further residential development was not legally possible.

In his testimony concerning PC-1 through PC-4, Investigator Fruechtl was troubled by respondent's failure to consider and discuss the unique nature of the luxury estate market.

No other luxury estate in the United States was listed, much less sold, for half of Porcupine Creek's "as is" market value set forth PC-1 and PC-2. Investigator Fruechtl believed that by ignoring the national luxury estate market and using sales of dissimilar Coachella Valley luxury homes (not luxury estates) for comparison purposes, respondent grossly overestimated the market value of Porcupine Creek's residential component. He believed that the omission of the market information involved USPAP violations and made the appraisals misleading.

Investigator Fruechtl's last major criticism of PC-1 through PC-4 involved the manner in which respondent assessed the value of the golf course. Investigator Fruechtl believed that PC-1 and PC-2 overvalued the open land and the cost required to construct a similar golf course. According to Investigator Fruechtl, PC-1's valuation of the golf course could not reasonably be supported, violated USPAP standards, and was misleading.

67. Investigator Fruechtl backed up his conclusions about the unique nature of the luxury estate market and the value of golf courses with research.

Investigator Fruechtl determined that the value of luxury homes (not luxury estates) in the Coachella Valley peaked around June 2006, with sales of such homes ranging from \$3,000,000 to \$10,000,000. Other than the Annenberg Estate, there was no other estate in the Coachella Valley with its own private golf course. Luxury homes within the Coachella Valley that were available for comparison purposes were frequently situated within gated communities that had private golf courses. In the development of golf-oriented communities, the golf course component was a loss leader whose main purpose was to increase the value of the homes within the community. Purchasers of these luxury homes were far more plentiful than those who were able to purchase a luxury estate with its own private golf course.

Investigator Fruechtl researched the appraisal of luxury estates and high value homes. In reviewing materials maintained within the Appraisal Institute's Lum Library, he found that when valuing high-end homes, cost does not equal value, and that it is necessary for an appraiser to address available market information relating to luxury estate-type properties when appraising another luxury estate such as Porcupine Creek. A cost appraisal approach was not necessarily the most accurate approach to determining market value, and the cost approach value needed to be tempered by what was actually occurring in the marketplace.

Investigator Fruechtl obtained sales and listings of luxury estates via the Internet; he did so to put respondent's valuations of Porcupine Creek into perspective. He spoke with brokers, appraisers and others, including MAIs, who had appraised luxury estates with private golf courses. Investigator Fruechtl learned that having a private a golf course as part of a luxury estate was often perceived to be a liability since the cost of maintaining the golf course substantially reduced the pool of available buyers. With this in mind, Investigator Fruechtl investigated six luxury estates with golf courses, four of which had been sold or were being listed for sale when respondent prepared PC-1. When he analyzed the available data, Investigator Fruechtl found that the cost to develop the luxury estates was significantly higher than the listing or sales prices for those estates.

Investigator Fruechtl was critical that respondent's appraisals did not address the national luxury estate market where the luxury estate included a private golf course, something respondent had agreed he would do in his agreement for services, because potential purchasers of Porcupine Creek would be looking at similar properties throughout the United States and the listings for those properties would influence the price point for Porcupine Creek.

Investigator Fruechtl testified that respondent's failure to address the national luxury estate market involved a lack of due diligence that violated USPAP standards.

68. On cross-examination, Investigator Fruechtl admitted that PC-1 and PC-2 contained inferences that could be attributed to obsolescence (cost does not equal value) and that he never spoke with respondent about obsolescence. He admitted that the Porcupine Creek golf course had 19 holes rather than the 18 holes permitted under the Development Agreement. He did not believe Larry Ellison, Porcupine Creek's new owner, violated the Development Agreement by constructing tennis courts and a clubhouse in an area where storage was previously located because the tennis courts and clubhouse were "related amenities" under the Development Agreement.

On cross-examination, Investigator Fruechtl did not dispute that the \$42.9 million Mr. Ellison reportedly paid for Porcupine Creek in January 2011 might be considered a "distress sale." Investigator Fruechtl did not dispute that what Mr. Ellison paid for Porcupine Creek might not reflect the true market value of that luxury estate.

On cross-examination, Investigator Fruechtl admitted that PC-3 and PC-4 showed a decline in the value of Porcupine Creek that was consistent with the general nationwide trend involving a decline in the value of luxury estates; however, he disagreed with the percentage decline reflected in PC-3 and PC-4.

Respondent's Evidence

69. Respondent believed the major contested issues involved the Development Agreement, the impact of the flood control easement, the valuation of the golf course, and "obsolescence."

70. Respondent obtained the initial assignment to value Porcupine Creek from Palm Desert National Bank in September 2007. His first task was "to walk the grounds" and inspect the property. He determined that Porcupine Creek was an extremely unique property. He was very impressed with the construction details and works of improvement he observed at Porcupine Creek. Respondent spoke with Timothy Blixseth, a real estate developer and timber baron who, along with his then wife Edra, owned the property at the time.

71. Respondent decided to value Porcupine Creek by using a cost approach and a sales comparison approach. He determined that heavily relying on a sales comparison

approach was not practical because he would not be able to visit other luxury estates within the United States; for this reason, he chose to emphasize a cost approach.

Respondent divided Porcupine Creek into smaller parts in order to use a cost approach, deciding to separately value the golf course, the estate home and guest casitas, the two off-site homes, and the mountain reserve land, and to add the sums of these parts together to obtain a total market value.

72. Respondent testified that when using the “as if vacant” approach there was no need to consider the Development Agreement because an appraiser must start with the value of unentitled raw land when using this approach.

Respondent testified that when using the “as is” approach, the Development Agreement did not need to be included in the appraisal report because the estate’s “as is” value already included the inherent value of the Development Agreement, which respondent referred to as a “bonus.” Respondent defined this “bonus” as the value of permitting a non-conforming use. In this instance, respondent claimed that the Development Agreement permitted the development of Porcupine Creek and there likely would not have been any development without the agreement.

Respondent also claimed that since PC-1 was a “summary” report, he was not required to disclose the Development Agreement.

For all these reasons, respondent asserted that PC-1’s failure to refer to and analyze the Development Agreement was not misleading. He claimed the Development Agreement was irrelevant or was already incorporated in the estate’s value. He believed the development agreement and municipal ordinance were irrelevant to his determination of highest and best use and did not limit what was legally permissible.

73. On the issue of the flood control easement, respondent testified that the easement was already in place; that Porcupine Creek benefitted from the easement and the concrete flood channel; and that there was no need to disclose the fact of the easement and flood channel since they were a part of the estate’s inherent value.

Respondent claimed that it was irresponsible of Investigator Fruechtl to assert that the easement had a negative impact on the use of 12.5 acres of Porcupine Creek. He also was critical of Investigator Fruechtl’s claim that the estate’s proximity of the elementary school and the entry to Porcupine Creek through an older subdivision should have been disclosed because they might have a negative impact on Porcupine Creek’s value.

74. Respondent testified that his valuation of the golf course open space property was correct and that Investigator Fruechtl's testimony demonstrated incompetence and violated the "consistent use theory."¹⁴

Respondent testified that Inspector Fruechtl improperly used the commercial value of a golf course to calculate the value of the estate's golf course land. Respondent testified that an appraiser must consider the value of vacant land, without a golf course on it, to determine the highest and best use of that land. In those instances in which the vacant land has been incorporated into a golf course community, the golf course was a loss leader and the value of the golf course land was "sucked out" of the land and transferred to adjacent residential properties that benefited from being in close proximity to the golf course. Because of this, respondent asserted that it was proper for him to use the value of vacant land that could be used for residential development when calculating the value of Porcupine Creek's open space. Failing to provide such a value would result in Porcupine Creek's undervaluation, according to respondent.

75. Respondent claimed that obsolescence or superadequacy (a term used to describe a real estate component that is not necessary to determine its current or anticipated use) was a "white elephant" and there was "no evidence that there was \$1 of superadequacy."

76. Respondent claimed Investigator Fruechtl was a "Monday morning quarterback" who improperly relied on Porcupine Creek's distress sale of \$49 million to support the contention that respondent had overvalued Porcupine Creek; that Investigator Fruechtl intentionally used listings for many estate properties that had not sold as comparables, which was unethical; that Investigator Fruechtl was incompetent; and that Investigator Fruechtl did not investigate a Montana bankruptcy proceeding relating to Porcupine Creek in which respondent testified.

Credibility Determinations

77. Investigator Fruechtl held an MAI designation and had expertise in complex transactions involving real property and the application of USPAP standards to those kinds of transactions. Investigator Fruechtl spent more than a hundred hours investigating the Porcupine Creek complaint. He prepared a comprehensive investigative report that set forth the scope of his investigation, the persons he interviewed, the documents he reviewed, and the other information he considered in reaching the opinions and conclusions set forth in his report. His report included specific findings of USPAP violations.

¹⁴ Consistent use is defined as: "... the concept that land cannot be valued on the basis of one use while the improvements are valued on the basis of another." Underlying the concept of consistent use is the principle of highest and best use: "The highest and best use of land as vacant and the highest and best use of the property as improved are connected but distinctly different concepts."

Investigator Fruechtl testified in a calm and deliberate fashion. He did not offer opinions about the value of the Porcupine Creek property, as that was not his assignment, but his testimony established that respondent failed to comply with USPAP and produced four appraisals that were not credible and were misleading. Investigator Fruechtl sometimes offered testimony in response to questions that were not asked, but his testimony was usually responsive. He did not demonstrate bias.

78. Once again, in his explanations of PC-1 through PC-4, respondent provided complicated, long-winded, jargon-filled testimony. His reasons for not including the Development Agreement in the appraisals made no sense. He admitted to Investigator Fruechtl that he should have disclosed the agreement. Respondent used properties that were not comparable in his valuation of Porcupine Creek, and he did not consider sales or listings of luxury estates. His valuation of the golf course component was unrealistic. Respondent offered absolutely no factual support for his claim that the furniture, furnishing and fixtures on the estate had a value of more than \$13 million.

Respondent's demeanor and manner of testifying raised many questions about his credibility. He offered no expert testimony, other than his own, to establish that his appraisals of the Porcupine Creek property complied with USPAP standards.

Conclusions Regarding PC-1

79. PC-1 omitted a Development Agreement and city ordinance that restricted development of Porcupine Creek. PC-1 failed to adequately describe Porcupine Creek's diminished usable land area due to the presence of a flood control easement and storm channel. PC-1's determination of Porcupine Creek's highest and best use was based upon an analysis that did not consider restrictions imposed by the Development Agreement and a city ordinance. PC-1 contained conclusions and representations about Porcupine Creek's highest and best use that were erroneous and misleading.

PC-1 did not describe the national luxury estate market, which was essential to a proper understanding of Porcupine Creek's value. PC-1 omitted relevant listings and sales within the national luxury estate market. PC-1 did not contain sufficient relevant information to support a credible cost approach or a credible sales comparison approach in valuing Porcupine Creek's residential and golf course components. National luxury estate market information was available that raised serious questions about and sometimes directly conflicted with the component allocations and values set forth in PC-1.

PC-1 did not mention, much less provide, any support for the values allocated for furnishings, fixtures and equipment.

PC-1 did not disclose or comment on the sales of golf courses in the Coachella Valley. PC-1 improperly used sales of Coachella Valley property with residential development value for comparison purposes, and not vacant property that could be used only as "open space." PC-1 did not contain reasonable and adequate support for the value

conclusions related to the 157 acres of golf course open space. These errors and omissions violated USPAP Standards Rules 1-1(a), 1-1(b), 1-2(e)(i), 1-3(a)(b), 1-4(a)(e)(g), 1-6(a)(b), and 2-2(b)(iii)(viii)(ix).

PC-1 did not analyze the various component parts as a whole. PC-1's "As Is" Market valuation of Porcupine Creek unreasonably reflected the sum of the individually appraised component values predicated on purported market activity for each component. This approach was misleading and violated USPAP Standards Rules 1-4 (e), and 2-2 (b)(viii).

In his preparation of PC-1, respondent failed to perform the scope of work required to complete the appraisal in a manner consistent with the standard of practice required of other licensees, failed to employ recognized USPAP methods and techniques necessary to produce a credible appraisal, and failed to produce an appraisal that contained sufficient information to enable an intended user to understand the appraisal properly. PC-1 was misleading. Respondent's conduct violated the Scope of Work Rule and the Conduct Section of the Ethics Rule.

PC-2

80. Respondent prepared PC-2 on June 16, 2008, with an effective date of value of June 16, 2008.¹⁵ According to PC-2, which was a restricted report,¹⁶ Porcupine Creek's appraised "as is" market value was \$207,590,000. Respondent prepared PC-2 for the Palm Desert National Bank as a "benchmark." PC-2 proceeded with the extraordinary assumption that the improvements remained as described in PC-1, which was incorporated by reference.

In PC-2's opinion of value section, respondent wrote:

Since the previous appraisal dated October 17, 2007, real estate market conditions have deteriorated, however, the preponderance of the deterioration has occurred in the entry level and move-up residential markets as opposed to custom and luxury residential markets. Consequently, research of sales and listings indicated luxury residential market is stable from the previous appraisal dated October 17, 2007.

¹⁵ Exhibit 77, the 2008 edition of USPAP, applies to PC-2.

¹⁶ A restricted appraisal report contains limited information about the property being appraised, and its distribution is limited to the report's intended user. A summary appraisal report, such as PC-1, contains far more detail and analysis, and it is frequently used by lenders and financial institutions.

81. A hard money lender¹⁷ received PC-2 to determine the value of Porcupine Creek as collateral for a loan.

82. When PC-2 was issued, golf course sales and listings for improved golf courses had a unit value of \$27,011 to \$45,000 per acre. In contrast, PC-2 reflected a unit value of \$869,236 per acre (based on the Porcupine Creek's 157 acres of private open space that included land and improvements).

83. Since PC-2 was based on PC-1, the errors and omissions previously mentioned concerning PC-1 were necessarily present.

Conclusions Regarding PC-2

84. PC-2 omitted pertinent city ordinances and the Development Agreement. PC-2 misrepresented development potential on portions of Porcupine Creek that was not legally possible. PC-2 contained conclusions and representations of highest and best use that were not supported.

PC-2's valuation methodology under the sales comparison approach included improved sales of various components, but it did not disclose or analyze sales of improved golf courses. The sales comparison approach used sales of property that had significant residential development potential rather than property that could only be used as open space. PC-2 improperly adjusted comparable sales in valuing the estate's residential component and omitted listings of luxury estates with golf courses. PC-2 failed to provide adequate support for various value conclusions.

PC-2 failed to analyze the various component parts as a whole. The "As Is" Market value reflected the sum of the individually appraised components predicated on purported market activity for each component without considering whether the total sum was a reasonable value. PC-2 did not provide factual support for the values for furnishings, fixtures and equipment. PC-2 did not reconcile an unsupported cost approach market value despite the availability of national luxury estate market information that conflicted with component allocations and the final value estimate.

These errors and omissions violated USPAP Standards Rules 1-1 (b), 1-2 (e)(i), 1-3 (a)(b), 1-4(a)(e)(g), 1-6(a)(b), and 2-2 (c)(iii)(viii)(ix).

In connection with these errors and omissions, respondent failed to correctly employ recognized methods and techniques required to produce a credible appraisal and failed to

¹⁷ A hard money lender offers a specialized type of real estate backed short-term capital loan based on the value of the real estate acting as collateral. Hard money lenders tend to focus on the value of the collateral property rather than the borrower's ability to repay the loan. A hard money lender typically charges much higher interest rates than banks. As respondent testified, "They loan to own."

provide reasoning to supported the analyses, opinions and conclusions set forth in PC-2, in violation of USPAP Standards Rule 1-1 (a).

Respondent failed to identify the problem to be solved and to provide the scope of work necessary to complete the assignment consistent with appraiser peers' actions, in violation of USPAP Standards Rule 1-2 (h), 2-2 (c)(vii), and the Scope of Work Rule.

Respondent's appraisal in PC-2 was misleading, and respondent failed to report sufficient information to enable intended users of PC-2 to understand the appraisal properly, in violation of USPAP Standards Rules 2-1 (a)(b).

Respondent failed to disclose and properly analyze relevant property and market characteristics pertaining to Porcupine Creek. PC-2 was misleading, in violation of the Conduct Section of the Ethics Rule.

PC-3

85. Respondent prepared PC-3 on May 20, 2009, with an effective date of value of May 11, 2009.¹⁸ PC-3 was prepared for the Palm Desert National Bank "to assist the client in evaluating the subject property for loan security matters or asset monitoring" PC-3 stated, "This is a federally related transaction."

According to PC-3, which was a summary report, Porcupine Creek's appraised "as is" market value was \$137,070,000 "if sold for cash or its equivalent as sold to a single buyer as of the effective date of this report, May 11, 2009."¹⁹ The "as is" market value represented the value of the land, improvements on the land, the two residences located in close proximity to Porcupine Creek, and furnishings, fixtures and equipment existing throughout the estate according to PC-3.

PC-3 proceeded on the assumption that Porcupine Creek's highest and best use was "for the continued use 'as is' as one or two estate homes with a golf course and associated amenities." PC-3 contained an extraordinary assumption that the property remained in virtually the same conditions as respondent observed in the October 17, 2007, appraisal.

86. PC-3 discussed market values of properties in Rancho Mirage and the Coachella Valley. PC-3 did not analyze trends in the national luxury estate market in which the typical buyer would not be restricted to the Coachella Valley. PC-3's conclusions in the

¹⁸ Exhibit 77, the 2008 edition of USPAP, applies to PC-3.

¹⁹ Despite the "single buyer" limitation set forth, PC-3 stated that the most probable purchaser was:

Luxury Home Site: Individual Home Buyer.

Golf Course, Guest Homes & Remaining Land: Developer, Investor.

Regional and Neighborhood Analyses and Conclusion sections were inaccurate because they did not address the national luxury estate market or national trends for luxury estates.

87. PC-3 mentioned a \$25 million land sale in Palms Springs (\$285,193 per gross acre, based on 87.66 acres) and represented the sale was an arm's length transaction rather than a foreclosure sale. The Palm Springs transaction included approximately 385 residential lots, some streets, and open space that contained a failed golf course. PC-3 stated the actual land area was 87.66 acres when, in fact, the actual land area was at least 218 acres. Thus, PC-3 overstated the per gross acre price. After adjustments to "Open Space" sales, PC-3 concluded that Porcupine Creek's open space had a unit value of \$281,791 per acre, or \$6.47 per square foot.

88. While PC-3 reflected a decline from the values reported in PC-2, PC-3 did not provide any support for the rate of decline other than to suggest it was the result of external or economic obsolescence. The difference between the effective dates of value set forth in PC-2 and PC-3 was 329 actual days, approximately 11 months. The difference in values reported in PC-2 and PC-3 reflected an approximate 37 percent decline in Porcupine Creek's total value. Respondent provided no support for this rate of decline.

89. In PC-1, respondent used an upward adjustment of about a \$2,000 per square foot, exclusive of land and other improvement values, to account for the square footage discrepancies between Porcupine Creek and the properties used as comparables. PC-3 used an upward adjustment of about \$1,289 to \$1,326 per square foot, exclusive of land and other improvement values, to account for the discrepancies in size.

PC-3's value for size adjustment was not supported. Respondent's failure to mention listings of estates in Coachella Valley that were more similar in size to Porcupine Creek was not an error attributable to a lack of competency.

90. PC-1 and PC-2 included valuations for personal property, furnishings, fixtures and equipment in excess of \$13 million. The valuations excluded the golf course equipment.

PC-3 contained valuations for the same personal property, furnishings, fixtures and appliances in an amount that totaled \$8,957,000, about two-thirds of the value provided in the report prepared 11 months before. Respondent's work files did not contain any support or breakdown for the personal property valuation in PC-3 or provide any explanation for the approximate 33 percent decrease in value.

Complainant and Respondent's Evidence Regarding PC-3

91. Investigator Fruechtl's narrative report, supporting documentation, and credible testimony set forth those factual matters establishing respondent's USPAP violations in PC-3.

92. Respondent testified that between June 2008 and May 2009, “the price point for luxury homes collapsed,” which resulted in Porcupine Creek’s approximate \$70 million loss in value. He opined that the collapse was due to “developers getting out of the market.” He testified that the following comment set forth in PC-3 was valid and did not contradict his testimony:

Signs of decreasing demand are evident but the long term economic outlook is encouraging. Commercial buildings and land values appear relatively stable after significant increases in 2004 and 2005. Residential improvements and land values appear to be stable or decreasing slightly and time on the market has been extending. The market appears to indicate this trend may continue for the next 6 to 12 months.

Respondent testified that the reference in PC-3 to 35 percent external obsolescence was a typographical error and it was merely coincidental that the 34 percent decrease in Porcupine Creek’s value between PC-2 and PC-3 was consistent with that typographical error.

Credibility Determinations

93. Investigator Fruechtl’s testimony concerning PC-3 was far more credible than respondent’s testimony for the reasons previously stated.

Conclusions Regarding PC-3

94. PC-3 omitted city ordinances and the Development Agreement that restricted further development. PC-3 did not describe the diminished use of 12.5 acres of Porcupine Creek as a result of the flood control easement and concrete flood channel. PC-3 did not adequately describe the existing luxury estate market in valuing Porcupine Creek.

PC-3’s highest and best use did not consider the limitations imposed by the city ordinances and Development Agreement. PC-3 stated the most probable purchaser of Porcupine Creek was two purchasers, the first being an “Individual” for the luxury home site and the second as being a “Developer, Investor” for the “Golf Course, Guest Homes and Remaining Land,” even though PC-3’s premise was that Porcupine Creek would be sold to a single buyer. PC-3 claimed Porcupine Creek had residential development potential that did not legally exist. PC-3 contained conclusions and representations of highest and best use that were not legally permissible.

PC-3’s valuation methodology under the sales comparison approach included sales of various components, but it did not disclose or discuss recent sales of golf courses. PC-3 improperly used sales of land with significant residential development potential to value Porcupine Creek’s open space. PC-3 misrepresented adjustments to the comparables in valuing Porcupine Creek’s residential component and omitted available listings of Coachella Valley luxury estates. PC-3 misrepresented the physical characteristics of Porcupine Creek

and its legal characteristics. PC-3 did not provide adequate support for various market value conclusions.

PC-3 failed to develop a credible opinion of the various value components, resulting in a misleading report and an unsupported valuation using the cost approach. PC-3 did not analyze the various value components as a whole. Respondent's "As Is" Market valuation of Porcupine Creek reflected the sum of the individually appraised component values based on purported market activity for each component, but PC-3 did not reconcile the value reached in the cost approach with sales and listings of other luxury estates despite the availability of national luxury estate market information that conflicted with the final value estimate.

PC-3 provided no support or analyses of the various values related to the estate's furnishings, fixtures, or equipment.

PC-3 failed to employ recognized methods and techniques required to produce a credible appraisal.

These errors and omissions violated USPAP Standards Rules 1-1 (a)(b)(i)(ii)(iii), 1-2 (e)(i), 1-3 (a)(b), 1-4(a)(e)(g), 1-6(a)(b), and 2-2(b)(iii)(viii)(ix).

In connection with these errors and omissions, respondent failed to identify the problem to be solved and provide the research and analyses required to perform the work necessary to complete the assignment in a manner consistent with that provided by appraiser peers, in violation of USPAP Standards Rules 1-2 (h), 2-2 (b)(vii), and Scope of Work Rule.

As a result of these errors and omissions, respondent did not clearly and accurately set forth a market value appraisal. PC-3 was misleading and did not provide sufficient information to enable an intended user to understand the appraisal properly, in violation of USPAP Standards Rule 2-1(a)(b) and the Conduct Section of the Ethics Rule.

PC-4

95. Respondent prepared PC-4 on September 19, 2008, with an effective date of value of September 14, 2009.²⁰ PC-4 was prepared for attorneys representing the Palm Desert National Bank in a Montana bankruptcy proceeding.

According to PC-4, which was a summary report, Porcupine Creek's appraised unimpaired "as is" market value (no bankruptcy value impact considered) was \$108,500,000 "if sold to a single purchaser as of the date of appraiser's inspection."

According to PC-4, Porcupine Creek's impaired "as is" market value (including the detrimental condition related to the bankruptcy) was \$73,500,000.

²⁰ Exhibit 77, the 2008 edition of USPAP, applies to PC-4.

PC-4 did not include valuation of any personal property in reaching market values, but did include the valuation of existing golf course equipment.

PC-4 proceeded on the assumption that Porcupine Creek's highest and best use was "for the continued use 'as is' as one or two estate homes with a golf course and associated amenities." This use was not legally permissible.

PC-4 stated, "Bankruptcy impacting the subject property is considered a Class IV detrimental condition that is only temporary in nature."

In PC-4, respondent represented that he "inspected the exterior of the property . . . and found that condition of the property approximately 90% of its pristine value condition when I inspected the property October 17, 2007. Current market conditions were taken into consideration and are intrinsic in the previously estimated market value of \$108,500,000."

PC-4 contained the same errors and omissions previously noted in PC-3, other than as supplemented or explained below.

96. After making adjustments for open space sales, PC-3 concluded the open space unit value was \$281,791 per acre, or \$6.47 per square foot. After making adjustments for the same open space sales, PC-4 concluded the value of the open space had decreased to \$229,269 per acre, or \$5.26 per square foot. The difference in the open space land values set forth in PC-3 and PC-4 represented an 18.7 percent decrease in value over four months. This decrease was equivalent to an annual decrease of approximately 56 percent. This rate of decrease was unsupported.

97. Although PC-3 and PC-4 reflected declining property values, respondent did not provide any support for the rate of decline. The difference between the effective date of PC-3 and PC-4 was 126 days, or approximately 4.2 months. PC-4 reported the equivalent of a 42 percent annual decrease in value (less personal property) between the effective dates of the two reports. Respondent provided no support for this rate of decline.

98. With respect to the region's economy, respondent once again wrote:

Signs of decreasing demand are evident but the long term economic outlook is encouraging. Commercial buildings and land values appear relatively stable after significant increases in 2004 and 2005. Residential improvements and land values appear to be stable or decreasing slightly and time on the market has been extending. The market appears to indicate this trend may continue for the next 6 to 12 months.

99. Investigator Fruechtl's narrative report, supporting documentation, and credible testimony established the USPAP violations related to PC-4.

100. Respondent testified that the reference in PC-4 to 46 percent external obsolescence was a typographical error and that it was a coincidence that the decrease in value between PC-2 and PC-4 coincided with that typographical error.

Conclusions Regarding PC-4

101. PC-4 omitted relevant city ordinances and the Development Agreement. PC-4 did not describe the diminished use of 12.5 acres of Porcupine Creek as a result of the flood control easement and concrete flood channel. PC-4 did not adequately describe the existing national luxury estate market.

PC-4's highest and best use was based upon an analysis that did not consider the restrictions on residential development imposed by city ordinance and Development Agreement. PC-4 stated the estate's most probable purchaser was two purchasers, the first being an "Individual" for the luxury home site and the second being a "Developer, Investor" for the "Golf Course, Guest Homes and Remaining Land." PC-4 represented there was residential development potential on portions of the site, contrary to the city ordinances and Development Agreement. PC-4 contained conclusions and representations of highest and best use that were not legally permissible.

PC-4 did not disclose or discuss recent sales of golf courses. PC-4 improperly used sales of land with residential development potential to value Porcupine Creek's open space. PC-4 misrepresented adjustments to comparables for the estate's residential component and omitted available listings of high-end Coachella Valley residences in its analysis. PC-4 misrepresented characteristics of Porcupine Creek and the physical, economic and legal characteristics of comparables. PC-4 did not provide adequate support for various market value conclusions.

Respondent failed to develop a credible opinion of the various component values, analyze relevant cost data to estimate the cost if new of the improvements, or analyze the difference between the cost if new and the present worth of the improvements, all of which resulted in a misleading appraisal and an unsupported value using the cost approach.

Respondent did not analyze the various components as a whole. Respondent's "As Is" Market value of the estate reflected the sum of the individually appraised components, which were predicated on purported market activity for each component. Respondent did not provide sufficient and relevant information to reconcile the final value reached in his cost approach, despite the availability of national luxury estate market information that conflicted with component allocations and the final value estimate.

Respondent did not employ recognized methods and techniques necessary to produce a credible appraisal or provide the reasoning to support the analyses, opinions, and conclusions set forth in PC-4.

These errors and omissions violated USPAP Standards Rules 1-1 (a)(b)(i)(ii)(iii), 1-2 (e)(i), 1-3 (a)(b), 1-4(a)(e)(g), 1-6(a)(b), and 2-2(b)(iii)(viii)(ix).

In connection with these errors and omissions, respondent failed to identify the problem to be solved and to provide the research and analyses required to perform the scope of work in a manner consistent with appraiser peers' actions, in violation of USPAP Standards Rules 1-2 (h), 2-2 (b)(vii), and Scope of Work Rule.

As a result of these errors and omissions, PC-4 did not clearly and accurately set forth an appraisal. PC-4 was misleading. PC-4 failed to report sufficient information to enable its intended users to understand PC-4 properly, in violation of USPAP Standards Rule 2-1(a)(b).

In connection these errors and omissions, respondent did not disclose relevant property and market characteristics pertaining to Porcupine Creek, which resulted in his communicating the assignment results in a misleading manner, in violation of the Conduct Section of the Ethics Rule.

THE SALTON SEA

102. Notice is taken that the Salton Sea was accidentally created in 1905 when the Colorado River breached irrigation canal gates leading into the Imperial Valley. For the next 18 months, the Colorado River flowed unimpeded into the Salton Basin, a dry lakebed more than 230 feet below sea level. By the time engineers regained control of the escaping waters in 1907, the Salton Sea was 45 miles long and 20 miles wide, with approximately 130 miles of shoreline.

Although the creation of this inland sea was accidental, it initially appeared to produce substantial benefits. Birds flocked to the area and game fish were introduced and thrived. Developers seized on the rare setting and branded it the "Salton Riviera," a "miracle in the desert." The Salton Sea enjoyed early success as a resort with the development of Salton City, Salton Sea Beach and Fish Springs on the western shore and Desert Beach, North Shore and Bombay Beach on the eastern shore. Hotels, yacht clubs, homes, and schools sprang up as the Salton Sea became a resort and residential destination.

By the late 1970s, however, the ecosystem had deteriorated and the Salton Sea was becoming an increasingly hostile environment. With no outlets and very little inflow, the Salton Sea essentially became a giant evaporation pond. Much of the water that flowed into the Salton Sea was salty agricultural runoff, filled with pesticides. After decades of intense summer heat, the Salton Sea had receded, leaving behind salts and accumulated materials.

The Salton Sea is now nearly 50 percent saltier than the Pacific Ocean, and its level of salinity is increasing. The Salton Sea no longer supports the wide variety of game fish that once flourished. During heat waves, the oxygen content of the Salton Sea rapidly drops, killing thousands, sometimes even millions, of tilapia, resulting in a foul, sulfurous odor that travels for miles. The Salton Sea continues to serve as a valuable stopover in the Pacific

Flyway migratory route that stretches from western Mexico through Canada, and fully two-thirds of the species of birds observed in the United States can be found in the Salton Sea area at various times throughout the year.

As the Salton Sea evaporated, so too did adjacent land values. In the late 1990s, the Salton Sea Authority, a local joint powers agency, began considering several alternatives to revive the Salton Sea, including a restoration concept that proposed the construction of a large dam to impound water to create a marine sea in the northern and southern parts of the Salton Sea. No funding was available to begin that project.

In May 2007, another restoration plan was unveiled that proposed a smaller but more manageable Salton Sea, at an expense of \$8.9 billion spread over 25 years. Under that plan, about 52 miles of barrier and perimeter dikes would be erected, along with earthen berms, to enclose the sea into a horseshoe shaped body of water along the northern shoreline of the Salton Sea from San Felipe Creek on the west shore to Bombay Beach on the east shore. The central portion of the Salton Sea would be allowed to evaporate and serve as a brine sink, while the southern portion of the Salton Sea would be converted into a saline habitat complex. The water available for use by humans and wildlife would be reduced by 60 percent under the plan.

As with any project requiring governmental funding, there are competing interests. Reconstruction of the Salton Sea has not yet begun under any proposal, and the Salton Sea continues its decline, as has been the case for the past 40 years.

RESPONDENT'S APPRAISALS OF THE DESERT SHORES PROPERTY

103. Desert Shores (formerly Fish Springs) is located on the western shore of the Salton Sea. Desert Shores and the neighboring community of Salton City are within the Salton Community Services District (SCSD), a special district that collects and disposes of sewage and solid waste, provides fire protection, constructs recreational facilities, promotes community recreation, improves street lighting and landscaping, and provides emergency medical services. SCSD has no land use authority; that responsibility falls on the Imperial County Board of Supervisors.

The communities of Mecca and Thermal, located in southern Riverside County, are in close proximity to the Desert Shores area.

104. The Desert Shores property at issue consists of two non-contiguous parcels of property known as Travertine Estates. The property is located on the western shore of the Salton Sea, within the northern perimeter of Imperial County and at the southern tip of Riverside County. The property consists of 293 acres of vacant land, zoned as open space, bisected by Highway 86. Neither parcel contains improvements.

DS-1

105. In January 2006, respondent appraised the Desert Shores property as having an “as is” market value of \$9,014,000 in an appraisal referred to as DS-1. That appraisal was not produced and is not at issue in this proceeding.

DS-2

106. In February 2006, Lennar Homes issued an unsigned, non-binding letter of intent offering to purchase the Desert Shores property. The letter of intent was set to expire in February 2009.²¹

Lennar Homes’ offer was predicated on the purchase of approximately 1,200 “paper lots” at \$40,000 per lot. The offer was subject to approval of a tentative tract map. The offer was based on an estimated average single family residence price point of \$225,000 per home, with an estimated cost of \$27,500 to finish the lots after the tract map was approved.

Lennar Homes’ letter of intent was prepared with the idea that Lennar Homes would start purchasing the Desert Shores property in June 2008. The letter of intent set forth Lennar Homes’ option to buy the property in stages, or “take downs,” within 90 days of the seller obtaining an approved tentative tract map. The letter of intent set forth “Conditions to Close” that included a condition that the “Seller shall have obtained an ‘Approved Tentative Tract Map [sic]’ for the development and construction of single-family homes on the Property.”

107. Respondent’s work file contained a copy of a “Tentative Tract Map” that depicted lot configurations that were different from the configurations contained in the Tentative Tract Map that accompanied Lennar Homes’ letter of intent.

108. On June 15, 2007, respondent prepared a summary appraisal report (DS-2) for Lennar Homes that set forth appraisals of the Desert Shores property with an effective date of June 1, 2007.²² DS-2’s function was to evaluate the Desert Shores property as collateral for a non-federally insured loan. In producing the appraisals, respondent utilized a land residual analysis technique²³ and a comparable sales analysis. The transmittal letter accompanying DS-2 stated that the appraisal report was intended to comply with USPAP.

²¹ Respondent sometimes referred to this as a “signed” letter of intent in his appraisals.

²² Exhibit 76, the 2006 edition of USPAP, applies to DS-2.

²³ The land residual analysis technique is used to derive the value of vacant land. It involves a discounted cash flow analysis that utilizes the retail value of finished lots as if they were sold to individual buyers over time. The value of the lots is determined by a sales comparison approach that provides a per square foot value, and from that figure various

109. DS-2 defined “market value ‘as is’” as follows:

MARKET VALUE “As Is” means an estimate of the market value of a property in conditions observed upon inspection and as it physically and legally exists without hypothetical conditions, assumptions, or qualifications as of the date of inspection. When an “As Is” valuation premise is used, the property is valued as of a specified date, assuming the property is in precisely the condition or status it actually was (is) in on the effective date of value. This condition must be accurately described in the appraisal report.

110. DS-2 stated the “as is” market value of the Desert Shores property was \$14,830,000. DS-2 stated that in “the ‘as is’ scenario, the property will be appraised at whatever stage of development exists at the effective date of the appraisal.”

111. DS-2 stated that the “as if partially entitled”²⁴ market value of the Desert Shores property was \$31,074,000. DS-2 stated that “in the ‘as if entitled’ scenario, the property will be appraised as if the property were entitled to the Tentative Tract Map²⁵ status only as of the effective date of the appraisal.”

112. DS-2 contained a hypothetical condition, an extraordinary assumption, and the highest and best use assumptions as follows: (1) there was Tentative Tract Map approval for 636 SFR [single family residence] lots on 99.89 acres [6.4 dwelling units per acre], 795 multi-family lots on 56.15 acres, and an 18.58± acre commercial pad site as of the effective date of the appraisal for the “as if partially entitled” market value analysis based on the Tentative Tract Map contained in DS-2; (2) “The potential for the subject property to be annexed to the Salton City Services District (SCSD) was discussed with SCSD manager, Tom Cannel and LAFO Director, Jurg Hueberger. This discussion indicated the proposed annexation is reasonably probable and will allow the proposed development as indicated in this report (Highest & Best Use Conclusion).”

discounts are taken including the cost to produce a finished lot, the hard and soft costs of development, and the developer’s profit.

²⁴ Generally speaking, the entitlement and development of real estate involves an extensive approval processes. It is common for a project to require numerous approvals, permits and consents from federal, state and local governing and regulatory bodies. The real estate entitlement process is frequently a political one, which involves uncertainty and often extensive negotiation and concessions to secure necessary approvals and permits.

²⁵ “Tentative tract map” means a map made for the purpose of showing the design and improvements of a proposed subdivision and existing conditions in and around it.

113. In the “Zoning” section of DS-2, respondent specifically assumed that SCSD would approve annexation and that appropriate zoning would be provided for single family residential, multi-family residential, neighborhood commercial and highway service commercial improvement within 12 months.

This extraordinary assumption was not clearly and conspicuously identified in DS-2 as an extraordinary assumption.

114. DS-2 also contained an extraordinary assumption that the Tentative Tract Map could be amended to provide 1,422 residential paper lots.

This extraordinary assumption was not clearly and conspicuously stated in DS-2, and the likelihood of this assumption being valid was very low.

The assumption that the Desert Shores property could be developed into 1,422 individual residential lots was physically improbable because the 56.15 acres of high density residential lots, as designated on the Tentative Tract Map, would accommodate no more than 359 detached single family residential lots with a density of 6.4 dwelling units per acre. Using 6.4 residential dwelling units per acre as a maximum entitlement, the entire project would yield no more than 995 single family residence lots.

115. DS-2 commingled and blended the value of single family residence lots and “paper lots” for multi-family dwellings in calculating value. To explain how this could be done, DS-2 stated:

The smaller undivided multi-family lots would sell for less per lot and the larger single family lots would sell for more per lot. The per lot average considered in the analysis is \$67,500 [per each paper lot]. This value produces an average price point of \$225,000 per home which is considered approximate for the subject district considering that the majority of homes are multi-family residences.

116. DS-2 briefly mentioned the discrepancy between single family residential lots and undivided multi-family lots in discussing the history of the Desert Shores property. In this regard, DS-2 stated, in part, that Lennar Homes’ letter of intent contained calculations “apparently based on all single family lots rather than a mix of single family, multi-family and commercials as is proposed in the current Tentative Tract Map.” In this portion of DS-2, respondent did not comment upon the need to amend the Tentative Tract Map or the improbability of the Desert Shores property accommodating more than 1,000 single family residential lots.

117. Respondent’s assertion that the average value of a single lot, even for one of the 636 single family residential lots, was unreasonable and excessive. This price point was unsupported by available market information.

118. DS-2 used four vacant land sales as comparables. Land Sale 1 was represented to be an arm's length "cash" transaction when, in fact, the seller was responsible for primary financing in a carry-back loan transaction.

Land Sale 2 was represented to be an arm's length transaction with a sales price of \$1,695,000. However, the grant deed for that sale, which was not mentioned in DS-2, contained a documentary transfer tax that equaled a sales price of \$1,050,000. There was also information in respondent's work file that indicated the sales price of Land Sale 2 was \$1,050,000. Inspector Fruechtl spoke with the buyer of the property and confirmed that its sale price was \$1,050,000, about 62 percent of what DS-2 reported and used as a comparable sale.

Land Sale 3 was deemed a comparable, even though it was located in Mecca, an area closer to the path of probable development than Desert Shores' location.

119. DS-2 used four finished lot sales to value the Desert Shores property's finished lots. As previously indicated, DS-2 concluded a finished lot had a value of \$67,500 based on the sales comparison approach.²⁶

Finished Residential Lot Sale 1 reflected a sales price of \$33,000 in November 2006 for a lot located on the north shore of the Salton Sea, about 20 miles away from the Desert Shores property. DS-2 did not identify the buyer or the seller, and the sale was "not recorded." According to the information in respondent's work file, Lot Sale 1 never closed escrow.

Finished Residential Lot Sale 2 reflected a sales price of \$33,700 in May 2007 for a lot located on the north shore of the Salton Sea, about 20 miles from the Desert Shores property. The loan to value ratio for this sale was 90 percent, which was atypical for the area and suggested creative financing. DS-2 did not provide any explanation for this favorable loan transaction.

Finished Residential Lot Sale 3 reflected a sales price of \$37,500 in April 2007 for a lot in Salton City, in close proximity to the Desert Shores property. More recent sales transactions were available but were not included in DS-2.

Finished Residential Lot Sale 4 reflected a sales price of \$34,500 in September 2006 for a finished lot in Salton City, located to the south and in close proximity to the Desert Shores property. More recent sales transactions were available but not included in DS-2.

²⁶ DS-2 stated that the cost to develop a finished lot was \$27,250. When that figure is added to the \$40,000 price per paper lot mentioned in Lennar Homes' letter of intent, the finished lot would have a value of \$67,500. Respondent denied reverse-engineering a finished lot value based on the sales comparison approach.

DS-2 provided no market adjustment for the finished lots used as comparables. DS-2 asserted there was “increasing demand for residential sites in the subject neighborhood” when, in fact, market conditions were declining. Respondent made an upward adjustment of \$15,000 per lot for the Desert Shores property based on a “view,” even though most lots located in the Desert Shores proposed development did not have superior views to the views from the four comparable properties.

DS-2 stated that all Desert Shores residential lots would be situated within a “gated community.” An upward adjustment of \$15,000 per lot was provided for this and other asserted amenities. However, the Tentative Tract Map did not support the assertion. There were no gated approaches depicted in the map for the area in which the 636 single family homes were going to be located. The location of an elementary school within the southwest quadrant of the purposed residential development made the existence of gated access for that area highly improbable. Only the multi-family residences contained design guidelines for gated entries and a public meeting place.

Finally, the minimal downward adjustment for the decreased lot sizes of lots in the Desert Shores development was not supported in any fashion.

120. DS-2 reported that the Desert Shores entitlement process to date included “completion of the Phase I Environmental Report” and “Tentative Tract Map completed and expected to be approved within 12 months.” DS-2 also reported there was “a completed general plan, specific plan, and environmental impact report”

In fact, an informational and scoping input meeting had not been held when DS-2 was issued; from the date of that meeting, once scheduled, it would take at least another 18 months for the Desert Sands property to proceed through the entitlement process. DS-2’s representations about the existence of “a completed general plan, specific plan, and environmental impact report” were untrue. In fact, the Desert Shores development never moved beyond the Draft Specific Plan stage. An Environmental Impact Report, which was required for entitlements, was never completed. Respondent’s work file did not even contain a complete copy of the Draft Specific Plan, much less evidence of other entitlement documentation to which it referred.

121. DS-2 did not discuss the number of residential developments being planned for the immediate market area and in other areas surrounding the Salton Sea. The number of proposed residential developments and the number of existing vacant lots in the Salton Sea area had significant impact on Desert Shores’ value and warranted disclosure and analysis.

Respondent knew about the planned development in the area, as indicated by DS-2’s claim that there was “new residential communities and a smaller commercial development approximately 10 miles to the south of the subject property.” This comment about what was happening to the south gave the misleading impression that there was active development to the south that was trending toward the Desert Shores when that was not the case.

122. DS-2 did not mention that the activity in the south included failed existing subdivisions and vacant land. On November 7, 2007, there were 18,840 undeveloped recorded lots within various failed subdivisions in the Salton City area, immediately south of Desert Shore. Although some scattered residential development had taken place, the number of vacant lots in the area represented potential competition with Desert Shores.

123. DS-2 did not refer to the impact of the Travertine Point, a proposed development directly north of Desert Shores. Travertine Point was designed to encompass 12,300 residential units and approximately 346 acres of mixed-use development, including commercial and business parks. It was estimated that that construction of Travertine Point would occur over the next 40 years.

124. The development at Travertine Point was significant because it was substantially larger than the Desert Shores development and was further along in the entitlement stage. The Travertine Point development would compete with Desert Shores. Because Travertine Point was further along in the entitlement process, its development would severely impact the market share and absorption rate of the Desert Shores property.

125. Desert Shores was situated within the southerly portion of Thermal's zip code (92274), directly south of the Riverside/Imperial county line.

The median single-family home price in Thermal reached a high of \$273,800 in May of 2006. Most sales activity within the zip code took place in the Riverside County portion of Thermal, closer to Coachella than Desert Springs. The median single-family home price for homes in Thermal in June 2007 was \$235,400. This median price reflected about a 14 percent drop from the market high.

Complainant's Evidence Regarding DS-2

126. Investigator Fruechtl testified about his investigation of the complaint, his review of DS-2 and respondent's work file, and his investigation of the Salton Sea market. He applied the 2008 edition of USPAP to DS-2. He did not provide any value for Desert Shores property, but this did not prevent him from reaching valid opinions and conclusions concerning DS-2's failure to comply with USPAP Standards.

127. While Investigator Fruechtl was critical of many findings and conclusions in DS-2, he was most concerned that respondent had calculated the value of the property based on the sale of 1,422 paper lots, the use of a finished lot value that was unsupported by sales within the local market, and DS-2's failure to identify other projects in the area that would compete with the Desert Shores development.

128. Investigator Fruechtl's concern about respondent's use of 1,422 paper lots to value the Desert Shores property, when such lots did not exist, was compelling. DS-2's use of "lots" in place of "units" was simply misleading. DS-2 did not mention the difficulty, if

not the impossibility, of obtaining 1,422 separate residential lots given the size of the Desert Shores property and its zoning. The Tentative Tract Map did not depict 1,422 lots.

129. Investigator Fruechtl's testimony about the misleading statements in DS-2 concerning entitlements was also valid. DS-2 reported that the Desert Shores entitlement process included "completion of the Phase I Environmental Report" and that a Tentative Tract Map had been completed and was expected to be approved within 12 months. DS-2's representations about the existence of "a completed general plan, specific plan, and environmental impact report" were simply untrue, and it would have taken more than 18 months for the Desert Shores project to have completed the entitlement process when DS-2 was issued. The misleading statements had a significant impact on valuation.

130. Investigator Fruechtl's testimony about declining real property values in the Salton Sea and Desert Shores area was credible and supported by more recent market data than the sales data contained in DS-2.

131. Investigator Fruechtl took issue with respondent's claim that the revitalization of the Salton Sea was in the works and was inevitable. He gathered newspaper articles that suggested the rejuvenation of the Salton Sea was a "hard sell" and was unlikely to occur any time in the near future.

132. Investigator Fruechtl's testimony concerning DS-2's overvaluation of finished lots was credible. Investigator Fruechtl's investigation and analysis into the sales DS-2 relied on as comparables was far more comprehensive and believable than the market analysis set forth in DS-2.

133. David Black is employed by the Imperial County Planning Department as a Senior Planner. He was familiar with general plan amendments, zoning changes, and the entitlement process related to large subdivisions.

Mr. Black knew about the entitlement process for Travertine Estates (the Desert Shores property). In August 2006, the County received an application from Travertine Estates for a general plan amendment, a zoning change, a specific plan amendment, and a proposed or tentative tract map. The next step in the entitlement process involved holding a public hearing. A hearing was noticed for November 15, 2007, but it was removed from the agenda at the developer's request and was never rescheduled.

Mr. Black testified that County approval of an environmental impact report typically takes about a year, and a public hearing is held three or four months after approval is given. It typically takes 15 or 16 months after that for a tentative tract map to gain approval. Mr. Black testified that Travertine Estate's submission of a tentative tract map did not constitute county's approval of that tract map, approval of an environmental impact report, or approval of a specific plan.

Mr. Black testified the Travertine Estate plan “closed out” and is no longer pending. He believed that development in Imperial County dropped off in 2007 and 2008 due to declining market conditions.

Respondent’s Evidence Regarding DS-2

134. Respondent testified that under an USPAP advisory opinion, it was improper for Investigator Fruechtl to consider information that was not available to respondent at the time of his appraisal, and that is precisely what Investigator Fruechtl did in his analysis of the Desert Shores – he was a “Monday morning quarterback.” Respondent testified that when DS-2 was prepared, no one had any idea of the extent to which property values in the Salton Sea area would decline.

Respondent testified that the 12-month entitlement estimate he set forth in DS-2 involved extraordinary assumptions to which he and his client had agreed, and that the assumption was not unreasonable because of that agreement. Respondent also testified that he actually believed the tentative tract map could be approved and that zoning could be changed within 12 months based on his familiarity with development in the area.

Respondent asserted that his comments in DS-2 about the reclamation of the Salton Sea and the manner in which its recovery would benefit property values were not misleading simply because he failed to mention how long a restoration project might take. He testified that his comments describing the reclamation project were accurate; he testified he did not ignore the “buzz that was going on.”

In DS-2, respondent described the Coachella Valley market as being “stable” with the goal of communicating to the intended user that there had been a “dip in the market” but the value of real property would stabilize and return to the price points identified in Lennar Homes’ letter of intent. He said the term “stable,” as used in D-2, applied to a period of approximately 20 years.

Respondent testified that he reported the Lennar Homes’ letter of intent was “signed” because that was what he was told by a Lennar Homes’ representative. He admitted there was nothing in his work file that confirmed the conversation. He did not take issue with the claim that his work file contained an unsigned letter with the word “draft” on it. He testified that he mentioned Lennar Homes’ letter of intent in DS-2 because he was required to do so under USPAP.

Respondent testified he considered competition from other development projects in the Coachella and Imperial Valley when valuing the Desert Shores property, but it would have been improper for him to use the sale of finished lots located in aging, uncompleted subdivision to calculate the value of the Desert Shores lots. He testified that the presence of finished lots in older subdivisions did not impact the value of the Desert Shores lots because “they were not competitive.” He testified there were no finished lots for sale in newer subdivisions that he could have used for comparison purposes.

Respondent testified that DS-2 did not mislead his client. He denied all allegations related to DS-2.

Credibility Determinations

135. The credibility determinations related to DS-2 are consistent with the findings previously set forth herein.

Conclusions Regarding DS-2

136. DS-2 identified the proposed development as containing 1,422 paper lots when the Tentative Tract Map reflected 635 single family residence lots and three lots with the potential for 786 multi-family residential units. DS-2 claimed the Desert Shores subdivision was going to be a gated community when that was not the case. DS-2 stated Lennar Homes' letter of intent was signed when that was not the case. DS-2 did not analyze a "condition to close" provision in the letter of intent. DS-2 stated market conditions in the area were stable when there was evidence that reflected a downward trend in values. DS-2 did not mention approximately 18,840 vacant residential lots south of the Desert Shores property or a larger proposed master planned community to the north. DS-2's determination of highest and best use was based on 1,422 paper lots and did not consider existing and potential competition in the immediate market area.

DS-2's sales comparison approach included one transaction that was reported as a cash transaction that actually involved substantial seller financing. DS-2 included unsupported upward adjustments for Desert Shores' location, view and entitlements. DS-2's finished lot valuation misrepresented the availability of finished vacant residential lots in the marketing area and included outdated transactions when more recent and proximate sales were available. DS-2 reached value conclusions that conflicted with available market information.

These errors and omissions violated USPAP Standards Rules 1-1(a)(b)(i)(ii)(iii), 1-1(b), 1-2(e)(i), 1-3 (a)(b), 1-4(a), 1-6(a)(b), and 2-2 (b)(iii)(viii)(ix).

In connection with these errors and omissions, respondent failed to correctly employ recognized methods and techniques necessary to produce a credible appraisal and provide reasoning to supported the analyses, opinions, and conclusions set forth in DS-2, in violation of USPAP Standards Rule 1-1(a).

In connection with these errors and omissions, respondent failed to identify the problem to be solved and failed to include the research and analyses required to perform the scope of work necessary to complete the assignment in a manner consistent with appraiser peers' actions, in violation of USPAP Standards Rules 1-2 (h) and 2-2 (b)(vii), and the Scope of Work Rule.

In connection with these errors and omissions, respondent failed to clearly and accurately set forth the appraisal in a manner that would not be misleading and failed to report sufficient information to enable the intended user to understand the appraisal properly, in violation of USPAP Standards Rule 2-1 (a)(b).

In connection with these errors and omissions, respondent failed to disclose and properly analyze relevant property and market characteristics pertaining to the Desert Shores property and improperly selected land sales for comparison purposes that resulted in communicating assignment results in a misleading manner, in violation of the Conduct Section of the Ethics Rule.

DS-3

137. On January 3, 2008, about seven months after respondent issued DS-2, he issued a summary appraisal report (DS-3) for MKA Capital that set forth appraisals of the Desert Shores property with an effective date of December 18, 2007.²⁷ The function of the report was for the possible financing of the Desert Shores property.

In producing DS-3, respondent again utilized the land residual analysis and a comparable sales analysis. The transmittal letter accompanying DS-3 stated that the appraisal report was intended to comply with USPAP.

138. DS-3 set forth an “as is” market value and an “as if entitled” market value for the Desert Shores property. DS-3 stated the “as is” market value involved an appraisal of the property “at whatever stage of development as of the effective date of the appraisal.” The “as if entitled” appraisal appraised the property “as if the property were 100% fully entitled as of the effective date of the appraisal.”

139. DS-3 stated the “as is” market value of the property was \$14,850,000 (\$50,683 per acre).

140. DS-3 stated that the “as if fully entitled” market value of the property was \$15,891,000 (\$54,235 per acre).

141. DS-3 contained a hypothetical condition, an extraordinary assumption, and a highest and best use assumption: (1) in the “as if entitled” scenario, the hypothetical condition is being made that the subject property is 100 percent fully entitled as of the effective date of appraisal; and (2) conversations with the SCSD indicated there was a reasonable probability the subject property will be annexed into the district, which would allow for the development of the subject property as proposed (major highest and best use conclusion).

²⁷ Exhibit 77, the 2008 edition of USPAP, applies to DS-3.

142. In the “Zoning” section of DS-2, respondent stated the property was within the SCSD’s sphere of influence and was zoned S-2 – open space. DS-3 represented that the property was “in the process of being annexed.” DS-3 further represented that the property “has an engineered tract map which subdivides the property into 1,422 residential lots, 18.58 Acres of Commercial Use, and 58 acres designated for Open Space and Public Utilities.”

143. DS-3 represented the “as is” market value was based on respondent’s reliance on the unsigned, non-binding letter of intent dated February 14, 2006. The Tentative Tract Map on which DS-3 relied contained 636 single family residential lots and three lots with a combined 786 high density residential units. DS-3 did not state that the Draft Specific Plan and Tentative Tract Map had to be amended to provide for 1,422 residential paper lots, the likelihood of which was physically improbable as previously determined.

144. DS-3 contained a “Trend Analysis” that stated:

The unincorporated area of Imperial County known as Desert Shores is very rural with an abundance of vacant lots and large parcels of land available for development. This area is in an emerging market. The Eastern Coachella Valley as well as Salton City had tremendous growth from 2002 thru 2006 **with median home prices reaching well above \$375,000** (emphasis added) in 2006. Since 2006 there has been a slow down in the housing market due to the amount of new home inventory currently on the market. The Salton Sea Restoration Project and the new Torres Martinez Indian Casino built on the southern side of the Salton Sea,²⁸ has caused continued potential development interest in the area. However, most vacant land parcels and proposed developments have been delayed until the current supply of new and resale homes have been absorbed approximately 12 to 24 months [sic].

145. DS-3 did not analyze trends within Desert Shores’ immediate market area. DS-3 implied that median prices in the area reached a high of \$375,000, but this implication was inaccurate because \$375,000 represented the median home price in superior market areas. DS-3 would have been more accurate had it included price trends in the immediate area of Desert Shores and neighboring zip code areas.

²⁸ Notice is taken that the Torres-Martinez Indian Casino, also known as the Red Earth Casino, is located in Salton City. The casino is 14,000 square feet and contains 350 gaming machines (mostly penny slots) and eight table games including Texas Hold’em, Spanish 21, and Lucky Ladies Blackjack. The casino is open 24 hours a day. It is hard to believe that the operation of this small, isolated casino “caused continued potential development interest in the area.”

The median single-family home price for Thermal in June 2007, when respondent issued DS-2, was \$235,400. The median single-family home price in Thermal in December 2007, the date of value in DS-3, had dropped to \$199,900. DS-3 did not address the further decline in market conditions.

146. Investigator Fruechtl's testimony, supporting documentation, and report established that this portion of DS-3 was misleading.

147. DS-3 did not mention the number of residential developments that were being planned for the immediate market area including Travertine Point, Kohl Ranch, and the Blixseth properties.

As previously found, the development of Travertine Point had a significant impact on the value of the Desert Shores property because it was substantially larger and further along in the entitlement process than Desert Shores. The Travertine Point development warranted disclosure and analysis in DS-3.

148. DS-3 did not address finished vacant lots to the south that would compete with Desert Shores' residential development.

149. DS-3 stated that the Desert Shores property had been in the entitlement process for nearly a year and a half and was approximately halfway through to the full entitlement stage. DS-3 represented that the general plan, specific plan, Tentative Tract Map, and environmental report, had been submitted or were ready for submission when that was not the case.

150. DS-3 contained two Highest and Best Use scenarios: the first was for "As Is Vacant Land"; the second was for "As Proposed."

DS-3 concluded that the Highest and Best Use – "As Is Vacant Land" involved the property being held for near future development (one to two years) because current market conditions indicated that development at that time was not economically feasible.

In analyzing the Highest and Best Use "As Proposed" scenario, DS-3 claimed the Desert Shores property was located in an emerging market, was in the process of being annexed into the SCSD with an engineered tentative tract map, and the tentative tract map was in the process of being approved. DS-3 concluded that the highest and best use of the property was to continue the entitlement process and then hold the property for near term development (one to two years).

DS-3's representation regarding Desert Shores' status in the entitlement process was unsupported, as was the representation that annexation and approval the Tentative Tract Map would be completed within 12 months. Little to no progress had been made since DS-2 was issued.

The subdivision of the Desert Shores property was scheduled for a public meeting on November 15, 2007, before the Imperial County Environmental Evaluation Committee, but the developer took the agenda item off calendar. This was not mentioned in DS-3. The agenda item was never again posted for a public hearing.

151. DS-3 indicated a value of \$67,730 per finished lot.

152. Investigator Fruechtl’s testimony, supporting documentation, and report established that the per finished lot price set forth in DS-3 was not supported by available market information.

DS-3 utilized three vacant land sale transactions to value the Desert Shores property’s 293 gross acres:

	<u>Address</u>	<u>Sales Date</u>	<u>Sales Price</u>	<u>DS-3 Report Reported Terms</u>	<u>Actual Terms</u>
1	Buchanan St. & Ave. 72, Thermal	3/14/06	\$3,700,000	“Conventional”	\$3,100,000 by Private Party (Seller); 84% Loan to Value Ratio (LTV)
2	SWC Hwy 111 & Vander Veer Rd. North Shore	2/27/06	\$1,100,000	“Cash”	\$900,000 by Private Party (Seller); 82% LTV
3	Ave. 72 & Hwy. 86, Mecca	3/22/07	\$6,500,000	“Cash”	\$4,275,000 by Private Party (Seller); \$112,500 by Private Party (Broker); 68% LTV (Combined)

DS-3 represented that two of the three sales were “Cash” transactions in the data sheets. However, in all three sales the seller carried the primary financing. These three transactions were not on “cash” terms to the seller. The sales did not reflect “market value” and the financing of the sales actually conflicted with respondent’s definition of “market value.” According to DS-3, market value was “the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.”

DS-3 made upward adjustments to the value of the Desert Shores property based on its location. The location adjustments were unsupported. The selected comparable land sales were actually located in closer proximity to centers of employment and were in superior locations. Land Sale No. 2 was located adjacent to the Salton Sea with potential access and the presence of utilities from an adjacent subdivision; however, DS-3 stated the location of this sale was inferior to the Desert Shores location, an assertion that resulted in a 10 percent positive adjustment. DS-3 also asserted that the location of Land Sale Numbers 1 and 3 were inferior to that of the Desert Shores, another assertion that resulted a positive 10 percent adjustment.

Respondent’s adjustments for location were completely arbitrary.

Land Sale No. 1 in DS-2 and Land Sale No. 3 in DS-3 involved the exact same property. Respondent made no location adjustment for the property in DS-2, while DS-3 contained a positive adjustment of 10 percent for the exact same property. The two reports were in conflict. Respondent provided no explanation for the discrepancy.

DS-3 contained an upward adjustment of 20 percent based upon Desert Shores' purported superior views. DS-3 stated Land Sale No. 2 had an inferior view, which was unsupported given Land Sale No. 2's sale's proximity to the Salton Sea. Based upon the elevations depicted on Desert Shores' Tentative Tract Map, only a small portion of the residential lots at Desert Shores had a notable view of the Salton Sea, and some of those views were offset by the lot's close proximity to State Highway 86. Overall, the view adjustments claimed in DS-3 were not supported.

DS-3 included an upward adjustment for entitlements. According to the Comparable Land Sales Grid in DS-3, the three comparables did not have entitlements while the Desert Shores property had an engineered Tentative Tract Map. Respondent made a positive adjustment of \$18,000 per acre for each comparable sale. This adjustment translated to a cost of \$2,196,000 to obtain entitlements for Land Sale No. 1; a cost of \$702,000 to obtain entitlements for Land Sale No. 2; and a cost \$5,534,820 to obtain entitlements for Sale No. 3. Respondent's adjustment of \$18,000 per acre for land that was unentitled implied that the Desert Shores property had a similar cost to obtain entitlements. Based on Desert Shores' area of 293 gross acres, this equated to an implied cost of \$5,274,000 for entitlements. The implied cost of entitlements of \$5,274,000 was contrary to the total cost of the Desert Shores cost of entitlement in the amount of +/- \$1,500,000, or \$5,119 per gross acre, as reflected in DS-2.

DS-3 also contained an analysis of finished lot sales. DS-3 implied that 1,422 residential lots were located within a gated community that had amenities such as a recreation building and community pool. DS-3 claimed a positive adjustment for the Desert Shores property based on entitlements that did not exist. DS-3's analysis made an upward adjustment that totaled about \$19,500 per lot for these nonexistent amenities.

DS-3 stated that the Desert Shores' average finished lot size was 6,537 square feet. Respondent made lot size adjustments in his appraisals. The across the board lot size adjustments as set forth in DS-3 were unsupported.

153. Based upon an average adjusted price per finished lot of \$67,730, DS-3 concluded that the value of the 1,422 residential lots was about \$96,312,000. The average price per finished lot was based on the "Finished Lot Sales Comparison Grid" and the "Comparable Lot Sales Analysis."

However, the "Finished Lot Sales Comparison Grid" and the "Comparable Lot Sales Analysis" were not based on actual lot sales, but rather on an allocation of land values to the full sales price of improved properties that sold between September 2006 and June 2007. The "Sales Comparison" section of DS-3 did not explain why the actual sales of finished

residential lot sales were used in DS-2, were not used in DS-3, or why the allocation method was used to calculate finished lot value in DS-3.

154. Investigator Fruechtl's testimony, supporting data, and report established that the first "sale" used in respondent's allocation method never occurred. DS-3 misrepresented the sale date of the second "sale" and did not adequately analyze the terms of that sale. There was no documentation in respondent's work file for the sale. DS-3 misrepresented the sale date for the third sale and did not adequately analyze that sale. There was no documentation of the third sale in respondent's work file.

155. Investigator Fruechtl's testimony, supporting data, and report established that respondent's use of the allocation method was an inappropriate method to provide a formal opinion for the value of the Desert Shores property when comparable land sales in the immediate vicinity were available. Respondent's lot value conclusion was unsupported by direct market evidence, which included 40 lot sales closing between January 2007 and June 2007, and 22 lot sales closing between June 2007 and December 2007.

156. DS-3 stated the rate of absorption for finished lots similar to Desert Shores' proposed lots was from five to ten per month. DS-3 did not explain that assertion, and nothing was contained in respondent's work file that suggested that this rate of absorption was valid.

Complainant's Evidence Regarding DS-3

157. Investigator Fruechtl's testimony, supporting data, and report established that DS-3 violated USPAP.

Respondent's Evidence Regarding DS-3

158. Respondent made the same arguments regarding DS-3 that he made in his defense of DS-2.

Respondent testified he used a 27 percent finished lot value to total sale price in allocating the value of the Desert Shore lots "because that's what we saw in new homes in that price range That's what Lennar Homes used."

Respondent testified that DS-3 did not mislead his client. He denied all allegations related to DS-3.

Credibility Determinations

159. The credibility determinations related to DS-3 are consistent with the credibility findings previously set forth herein.

Conclusions Regarding DS-3

160. DS-3 failed to identify relevant property characteristics of the Desert Shores property by representing that the proposed development contained 1,422 lots when the Tentative Tract Map reflected 635 single family residence lots and three lots with the potential for 786 multi-family residential units. DS-3 misrepresented the proposed subdivision as a gated community. DS-3 represented a Letter of Intent was signed when that was not the case. DS-3 represented market conditions were stable when persuasive evidence established a downward trend in values. DS-3 did not identify or analyze potential market conditions, including approximately 18,840 existing finished residential lots to the south of the Desert Shores property and a proposed master planned community to the north of the Desert Shores property that was designed for 12,300 residential units when completed.

DS-3's highest and best use was based upon analysis involving 1,422 paper lots, and it did not consider existing and potential competition in the immediate market area. The data set forth in DS-3 did not support the value estimate for Desert Shores' finished lots. DS-3's conclusion and representations concerning the Desert Shores property's highest and best use were not physically possible.

DS-3's sales comparison approach for the value of vacant gross acreage included a reported cash transaction that involved substantial seller financing. DS-3 contained unsupported upward adjustments for the Desert Shores property for location, views and entitlements. DS-3's finished lot valuation analysis did not mention the availability of finished vacant residential lots in Desert Shores' immediate marketing area and relied on outdated transactions when more reliable recent and proximate sales were available. DS-3 failed to provide adequate support for the various value conclusions related to market value.

DS-3 failed to provide sufficient relevant information pertaining to the quality and quantity of data available and it did not reconcile unsupported value indications despite available market information that conflicted with the final value estimate set forth in DS-3.

These errors and omissions violated USPAP Standards Rules 1-1 (b), 1-2 (e)(i), 1-3 (a)(b), 1-4(a), and 1-6(a)(b), and 2-1(a), 2-2 (b)(iii)(viii)(ix).

In connection with these errors and omissions, respondent failed to correctly employ recognized methods and techniques necessary to produce a credible appraisal and failed to provide reasoning to support the analyses, opinions, and conclusions in DS-3, in violation of USPAP Standards Rules 1-1(a).

In connection with these errors and omissions, respondent failed to identify the problem to be solved and failed to provide the research and analyses required to perform the scope of work necessary to complete the assignment in a manner that would be consistent with appraiser peers' actions, in violation of USPAP Standards Rules 1-2 (h), and 2-2 (b)(vii), and the Scope of Work Rule.

In connection with these errors and omissions, respondent failed to clearly and accurately set forth an appraisal in a manner that would not be misleading and failed to report sufficient information to enable an intended user to understand the appraisal properly, in violation of USPAP Standards Rules 2-1 (a)(b).

In connection with these errors and omissions, respondent failed to disclose and properly analyze relevant property and market characteristics and improperly selected comparable land sales that resulted in communicating the assignment results in a misleading manner, in violation of the Conduct Section of the Ethics Rule.

RESPONDENT'S APPRAISALS OF THE BOMBAY BEACH PROPERTIES

161. Bombay Beach is located on the east shore of the Salton Sea. Notice is taken that Bombay Beach is 223 feet below sea level, the lowest populated community in the United States. The decaying ruins at Bombay Beach attract photographers and visitors, and several documentaries have depicted the physical decline and challenging lifestyle found at Bombay Beach.

In 2006, Bombay Beach had a population of less than 500 residents. The median household income within a five-mile radius of Bombay Beach was about \$25,000 per year. The nearest gas station was located in Niland, a community of about 1,000 residents located 20 miles south of Bombay Beach.

162. The Bombay Beach property at issue consisted of 17 assessor parcels, with different zoning throughout those parcels. In his two appraisal reports, respondent identified these parcels as being four separate parcels. There were 1,551.75 acres in the parcels, whether they are described as 17 parcels or four parcels. Hereafter, for convenience, the property will be described as four parcels. Because the four parcels were non-contiguous, and because there were other parcels interspersed between the four noncontiguous parcels, development of the properties was more difficult than if there was just one undivided parcel.

Parcel No. 3 was bounded on the north and west side by government-owned land that essentially land locked Parcel No. 3 on two sides. State Highway 111 extended around the easterly portion of the Salton Sea and provided access to Parcel Nos. 1 and 4. Directly north of State Highway 111, in the vicinity of Bombay Beach, was the Southern Pacific railroad's easement and railroad tracks. Southern Pacific's easement was 200 feet, and the easement and railroad tracks limited access to Parcel Nos. 1 and 4 from Highway 111.

163. About the time that respondent prepared his appraisals, the Salton Sea Restoration Plan was being discussed. As discussed above, that plan envisioned the restoration of the Salton Sea as a recreation and resort area by building of a dam across the sea to preserve the northern half of the sea as a recreational salt-water lake and allowing the southern half to become a shallow salt sink and salt tolerant vegetation area. If this plan were approved, financed and constructed, the areas surrounding the Salton Sea to the north

and west would be enhanced, but areas to the south, such as the Bombay Beach area, would be negatively impacted by the creation of, and close proximity to, the salt sink.

BB-1

164. On November 8, 2005, respondent completed a summary real estate “as is” market value appraisal report (BB-1)²⁹ for four parcels of raw land in the vicinity of Bombay Beach. Those parcels totaled 1,551.75 acres.

SLD, a developer, was the intended user of BB-1. The function of BB-1 was to obtain financing for the Bombay Beach properties.

BB-1 used the sales comparison approach and discounted cash flow method of valuation.³⁰ The appraisal was intended to comply with USPAP.

BB-1 had an effective date of value of November 4, 2005. BB-1 set forth an appraised “as is” market value of \$21,355,000.

BB-1 determined at one point that the “highest and best use for the subject property ‘as is’ is hold for future development (3-5 years).” At another point BB-1, stated: “It was determined that the highest and best use for the subject property would be to assemble Parcels 2 & 3 with contiguous parcels and hold for future development. Parcels 1 & 4 should be sold separately and held for future development.”

165. BB-1 did not explain how Parcel Nos. 2 and 3 could be assembled. Nor did BB-1 mention that the government-owned property abutting Parcel 3 restricted the assembly of Parcel Nos. 2 and 3.

166. BB-1 stated that the property was appraised with an assumption that there were no easements or encroachments that negatively impacted the value of the property. However, Parcel No. 4 was negatively impacted by an easement to maintain existing levees and ditches and an easement for the construction and maintenance of future levees and ditches.

The information relating to these easements was set forth in a Title Report in respondent’s work file. BB-1 did not comment on it.

²⁹ Exhibit 75, the 2005 edition of USPAP, applies to BB-1.

³⁰ The discounted cash flow method of valuation involves estimating net cash flows over the period of investment (known as the holding period), and then calculating the present value of that series of cash flows by discounting those net cash flows by using a selected “discount rate.” When the discount rate is unknown, but the initial investment is known, the discount rate may be calculated.

167. BB-1 did not mention the existing railroad tracks, which posed a detriment for potential residential development and diminished access to Parcel Nos. 1 and 4. The distance between the existing railroad crossings in the area of Parcel Nos. 1 and 4 was five miles, which limited access and development. Building new crossings was problematic because of a flood zone in the area. Access to Parcel No. 1 was not “good,” as described in BB-1.

BB-1 did not mention that much of the acreage in Parcel No. 1 and Parcel No. 4 was within a flood zone and that the properties were substantially impacted by a floodway.

BB-1 did not mention that Parcel 1 was impacted by the location of the Alquist-Priolo earthquake zone, which had a negative impact on that parcel’s development potential.

BB-1 mentioned, but did not discuss, that 280 acres of Parcel 1 and 240 acres of Parcel 2 were subject to the rights of others to ingress and egress at all times for the purpose of mining, drilling and exploring the land for oil, gas, minerals and mineral substances. Investigator Fruechtl testified these rights limited the potential development of the parcels.

BB-1 did not mention that Parcel No. 3 was bounded on the north and west by government-owned land that essentially land locked that parcel on two sides.

168. In the Zoning section, BB-1 incorrectly stated that the General Plan designation for the “four” parcels was “Specific Plan Zone Area” and that specific zoning for the parcels was “S-2 Open Space Preservation.”

In fact, the correct General Plan designations for the 17 parcels varied between “R-OS” (Recreational-Open Space), “LDR” (Low Density Residential), and “GC” (General Commercial). The correct specific plan zoning varied between “S-1” (Recreational/Open Space), “R1-L1” (Single Family Residential - one dwelling unit per legal lot-1 acre minimum), and “C-2” (Medium Commercial).

169. BB-1 stated:

The subject site is located in an immerging [sic] market, in the path of development. Due to the fact that the subject’s 4 parcels are not contiguous, the maximally productive use would be to hold for future development and possible assemblage.

BB-1’s assertion that the Bombay Beach properties were located in an emerging market area was unsupported. Given its remote location and the possibility that Bombay Beach area might become even less desirable if the Salton Sea restoration project were approved, the demand for housing in the Bombay Beach area was limited over the long term. The development impediments discussed above, including the easement to maintain levees and ditches on Parcel No. 4, the access problems for Parcel Nos. 1 and 4 due to the railroad tracks, the negative impact of Parcels No. 1 and 4 as a result of being in a flood zone, the proximity of Parcel No. 1 to the Alquist-Priolo earthquake zone, and the limitations on the

uses of Parcel Nos. 1 and 4 due to the mineral rights held by others, limited the potential development of Parcels Nos. 1 and 4.

170. BB-1 did not identify the prior sale of the subject properties recorded on August 23, 2004, for a price of \$2,989,000. This transaction involved 30 parcels that totaled 2,310 gross acres. The property that was sold included all of the subject parcels (except for one parcel) and 14 other parcels that were not a part of the subject properties at issue.

Based on the land areas indicated on the county assessor's map, this prior sale equated to a value of \$1,294 per gross acre.

171. BB-1 described the properties' sales history in the factual data section of BB-1 as follows:

[T.W.] went into escrow May 19, 2005 to purchase the entire 7,800 acres from [P.S.] for \$21,833,000 or \$2,799 per acre.

BB-1 did not identify the status or conditions of escrow. Other than a two page Amendment to the Escrow Instructions, dated September 6, 2005, respondent's work file contained no information relating to the 2004 sale and the 2005 escrow amendment.

172. During his investigation, Investigator Fruechtl determined that in the September 6, 2005, escrow amendment, T.W. designated SLD as the Buyer and that P.S. accepted SLD as the Buyer; about two months later, on November 21, 2005, a grant deed was recorded that showed title to the subject properties (not the entire 7,800 acres) being transferred from P.S. to SLD. A Document Transfer Tax of \$4,730 was reflected on the grant deed that indicated a reported sales price of \$4,300,000 for the subject properties, and not a sales price of \$21,833,000. That sales price reflected a unit price of \$2,771 per acre.

BB-1 did not accurately comment on the status of the sale of the subject properties or the terms of the sale.

173. BB-1 represented that the difference in value between the escrow price of \$2,799 per acre and the appraised value of \$13,762 per acre set forth in BB-1 was due to increasing market conditions since the properties went into escrow.

This statement was unsupported, and implied that market conditions increased 492 percent from May 19, 2005, through November 8, 2005, a period of less than six months.

174. BB-1 used three land sale comparables for valuation purposes. The comparable land sales involved properties located around the northerly portions of the Salton Sea, much closer to areas where development activity would first occur in comparison to the Bombay Beach area.

The land sales selected by respondent were:

Sale No.	Location \ Buyer & Seller	Recording Date	Zoning	Sales Price	Acres	Price/Acre
1	Avenue 86 & Hwy 86 Desert Shores, CA Buyer: [R.G.P., LLC] Seller: [B.E.P., LLC]	3/1/2005	A-2	\$8,400,000	336	\$25,000
2	70750 Hayes Avenue Thermal, CA Buyer: [P.T.R.E.H., LLC] Seller: [S.S.E., LLC]	8/30/2005	A-1-20	\$3,428,000	171.4	\$20,000
3	Avenue 78 & Polk Street Mecca, CA Buyer: [P.P., LLC] Seller: [D.E. Inc.]	3/1/2005	A-1-20	\$1,775,000	58.17	\$30,514
Zoning: A-2 (Imperial County) A-1-20 (Riverside County)						

175. Land Sale No. 1 was located at Avenue 86 and Highway 86 in Desert Shores. It involved the sale of 336 acres at \$25,000 per acre, with a recording date of March 1, 2005, for a sales price of \$8,400,000. Respondent's reports indicated Land Sale No. 1 involved the sale of several non-contiguous clusters in Riverside and Imperial Counties, approximately 38 miles northwest of the subject properties on the westerly side of the Salton Sea.

BB-1 represented the use of Land Sale No. 1 at the time of sale was "Agricultural Land –Table Grape Vineyards" with the Highest and Best Use as "Interim Use as Agriculture: Hold for future development."³¹ BB-1 stated the property was "currently improved with vineyards. Most properties in this area are being used as agriculture land as an interim use or being held for future development."

Aerial imagery of the Riverside portions of the property revealed that the acreage that was sold included a variety of improvements associated with farming operations along with a substantial residence.

BB-1 erroneously represented that Land Sale No. 1 was an arm's length transaction. The transaction was actually a transfer between corporate entities controlled by the same parent corporation. In addition, the transfer was for "an undivided 90% interest" in the described properties.

³¹ The portion of this sale located in Imperial County was directly adjacent to the Desert Shores subject property and was part of the larger proposed Travertine Point development.

BB-1 represented Land Sale No. 1 involved 336 gross acres. However, the total land area for Land Sale No. 1 was actually 684.15 acres. Respondent's documentation for Land Sale No. 1 included a total of 16 Assessor Parcel Numbers (APN's) for the transfer with five parcels located in Riverside County. But, the data page within BB-1 only reflected eleven parcels of property within Imperial County and omitted the five parcels that were situated in Riverside County.

176. BB-1 stated Land Sale No. 2 involved a 171.4 acre transaction in Thermal with a sales price of \$3,428,000, or a per acre price of \$20,000.

The property involved in Land Sale No. 2 was actually located in Mecca, Riverside County, just south of Highway 111. The property was located at the northern end of the Salton Sea, approximately 23 miles northwest of the Bombay Beach properties. BB-1 represented the use the property of Land Sale No. 2 at the time of sale as "Farmed Citrus," with the Highest and Best Use as "Interim Use Agriculture: Hold for future development."

BB-1 identified the source of verification for Land Sale No. 2 as "Metroscan: Co-star Comps: Buyer." Other than respondent's report, respondent's work file did not contain any information pertaining to this sale. Investigator Fruechtl searched CoStar data related to Land Sale No. 2 by address, assessor parcel numbers, and cross street. He found no information on Co-Star concerning the sale.

177. BB-3 stated Land Sale No. 3 involved the sale of 58.17 acres of property in Mecca for \$1,775,000, or a per acre sales price of \$30,514, with a recording date of March 1, 2005.

Land Sale No. 3 actually involved property located in Thermal, just south of Highway 111. The property was west of the Salton Sea, approximately 36 miles northwest of the Bombay Beach properties. Land Sale No. 3 was located between the noncontiguous parcels described in BB-1 as Land Sale No. 1. Land Sale No. 3 was acquired as part of an assemblage³² that BB-1 did not mention.

BB-1 represented the use of the property at the time of its sale was "Citrus Ranch with miscellaneous out buildings" with the Highest and Best Use as "Agriculture as interim use." BB-1 stated, "This property is currently improved with date trees," which contradicted the property's previous description as a citrus ranch.

³² An assemblage is the putting together the purchase, or options for the purchase, of several small parcels from multiple owners to create a larger parcel of land. The purchaser's goal is to obtain enough land for a particular development or to sell the larger parcel for more money than it cost to purchase the smaller parcels. The increase in value due to the assemblage is called plottage value.

BB-1 identified its source of verification as “Metroscan; Desert Area CIE; Desert Pacific Properties.” However, other than respondent’s report, the work file contained no supporting information.

178. BB-1 contained a sale adjustment grid for each of the four parcels that constituted the subject properties. BB-1 compared each Bombay Beach parcel with Land Sales Nos. 1, 2 and 3 and made adjustments.

BB-1 described the location of each subject parcel as “Average” and described the location of each comparable sale as “Similar.” BB-1 did not make downward adjustments to the Bombay Beach property even though the location of the comparables was superior. Sales closer to Bombay Beach involved lower prices on a per acres basis than in areas west and north Bombay Beach. The Bombay Beach’s location was, without doubt, inferior to the location of all three selected sales.

179. Respondent’s work file contained various Multiple Listing Service (MLS) pages for sales taking place in the north shore area of Salton Sea. However, the work file contained no MLS information for the Bombay Beach area.

180. Investigator Fruechtel determined there were six land sales in the Bombay Beach area that were available for comparison purposes when respondent prepared BB-1. A comparison of the property value of those sales contrasted sharply with the three comparable sales respondent used for valuation purposes in BB-1.

Excluding transactions that involved heavily leveraged seller financing, the unadjusted sales in the Bombay Beach area properties reflected a value from \$275 to \$1,574 per acre. The sales history in the Bombay Beach area demonstrated a decline in price per acre as parcel size increased. The sales in the Bombay Beach area were significantly lower than BB-1’s comparable sales, which reflected an unadjusted range in value of from \$20,000 to \$30,514 per acre. And, the sales within the Bombay Beach area reflected significantly lower land values than the values calculated in BB-1.

181. BB-1 included a discounted cash flow analysis that assumed all four Bombay Beach parcels were sold to an individual buyer. The discounted cash flow analysis was flawed because respondent used unsupported assumptions. These assumptions included:

- a. The subject property would sell at the aggregate retail price of \$26,176,000. The aggregate retail price was based upon a sales comparison approach that did not address various issues that impacted value, such as location, the availability of potable water, views, and the use of sales involving seller financing as comparable sales.

b. Assumptions regarding marketing time and sell off periods. Respondent's work file did not contain any evidence pertaining to marketing time and sell off periods.

Complainant's Evidence Regarding BB-1

182. Investigator Fruechtl's testimony, supporting documentation, and report established the matters set forth in Factual Findings 164 through 181. Investigator Fruechtl did not express any opinions on the Bombay Beach property's market value, but he testified about many matters that impeached the thoroughness of respondent's data gathering process and the validity of his valuations. The appraisal report was misleading.

Respondent's Evidence Concerning BB-1

183. Respondent testified that USPAP requires an appraiser to evaluate the sales history of a subject property in the three years preceding the appraisal. Respondent said he followed that directive. The sale occurring on August 23, 2004, did not involve the exact same parcels, so disclosure of the sale was not required.

Respondent testified that the subject property was worth \$13,762 per acre, even though it was part of a previous sales transaction in which property sold for \$2,799 per acre, because the four parcels at issue were more valuable than the remaining parcels due to their proximity to the Salton Sea and frontage on Highway 111. Respondent testified that the 1,551.75 acres in the four parcels would sell for more per acre than the 7,800 acres due to economies of scale. Finally, respondent testified that land values had increased from the May 2005 escrow date through the date of appraisal; he disputed that the sales figures reflected an approximate 400 percent increase in property values in less than six months.

Respondent testified that the mileage from the Bombay Beach area to the western shore of the Salton Sea would not be an issue once a bridge was constructed across the Salton Sea as proposed by the restoration project. According to respondent, location must be defined as a property's proximity to goods and services and, under this definition, the Bombay Beach property's location was not inferior.

Respondent testified that the exploration and mining rights of others was not relevant because BB-1 specifically assumed there were no negative subsurface soil conditions.

Respondent testified the flood zones had little impact on development because there was no specific plan for development. Respondent admitted he was not aware of the proximity of Parcel No. 1 to the Alquist-Priolo earthquake zone, but he argued that the earthquake zone had no impact on Parcel No. 1's value because the land within the zone could be used for mitigation purposes and residential density outside the zone could be increased. Respondent did not perceive zoning to be an issue because zoning always changes with development. Respondent testified that the impact of the railroad tracks was disclosed because maps in BB-1 depicted the presence of those railroad tracks.

Respondent testified he did not perform a highest and best use analysis without assemblage because “the properties had already been assembled.”

Respondent was critical of Investigator Fruechtl’s analysis of comparable sales, claiming that BRE’s approach “disassembled” the Bombay Beach area properties and eliminated their value as a result of their assemblage. He claimed that Investigator Fruechtl was “doing everything he could to pull down the value of the subject property.” As an example of overreaching, respondent cited Investigator Fruechtl’s observation that BB-1 misidentified a citrus ranch as a date tree farm. Respondent observed that he mentioned in his report that several comparables currently were being used for agricultural purposes. He testified that his selection of the properties as comparable sales was appropriate and that he made credible adjustments.

The thrust of respondent’s testimony was that Investigator Fruechtl was “steering his report and intentionally discrediting my report” and that “90 percent of what he has done is irrelevant to the bottom line.”

Credibility Determinations

184. Investigator Fruechtl’s testimony concerning BB-1 was far more credible than respondent’s testimony for the reasons previously stated.

Conclusions Regarding BB-1

185. BB-1 did not analyze a recent sale of the Bombay Beach property or the facts and circumstances underlying that sale. BB-1 did not mention a known earthquake fault, the mineral rights of others with “right of access at all times,” site configuration, and limited access issues. BB-1 minimized the impact of railroad tracks, a flood zone, and development patterns.

BB-1 failed to provide or adequately analyze comparable sales of properties that better represented the characteristics of Bombay Beach properties and respondent selected sales for evaluation purposes that were not comparable sales in the immediate area.

These errors and omissions violated USPAP Standards Rules 1-1 (b), 1-2 (e)(i), 1-4(a), 1-5(a)(b), and 2-2 (b)(iii)(ix).

In connection with these errors and omissions, respondent failed to employ recognized methods and techniques necessary to produce a credible appraisal, in violation of USPAP Standards Rule 1-1(a).

In connection with these errors and omissions, respondent failed to identify the problem to be solved and to provide the research and analyses necessary to complete the assignment in a manner consistent with appraiser peers’ actions, in violation of USPAP Standards Rules 1-2 (f) and 2-2(b)(vii).

In connection with these errors and omissions, BB-1 was misleading and did not contain sufficient information to enable the intended user of BB-1 to understand the appraisal properly, in violation of USPAP Standards Rule 2-1 (a)(b).

In connection with these errors and omissions, respondent failed to disclose and properly analyze relevant property and market characteristics, ignored relevant market information, and utilized land sales from other market areas that resulted in a misleading appraisal, in violation of the Conduct Section of the Ethics Rule.

BB-2

186. On June 19, 2006, respondent prepared a second summary appraisal report (BB-2) for the same Bombay Beach property.³³ BB-2 was intended to be an “updated” appraisal of the “as is” market value of the Bombay Beach properties. BB-2’s effective date of value was June 16, 2006. BB-2’s opinion of value was \$24,054,000.00.

187. SLD was BB-2’s intended user. The function of BB-2 was to obtain possible non-federally related financing for the Bombay Beach property.

188. BB-2 did not contain relevant characteristics concerning the Bombay Beach properties including the land locked nature of some parcels, the presence of earthquake and flood hazard areas, and the impact of railroad tracks on access. BB-2 mentioned, but did not comment upon, mineral rights of others who had rights of access to Parcel Nos. 1 and 4.

189. BB-2 summarized the same sales from BB-1 in the section entitled “Sales Comparison Approach.” BB-2 included the statement:

Three sales of similar land in the subject’s district were analyzed. These sales occurred within the last 12-15 months. The sizes ranged from 58.17 to 336 acres. When minor adjustments were made for view, access, on and off-site improvements, the sales indicated aggregate retail for the individual parcels as follows:

- Parcel 1 - \$11,055,000 (\$19,225/Acre)
- Parcel 2 - \$1,389,000 (\$17,363/Acre)
- Parcel 3 - \$1,736,000 (\$17,360/Acre)
- Parcel 4 - \$14,120,000 (\$17,722/Acre)

Total Aggregate Retail: \$28,300,000.

BB-2’s sales comparison approach using these comparables was not supported for the reasons previously mentioned.

³³ Exhibit 76, the 2006 edition of USPAP, applies to BB-2.

Complainant and Respondent's Evidence

190. Complainant's evidence included Investigator Fruechtl's testimony, the supporting data, and report.

Respondent's evidence included respondent's testimony and supporting data.

Credibility Determinations

191. Investigator Fruechtl's testimony concerning BB-2 was far more credible than respondent's testimony for the reasons previously stated.

Conclusions Regarding BB-2

192. BB-2 did not analyze a recent sale of the Bombay Beach property or the facts and circumstances underlying that sale. BB-2 omitted a known earthquake fault, the mineral rights of others with "right of access at all times," site configuration, and limited access issues. BB-2 minimized the impact of railroad tracks, a flood zone, and development patterns. BB-2 failed to provide or analyze comparable sales of properties in the immediate area that better represented the value of the Bombay Beach properties than the comparables used in the appraisal report.

These errors and omissions violated USPAP Standards Rules 1-1 (b), 1-2 (e)(i), 1-4(a), and 1-5(a)(b); and 2-2 (b)(iii)(ix).

In connection with these errors and omissions, respondent failed to employ recognized methods and techniques necessary to produce a credible appraisal, in violation of USPAP Standards Rule 1-1(a).

In connection with these errors and omissions, respondent failed to identify the problem to be solved and provide the research and analyses required to perform the scope of work necessary to complete the assignment in a manner that would be consistent with appraiser peers' actions, in violation of USPAP Standards Rules 1-2 (f) and 2-2(b)(vii).

In connection with these errors and omissions, BB-2 was misleading and did not contain sufficient information to enable the intended user to understand the appraisal properly, in violation of USPAP Standards Rule 2-1 (a)(b).

In connection with these errors and omissions, respondent failed to disclose and properly analyze relevant property and market characteristics pertaining to the subject properties, ignored available local market information, and utilized land sales from other market areas that resulted in a misleading appraisal. Respondent violated the Conduct Section of the Ethics Rule.

Other Evidence

193. Respondent called Judy Lozano. Ms. Lozano has worked in the banking industry for more than 25 years, primarily as a commercial loan officer. In 1993, she began working for the Palm Desert National Bank, a nationally chartered bank. She became the Chief Credit Officer of that bank.

All loans in excess of \$250,000 involved federally regulated transactions, and only licensed appraisers could provide appraisals for the real properties used as collateral for such loans. USPAP compliance was required for those appraisals. While Ms. Lozano was somewhat familiar with USPAP standards, she used a worksheet to determine whether an appraisal complied with USPAP standards. She was not an expert in USPAP compliance.

Respondent provided real property appraisals for the Palm Desert National Bank for more than 20 years. Respondent was a well-respected real estate appraiser within the Coachella Valley community. Ms. Lozano was not aware of respondent ever submitting any appraisal that violated USPAP.

On behalf of her employer, Ms. Lozano asked respondent to appraise the Porcupine Creek property several times. Respondent's appraisals were reviewed by another appraiser, as was required whenever a loan exceeded \$1,000,000. Ms. Lozano testified that respondent's appraisals were never found to be erroneous on review. Federal bank examiners never took issue with any of respondent's appraisals. To Ms. Lozano's knowledge, no reviewer or bank examiner ever stated that respondent's appraisals violated USPAP.

With respect to PC-4, Palm Desert National Bank sought an appraisal to contest Edra Blixseth's claim in a Montana bankruptcy action that Porcupine Creek had no equity and she was no longer required to maintain Porcupine Creek. Respondent provided PC-4 to the bank and served as the bank's expert witness in the bankruptcy proceeding. The bankruptcy judge found respondent's appraisal more credible than the appraisal provided by Ms. Blixseth's expert witness.

With respect to properties in the Salton Sea area, Ms. Lozano testified there was a price spike in 2007; after that, prices of land in the Salton Sea area declined.

Ms. Lozano resigned her position with Palm Desert National Bank. When she resigned, the bank was designated a "troubled institution" because the capital on hand was insufficient to cover potential losses. Ms. Lozano believed this situation was caused by the declining value of real estate and borrowers' inability to repay loans. Palm Desert National Bank closed in 2012 and was placed in receivership.

194. Respondent introduced a Memorandum of Decision issued by the United States Bankruptcy Court, District of Montana, in Case No. 09-61893-11, dated October 20, 2009, entitled *In Re BLX Group, Inc., Debtor*.

In reaching his decision in that matter, the Honorable Ralph B. Kirscher, U. S. Bankruptcy Judge, found that between the competing real estate appraisals provided to him during trial, respondent's appraisal contained much more detail and was more objective. The court found respondent had a better grasp of market conditions in the Coachella Valley and, in particular, Rancho Mirage, than the opposing expert. On this basis, the court gave greater weight to respondent's testimony and appraisal.

Respondent claimed that the bankruptcy court found his appraisal to be "correct" and that his testimony reflected the true market value of Porcupine Creek as of the date of PC-4. He suggested that the bankruptcy court determined there were no USPAP violations in connection with his appraisal. In this respect, he implied that the doctrine of collateral estoppel applied.

The Memorandum of Decision, dated October 20, 2009, does not have any relevance in this disciplinary proceeding. The issues litigated in the bankruptcy proceeding and this proceeding are not the same. USPAP issues were not litigated in the bankruptcy proceeding. The parties in the proceedings are not identical or in privity.³⁴

Substantial Relationship

195. The first amended accusation was filed directly as a result of respondent's licensed activities. The USPAP violations that were established in this matter have a substantial relationship to the qualifications, functions and duties of a licensed real estate appraiser. Respondent engaged in willful violations of the Real Estate Appraisers' Licensing and Certification Act. (Cal. Code Regs., tit. 10, § 3722, subd. (b).)³⁵

Rehabilitation Evaluation

196. California Code of Regulations, title 10, section 3273, sets forth BREA's criteria of rehabilitation. The regulation provides in part:

³⁴ Traditionally, the doctrine of collateral estoppel is applied only when several threshold requirements are fulfilled. First, the issue sought to be precluded from relitigation must be identical to that decided in a former proceeding. Second, the issue must have been actually litigated. Third, the issues must have been necessarily decided in the former proceeding. Fourth, the decision in the former proceeding must be final. Finally, the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding. Even if these threshold requirements are satisfied, the doctrine will not be applied if such application would not serve its underlying fundamental principles. (*Gikas v. Zolin* (1993) 6 Cal.4th 841, 848-849.)

³⁵ Willful conduct does not require a purpose or specific intent to bring about a result. However, it requires more than simple negligence or accidental conduct. (*Patarak v. Williams* (2001) 91 Cal.App.4th 826, 829.)

(a) Upon a determination . . . that a substantial relationship exists between particular acts or omissions and the qualifications, functions or duties . . . by a licensee. . . , the Chief shall consider all competent evidence provided by the . . . licensed appraiser or known to the Chief, consisting of testimony or other facts showing:

(1) The effect of the passage of time . . . ;

[¶] . . . [¶]

(10) Correction of business practices . . . with the potential to cause such injury;

[¶] . . . [¶]

(13) Change in attitude from that which existed at the time of the . . . offense as evidenced by any or all of the following:

(A) Testimony of . . . licensed appraiser

197. Using BREAs' criteria for rehabilitation, the passage of time has not resulted in any change in respondent's appraisal practices or attitude. He admitted no wrongdoing. He asserted he was vindicated by the Appraisal Institute in some type of summary proceeding that did not involve the taking of testimony under oath, but he provided no evidence to corroborate this unsubstantiated testimony.

Respondent did not offer the opinion of any independent expert witness in his defense. The testimony and evidence he presented in his defense was not compelling. He attacked the qualifications, integrity and motivation of those who questioned his professional competence and held views that were contrary to his own. He provided testimony from a character witness who worked for the Palm Desert National Bank, who was satisfied with his appraisals. Rehabilitation was not established.

Costs of Investigation and Enforcement

198. The declaration of John Schmidt established that he provided 160 hours of investigative services in the 2013-2014 fiscal year and that his time was billed at \$67.03 per hour. The time spent in the investigation of LQ-1 and the hourly rate charged in that investigation was reasonable.³⁶

³⁶ In his deposition testimony related to LQ-1, respondent testified that his fee was \$375 per hour.

The declaration of Donald Fruechtl established that he provided 300 hours of investigative services in the 2010-2011 fiscal year, 304 hours of investigative services in the 2011-2012 fiscal year, 144 hours of investigative services in the 2012-2013 fiscal year, and 224.75 hours of investigative services in the 2014-2015 fiscal year. His billing rates ranged from \$54.55 per hour to \$67.30 per hour. The time spent in the investigation of PC-1, PC-2, PC-3, PC-4, DS-2, DS-3, BB-1, and BB-2 was reasonable. The hourly rates charged in the investigations of those appraisals were reasonable.

BREA's reasonable cost of investigation totaled \$71,763.68.

199. Complainant provided a declaration in support of enforcement costs that established the Attorney General's Office billed BREA \$54,065.00 for legal services. A detailed billing was attached to the deputy attorney general's declaration that described the legal services that were provided, the dates those services were provided, and the individual providing the legal services. The rate of \$170 per hour for legal services was reasonable and the rate of \$120 per hour for paralegal services was reasonable. This disciplinary matter was factually and legally complicated, and it was vigorously contested. Counsel for complainant was well prepared and highly professional

BREA's reasonable costs of enforcement total \$54,065.00.

200. BREA's reasonable costs of investigation and enforcement total \$125,828.

Respondent failed to provide any evidence that suggested the costs of investigation and enforcement were unreasonable.

201. This case did not involve the undertaking of a massive investigation that disclosed only a few instances of relatively minor misconduct. The BREA's investigation into four separate complaints disclosed respondent's inexplicable pattern of USPAP violations during his appraisals. His misconduct posed a risk of harm to the public. Respondent did not admit any wrongdoing. He expressed no remorse. He did not raise a colorable challenge to the disciplinary sanction the BREA recommended. He did not establish that he currently lacks the financial ability to pay investigative and enforcement costs. There is no reason to discount the BREA's costs.

LEGAL CONCLUSIONS

Purpose of the Real Estate Appraiser Law

1. Protection of the public is the highest priority of the Bureau of Real Estate Appraisers in exercising its licensing, regulatory, and disciplinary functions. Whenever protection of the public is inconsistent with other interests sought to be promoted, protection of the public shall be paramount. (Bus. & Prof. Code, § 11310.1.)

Burden and Standard of Proof

2. In administrative proceedings involving a professional license, grounds for imposing discipline must be established to a reasonable certainty and cannot be based on surmise or conjecture, suspicion or theoretical conclusions, or uncorroborated hearsay. (*Small v. Smith* (1971) 16 Cal.App.3d 450, 457.)

The standard of proof in an administrative proceeding to revoke or suspend a professional license is clear and convincing proof to a reasonable certainty and not a mere preponderance of the evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.)

“Clear and convincing” evidence means evidence of such convincing force that it demonstrates, in contrast to the opposing evidence, a high probability of the truth of the facts for which it is offered. Such evidence requires a higher standard of proof than proof by a preponderance of the evidence. (BAJI No. 2.62.)

Authority to Impose Discipline

3. Business and Professions Code section 11313 authorizes the Director to adopt and enforce rules and regulations that are reasonably necessary to carry out the purposes of the Real Estate Appraisers’ Licensing and Certification Law.

Business and Professions Code section 11314 requires the BREA to enact regulations for the discipline of real estate appraisers to ensure protection of the public interest and compliance with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Public Law 101-73, and any amendments thereto.

California Code of Regulations, title 10, section 3721, authorizes the Director to suspend or revoke any license of any person who has violated any provision of USPAP, any provision of the Real Estate Appraisers’ Licensing and Certification Law, or any regulations promulgated pursuant thereto.

Statutes, Regulations, USPAP Standards and Rules

4. Business and Professions Code section 11319 provides that USPAP constitutes the minimum standards of conduct and performance for real estate appraisers.

5. California Code of Regulations, title 10, section 3701, provides that licensed real estate appraisers must conform to and observe USPAP standards as promulgated by the Appraisal Standards Board of the Appraisal Foundation.

6. Business and Professions Code section 11328 requires licensed real estate appraisers to submit copies of appraisals and work files to the BREA upon request.

7. Exhibit 75, the 2005 edition of USPAP, applies to BB-1 and is incorporated by reference.
8. Exhibit 76, the 2006 edition of USPAP, applies to PC-1, DS-2 and BB-2, and is incorporated by reference.
9. Exhibit 77, the 2008 edition of USPAP, applies to LQ-1, PC-2, PC-3, PC-4, and DS-3 and is incorporated by reference.

Cause Exists to Impose Discipline

10. First Cause for Discipline (Violations of the 2006 USPAP Standards Rules relating to PC-1): Clear and convincing evidence established that grounds exist to impose discipline upon respondent's license under Business and Professions Code sections 11313 and 11314, in conjunction with California Code of Regulations, title 10, sections 3701 and 3721, subdivision (a)(6), as set forth in Factual Findings 32-79.

11. Second Cause for Discipline (Violations of the 2008 USPAP Standards Rules relating to PC-2): Clear and convincing evidence established that grounds exist to impose discipline upon respondent's license under Business and Professions Code sections 11313 and 11314, in conjunction with California Code of Regulations, title 10, sections 3701 and 3721, subdivision (a)(6), as set forth in Factual Findings 32-38 and 80-84.

12. Third Cause for Discipline (Violations of the 2008 USPAP Standards Rules relating to PC-3): Clear and convincing evidence established that grounds exist to impose discipline upon respondent's license under Business and Professions Code sections 11313 and 11314, in conjunction with California Code of Regulations, title 10, sections 3701 and 3721, subdivision (a)(6), as set forth in Factual Findings 32-38 and 85-94.

13. Fourth Cause for Discipline (Violations of the 2008 USPAP Standards Rules relating to PC-4): Clear and convincing evidence established that grounds exist to impose discipline upon respondent's license under Business and Professions Code sections 11313 and 11314, in conjunction with California Code of Regulations, title 10, sections 3701 and 3721, subdivision (a)(6), as set forth in Factual Findings 32-38 and 95-101.

14. Fifth Cause for Discipline (Violations of the 2006 USPAP Standards Rules relating to DS-2): Clear and convincing evidence established that grounds exist to impose discipline upon respondent's license under Business and Professions Code sections 11313 and 11314, in conjunction with California Code of Regulations, title 10, sections 3701 and 3721, subdivision (a)(6), as set forth in Factual Findings 103-136.

15. Sixth Cause for Discipline (Violations of the 2008 USPAP Standards Rules relating to DS-3): Clear and convincing evidence established that grounds exist to impose discipline upon respondent's license under Business and Professions Code sections 11313

and 11314, in conjunction with California Code of Regulations, title 10, sections 3701 and 3721, subdivision (a)(6), as set forth in Factual Findings 103-107 and 137-160.

16. Seventh Cause for Discipline (Violations of the 2005 USPAP Standards Rules relating to BB-1): Clear and convincing evidence established that grounds exist to impose discipline upon respondent's license under Business and Professions Code sections 11313 and 11314, in conjunction with California Code of Regulations, title 10, sections 3701 and 3721, subdivision (a)(6), as set forth in Factual Findings 102 and 161-185.

17. Eighth Cause for Discipline (Violations of the 2006 USPAP Standards Rules relating to BB-2): Clear and convincing evidence established that grounds exist to impose discipline upon respondent's license under Business and Professions Code sections 11313 and 11314, in conjunction with California Code of Regulations, title 10, sections 3701 and 3721, subdivision (a)(6), as set forth in Factual Findings 102, 186-192.

18. Ninth Cause for Discipline (Violations of the 2008 USPAP Standards Rules relating to LQ-1): Clear and convincing evidence established that grounds exist to impose discipline upon respondent's license under Business and Professions Code sections 11313 and 11314, in conjunction with California Code of Regulations, title 10, sections 3701 and 3721, subdivisions (a)(6) and (a)(7), as set forth in Factual Findings 11-30.

The Appropriate Measure of Discipline

19. The misconduct in this matter was discovered during the investigation of complaints filed with the BREAA. The BREAA did not initiate the investigations. The BREAA's investigation into the nine real estate appraisals at issue was thorough, unbiased, and well documented. The clear and convincing evidence established that respondent failed to comply with USPAP standards in nine appraisals he issued from November 2005 through September 2009, and that each appraisal was misleading due to respondent's inexplicable and unjustified errors and omissions. The improper appraisals posed serious risks of harm to individuals relying on them. Respondent denied any wrongdoing, despite clear and convincing evidence of misconduct, and he provided testimony in his defense that was farfetched. Respondent presented no evidence in rehabilitation.

There is no evidentiary basis to conclude that respondent would not utilize the same kinds of faulty appraisal techniques in the future if he were to retain his license. His evident disdain for the BREAA and those who critically reviewed his appraisals make him an extremely poor candidate for close supervision. There is no reason to believe that respondent would benefit from a period of probation or that steps could be taken to protect the public during any period of probation.

Respondent lacks the competence and character required to hold a real estate appraiser license. Only the outright revocation of respondent's real estate appraiser license will protect the public.

Costs of Investigation and Enforcement

20. Business and Professions Code section 11409 provides in part:

(a) Except as otherwise provided by law, any order issued in resolution of a disciplinary proceeding may direct a licensee . . . found to have committed a violation or violations of statutes or regulations relating to real estate appraiser practice to pay a sum not to exceed the reasonable costs of investigation, enforcement, and prosecution of the case. . . .

21. *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 held that a regulation imposing investigative and enforcement costs under California Code of Regulations, title 16, section 317.5 (which is similar to Bus. & Prof. Code, § 11409) did not violate due process. However, it was incumbent on the agency to exercise discretion to reduce or eliminate cost awards so that costs imposed under section 317.5 did not “deter chiropractors with potentially meritorious claims or defenses from exercising their right to a hearing.”

The California Supreme Court set forth four factors that should be considered in deciding whether to reduce or eliminate costs:

- (1) whether the licensee used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed;
- (2) whether the licensee had a “subjective” good faith belief in the merits of his position;
- (3) whether the licensee raised a “colorable challenge” to the proposed discipline; and
- (4) whether the licensee had the financial ability to make payments.

The *Zuckerman* criteria were applied in this matter. The application of those criteria does not compel the reduction of investigation or enforcement costs.

Under all the circumstances, it is appropriate to order respondent to pay \$125,828 for the BREAs’ reasonable costs of investigation and enforcement.

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ORDER

Certified Residential Real Estate Appraiser License No. AG 004590 issued to Raymond Dozier is revoked.

Raymond Dozier shall pay \$125,828 to the Bureau of Real Estate Appraisers.

DATED: April 23, 2015.

Original Signed


JAMES AHLER
Administrative Law Judge
Office of Administrative Hearings