

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

In the Matter of the First Amended Accusation
Against:

**RICHARD P. MONTGOMERY
1601 North Sepulveda Blvd, Ste. 560
Manhattan Beach, CA 90266**

**Real Estate Appraiser License No.
AG022371**

Respondent.

Case Nos. C090605-03, C20130115-01

OAH No. 2012020418

DECISION AND ORDER

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

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

It is so ORDERED 9-6-13.

Original Signed

FOR THE BUREAU OF REAL ESTATE APPRAISERS
DEPARTMENT OF CONSUMER AFFAIRS

1 KAMALA D. HARRIS
Attorney General of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 GILLIAN E. FRIEDMAN
Deputy Attorney General
4 State Bar No. 169207
300 So. Spring Street, Suite 1702
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Attorneys for Complainant
7

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

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11 In the Matter of the First Amended Accusation
Against:
12 **RICHARD P. MONTGOMERY**
13 **1601 North Sepulveda Blvd, Ste. 560**
Manhattan Beach, CA 90266
14
15 **Real Estate Appraiser License No.**
AG022371
16
17 Respondent.

Case Nos. C090605-03, C20130115-01
OAH No. 2012020418
STIPULATED SURRENDER OF
LICENSE AND ORDER

18
19 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
20 proceeding that the following matters are true:

21 PARTIES

- 22 1. Elizabeth Seaters is the Chief of Enforcement, Bureau of Real Estate Appraisers,
23 Department of Consumer Affairs (Complainant). She brought this action solely in her official
24 capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of
25 California, by Gillian E. Friedman, Deputy Attorney General.
26 2. Richard P. Montgomery (Respondent) is represented in this proceeding by attorney,
27 Scott J. Harris, Esq. whose address is S J Harris Law, 8383 Wilshire Boulevard, Suite 830,
28 Beverly Hills, California 90211.

1 CULPABILITY

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

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

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

13 RESERVATION

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

17 CONTINGENCY

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

28 ///

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

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

7 ACCEPTANCE

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

13
14 DATED: 8/21/13 **Original Signed**
15 RICHARD P. MONTGOMERY
16 Respondent

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

20 DATED: 8/21/13 **Original Signed**
21 SCOTT L. HARRIS, ESQ.
22 S J HARRIS LAW
Attorney for Respondent

23 ///
24 ///
25 ///
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ENDORSEMENT

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

Dated: 8/21/13

Respectfully submitted,

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

eral

Original Signed

GILLIAN E. FRIEDMAN
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

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

1 KAMALA D. HARRIS
Attorney General of California
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8 **BEFORE THE**
DIRECTOR OF THE OFFICE OF REAL ESTATE APPRAISERS
9 **STATE OF CALIFORNIA**

10
11 In the Matter of the First Amended Accusation
12 Against:

Case No. C090605-03, C20130115-01

13 **RICHARD P. MONTGOMERY**
14 **1601 North Sepulveda Blvd, Ste. 560**
Manhattan Beach, CA 90266

FIRST AMENDED ACCUSATION

15 **Certified General Appraiser License No.**
16 **AG022371**

17 Respondent.
18

19
20 Complainant alleges:

21 **PARTIES**

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

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

1 **REGULATORY PROVISIONS**

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

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

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

13 10. Regulation, section 3721 states:

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

17

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

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

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1 **UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE**

2 11. USPAP Rule 1 states:

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

6 12. USPAP Standards Rule 1-1 states:

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

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

10 (b) not commit a substantial error of omission or commission that significantly affects an
11 appraisal; and

12
13 13. USPAP Standards Rule 1-2 states:

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

15
16 (d) identify the effective date of the appraiser's opinions and conclusions;

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

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

20
21 (h) determine the scope of work necessary to produce credible assignment results in
22 accordance with the SCOPE OF WORK RULE.

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

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

26
27 (b) develop an opinion of the highest and best use of the real estate.

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

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

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

....

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

....

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

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

In developing a real property appraisal, the appraiser must:

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

....

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

Each written or oral real property appraisal report must:

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

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

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

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

....

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

....

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

3

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

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

6

7
8 (ix) state the use of the real estate existing as of the date of value and the use of the real
9 estate reflected in the appraisal; and, when an opinion of highest and best use was developed by
10 the appraiser, summarize the support and rationale for that opinion;

11 (x) clearly and conspicuously:

12 state all extraordinary assumptions and hypothetical conditions; and

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

14 . . .

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

16 **ETHICS RULE**

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

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

22 Conduct:

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

25 An appraiser must not engage in criminal conduct.

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

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

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

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

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

10 21. USPAP Scope of Work Rule, states:

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

- 13 1. identify the problem to be solved;
- 14 2. determine and perform the scope of work necessary to develop credible assignment
15 results; and
- 16 3. disclose the scope of work in the report.

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

20 Problem Identification

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

24 Scope of Work Acceptability

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

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

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

3 Disclosure Obligations

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

6 22. The USPAP Competency Rule states:

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

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

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

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

15 COST RECOVERY AND FINES

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

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

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

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

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

3 **FIRST CAUSE FOR DISCIPLINE**

4 (Misleading and Inaccurate Appraisal Reports-

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

6 25. Respondent is subject to disciplinary action under Business and Professions Code
7 sections 11313 and 11319, in conjunction with California Code of Regulations, title 10, section
8 3701, for violating Regulation, sections 3705 and 3721, subdivisions (a)(6) and (a)(7) in that on
9 or about September 22, 2006 and May 2, 2008, Respondent completed real estate appraisal
10 reports for a vacant 19-acre property located north of Rancho Cucamonga, California commonly
11 known as Robin Hood Road and Snow Drop Road (APN: 0201-043-31). The reports contained
12 errors or omissions, in violation of the provisions of the Uniform Standards of Professional
13 Appraisal Practice (USPAP), as follows:

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

20 (b) Respondent failed to describe the subject neighborhood correctly and instead included
21 an abundance of misleading information. Respondent's appraisal reports include an excessive
22 amount of information regarding other areas and insufficient information regarding the
23 neighborhood the subject property is located in. The appraisal reports fail to discuss the high fire
24 hazard problem, and the complex multi-jurisdictional regulation of the area. Respondent falsely
25 reported that the subject property is located in the city of Rancho Cucamonga (S.R. 1-1(a), 1-
26 1(b), 1-2(e)(i), 2-1(b), 2-2(b)(iii) and Conduct Section of the Ethics Rule);

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

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

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

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

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

17 (h) Respondent failed to research and report any progress made since the September 22,
18 2006 appraisal development of the subject property. Respondent failed to report in the absence
19 on any such progress, any attempts to develop the property. Respondent failed to consider in the
20 May 2, 2008 appraisal why there were no attempts if none had been made (S.R. 1-2(e)(i), 2-
21 2(b)(iii) and Conduct Section of the Ethics Rule);

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

24 (j) Respondent failed to state in his appraisal reports the amount of development allowed
25 by the existing zoning of the subject property in his highest and best use analysis of the subject
26 property. The reports fail to discuss the density allowed by zoning (S.R. 1-2(e)(i), 1-3(b), 2-
27 2(b)(iii), 2-2(b)(ix));

28 ///

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

4 (l) Respondent failed to analyze the physical constraints on the development of the site,
5 including the terrain, its location, access, and the easement on the property (S.R. 1-2(e)(i), 2-
6 2(b)(iii), 2-2(b)(x));

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

9 (n) Respondent failed to reach an appropriate highest and best use conclusion. The 2008
10 report concludes that development of the property should be withheld until the economy
11 improves. The report fails to state what the interim use of the property would be until that time
12 would come and fails to project when it would happen. The conclusion is based on false
13 information regarding the subject property physical characteristics and zoning (S.R. 1-2(e)(i), 2-
14 2(b)(iii), 2-2(b)(x));

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

18 (p) Respondent failed to describe the sales used as comparables in his reports adequately.
19 The reports lack plat maps that show clearly where the sale parcels are located (S.R. 1-1(a), 1-
20 1(b), 1-4(a), and 2-1(b));

21 (q) Respondent failed to state the potential use for each sale in his reports (S.R. 1-1(a), 1-
22 1(b), 1-4(a), and 2-1(b));

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

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

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

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

16 SECOND CAUSE FOR DISCIPLINE

17 (Misleading and Inaccurate Appraisal Reports-

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

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

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

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

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

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

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

22 (f) Respondent failed to analyze the legal constraints on the property, which include the
23 fact that it is within the jurisdiction of San Bernardino County and the city of Rancho Cucamonga
24 neither of which allow for high density development as the subject property was valued.
25 Respondent failed to consider the impact of the parcels that it included within its boundaries (S.R.
26 1-1(a), 1-1(b), 1-3(b), 2-1(a), 2-1(b), 2-2(b)(ix) and Conduct Section of the Ethics Rule);

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

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

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

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

16 (j) Respondent failed to report the prior sale of the subject property correctly. The
17 reports state the sale price, but does not state the terms of the sale, days on the market, asking
18 price and the buyer's intended use of the property. Respondent failed to reconcile the prior sale
19 price with his value conclusion, which was much higher. This error was compounded in the 2008
20 appraisal report where Respondent acknowledged that the market was in decline (S.R. 1-1(b), 1-
21 5(b), 1-6(a), 2-2 and Conduct Section of the Ethics Rule); and

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

1 **THIRD CAUSE FOR DISCIPLINE**

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

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

14 (a) Respondent failed to describe the subject neighborhood in an appropriate manner and
15 failed to discuss the market for the subject property in an appropriate manner (S.R. 1-1(a), 1-1(b),
16 1-2(e)(i), 2-1(a), 2-2(b)(iii) and Conduct Section of the Ethics Rule);

17 (b) Respondent produced a second appraisal report of the subject property dated March
18 20, 2008 that failed to report changes in the market which resulted in a different value conclusion
19 (S.R. 1-2(e)(i), 2-2(b)(iii), and 2-2(b)(ix));

20 (c) Respondent failed to describe the subject property correctly. Respondent failed to
21 adequately describe the terrain on the site. The comment in the reports that the site appears to be
22 gently rolling is misleading. Respondent failed to determine the amount of useable terrain on the
23 site. Respondent failed to describe the access to the site and failed to determine that it was
24 adequate for the highest and best use conclusion in his reports (S.R. 1-1(a), 1-1(b), 1-2(e)(i), 2-
25 1(b), 2-2(b)(iii) and Conduct Section of the Ethics Rule);

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

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

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

9 (g) Respondent failed to report that the subject property consisted of steep terrain and
10 how that would impact development of the subject property. Respondent failed to describe access
11 to the (landlocked) subject property or report that there was no known vehicle access. As noted in
12 the title report, the property does not abut a road and there is no recorded access agreement (S.R.
13 1-2(e)(i), 2-2(b)(iii), 2-2(b)(ix));

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

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

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

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

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

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

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

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PRAYER

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

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

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

3. Ordering Richard P. Montgomery to pay the Director of the Office of Real Estate Appraisers a fine pursuant to Business and Professions Code section 11316; and

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

DATED: 5/28/13

Original Signed

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

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